

RED HILL VALLEY PARKWAY INQUIRY

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE THE HONOURABLE
HERMAN J. WILTON-SIEGEL
held via Arbitration Place Virtual
on Wednesday, August 10, 2022, at 9:31 a.m.

VOLUME 50

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1 Arbitration Place Virtual
2 --- Upon resuming on Wednesday, August 10, 2022,
3 at 9:31 a.m.

4 MR. LEWIS: Good morning,
5 Commissioner, counsel, Mr. Oddi. Let's start off
6 with the land acknowledgement for the week before
7 we proceed.

8 I would like to open this week
9 of hearing by acknowledging that the City of
10 Hamilton is situated on the traditional
11 territories of the Erie, Neutral, Huron-Wendat,
12 Haudenosaunee and Mississaugas. This land is
13 covered by the Dish With One Spoon Wampum Belt
14 Covenant, which was an agreement between the
15 Haudenosaunee and Anishinaabek to share and care
16 for the resources around the Great Lakes.

17 We further acknowledge that
18 the land on which Hamilton sits is covered by the
19 Between the Lakes Purchase, 1792, between the
20 Crown and the Mississaugas of the Credit First
21 Nation.

22 Many of the counsel appearing
23 on this hearing today are in Toronto, which is on
24 the traditional land of the Huron-Wendat, the
25 Seneca and most recently the Mississaugas of the

1 Credit River. Today this meeting place is still
2 home to many indigenous people from across Turtle
3 Island and I'm grateful to have the opportunity to
4 work on this land.

5 Mr. Oddi was affirmed last
6 day, and so I would just remind Mr. Oddi of that
7 and that his affirmation remains in effect.

8 PREVIOUSLY AFFIRMED: MARCO ODDI

9 MR. LEWIS: Commissioner, as
10 you recall, Mr. Oddi first testified on May 4 and
11 5, 2022 and, at that time, he was the City of
12 Hamilton's manager of construction, engineering
13 services. Since that time, the City has advised
14 us that Mr. Oddi is no longer employed by the City
15 of Hamilton and also that the circumstance of his
16 departure are not related to matters pertaining to
17 the inquiry. I just wanted to put that on the
18 record at the outset before commencing Mr. Oddi's
19 examination today.

20 JUSTICE WILTON-SIEGEL: Thank
21 you.

22 EXAMINATION BY MR. LEWIS:

23 Q. Mr. Oddi, we covered your
24 background and work history in your testimony in
25 early May, but just as a refresher, because it's

1 been a while, you started working at the regional
2 municipality of Hamilton-Wentworth back in 1991.

3 Correct?

4 A. That's correct.

5 Q. And you were, skipping
6 over to the aughts, the senior project manager in
7 the Red Hill Valley Parkway project office from
8 January 2003 to March 2009. Is that right?

9 A. It might have been
10 March 2003, but, I mean, it's around that time.
11 It's 2003 to 2009.

12 Q. Okay. And after that,
13 you were the senior project manager, construction
14 office, from 2009 to, I believe, January 2016. Is
15 that correct?

16 A. That's correct.

17 Q. And I don't think we
18 covered that because of the time period. What
19 were your principal responsibilities in that role,
20 senior project manager, construction office?

21 A. I had various roles.
22 Basically when I started in the group in 2009, we
23 also were doing some of the larger facility
24 projects, so I had project managers who did
25 facility projects reporting directly to me and I

1 had a supervisor who looked after 12 or 13
2 construction inspectors who looked after the
3 capital work that we were doing. He reported to
4 me, as well as those inspectors. At one point I
5 helped out the City with dealing with
6 Infrastructure Ontario and finalizing the
7 proponent to build the new Tim Hortons Field.

8 And then in 2015, we had a
9 little bit -- one of our senior project managers
10 who looked after the project managers in the
11 construction section went over to the waterfront
12 office to look after that project, so I then --
13 and at that point we reorganized and put all the
14 facility project managers under one umbrella
15 within public works because at that point when we
16 had it we had some in our group, recreation had
17 some in their group and then we had a facilities
18 department that did the day-to-day operation
19 stuff, so that got consolidated into one group
20 that did all the facilities. And then I was
21 looking after, for that year, the project managers
22 that were looking after the capital works, what we
23 call the horizontal linear work.

24 Q. And so, is that, sort of,
25 broadly speaking, each project would have a

1 specific project manager and those project
2 managers would report to you. Is that right?

3 A. Correct, yeah. Our group
4 would look after, you know, 30 to 40 concurrent
5 construction projects involving roads, sewer,
6 sidewalk, water main, sewer, bridges, retaining
7 walls, and we also helped look after the lining
8 programs, so the rehabilitation of watermain
9 lining and sewer lining. And then as well as
10 looking after the 30 or 40 concurrent projects, we
11 always have a two-year maintenance on contracts,
12 so we have to do two-year maintenances on the 30
13 to 40 projects from two years prior. And then
14 we're also helping out the asset management and
15 design people as we're trying to prepare for the
16 next year's program of 30 to 40 projects, you
17 know, reviewing plans, specifications and getting
18 ready for the following year construction.

19 Q. And you reported in that
20 position to Jerry Parisotto. Is that right?

21 A. That's correct.

22 Q. And then he, in turn,
23 reported to Gary Moore. Is that right?

24 A. That's correct.

25 Q. And during that time, we

1 know that the LINC was resurfaced in 2011. That
2 came under your purview?

3 A. Yes. In terms of the
4 inspection staff, yes.

5 Q. Sorry, the inspection
6 staff, not the construction staff?

7 A. No, because at that time
8 I still had the facility project managers and the
9 inspectors and quality assurance kind of reported
10 through my arm. Right? We had another senior
11 project manager. We had two senior project
12 managers in construction and the other gentleman
13 looked after the project managers who were --
14 would oversee the project. But we worked together
15 as a total unit team.

16 Q. All right. And then from
17 January 2016 until your departure at the time of
18 your testimony in May, you were the manager of
19 construction and engineering services. Right?

20 A. That's correct.

21 Q. Okay. And you reported
22 to Mr. Moore until he left for the LRT project in
23 2018. Is that right?

24 A. That's correct.

25 Q. And then who after

1 Mr. Moore's departure did you report to?

2 A. Gord McGuire.

3 Q. Okay. Now, I just

4 briefly want to talk a bit about document

5 management and storage. What expectations or

6 guidance existed in engineering services regarding

7 where and how information should be saved on

8 network drives or in ProjectWise?

9 A. Well, we had a very, if

10 you want to call it, a rigid program. We had very

11 structured folders. Every time there was a

12 project, once it was tendered, that information

13 would get stored with the contract number, the

14 contract description, within ProjectWise, and then

15 there was folders that dealt with, you know,

16 pre-construction, during construction and

17 maintenance. So, pretty -- a pretty rigid

18 thorough place where information should be stored.

19 Q. Right. And did you input

20 information into ProjectWise?

21 A. Very rarely. You know,

22 if we were doing any reports, you know, at one

23 point we started doing things called sectional

24 area reports, you know, either myself or my admin

25 would then put them in ProjectWise. I would tend

1 to use ProjectWise more to open up, you know,
2 older projects, to look up information in case
3 there were e-mails or enquiries that we had to
4 respond to.

5 Q. And so, if you were
6 looking for a report or diagrams or whatever about
7 a particular project, you would expect it to be
8 located in the ProjectWise file for that project
9 and that's where you would look for it. Is that
10 right?

11 A. If i was looking for the
12 construction information, I would look there. If
13 it was looking for drawings or, you know,
14 geotechnical reports, as-builts, inspector, we
15 called our as-builts inspector reports sometimes,
16 I would look that up in our SPIDER system.

17 Q. Okay.

18 A. And that SPIDER is
19 basically spatial indexing -- I can't remember
20 what the acronym exactly stands for, but all that
21 information was stored in a corporate drive,
22 basically PDF files.

23 Q. All right. And for the
24 Red Hill Valley Parkway, was there a ProjectWise
25 file set up for that?

1 A. No, there wasn't.

2 Q. And why is that? Is that
3 just the timing of it?

4 A. No. ProjectWise was
5 something that engineering services used. Not
6 every division or section within public works or
7 the City use it. So, ProjectWise was kind of
8 engineering services' server. When we were doing
9 Red Hill, we were storing information on a
10 corporate drive.

11 Q. Okay. Is that the
12 P-drive?

13 A. Yeah. It can be labelled
14 whatever letter you want in your computer, but
15 everyone probably called it the P Mariner project
16 data server.

17 Q. Sorry, Mariner?

18 A. Yeah, M-A-R-I-N-E-R.

19 Q. As in, like, the ancient
20 Mariner?

21 A. Yeah, I guess. IT guys
22 name them. Right? I think SPIDER stands for
23 spatially indexed drawings and engineering
24 records, so there you go. I remember that
25 acronym.

1 Q. Did you have access to,
2 call it, the P-drive folders?

3 A. Yes. Yes, I did.

4 Q. For Red Hill?

5 A. For Red Hill, yes.

6 Q. And is that because you
7 were part of the original construction team,
8 project team?

9 A. Yes. My understanding
10 was there was restrictions put on by IT of who
11 could access that particular folders.

12 Q. Do you know what those
13 restrictions were?

14 A. I can't recall.

15 Q. And was it used, that
16 drive, was that used subsequent to the initial
17 construction for matters relating to the Red Hill?

18 A. Yeah, it may have. Yes.

19 Q. Okay. And is that where
20 you would have expected electronic copies of
21 reports pertaining to the Red Hill to be stored or
22 would you expect them to be somewhere else?

23 A. No. I would expect --
24 the Red Hill folder was set up for basically the
25 Red Hill Valley project office, so any new

1 projects, like the LINC or Red Hill, I would
2 expect those, because they're new projects being
3 done by engineering services, would be set up and
4 stored in ProjectWise.

5 Q. Okay. So, even if it
6 pertained to the Red Hill itself,
7 post-construction, you would expect it to be in
8 ProjectWise. Is that right?

9 A. Correct, yeah. The only
10 thing that would go into the Red Hill folder, I
11 would expect, would be -- you know, because we did
12 five-year monitoring of the creek, you know, there
13 was a two-year maintenance on all the construction
14 contracts, so anything related to the Red Hill
15 Valley projects would be in that directory and
16 anything new that the City was doing, again for
17 Red Hill or the LINC, would be stored in
18 ProjectWise.

19 Q. Sorry, when you refer to
20 that directory, you're talking about the P-drive,
21 the same one that was there for construction. Is
22 that right?

23 A. No. Sorry. I was
24 talking about Red Hill, so anything pertaining to
25 Red Hill, the Red Hill Valley, you know, like the

1 creek. I think we were also doing planting as
2 well after 2007, so any of that type of
3 information related to Red Hill would have been
4 stored in the project folder, yeah, I believe it
5 was called Red Hill Valley Parkway, the project
6 folder, in the Mariner drive.

7 Q. Right. That's what I
8 said. The P Mariner drive?

9 A. Correct.

10 Q. Okay. And what about
11 things like I know you, and we'll get to talking
12 about it, the Tradewind report and the Golder
13 report, where would you expect those to be filed,
14 reports about the Red Hill in 2014? What would be
15 your expectation about where those would be
16 stored?

17 A. You know, that some
18 folder would be created in ProjectWise. So, what
19 would happen, a lot of times when you see the way
20 it's used by the design staff, they'll have
21 different folders for the different project street
22 names. Sometimes when we put a tender together,
23 it might have two or three different streets, so
24 if you're looking for design info in ProjectWise,
25 it could be in three different folders, but if

1 you're looking for construction related, we would
2 always file it under the contract tender number.
3 But then I can't remember if it was in 2021 or
4 2020, they came up with a new filing structure for
5 ProjectWise of how we would store information and
6 data, but again -- so, it's a very rigid
7 prescriptive here is the different folders, here
8 is where you'll store information related to that
9 particular project.

10 Q. But just then to my
11 specific question, though, if I understood you
12 correctly, your expectation would be reports like
13 the Tradewind report, the Golder report,
14 pertaining to the Red Hill Valley Parkway would be
15 in a ProjectWise folder. Is that right?

16 A. Yeah. I would expect
17 that, yes.

18 Q. Okay. Now, I just
19 briefly want to talk about lighting, illumination
20 on the Red Hill. I understand that you were aware
21 that lighting on the Red Hill was an issue that
22 was raised from time to time and issues with
23 lighting. Is that fair?

24 A. Yeah, that's fair.

25 Q. Okay. Do you recall

1 receiving complaints about lighting concerns on
2 the Red Hill from time to time?

3 A. Occasionally. I mean,
4 especially once the parkway opened, any concerns
5 were either directed to myself or Gary to deal
6 with.

7 Q. Okay. And why to you or
8 to Gary once construction had been completed? Why
9 at that point?

10 A. Well, I mean, up to 2009,
11 I was still within the project office, right,
12 working on -- doing the two-year maintenance. We
13 were doing, every year, looking at the creek, so I
14 expected it to come to our office because we built
15 it.

16 Q. Right. Okay. What about
17 after that?

18 A. You know what? After, I
19 mean, up to when I left the City, I would still,
20 if there was any questions, concerns, you know,
21 normally people would send it to my direction
22 because of my background with the project.

23 Q. Okay. And so, you know,
24 when you occasionally received complaints about
25 it, who were those from? Are those from just

1 drivers, users of the parkway?

2 A. Yeah, they could be
3 drivers, they could be -- you know, sometimes it
4 would be a phone call that would come to the call
5 centre. Sometimes it would be an e-mail that
6 would go to a councillor's office and then
7 councillor would forward it to us to look at to
8 respond to.

9 Q. And how did you typically
10 respond? Did you develop a sort of standard type
11 answer to complaints or enquiries about
12 illumination or did you --

13 A. Yeah. It's funny. I
14 mean, the Red Hill -- the lighting on the Red Hill
15 is the exact same as the lighting system on the
16 LINC. Its just decision point lighting. So, if
17 you look at a typical MTO road, they usually
18 have -- they'll light basically in advance of your
19 exit ramps. They normally -- for high-mast
20 lighting, they would have three luminaires set up.
21 We would have -- our design had four luminaires,
22 so we had two at the gore and two prior. And a
23 typical MTO road, so if you drive older parts of
24 Highway 403, you know, unless they go in and
25 update it, you'll see this conventional

1 luminaires. So, there is no direct lighting of
2 the mainline on the LINC or Red Hill, just
3 portions. But, you know, the LINC, because it's
4 adjacent to development, you get that ambient kind
5 of lighting in the background. There are areas
6 through the valley where it is dark.

7 So, you know, usually a lot of
8 complaints were from, you know, not necessarily --
9 you know, maybe it was people who just weren't
10 comfortable driving in the dark at night. So, you
11 know, it was a brand new road. We had closed
12 Mount Albion Road as part of the projects, so you
13 took away that access. So, you know, basically to
14 address it, I came up with sort of a standard
15 answer basically that said here we use
16 conventional decision point lighting and it's, you
17 know, quite common. Like, after Red Hill was open
18 or just prior to, I drove around different
19 highways and even if I, you know, going to
20 different consultant meetings or just to confirm
21 that, yeah, if you look at these other
22 sections along the QEW, 400-series highways, you
23 see similar type of lighting. Right?

24 Q. Right. So, if I could
25 take you to, Registrar, just as a touch point on

1 this, HAM38954. Maybe if we could expand it a
2 little bit, since it's just the one e-mail. Is
3 that possible? Thank you.

4 At first there's an e-mail
5 from Marco Oddi on December 5, 2008 and then you
6 forward that on December 9, 2008 to Ron Gallo,
7 just with an FYI, and the subject is "Lighting on
8 Red Hill Valley Parkway." And you referred to
9 sort of a standard response and I'm just noting
10 that a lot of what you described just now is
11 what's in this e-mail. Is that fair?

12 A. Sorry, I'm just reviewing
13 it. Yeah, that's fair.

14 Q. Okay. And you talk about
15 the QEW and the 403 and that the Red Hill and the
16 LINC utilize conventional lighting at interchange
17 ramp terminals and crossroads. And then you talk
18 about the specific thing that you notice, that two
19 of the four luminaires in the southbound RHVP at
20 the Barton Street interchange are not working.
21 I'll arrange to have it corrected.

22 So, this e-mail doesn't
23 indicate who you sent it to. Do you know what's
24 going on here?

25 A. If you can scroll up a

1 bit, there was an e-mail to Ron Gallo, correct,
2 that I forwarded?

3 Q. Yeah, you forwarded it to
4 Mr. Gallo?

5 A. So, Mr. Gallo was in our
6 traffic section. And I think at that time, you
7 know, like I said, people were calling in to
8 complain, they would get the call centre. And
9 then basically the call centre would try and,
10 okay, which department should this go to? So,
11 something like this lighting, you know, traffic
12 may have been getting a lot of questions, so I
13 think Ron had contacted me saying -- because I
14 said, look, Ron, you can pass them on to me, I can
15 deal with them, but, you know, there is that point
16 where, okay, Red Hill Valley project office isn't
17 going to exist anymore, operations people have to
18 start, you know, owning things. And Ron was, you
19 know, a very good colleague, a very knowledgeable
20 gentleman, and I just said I have responded to a
21 couple of things. I can forward it to you. This
22 way, at least when we're responding to the public,
23 we're being consistent. And I think the e-mail,
24 that December 5, was something that was sent
25 probably from a councillor and that's why that

1 line is in there about two of the four luminaires
2 weren't working. And given that it was in the
3 December of 2008, that's still within the two-year
4 warranty. I would have been following up with,
5 you know, our contractor to see, okay, is there an
6 actual problem with the luminaires, the wiring?
7 More than likely we were having a challenge with
8 people actually stealing wire, like stealing
9 copper wire.

10 Q. Copper wire's got value.

11 A. Oh, it does.

12 Q. But my question is: It
13 just says "from" and we don't have the "to," so it
14 looks like this is a response by you to someone,
15 but --

16 A. Correct. And I believe I
17 had responded back to a councillor, so I don't
18 know why it's not in there. I don't really know
19 why.

20 Q. Is this indicative of the
21 standard type of response, with the exception of
22 that specific paragraph about two of the four
23 luminaires?

24 A. If the question came to
25 me, this is how I responded.

1 Q. Okay.

2 A. So, again, all I was
3 providing that information to Mr. Gallo in traffic
4 so that if they wanted to respond or, you know, if
5 they thought anything else, then they could, you
6 know, follow up as required. Right?

7 Q. Okay. And I think
8 Mr. Gallo, you said that he was in traffic. I
9 believe he was a senior project manager, signals
10 and systems in traffic operations and engineering.
11 Does that make sense?

12 A. I believe so and I
13 believe at that time lighting probably would have
14 been under their jurisdiction.

15 Q. All right. Now, to jump
16 forward in time -- you can take that down,
17 Registrar, thank you -- we know that Golder, led
18 by Ludomir Uzarowski, undertook a five-year review
19 on the Red Hill Valley Parkway pavement in 2013
20 and that he primarily communicated with Mr. Moore
21 about that. Can you tell us what was your
22 awareness of and involvement, if any, in that
23 review, that project?

24 A. I was aware they were
25 going to do a five-year review. They were going

1 to do, I think it was the following -- some type
2 of testing on it, on the road, and they were going
3 to do cores to see how the asphalt, you know, are
4 we getting any bottom-up cracking, any top-down
5 cracking, so I knew it was going to happen. Gary
6 had put, I think it was, Vimy, gave Vimy my
7 contact information.

8 Q. That's Vimy Henderson?

9 A. Correct, from Golders.

10 So, my involvement was basically to put Vimy in
11 touch with the appropriate people because if
12 you're going to go out there, you're going to need
13 a road occupancy permit, which you would get from
14 Rich Shebib, who was in our corridor management
15 section.

16 And then I had said to Vimy,
17 because it was Red Hill related, I think Gary
18 said, here, can you stick-handle this? And I said
19 to Vimy that, you know, if they can't provide
20 their own traffic control, because you're doing
21 work on a highway, you either have to have the --
22 you may need crash trucks. I don't know if they
23 were doing lane closures or if it was just a
24 rolling thing. I said, if you need any crash
25 trucks or that type of thing, you can touch base

1 with our traffic section. So, I either would
2 have -- I don't know if I gave her either Martin
3 White or Kris Jacobson's contact information so
4 that she could coordinate their work with them.

5 And also at the time I think I
6 had said to Vimy, you know, Rich will give you,
7 whether you can do it -- the volumes were still
8 relatively low in 2008. At that point, you could
9 still walk across the freeway. You know, it
10 hadn't got really busy like it is now. It was
11 busy, but relatively speaking it wasn't as busy.
12 So, I said you may be able to do lane closures
13 during the day after rush hour, but again, Rich
14 would allow you or give you the information to do
15 that.

16 Q. Okay. If we could go to
17 GOL4450, which I believe is also Exhibit 92. This
18 is a note by Vimy Henderson on May 8, 2013. She
19 indicates:

20 "Spoke to Marco to okay
21 field schedule with him."

22 And then talks about related
23 matters. Is this what you were referring to, your
24 discussion with Vimy Henderson around that --

25 A. Yeah, I believe so. I

1 believe that's -- yeah.

2 Q. Okay. And you referred
3 to the type of testing they were doing and you
4 started saying falling. Do you mean falling
5 weight deflector testing?

6 A. Yeah. But I'm saying
7 that from reading the documents, right, in
8 preparation. If I hadn't read that, I would have
9 just said, yeah, they were doing some kind of
10 testing. And I recall I was always interested in
11 the cores to see if we were getting any bottom-up
12 cracking.

13 Q. Right. In relation to
14 the --

15 A. Perpetual pavement
16 system.

17 Q. Okay. But at the time
18 would you -- I appreciate now perhaps without
19 reviewing the documents you wouldn't have recalled
20 that at the time. Did you know they were doing
21 the falling weight deflector testing?

22 A. No. At the time, I don't
23 think so. I'm sure Vimy mentioned it, but, you
24 know, it wouldn't have meant much to me.

25 Q. Okay. And dip and bump

1 analysis, did you know they were doing that?

2 A. Yeah, I believe so as
3 well. Yeah. Kind of looking at the profile of
4 the road to see if there was -- because we did
5 expect to get some long-term settlements. We had
6 some infrastructure that was buried pretty deep
7 and not much time. You do your compaction, but --
8 so, I expected to get some long term dips on
9 different parts of the freeway, especially things
10 north of Queenston Road, given the timing of how
11 the construction went.

12 Q. Okay. And aside from
13 what you described, did you have any other
14 involvement with the five-year review?

15 A. No, that was it. It was
16 just to put Vimy in touch with the appropriate
17 people so they can go out and do their work.

18 Q. Okay. And at that time,
19 you were the senior project manager in the
20 construction office, as we talked about. Right?

21 A. Correct.

22 Q. And so, why -- first of
23 all, it's Mr. Moore, I guess, that asked you to
24 coordinate with Ms. Henderson. Is that right?

25 A. Yes.

1 Q. So, how does that come
2 into your role at that point? Why is he asking
3 you to do that?

4 A. I don't know. Gary just
5 asked. He thought maybe if they needed traffic
6 control, we would get a contractor to arrange it
7 for them.

8 Q. No, I understand the
9 reason about why you might need traffic control,
10 but why you?

11 A. Oh, me? Just because
12 I -- I don't know, because I had worked on Red
13 Hill. I don't know. You would have to ask Gary,
14 but he asked me to do it and, sure. I mean, Gary
15 could have put him in touch with Rich and done the
16 same thing, you know, but I don't know. He just
17 said, here, take care of this for me.

18 Q. Okay. And you can take
19 that down, Registrar. Thank you.

20 We know there was a heavy rain
21 event on September 21, 2013, so several months
22 later from what we were just talking about, and
23 that a series of discussions followed amongst city
24 staff respecting reported slipperiness on the Red
25 Hill ramps and road. And I can take you to some

1 of those communications that you weren't copied
2 on, but were you aware of those discussions taking
3 place at the time?

4 A. No, I wasn't.

5 Q. Okay. And did you have
6 any other discussions around and about that time
7 about slipperiness on the Red Hill?

8 A. I don't recall any, no.

9 Q. All right. And those
10 e-mails between staff ultimately then resulted in
11 Mr. Moore e-mailing Ludomir Uzarowski on
12 September 30, 2013 to enquire about skid
13 resistance testing on the Red Hill and the LINC,
14 and Dr. Uzarowski agreed to do so. Were you aware
15 of that at the time?

16 A. No, I wasn't.

17 Q. All right. And we know
18 that Tradewind was contracted by Golder to perform
19 the skid resistance testing on the Red Hill and
20 LINC and that they performed it on November 20,
21 2013. Did you have any part in arranging or
22 organizing it?

23 A. No, I didn't.

24 Q. If we could go, then, to
25 HAM36542, Registrar. This is a November 19, 2013

1 e-mail chain and if we could pull up images 3 and
2 4 to start. We see that on image 4 Dr. Uzarowski
3 e-mails Mr. Moore and Vimy Henderson about
4 friction testing in Hamilton, that's the subject
5 line, with the price to carry it out on the Red
6 Hill and the LINC. That's on the 19th of
7 November.

8 And then you'll see, then, on
9 the left-hand page, and if you could, Registrar,
10 expand the bottom e-mail, there we go, on the
11 19th, early in the morning, Mr. Moore replies to
12 Dr. Uzarowski, copying Vimy Henderson as well as
13 Diana Cameron, Martin White, Rich Shebib and you,
14 and he says:

15 "This is acceptable.
16 Please proceed. Ask
17 Diana to prepare a
18 purchase order."

19 And then in the last
20 paragraph:

21 "Marco, Rich, Martin,
22 Golder is going to do
23 friction testing as
24 below. They will need
25 traffic control

1 coordination. Please
2 contact Vimy in this
3 regard. Thanks."

4 So, first thing, had you had
5 any communications with Golder that you recall
6 between your call with Vimy Henderson back in
7 May 2013 and these e-mails on November 19?

8 A. No, I didn't have any
9 conversations and when I saw this, I thought,
10 okay, Rich is the one who does the occupancy
11 permit, Martin has the crash trucks and traffic,
12 basically there's nothing for me to do. So, I
13 just keep doing my -- you know, looking after the
14 30 to 40 concurrent projects, getting set up for
15 the upcoming year and making sure, you know, we've
16 done all our two-year maintenances from the on the
17 30 to 40 projects from the years prior. So, for
18 me, there was nothing for me to do here. It would
19 have been, okay, great. I probably would have
20 just deleted this e-mail.

21 Q. Okay. But it seems a
22 little similar to the request from Mr. Moore back
23 in May, right, to arrange --

24 A. Oh, yeah, exactly. Now,
25 if Rich and Martin weren't on these e-mails, then

1 I would have, you know, called Vimy or e-mailed
2 her and said, you know, get your road closure
3 permit through Rich and if you require crash
4 trucks, Martin may be able to help you out with
5 that.

6 Q. All right. And sorry,
7 you say you probably just deleted this e-mail.
8 Why do you say that?

9 A. There was nothing for me
10 to do. Back in May -- and, again, at this point,
11 Vimy probably already knew the process because
12 she's done it once already. Right?

13 Q. Right. But he's asked
14 you along with Rich and Martin White to --

15 A. Yeah. I didn't see the
16 need to follow up. I mean, Rich is very good at
17 what he does. He does occupancy permits all the
18 time for, you know, developers, contractors,
19 utility work. And Martin is the one for
20 operations who has the crash trucks, so he
21 included me, but there really was nothing for me
22 to do with this. If you look at the request, it's
23 just, hey, they need traffic control coordination,
24 please contact Vimy. So, I'm like, okay, as long
25 as Rich and Martin get a hold of her then we're

1 good to go.

2 Q. You can take that down.

3 Then Martin responds copying everyone:

4 "Thanks, Gary.

5 Appreciate that."

6 And then he asks Kris, who I
7 guess is Kris Jacobson, to please assist with
8 traffic control and crash truck if required and
9 please coordinate with Vimy. Do you recall
10 receiving that?

11 A. Yeah, yeah. I'm
12 obviously on it and it's one of these once you're
13 in these chains, then people reply all, you just
14 get copied on them. But, again, there's no work
15 for me to do. Kris Jacobson was probably a senior
16 project manager in traffic under Martin, so, you
17 know, again, he would coordinate getting the crash
18 trucks out there. And it looks like, again,
19 Martin is saying, good, it will basically be at
20 the City's cost. There's no cost to Golders for
21 it.

22 Q. You can take that down,
23 Registrar. Thank you. Then if you could just
24 bring up images 1 and 2, please. And then
25 there's, again, further communications that you're

1 copied on, but you're not sending any of these
2 e-mails?

3 A. Correct, yeah. Again,
4 you're in the chain, so you just get included.
5 Right?

6 Q. Yeah. Did you discuss
7 the friction testing with Mr. Moore?

8 A. No. No, I didn't.
9 Again, at this point, like I said, it's not on my
10 to-do list. By now, I think I have a Blackberry
11 or -- I don't know if we had gotten the Samsungs
12 yet, but -- because I don't think I got a
13 Blackberry until about 2011. So, basically you
14 see this, it's just that. Again, I wouldn't have
15 paid attention to it. There was no followup, no
16 action items for me to deal with. I just would
17 have deleted it.

18 Q. Okay. Fair. But you
19 were the project manager for the Red Hill
20 construction and, as you said, people would come
21 to you if they had issues, you know, and questions
22 and stuff about the Red Hill and fair enough, so
23 you continued to have some involvement with it
24 when people had questions. And also you had, I
25 think you said, some involvement with the LINC

1 resurfacing in 2011, two years prior. Right?

2 A. Yes, correct.

3 Q. Right. So, were you not
4 curious as to what was going on here and why
5 friction testing was happening on --

6 A. No. I mean --

7 Q. -- the Red Hill or the
8 LINC?

9 A. No, I would have -- you
10 know, I probably wouldn't have paid much attention
11 to it. Golder was gathering data for the
12 five-year review. Was this part of it? I wasn't
13 aware of the stuff during the rain storm, so to
14 me, this was just, oh, he's just gathering more
15 data, you know, to write a paper or something.

16 Q. You weren't curious about
17 it?

18 A. No. No. Again, I'm
19 pretty busy in my role looking after, you know,
20 the 30 to 40 projects. And at that time, in 2013,
21 I would have been really heavily involved dealing
22 with Infrastructure Ontario about picking the
23 proponents to do Tim Hortons Field. Right? On
24 top of all my other duties that we were doing.
25 You know, we had the project managers, I had the

1 facility project managers, we were doing, you
2 know, all kinds of work throughout the City,
3 right, for the fire department, for recreation
4 centres.

5 Q. Okay. Fair enough. But
6 you mentioned something about, oh, he's just
7 gathering more data to write a paper or something.
8 Were you aware that there was any discussion about
9 a paper at the time?

10 A. No. I'm just sort of
11 speculating that that might have been what I
12 thought. But, again, there's no action for me, so
13 it's like, okay, delete. I didn't have any -- I
14 wasn't curious about it, didn't question it,
15 didn't even -- I'll be honest. I didn't even
16 recall that they were doing friction testing.

17 Q. Sorry, didn't recall it
18 when?

19 A. Oh, if I had got -- if
20 someone asked me was there friction testing on the
21 road, I would have said no. Like, as I'm saying
22 throughout this whole -- through the whole inquiry
23 here. Right?

24 Q. Well, we're going to be
25 asking you about that, so let's get to that.

1 A. Yeah. Sorry.

2 Q. Did you attend at the
3 Tradewind testing on November 20, 2013?

4 A. No. No, I didn't.

5 Q. Okay. So, in addition to
6 the Red Hill and the LINC mainlines, they tested
7 three ramps. Did you have any awareness of that?

8 A. No, I didn't.

9 Q. Okay. Registrar, if we
10 could pull up the native format of TRW92 and if we
11 could go to the first tab, which is titled Raw.
12 If you could go up a bit to row 1253. That's
13 good. Okay.

14 So, you'll see there it's
15 towards the bottom, it says "operator message" on
16 the left-hand side. Do you see that?

17 A. Mm-hmm.

18 Q. Can you read it?

19 A. Yes, I can.

20 Q. Then it says at 1255:

21 "Greenhill on-ramp right
22 wheel path mix change at
23 260 metres, last
24 140 metres, same mix as
25 Red Hill Valley Parkway."

1 And we know from Rowan Taylor
2 of Tradewind, who testified, that that field in
3 the spreadsheet was filled in by the grip tester
4 operator, Michael Hogarth, that day. And
5 appreciating that you weren't there, so it's just
6 the information in there I want to ask you about.

7 And then if you just scroll
8 down a little bit, Registrar, it says:

9 "Average values, run
10 data."

11 And it gives the distance and
12 it's it testing on that ramp and it shows the
13 first 200 metres with a grip number of -- am I on
14 the right one? Hold on here. Sorry. Yeah,
15 sorry. It's column E there. So, it shows it's
16 the speed and then on the right-hand numbers
17 starting at 60 and then two 60s and then 52 and
18 42. That's the grip number you testified over
19 each of those distances, each 100 meters. So, it
20 starts at 60 and then at 200 to 300 meters, 52,
21 and then 300 to 400, 42. And so, he's indicating
22 that it's the same mix as the Red Hill Valley
23 Parkway in the last 140-metres.

24 And you were the project
25 manager on the Red Hill construction. Do you

1 recall that the Greenhill on-ramp, that SMA was
2 used as on the mainline rather than the SP12.5 FC2
3 for the last 140 meters of the ramp. Do you
4 recall that?

5 A. Well, what happens,
6 Greenhill -- is that -- Greenhill on-ramp?

7 Q. Yes.

8 A. I guess it doesn't matter
9 which -- do you know if this is the northbound
10 direction they're doing?

11 Q. He doesn't indicate it
12 there.

13 A. Because the northbound --
14 like, basically when we paved the Red Hill, SMA
15 was used on the mainline and SP12.5 FC2 was used
16 on the ramps.

17 Q. Right. Exactly.

18 A. So, if you came down, if
19 you're heading north on the Greenhill ramp, you'd
20 be coming down the ramp. Once you hit the gore,
21 at that point the Greenhill ramp that the lane,
22 it's basically a continuous lane to the King
23 Street interchange, so I would have to look at the
24 drawings just to confirm, but my gut feeling would
25 be that, okay, at that gore, we probably brought

1 the SMA all the way over and brought it to the
2 gore of the King Street off-ramp.

3 Q. So, when you say the
4 gore, what do you mean?

5 A. Sorry, that's the
6 triangle. It's that intersection area where the
7 ramp meets the mainline.

8 Q. Yes.

9 A. So, that sort of
10 triangular area is what they call the gore. At a
11 certain point -- so, even if it's the southbound
12 lane, it would be the same thing --

13 Q. And that's fair. You're
14 just saying you carry forward with the mainline
15 paving for a certain distance?

16 A. You got it. And in the
17 southbound definitely for sure because once you
18 get on from Greenhill, that becomes the truck
19 climbing lane all the way up the escarpment, so
20 it's definitely SMA all the way up in the
21 southbound lane.

22 Q. Right. Okay. So,
23 regardless of which lane it is, that makes sense
24 to you, that some portion, the portion that's
25 closest to the mainline, would have SMA for a

1 certain distance. Is that fair?

2 A. Well, no. Again, it
3 depends on the ramp configuration. If it was a
4 regular ramp that just tied in to the freeway,
5 that whole tie in, when it ties in to adjacent to
6 the freeway, would have been 12.5 FC2. But in
7 this case when you look, you have got basically
8 continuous lanes starting in the north and south.
9 That's why all of a sudden you definitely see --
10 you would see a horizontal line, a transverse
11 line, sorry. Right? Whereas if you were in a
12 normal ramp, it would just be running north-south.
13 I would see the joint north-south versus
14 east-west.

15 Q. Okay. And then if we
16 could go down to row 1301, Registrar, and a little
17 further just because we'll -- yeah, just keep
18 going so we can see it. That's good. Thank you.

19 So, you'll see now at the top,
20 1299, there's another operator message. And then
21 at 1301, it says:

22 "Stone Church off-ramp,
23 right wheel path, Red
24 Hill Valley Parkway mix."

25 Do you see that?

1 A. Yes, I do.

2 Q. And then it gives the
3 average values. And, again, the testimony of
4 Mr. Taylor was that the operator of the grip
5 tester, Mr. Hogarth, filled these fields in. And
6 then below that there are the results in 100-metre
7 increments and the far right numbers showing grip
8 numbers of 38, 40, 33 and 39. Do you see that?

9 A. Yes, I do.

10 Q. Okay. So, what it
11 appears to be indicating here is that this
12 off-ramp, it says Red Hill Valley Parkway mix.
13 And we heard from Dr. Uzarowski that likely this
14 was the ramp in the Mud Street interchange where
15 the SMA test strip was placed. Do you have any
16 insight into that?

17 A. Yeah. I mean, if that
18 ramp was to be -- I believe it would be called the
19 east to south ramp. That was where we did the
20 test strip, yes, and it was left in place. So,
21 that would make sense why he says it's the
22 mainline mix, yes.

23 Q. Okay. Fair. Obviously
24 Mr. Hogarth wouldn't have known this information
25 himself. He wasn't at the City, he was at

1 Tradewind. Do you know who gave Mr. Hogarth that
2 information?

3 A. No. He looked at it.

4 Visually there's a difference visually between SMA
5 and SP12.5 FC2. SMA is a gap graded mix. It kind
6 of looks like an open friction course. So, you
7 know, if you're -- you can't see it when you're
8 driving 100 kilometres an hour or 90. You know,
9 you don't see it. But if you're up close, you can
10 see the difference between SMA and 12.5 FC2.

11 Q. Right. You said, though,
12 just there that, no, he looked at it. Do you know
13 that that's how he found out about it?

14 A. No, I don't. I'm
15 assuming. It would be the same thing. For him to
16 pick up on the ramps that it's a different mix,
17 he's seeing that visually, so --

18 Q. But it wasn't --

19 A. No, I didn't inform him.
20 No. They're doing that on their own accord,
21 unless they touch base with Golder. I don't know.

22 Q. Right. So, it could have
23 been them but it wasn't you and, if I understand
24 you correctly, you don't know if anyone gave them
25 that information. Is that right?

1 A. That's correct.

2 Q. Okay. You can take that
3 down, Registrar. Thank you.

4 Now, on another issue in 2013,
5 we know that in 2013 CIMA conducted an RHVP safety
6 assessment and then again in 2015 they conducted a
7 safety review respecting the Red Hill Valley
8 Parkway. Did you have any involvement in those
9 projects?

10 A. No, I didn't. The
11 only -- I don't know if it was for their very
12 first assignment. I recall giving a copy of the
13 preliminary design report to someone in traffic so
14 that they could use it. So, I was aware they were
15 engaging CIMA, but I wasn't involved in the 2013
16 or 2015 reports.

17 Q. So, we'll go to that
18 document in a second. I think I know the one
19 you're talking about. But for both of those
20 projects, that's the only specific involvement
21 that you recall. Is that right?

22 A. Yeah. I wasn't involved
23 in any of the CIMA safety reports, because then I
24 think they did some subsequent ones after as well
25 and I didn't provide any input, I wasn't involved

1 in any discussions or, you know, initiating any
2 work with them.

3 Q. Okay. If we could go to
4 HAM41522 and image 1 and actually if you could
5 pull up image 2 as well. There we go.

6 So, if we start at the bottom
7 of image 2 and if you could expand that there,
8 Registrar, Wednesday, May 1, 2013, this is an
9 e-mail from you to Aneta Zaszowska copying Paul
10 McShane, Richard Andoga and Jennifer DiDomenico,
11 subject is "RHVP Info Request." Is this the
12 e-mail that you were talking about?

13 A. Yes. And, actually, just
14 reading the e-mail, I would have given them
15 whatever -- yeah. Those two files are basically
16 the horizontal alignment information for the
17 consultant to use and then the preliminary design
18 report, oh, and then also the IADP report. So,
19 those were paper copies, so I would have dropped
20 them off to Aneta for their use with the
21 consultant.

22 Q. Okay. Well, it says that
23 there's PDFs there, so --

24 A. The PDFs are just the
25 LINC data and the RHVP data, so that was --

1 Q. I see.

2 A. -- because I could pull
3 those out of the contract drawings. Right? I
4 could actually take here's those drawings from
5 those PDFs. This way, the consultant has it in
6 one document, whereas the 1990 PDR and the 2003
7 impact assessment and design process summary
8 report hadn't been -- at that time there were no
9 digital copies, so I dropped off the paper copies
10 for them.

11 Q. Thank you. You can take
12 that down, Registrar.

13 And then later the same day,
14 so Mr. Andoga -- you don't need to expand this
15 one -- responds with the 2007 sustainability
16 report. And then, you then reply at the bottom of
17 the image on the left on the same day, May 1.

18 And if you could expand that
19 e-mail. Yes. Could you also -- yeah, the top one
20 at the top of the page. That's great. Thank you.

21 You give them further
22 information and I'm noting that you give them
23 links to the RHVP mainline paving contract. And I
24 see it refers to Mariner just in the path there.
25 That's what you were talking about earlier,

1 Mariner/Vault/Engineering --

2 A. Yeah. Actually, it's
3 funny. This is a different Mariner. This is a
4 different server because this one is the Mariner.
5 It has the vault information on it. The other one
6 that has the Red Hill files is Mariner project
7 data, so it's a different server. I believe it's
8 a different server. IT would have to confirm
9 that.

10 Q. All right. In any event,
11 you indicate:

12 "I don't believe they
13 need the LINC resurfacing
14 cost breakdown."

15 And then you give just a
16 chronology of when various -- when the LINC and
17 the LINC extension and the Red Hill opened and
18 then the mainline resurfacing of the LINC, you
19 indicate it was completed July 22, 2011. Then you
20 state:

21 "Please note that the
22 2007 LINC resurfacing
23 project did not include
24 the Dartnall interchange
25 ramps. Also, the

1 mainline lane widths and
2 configurations as well as
3 the guide rail were not
4 altered."

5 So, did you have fairly
6 detailed knowledge of the resurfacing that was
7 done on the LINC?

8 A. I wouldn't say -- you can
9 see it. We resurfaced just the mainline. We
10 didn't do the shoulders and we did just some of
11 the ramps. And the reason Rich had asked -- Jeff
12 Pidsadny was the senior project manager over the
13 project managers, so I think Rick thought, okay,
14 you can give them the cost breakdowns for the
15 LINC. But it was a resurfacing project, so
16 nothing had been changed geometrically from the
17 original design, so that's why my comment about
18 they really don't need the resurfacing cost
19 breakdown because these guys are doing a safety
20 audit. I believe it was a safety audit. Whatever
21 they were doing, they wouldn't have needed that
22 cost information. Then just to give them some
23 understanding of how the project was built,
24 because it was, you know, done in stages. It
25 wasn't all -- we didn't open all 20 kilometres at

1 once. Right?

2 Q. I get that. It's just
3 the LINC resurfacing itself that I'm focused on
4 there.

5 A. Yeah. So, again, there
6 were no -- if there had been damaged guide rail,
7 you know, maintenance probably would have had it
8 done before we went in. In 2011, it was just a
9 straight resurfacing contract.

10 Q. Right. The shave and
11 pave?

12 A. Shave and pave, yeah.
13 And we basically closed it over weekends. I think
14 we started in, like, it might have been like
15 mid-May and then we were done by the end of July.

16 Q. Now, you've indicated
17 that this is your only involvement with the 2013
18 CIMA safety assessment. Right?

19 A. Yeah. It was basically
20 to give Aneta the background information.

21 Q. Okay. Did you see the
22 2013 CIMA report in 2013 when it came out?

23 A. No, I didn't.

24 Q. Do you recall when you
25 first saw it?

1 A. I would have seen it when
2 it was brought up during any discoveries.

3 Q. Okay. When is that? In
4 late 2018?

5 A. Oh, I mean, I've been
6 involved in a lot of discoveries. And usually the
7 way we were approaching it, legal had said if they
8 were going to question -- if there was questions
9 regarding design and construction and maintenance,
10 that they felt I would be a better witnesses for
11 the City during discovery because of my background
12 with design and construction. That way, if we had
13 any undertakings, it might have been only minor
14 undertakings for the maintenance stuff. If there
15 were no -- if there happened to be claims or
16 discoveries and they didn't have anything
17 involving design and construction and if it was
18 just maintenance, then someone from operations and
19 maintenance would attend the discovery.

20 Q. Right. Then with respect
21 to the 2015 CIMA review, you've indicated you
22 didn't have any involvement with that. When did
23 you first see that report that arose from the
24 review?

25 A. Same thing, in

1 discoveries.

2 Q. Actually in a discovery
3 itself?

4 A. I believe so, yes.

5 Q. Okay.

6 A. I mean, I've also seen it
7 in the overview documents now, but --

8 Q. I do not mean in the
9 course of this --

10 A. Right.

11 Q. Prior to this inquiry,
12 you saw it for the first time in discoveries?

13 A. Correct.

14 Q. And with respect to the
15 LINC resurfacing, what type of surface course was
16 used for the LINC resurfacing?

17 A. For the resurfacing
18 project?

19 Q. Yeah.

20 A. I believe we put down
21 12.5 FC2 and we actually -- because we had used --
22 I believe it was dolomitic sandstone with the
23 aggregate that was used on the -- when we paved
24 the LINC. In that contract, we allowed the
25 contractor to mill and use -- I can't remember the

1 percentages, if it was 10 or 15. We allowed them
2 to use that as recycled, what they call wrap.
3 Because it was good quality dolomitic sandstone,
4 it made sense to mix that in, so we did allow that
5 on the resurfacing of the LINC, and it was
6 basically a 12.5 FC2 that went back down.

7 Q. Okay. And so, from your
8 involvement, do you recall the paving limits of
9 the LINC resurfacing?

10 A. Basically we went from
11 Highway 403 to where the paving limits had stopped
12 when we built Red Hill. So, basically, we were
13 trying to replace any asphalt that was placed, you
14 know, up to -- 1997, we had opened it to Dartnall
15 and then we did the LINC extension was opened in
16 1999.

17 Q. Right.

18 A. Sorry. We didn't touch
19 the interchanges on the QEW. We didn't go into
20 the, sorry, the 403 interchange there.

21 Q. Okay. Focusing on where
22 the LINC joins up with the Red Hill --

23 A. Right.

24 Q. -- do you recall if the
25 two outside lanes going both directions, the

1 outside lanes in both direction, were paved
2 further to the east towards the Mud Street
3 interchange than the inside lanes, about
4 approximately 500 to 600-metres?

5 A. You know, I believe the
6 east northbound lanes, that paving limit was
7 extended a little further. I can't recall the
8 exact limit, but it was. I believe the south
9 westbound direction was paved according to the
10 limits in the contract.

11 Q. All right. So, if I
12 could take you to HAM12843, which is the Tradewind
13 report, appreciating you had not seen it at the
14 time, if we could go to images 5 and 6. Maybe
15 it's 6 and 7. Maybe go to the next image. Yeah,
16 there we go. Yeah.

17 So, you'll see here this is
18 eastbound, which is east and then north. And I'm
19 not asking you to comment on the friction test
20 results and what they mean themselves, but you'll
21 see that on the left it's the LINC and on the
22 right it's the Red Hill and you'll see that on the
23 right lane, right wheel, so the outside lane, that
24 the higher values continue on for some distance
25 and then they drop off. Do you see that?

1 A. Yeah, I do.

2 Q. All right. And so, you
3 just indicated that the outside lane was carried
4 on for a longer distance for the eastbound outside
5 lane. Correct?

6 A. Yeah. I recall one of
7 our inspectors saying, you know, it looked a bit
8 cracked, so we decided to go a little further and
9 clean it up now while we were there.

10 Q. Okay. Then if you could
11 go to the next two images, I think, there. This
12 is the south and then westbound, the other side.
13 You'll see there's a similar pattern there. It
14 actually shows it from the LINC on the left-hand
15 side even though the direction you would be
16 driving in a different and you'll see similar
17 plotting?

18 A. You know, what, Andrew,
19 what I just thought, why you could also be getting
20 this, it's because we have one highway, two names.
21 Anyway, only in Hamilton. If you look at where
22 the -- so, if this testing is done, and what I
23 don't know is if you look at where the actual
24 delineation of where Red Hill and LINC, you know,
25 magically transform into the other, it is west of

1 the Dartnall Road interchange. So, that would
2 explain, definitely explain, if these limits are
3 set where that sign is, then you're definitely,
4 like, you're well beyond where the Red Hill
5 contract started. You know, what I mean?

6 Q. Right. But it's only the
7 outside lane, which is the --

8 A. Well, I think they're
9 only testing the -- are they only testing the
10 outside lane?

11 Q. No, there's both.

12 A. They're both, okay.

13 Q. Yeah, it's both. And on
14 both directions it's the outside lane where you
15 have that short distance of higher results.

16 A. Yeah. From what I
17 recall, when they did the -- when they had done
18 that paving contract, I thought in the eastbound
19 direction that, you know, the east-north, I
20 thought they had done both lanes, not just the one
21 lane. But, again, without -- you know, I wasn't
22 out there. I don't know specific details. That's
23 just my recollection.

24 Q. Okay. All right. If we
25 could take those down.

1 On a different topic, what was
2 your general practice with respect to attending
3 public works committee meetings? Was that
4 something you did fairly regularly or no?

5 A. No. I would only attend
6 if I was asked to attend. If the director wasn't
7 available to attend and if we were covering for
8 him, then we would go.

9 Q. There was a public works
10 committee meeting on December 7, 2015 where
11 Mr. Moore and Councillor Merulla discussed
12 friction levels on the Red Hill and the quality of
13 the asphalt. Do you recall attending that
14 meeting?

15 A. No, I did not.

16 Q. You did not attend it?

17 A. I did not attend it, no.

18 Q. Do you recall did you
19 have any discussions with Mr. Moore about friction
20 levels on the Red Hill either before or after that
21 meeting?

22 A. No, I didn't.

23 Q. Or with anyone else that
24 you recall?

25 A. No, I didn't have any

1 discussions with Gary or anyone else.

2 Q. Okay. If we could go to
3 GOL1803. And this is a December 23, 2015 e-mail
4 from Dr. Uzarowski to you with the subject "Red
5 Hill Valley Parkway" and a response from you.
6 After pleasantries, Dr. Uzarowski says:

7 "We will be checking the
8 profile of the Red Hill
9 Valley Parkway. Do you
10 have an electronic copy
11 of the RHVP site plan
12 drawing?"

13 You respond:

14 "The attached PDF
15 contains a copy of the
16 pavement marking
17 drawings. Please let me
18 know if this information
19 is sufficient or if you
20 need the actual graded
21 drawings."

22 So, do you recall what this
23 was about, why you were providing this?

24 A. Again, I believe he
25 was -- they were doing kind of the dip analysis

1 along Red Hill and I believe he needed the
2 pavement marking drawings so they could just refer
3 to chainage. Right? As you've seen on the
4 drawings of Red Hill, there is specific chainages
5 along the entire route. Right?

6 Q. Yes. We know Golder did
7 inertial profile testing on the Red Hill in early
8 2015 or, sorry, in early 2016. Did you have any
9 involvement in that?

10 A. No, I didn't.

11 Q. Okay.

12 A. Unless those were things
13 that, you know, Gary had asked me to put -- like,
14 that wasn't the thing about with Vimy. Right?

15 Q. That we discussed before
16 was in 2013, so now --

17 A. Right, right. 2015, no,
18 I wasn't involved in the other one.

19 Q. Okay. But you were aware
20 that Golder was doing some work at that point, and
21 so you were aware of why you were providing this
22 information to him at the time?

23 A. I really can't say. I
24 just, you know, Ludomir, he needed some
25 information and I provided it to him. I didn't

1 have any -- I didn't, like, call him to ask him
2 what exactly he was doing. You know, just from
3 what I see in the e-mail. Right?

4 Q. I don't believe this has
5 been in evidence before and it's not in the
6 overview document, so if we could mark this,
7 Commissioner and Registrar, as an exhibit. I
8 believe it would be 135.

9 THE REGISTRAR: Noted,
10 counsel. Thank you.

11 EXHIBIT NO. 135:
12 December 23, 2015 e-mail
13 from Dr. Uzarowski to
14 Mr. Oddi, subject "Red
15 Hill Valley Parkway,"
16 GOL1803.

17 BY MR. LEWIS:

18 Q. Now, if we could take
19 that down and go to HAM764. And the second e-mail
20 is March 4, 2016. Ludomir Uzarowski e-mails
21 Mr. Moore the Red Hill dip and bump analysis and
22 says:

23 "Gary, please find
24 attached the Excel
25 spreadsheet with the bump

1 and dip analysis tables.
2 The drawings are too
3 large, so I've saved them
4 on the Golder FTP site
5 below."

6 And then on April 28, 2016,
7 Mr. Moore forwards that to you saying:

8 "Here it is."

9 Do you recall receiving this?

10 A. Yeah. Obviously I did
11 receive it and I believe, you know, Gary had sent
12 it to me so that I could take a look at it. You
13 know, how I described before, we expected to get
14 some long-term settlements along the parkway and
15 some of the ramps and I think I was just reviewing
16 it to see, you know, to confirm, yes, there's a
17 culvert crossing here, you know, because it's
18 funny, I kind of do recall. There was always --
19 most of the dips, except for one, which was just
20 north, in the northbound direction, just north of
21 King Street, there was a dip where, you know,
22 there was no infrastructure, there was no creek
23 remnant under it, there just was an area where,
24 you know, we have settlement and it was like kind
25 of inexplicable. All the other dips, you could

1 correlate it to a culvert, a sewer, you know,
2 water mains, some utility that had been done.
3 And, again, it's expected long-term to get these
4 kind of things.

5 Q. Okay. But why is
6 Mr. Moore sending it to you at that point, given
7 your role at the time? Do you know?

8 A. Because I could easily --
9 given my background, you know, I could pull out
10 the Red Hill contract drawings and look and
11 correlate it and say this is related to this, this
12 is related to this, so I believe that's why he
13 sent it to me.

14 Q. Do you recall having any
15 discussions with him about it?

16 A. You know, not really or
17 if I did it would have been just exactly what I
18 told you. Yes, everything correlates to
19 infrastructure except for the one. And then at
20 this point, if something is hazardous or needs to
21 be addressed, it would be done through operations
22 rather than, you know, through ours. We deal with
23 tenders, right, in my section at the time.

24 Q. All right. You can take
25 that down, Registrar, and if we could go to

1 overview document 7, image 120, and if you could
2 expand the bottom two paragraphs, 383 and 384.
3 Actually, I guess it's just 383, but we'll leave
4 it up.

5 So, on April 15, 2016, and
6 this is now actually just almost two weeks before
7 the e-mail we were just discussing, Mr. Andoga
8 e-mailed a number of people, Mr. Becke, Ms. Jacob,
9 copying Mr. Jazvac, Chris McCafferty, you and
10 Mr. Sidawi and says:

11 "Please be advised asset
12 management had programmed
13 both the LINC and RHVE
14 for rehabilitation in
15 2017. The objective is
16 to improve skid
17 resistance of the RHVP,
18 repair settlement areas
19 as well as repair the
20 ramps of the LINC. Both
21 the Miller Group and
22 Norjohn have been invited
23 to provide a proposal for
24 a rehabilitation strategy
25 to meet these objectives

1 in additional to
2 completing a 500-meter
3 test section along the
4 Dartnall Road
5 interchange. The test
6 sections are to be
7 completed this year. If
8 you have any questions in
9 this regard, please feel
10 free to contact this
11 office."

12 So, prior to receiving this
13 e-mail, were you aware that the Red Hill and LINC
14 had been programmed for rehabilitation?

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

16 Q. Okay. Would you have
17 expected to be in your role?

18 A. In terms of the timing,
19 are you saying the LINC and Red Hill or just Red
20 Hill?

21 Q. Well, either. It says
22 they programmed both for rehabilitation.

23 A. I think --

24 Q. But it's the Red Hill and
25 then repair the ramps of the LINC. Right?

1 A. Again, those repairs
2 might be, you know, related to that dip analysis
3 that we just saw. But yeah, my understanding of
4 the pavement on Red Hill was that, you know,
5 depending on traffic, that we would have to go in
6 and resurface every 10 to 15 years, so this was in
7 the ballpark. And the idea on Red Hill was to go
8 in and, you know, resurface, you know, before the
9 cracking gets into that second lift of asphalt.
10 So, before it gets past that 40 mils is when you
11 want to get in there so that you don't have
12 cracking in the bottom lift to preserve the
13 perpetual pavement.

14 The LINC, given how we had
15 done it as just a straight shave and pave, I
16 wasn't surprised. I said given the volumes on the
17 LINC, I didn't expect the LINC to last -- I
18 thought it might last 5 to 10. So, I mean, at
19 this point, I knew there was top-down cracking
20 that was occurring on the LINC and Red Hill.

21 Q. Sorry, was this about
22 doing the entire LINC or is it just the ramps? Do
23 you recall?

24 A. I don't recall. Just
25 skid resistance of the Red Hill, repair settlement

1 areas, as well as repair ramps of the LINC. Yeah,
2 I --

3 Q. I think you said
4 before --

5 A. I don't know. I mean, I
6 had noticed from driving on the roads, not that
7 anybody brought it up to me. I mean, I would use
8 the LINC and Red Hill as I would drive around to
9 different projects, so, you know, I was noticing
10 that we were getting cracking on both roads.

11 Q. Okay. So, you said that
12 the idea on the Red Hill was to go in and
13 resurface before the cracking gets into the second
14 lift of asphalt, but what he's referring there to
15 is the object -- he says specifically:

16 "The objective is to
17 improve skid resistance
18 of the RHVE, repair
19 settlement areas as well
20 as repair the ramps of
21 the LINC."

22 So, what information did you
23 have by that date, April 15, 2016, about skid
24 resistance on the Red Hill and improving it?

25 A. Yeah. I had none. I

1 mean, that comment, the goal of improving skid
2 resistance, doesn't mean there's a concern. You
3 know, the way we do condition reports, we don't
4 have a friction monitoring program. And by
5 resurfacing or doing, you know, other techniques,
6 you know, you get improved skid resistance.

7 Usually when we're doing
8 stuff, it's to address top-down cracking. I
9 thought the purpose of this meeting was to discuss
10 an asset preservation technique to address that
11 top-down cracking. I think Miller Group and
12 Norjohn have some proprietary products that, you
13 know, may be able to address it on a short-term
14 basis. You know, similar, again, if we had had a
15 cracked sealing program, the life of the Red Hill
16 pavement, you know, could have been extended, you
17 know, if we had had that in place.

18 So, I mean, I took this asset
19 management was, here it is, they're looking at a
20 preservation technique, they're going to try a
21 500-metre test section. From what I recall, there
22 were some pretty large settlements, some good dips
23 along the Dartnall Road interchange. So, I think
24 asset management was looking and saying, this
25 looks like a good test section to see and then

1 let's see if this product actually does work. If
2 it looks good, we then apply it, you know, on the
3 LINC and Red Hill.

4 Q. Okay. And so, we looked
5 at the e-mails about the friction testing being
6 done back in November of 2013, so the reference
7 here to improving skid resistance on the Red Hill,
8 did that raise any questions for you?

9 A. No. Again, in all my
10 years, we've never -- you know, to the best of my
11 knowledge, no municipality has a friction
12 monitoring program. We're usually monitoring, you
13 know, you getting bottom-up cracking would be,
14 like, road failures, are you getting potholes, are
15 you getting cracks. So, that's how you look at
16 does a road need to be rehabilitated.

17 Our asset management section
18 would do condition reports. I can't remember the
19 frequency, if they were every three or four years.
20 You would get an index and then because they were
21 asset management, they would try and coordinate
22 projects so that, oh, okay, does it make sense to
23 do just a resurfacing here? No, there's major
24 underground that needs to be done, so maybe now
25 it's a complete road reconstruction. So, asset

1 management would kind of try and, here is my pot
2 of money, here is all my challenges I have to
3 address; how do I best use that money to address
4 those challenges that we have? So, again, to me,
5 this was just a meeting to look at another asset
6 preservation technique.

7 Q. You're talking about the
8 meeting that followed?

9 A. Correct. Correct.

10 Q. All right. But you
11 indicated that, you know, by resurfacing, you get
12 improved skid resistance, but if you resurface,
13 you'll also deal with the cracking at least on the
14 top as well?

15 A. Exactly.

16 Q. So, why mention this?
17 You didn't have any question at all about why
18 they're mentioning that specifically?

19 A. Yeah, no. I wouldn't
20 have questioned it and you would have to ask
21 Mr. Andoga what he meant by it. You know, again,
22 the goal of improving skid resistance (technical
23 interruption).

24 Q. I believe Mr. Oddi has
25 frozen.

1 A. Can you hear me now?

2 Q. I can hear you but you're
3 not moving.

4 A. How about now? Can you
5 see me?

6 Q. We can see and hear you.

7 A. I just waved. You didn't
8 see that. Right?

9 Q. No. We just have your
10 image where it froze. There we go maybe.

11 A. Am I back?

12 Q. Sort of.

13 A. Did you just see this
14 now? Sort of? I don't think we're on Rogers
15 here. I don't know what's going on, Andrew.

16 Q. Fair comment. We seem to
17 be having an issue. We can hear Mr. Oddi. Is
18 everyone else having a freezing problem with him?

19 MS. TALEBI: Yes. He's frozen
20 for us here as well.

21 MR. LEWIS: Actually I'm
22 seeing him blink now.

23 THE REGISTRAR: Counsel, I
24 just saw him blink.

25 THE WITNESS: Do you want me

1 to stand up and do something?

2 BY MR. LEWIS:

3 Q. No, I believe we're good.

4 Thank you.

5 Okay. So, we asked about --
6 we would have to ask Mr. Andoga, and it's, like,
7 okay. And I think you were starting to say
8 something about improving skid resistance, but if
9 I'm wrong, I think that was at the time you froze.
10 If I'm wrong about that, correct me.

11 A. Yeah. I just reiterated
12 the comment that I said before, that the goal of
13 improving skid resistance doesn't mean that
14 there's a concern.

15 Q. Okay. If we can go to
16 HAM23919. And this is on April 25. Mr. Andoga
17 forwards Norjohn's proposal for an ultra-thin
18 bonded wearing course to many people, you amongst
19 them, along with Mr. Moore, Mr. Sidawi, Mr. Hughes
20 and Mr. McShane and Mr. Jazvac and refers to the
21 meeting on Wednesday, which is the 27th of
22 April 2016. Do you recall receiving the proposal?

23 A. Yeah, I would have. I
24 don't recall the details of the proposal, though.

25 Q. Okay. You recall,

1 though, attending the meeting? You referred to
2 that before.

3 A. Yes, I do recall
4 attending the meeting.

5 Q. Okay. And the ultrathin
6 bonded wearing course, do you recall the nature of
7 that, without getting too technical? It's not a
8 shave and pave resurfacing?

9 A. Yeah. No, it's not like
10 microsurfacing. From what I recall, it's kind of
11 like -- it kind of works like open friction
12 course, so it seemed to be promising, because I
13 wasn't a fan of microsurfacing because I didn't
14 think microsurfacing would address the cracking.
15 We had done microsurfacing prior to 2000 when we
16 were the region on a portion of the Nikola Tesla
17 parkway and basically, you know, your cracking
18 just reflects through. It ended up popping off
19 these thin layers all over. I think we had done a
20 piece of Highway 20 east of Upper Centennial
21 Parkway with it as well and it just didn't seem to
22 last. But this bonded wearing course seemed to be
23 different and, you know, it could work. It looked
24 like it could work.

25 Q. So, do you recall what

1 happened at the meeting and what the --

2 A. I just remember, you
3 know, there was some real good discussion going
4 around the table and, from what I recall,
5 basically there wasn't anything in our wheelhouse
6 to do. It seemed like they were maybe going to do
7 a trial section of it, but to the best of my
8 recollection, nothing ever came out of it.

9 Q. Okay. Did others share
10 your past experience or views about
11 microsurfacing, or is that also a concern about
12 the proposal by Norjohn?

13 A. You know, I can't recall
14 specifically, you know, who. But like yeah, some
15 of the people had the same concern with
16 microsurfacing. But, again, this bonded wearing
17 course appeared, you know, to be different and,
18 again, it had -- I believe we ended up -- I think
19 maintenance ended up using it, but not -- we ended
20 up using it not on the LINC and Dartnall, but they
21 put it in different roads within the City.

22 Q. But not for --

23 A. Not there, yes. If I
24 recall, I remember looking at it -- I'm not sure
25 if Eleanor Avenue was one of them, but I do recall

1 it looked like a really good product.

2 Q. Okay. Well, we know that

3 it wasn't done with respect to the expressways.

4 Do you recall why that was, why it was not

5 pursued?

6 A. No, I don't.

7 Q. And at that time, in

8 April 2016, were you aware that the Red Hill had a

9 high proportion of wet weather collisions?

10 A. I don't believe I did,

11 no.

12 Q. And do you recall that

13 topic being discussed at the meeting with Norjohn

14 on April 27, 2016?

15 A. No, I don't recall that,

16 that issue coming up.

17 Q. Do you recall the issue

18 of skid resistance or friction on the Red Hill

19 being discussed at that meeting?

20 A. No. No, I don't.

21 Q. And did you have any

22 discussions with Mr. Moore in around that time or

23 in 2016 more generally about friction or skid

24 resistance levels on the Red Hill?

25 A. No, I didn't.

1 Q. You can take that down
2 and go to overview document 7, image 126, and it's
3 paragraph 400. You can expand that with the
4 diagram as well.

5 So, this is May 20, 2016.
6 Council received an information update on the LINC
7 and Red Hill Valley Parkway safety improvements
8 and gave an anticipated timeline for short-term
9 safety enhancements/improvements for the LINC and
10 Red Hill Valley Parkway. And you received a copy
11 of this. Do you recall that?

12 A. If it was an information
13 update, more than likely I would have received a
14 copy of it, yes.

15 Q. Okay. I mean, I can take
16 you to the document, to the e-mail, if you have
17 any doubt about that?

18 A. Oh, no. It was normal
19 practice when they were sending information
20 updates that it be distributed throughout public
21 works.

22 Q. Okay. And it contains a
23 table there of, as I indicated, the short-term
24 safety enhancements/improvements for the LINC and
25 Red Hill Valley Parkway and the rehabilitation and

1 resurfacing aren't mentioned. Do you know why?

2 A. You know what? Maybe
3 they hadn't been programmed at the time and this
4 was stuff they were looking to do in 2016.

5 Q. Right. Well, we saw the
6 e-mail earlier from Mr. Andoga that said that
7 asset management had programmed both the LINC and
8 the Red Hill for rehabilitation in 2017.

9 A. Yeah. But, I mean, this
10 information report is just about something -- this
11 is about stuff that was happening in 2016, so I'm
12 assuming that's why it's not listed.

13 Q. You don't know but that's
14 your assumption?

15 A. Yeah, I'm assuming.
16 Again, you would have to ask -- Mr. Lupton, I
17 believe, did the update, so --

18 Q. Okay.

19 A. And that's probably
20 because I'm assuming operations, this was falling
21 under operations and maintenance. I'm assuming
22 that group would have reported ultimately to
23 Mr. Lupton.

24 Q. Do you know if council
25 was advised at any point about the rehabilitation

1 strategies and requests to Norjohn and Miller for
2 rehabilitation strategies?

3 A. I don't believe they ever
4 were. Since we didn't do it, I don't think -- and
5 even where we did try the bonded wearing course, I
6 don't recall seeing an information update about
7 that after the fact.

8 Q. Okay. You can take that
9 down, please, and if we could go to the same
10 overview document, 7, paragraph 127 and
11 paragraph 403, and if you could expand that for
12 us, please.

13 So, this is around the same
14 time period. It's in April, April 18, 2016. You
15 left a voicemail for someone at Philips
16 Engineering. If you could just take a moment to
17 review this. We do have the audio file of the
18 message, but if we just look at this first and
19 tell me once you've had a chance to review it.

20 A. Okay, I've reviewed it.

21 Q. Okay. Do you recall
22 leaving this voicemail?

23 A. Yes, I do.

24 Q. Okay. And who did you
25 leave the message for at Philips?

1 A. I believe I left it for
2 Ron Scheckenberger from -- but in 2016, I don't
3 know if they were Philips or if they were AMEC at
4 the time. I believe Philips had gotten bought out
5 by AMEC.

6 Q. Right. But you're
7 referring to Philips in the message, but in any
8 event I don't think anything turns on who they
9 were purchased by. But, sorry, was that
10 Mr. Scheckenberger?

11 A. Yes.

12 Q. Is that
13 S-C-H-E-C-K-E-N-B-E-R-G-E-R?

14 A. Yeah, just like it
15 sounds.

16 Q. Good.

17 A. I believe that's the
18 correct spelling, yes.

19 Q. Close enough.
20 Phonetically correct?

21 A. Yeah.

22 Q. All right. Why did you
23 leave him this message?

24 A. You know what? I had
25 been attending discoveries and I was very upset

1 that I had seen -- I mean, after I found out. I
2 can't remember. It was a discovery for an
3 accident that happened in the King Street
4 interchange --

5 Q. I'll just stop you for a
6 second there so we're talking about. This was the
7 Gawrylash lawsuit. Is that right? Jodi Gawrylash
8 and Michael Gawrylash?

9 A. It could be that one. I
10 was definitely in attendance at the discovery and
11 I had seen Gary Tansley who was -- basically Gary
12 ran the paving contract. That was the last work
13 he did with Philips before he retired. And when I
14 saw -- I was just upset because Gary was being
15 sued personally and I thought, okay, you know
16 what, basically, you know, we're turning into the
17 United States where they sue everyone. But I was
18 more upset when I found out that it was actually
19 the City's legal representatives that suggested
20 that Gary Tansley get sued.

21 Like, Philips I understand.
22 It's a corporation. They may have insurance.
23 When I talked to our adjuster, I didn't speak to
24 anyone else. This is strictly my opinion and I
25 was just very upset that I had a former colleague

1 who basically, you know, was being put through
2 this discovery process having to pay out of pocket
3 and if, you know -- so, basically there's nothing
4 you can do. He has to defend himself. If himself
5 and Philips get dropped from the suit, then, you
6 know, he can turn around and countersue the City
7 to get money back. So, it just seemed very
8 upsetting.

9 And why it was upsetting was
10 because also the way King Street was built, the
11 King Street alignment, the overhead road, it was
12 built in 1990. The engineers that did it, I
13 think, were Fenco. So, I recall during the
14 discovery that that was brought up, you know,
15 because the -- I don't know if it was the AMEC
16 lawyers that said, well, the alignment was already
17 fixed prior and it was set by a different
18 engineering firm. And during the discovery, you
19 know, I'm getting asked by our lawyer, who is that
20 person who stamped that drawing? You know, who is
21 he with now? Where is that firm? And the
22 gentleman who had stamped the drawing had passed
23 away, so it just seemed upsetting that it's like
24 this is what we're doing now. We're chasing to
25 see if there's insurance to get money back. I

1 understand it, but I was extremely upset.

2 So, you know, I did talk to
3 our adjusters about it and then just called Ron to
4 give -- it was more I didn't have Gary's contact,
5 but that way he could let Gary know what his
6 recourse could be. But, again, this was not the
7 City's opinion. I was just extremely upset at the
8 time about the direction that we were taking as a
9 City. But I still attended every discovery I did
10 my best to provide the right information.

11 Q. So, a few things there
12 which I'll come back to. So, if we could look
13 at -- if we keep that up, just the page itself,
14 you can take down the expansion, and if we could
15 pull up GOL7514.

16 And this is a third-party
17 claim and the third parties are the numbered
18 company 228404 Ontario Inc., Philips Engineering
19 and Gary Tansley?

20 A. Correct.

21 Q. And the Plaintiffs are
22 Jodi Gawrylash, Michael Gawrylash, Kay Gawrylash
23 and Chris Gawrylash, and the City of Hamilton are
24 among the Defendants. Correct?

25 A. Correct.

1 Q. And the City had third
2 partied in Philips, Mr. Tansley and the numbered
3 company. Right?

4 A. Correct, yeah.

5 Q. Okay. And so, the first
6 thing that -- not the first thing. One of the
7 things you said you were upset because Mr. Tansley
8 was paying out of his own pocket. You don't
9 actually know that, do you?

10 A. Yeah, I do, because when
11 I saw Gary at the thing, we didn't talk very much,
12 I just said, you know, what are you doing here?
13 Did you get dragged in by the Plaintiffs? And
14 then I'm pretty sure and said that comment about
15 we're becoming the United States where they sue
16 everybody. And he said no. He goes, it was
17 the -- at the time, he told me it was the City's
18 insurance people who suggested that they sue him
19 because he may have insurance, but at the time
20 Gary said, no, I'm paying for this all out of my
21 own pocket. I'm defending myself.

22 So, I was upset. And then,
23 again, like I said, I vaguely recall I believe
24 this was the one where they came up and then they
25 were asking, because Gary Tansley was the

1 principal at Philips who stamped the mainline
2 paving drawings.

3 Q. Yeah, exactly. For the
4 section that Philips designed --

5 A. The part B.

6 Q. Part B, which is the
7 central part of the Red Hill, right, he stamped
8 that. And he was also involved in the -- Philips
9 was the contract administrator for the
10 construction and Gary Tansley was involved?

11 A. Correct. Yeah. But if
12 you look at the alignment of the ramps, it was set
13 back in 1990 once that alignment of -- in terms of
14 the vertical anyway, what you have to meet from
15 the freeway and the expressway alignment through
16 the King Street interchange did not change. But
17 anyway. So, I was upset. That's why I made that
18 phone call.

19 Q. Okay. And you indicate
20 in your voicemail, you say:

21 "But I'm a little
22 disappointed that we're
23 charging. It doesn't
24 make any sense especially
25 when the design

1 guidelines and the
2 guidelines were set by
3 the region and the City."

4 So, that's what you're --

5 A. That was my opinion.

6 Again, I didn't confirm that with anyone. No one
7 else said that in the City. I was just upset and,
8 you know, it just didn't seem right. I understand
9 the corporation, that they're going after them,
10 there might be something they can get from them,
11 but to go after someone personally didn't seem to
12 make sense from my -- it would if it was the
13 plaintiff doing it. I said I get it, you know, I
14 understand, if that's the process where our system
15 is going, but my understanding at the time, I was
16 told that it was our insurance people that
17 suggested we sue him personally as well.

18 Q. Well, it says you were
19 told. In your voicemail you said:

20 "I just said to our
21 insurance people. That
22 seems insane but that's
23 the strategy they're
24 taking. We know they're
25 not responsible. We just

1 didn't do enough homework
2 on those in deciding to
3 charge the firm to the
4 principal."

5 So, you're --

6 A. Our insurance people --
7 the insurance people I'm referring to is our risk
8 management section. Right?

9 Q. Okay. So, they're saying
10 that that was driven by the insurer. Is that
11 right? Is that what you're saying?

12 A. I can't recall if they
13 said it was -- from what I recall, I thought it
14 was the legal firm that we had representing us at
15 the time.

16 Q. Right. And you indicate
17 that about the lawyers who want to know who the
18 engineers are and the principal --

19 A. Yeah. I think what put
20 me over the edge, I know I was upset, I felt bad
21 for Gary, but here is this drawing. Who stamped
22 that? Who designed that? Who has Fenco become?
23 Oh, it's that gentleman, I believe his name was
24 David Moncrief [ph], who had stamped those
25 drawings? And I knew David had passed away and I

1 said, no, David is passed away --

2 Q. You're talking about back
3 in 1990?

4 A. Yeah, he didn't pass away
5 in 1990, but if you look at the drawings from like
6 the general arrangement of the bridge for King
7 Street, that was done -- that bridge was designed
8 and built through Fenco, right, back in 1990.

9 Q. Okay. But you've
10 indicated that it was Mr. Tansley that was the
11 concern, but you state:

12 "Anyway, they did say
13 that. You know what?
14 They just named them in
15 the suit in case there's
16 insurance and these
17 people have insurance to
18 cover. They are just
19 trying to look to gather
20 money. So, in the case
21 of Philips and hopefully
22 Gary Tansley, they're
23 going to basically drop
24 you guys from the suit
25 and when they do that, if

1 and when they do that,
2 you guys can turn around
3 and ask the City to
4 reimburse you for the
5 legal costs you incur."

6 So, you're expressing the
7 concern or what you're expressing is directed both
8 for Philips and Mr. Tansley. Correct?

9 A. It's mainly for
10 Mr. Tansley, though. Philips is a corporation, I
11 might have said that, but my concern was for Gary.
12 And that, you know, he's paying out of pocket for
13 right now to defend himself, you know, so
14 hopefully he would be able to get some money back
15 if they get dropped. If they don't get dropped
16 from the lawsuit, he's out that money. It was
17 upsetting to me because Gary Tansley was a very
18 good colleague, you know. Like I said, he stayed
19 on to administer that last Red Hill contract.
20 Then he retired from his, you know, career from
21 Philips and, you know, nine years later he's in a
22 lawsuit spending money.

23 Q. But you were the City's
24 deponent. Right? You were the representative of
25 the City for examination for discovery. Right?

1 A. Correct.

2 Q. Right. And in this, you
3 are suggesting or you're saying that, as I read
4 it, that Philips is not and Mr. Tansley are not
5 responsible. You said:

6 "I just said to our
7 insurance people that
8 that seems insane that
9 that's the strategy
10 they're taking when we
11 know they're not
12 responsible."

13 A. Well, again, that's my
14 opinion. I'm upset at the time. Because
15 basically when you're designing ramps, you're
16 using standards. Right? And to the best of my
17 recollection, there were no deviations from the
18 standards through that interchange. And, again,
19 it was because it was a personal thing. Gary
20 Tansley was retired and paying out of pocket. You
21 know, corporation, you know, I might have said
22 Philips. I don't really -- Philips is a
23 corporation that didn't really exist anymore. To
24 the best of my knowledge, they didn't exist.

25 Q. But whoever bought them,

1 the point is that you have a --

2 A. Correct. And they might
3 have, depending on their agreements, but that's --
4 you know, that, I understand. The corporation
5 stuff, I understand. The personal thing was
6 upsetting.

7 Q. You're not telling
8 Mr. Tansley. You're telling Mr. Scheckenberger?

9 A. Correct, because I didn't
10 have Gary's contact information and it was more so
11 he could relay it back to Gary.

12 Q. You couldn't have gotten
13 Mr. Tansley's information if this was really who
14 it was addressed to?

15 A. You know, I guess I could
16 have, but I had Ron's contact information.

17 Q. Right. And you went
18 through Mr. Scheckenberger even though your
19 understanding was Mr. Tansley was paying out of
20 his own pocket?

21 A. That's correct, yes.

22 Q. You didn't think you
23 should find Mr. Tansley himself and then direct it
24 to him, if that was your concern?

25 A. Well, you know, at the

1 time I was very upset. I wasn't thinking very
2 clearly. And, again, that was just my opinion,
3 Andrew. No one corroborated that from the City.
4 I'm upset that a former colleague is paying out of
5 pocket to defend this. And, again, hopefully if
6 they get dropped, then he has that recourse to
7 either ask for the money or more than likely he
8 would probably have to countersue to get the money
9 back.

10 Q. Right. But then you
11 indicate what the strategy is:

12 "In the case of Philips
13 and hopefully Gary
14 Tansley, they're going to
15 drop you guys from the
16 suit, and when they do
17 that --"

18 A. Because again, the way
19 our risk people had explained it to me is that
20 basically they thought, well, they might have
21 insurance that could cover them, so, you know, but
22 I guess once you're named in the suit, you can't
23 say I don't have insurance, sorry, I got to drop
24 out. You have to proceed with it. Right?

25 Q. Right. And did --

1 nonetheless, your statement that you were upset,
2 you recognize at the time, though, that you were
3 conveying confidential information?

4 A. No, I didn't realize that
5 at the time.

6 Q. You did not? Isn't that
7 obvious?

8 A. No, just saying about the
9 countersuit, dropping? No, I didn't think that
10 would be confidential information.

11 Q. All right. Or anything
12 else that you had in that voicemail, you didn't
13 consider that to be information about legal
14 strategy that was confidential to the City?

15 A. Well, you know, you read
16 it now and it's like, yeah, in hindsight, again, I
17 regret making that phone call, but I was upset
18 after I had spoken to the insurance people.

19 Q. Do you recall an exchange
20 from the last time you testified between counsel
21 for the City, Mr. Chen at the time, and you in
22 your examination on May 5 respecting an e-mail you
23 sent to Dennis Billings of the MTO in February
24 2008 in which you represented that the SMA test
25 strip on the Red Hill met all the contractual

1 requirements. Do you recall that?

2 A. Do I recall that e-mail?

3 Yes.

4 Q. And do you recall the
5 exchange with Mr. Chen about it?

6 A. During the May 5? No, I
7 don't.

8 Q. Okay. And just to
9 summarize, I can take you to what you said, but do
10 you recall that you testified that neither you nor
11 the City stood to gain from any inaccuracy in your
12 e-mail to Mr. Billings about the test strip. Do
13 you recall that?

14 A. Yes.

15 Q. Okay. And what about in
16 this instance? Did the City stand to gain from
17 you disclosing to Philips this information?

18 A. Sorry, can you repeat the
19 question?

20 Q. Did you understand at the
21 time that was the contrary to the interests of the
22 City to say these things to a third party?

23 A. No. Honestly, at the
24 time I didn't. I was just upset about Gary. So,
25 again, I wasn't thinking straight. I was more

1 upset about Gary Tansley. You know, in hindsight,
2 you're right. It's like, yes, this is going to
3 cost the City, but, you know, I guess the more
4 prudent thing would have been to say, you know,
5 and I don't know how easy it is to do, can you
6 check if he has insurance? Okay, bring him in.
7 If he doesn't, why are you doing it personally?
8 It just didn't seem correct.

9 And, again, I said the comment
10 because when it came up that the bridge was
11 designed by another engineer, you know, our lawyer
12 is asking, well, okay, who bought Fenco, which I
13 didn't know, and, you know, where is this
14 gentleman? Is he still working? And I said, no,
15 he's passed away. So, I was like oh, my god,
16 we're going to go after someone else again. Where
17 I'm coming, it's very upsetting. So, I didn't
18 understand the strategy that the City was doing
19 and, again, I was upset.

20 Q. Did you expect anything
21 in return from Philips or --

22 A. No, absolutely nothing.
23 Nothing. Philips did not exist anymore.

24 Q. Okay. I think for
25 completeness we should just make the rest of the

1 pleadings exhibits. We just put in the --
2 Commissioner, if that makes sense. I don't need
3 to take him to it, but we have the Statement of
4 Claim of the Plaintiffs is GOL7515.

5 JUSTICE WILTON-SIEGEL:

6 Mm-hmm.

7 MR. LEWIS: The Statement of
8 Defence and Cross-Claim of the City of Hamilton is
9 GOL7513.

10 JUSTICE WILTON-SIEGEL:

11 Mm-hmm.

12 MR. LEWIS: And the Defence of
13 the City of Hamilton to the Cross-Claim of
14 Dominion of Canada General Insurance Company is
15 GOL7512.

16 JUSTICE WILTON-SIEGEL: Okay.

17 MR. LEWIS: So, Registrar --
18 oh, and then the third-party claim, which we have
19 up on the on the screen, is GOL7514.

20 JUSTICE WILTON-SIEGEL:

21 Mm-hmm.

22 MR. LEWIS: So, I think,
23 Registrar, those are Exhibits 136, 137, 138 and
24 139.

25 JUSTICE WILTON-SIEGEL: Okay.

1 THE REGISTRAR: Noted,
2 counsel. Thank you.

3 EXHIBIT NO. 136:
4 Statement of Claim of the
5 Plaintiffs, GOL7515.

6 EXHIBIT NO. 137:
7 Statement of Defence and
8 Cross-Claim of the City
9 of Hamilton, GOL7513.

10 EXHIBIT NO. 138: Defence
11 of the City of Hamilton
12 to the Cross-Claim of
13 Dominion of Canada
14 General Insurance
15 Company, GOL7512.

16 EXHIBIT NO. 139:
17 Third-party claim,
18 GOL7514.

19 JUSTICE WILTON-SIEGEL: And
20 would this be an appropriate time to take our
21 break?

22 MR. LEWIS: For me.

23 JUSTICE WILTON-SIEGEL: Then
24 let's take a break and return at quarter to 12:00.

25 --- Recess taken at 11:28 a.m.

1 --- Upon resuming at 11:46 a.m.

2 MR. LEWIS: We're back. May I
3 proceed, Commissioner?

4 JUSTICE WILTON-SIEGEL: Yes,
5 please proceed.

6 BY MR. LEWIS:

7 Q. Before we move on to the
8 next topic, I want to go back briefly, if you can
9 pull it up, Registrar, to HAM41522. If you could
10 bring up the second image as well, 1 and 2.

11 And this is just your e-mails
12 exchanged on May 1, 2013 to, in this case, Aneta
13 Zaszowska, copying Jeff Pidsadny and Richard
14 Andoga. And in the e-mail at the bottom that goes
15 on to the second page, you attach the links, and
16 we talk about this really briefly, to the RHVP
17 mainline paving contract, to the drawings, and
18 it's to the three sections and then the pavement
19 markings. Right? That's what those links are to?

20 A. That's correct.

21 Q. We talked about how this
22 was in connection with the work CIMA was doing in
23 2013. Do you have acknowledge one way or the
24 other if those drawings were provided to CIMA?

25 A. I would assume that they

1 were, but I can't confirm either way.

2 Q. Right. You would assume
3 so but you don't know?

4 A. Correct.

5 Q. Okay. Thank you. You
6 can take those down. All right. If we could go
7 now, Registrar, to overview document 7, image 182
8 and 183.

9 And the first number of
10 paragraphs, you're not copied on them at the
11 outset, but just to frame it for you, between
12 paragraphs 528 at the bottom of the image on the
13 left and then 534, which we haven't got to yet, on
14 these two images, is in late May, beginning on
15 May 26, 2017, and then early June 2017, there's a
16 request -- first of all, there's a request from
17 Ms. Graham to Mr. Moore about reporter questions
18 from the Spectator.

19 And then at 529 -- sorry,
20 you'll see at the top of the image 183 that
21 Ms. Graham says to Mr. Moore:

22 "She has also asked for a
23 copy of the pavement
24 friction testing done on
25 the RHVP. I've not heard

1 of this before. Is it a
2 public document?"

3 And then in paragraph 529
4 there's an e-mail from Ms. O'Reilly at the
5 Hamilton Spectator to Councillor Conley
6 indicating:

7 "I'm interested in info
8 on the pavement friction
9 testing conducted on the
10 RHVP last year."

11 And then in 530, Mr. Conley on
12 May 31 forwards that e-mail to Robert Ribaric, the
13 assistant to Mr. Conley, asking him to follow up.
14 And then 531, on June 1, Mr. Ribaric e-mails
15 Mr. Ferguson with the subject line "RHVP Pavement
16 Friction Testing," copying Councillor Conley and
17 asking:

18 "Was there pavement
19 friction testing done on
20 the RHVP last year, and
21 if so, what were the
22 results? Thanks."

23 On June 1, Mr. Ferguson
24 responds copying Councillor Conley and Mr. Moore:

25 "I have copied Gary on

1 this e-mail."

2 And then there's an
3 out-of-office message and we know that Mr. Moore
4 was scheduled to be out of the office until
5 June 12.

6 And then if we could move to
7 the next image, next two images, I guess, 184 and
8 185. And then June 5, Mr. Ribaric responds adding
9 in Ms. Cameron, Mr. Moore and Mr. Ferguson and
10 says:

11 "With Gary out of the
12 office, can you find
13 someone to provide a
14 response for Doug?
15 Thanks."

16 Then you're brought in on
17 June 5 at 1:46 p.m. Ms. Cameron responds to
18 Mr. Ribaric copying you, Mr. Moore, Mr. Ferguson
19 and Councillor Conley says:

20 "Hi, Rob. I most
21 certainly will get a
22 response for you by copy
23 to Marco. Marco, please
24 ensure you copy all on
25 your response."

1 And so, this is on June 5
2 you're linked in and there's a series of e-mails.
3 And the timing is a bit out of order on this, so
4 I'm just going to jump around a little bit. So,
5 that e-mail is at 1:46 p.m. and that's responding
6 to the question from Mr. Ribaric asking, was there
7 pavement friction testing done on the RHVP last
8 year and, if so, what were the results? And
9 that's what she's going to get the response from
10 you.

11 And then at paragraph 540 on
12 the right-hand image, she, Ms. Cameron, replies to
13 Mr. Conley at 3:25 copying you, asking you to
14 investigate and respond. Then 541 at 3:52 p.m.,
15 Ms. Cameron responds to Councillor Conley, copying
16 again Mr. Ribaric, Mr. Moore, you and Ms. Jacob:

17 "My apologies. It was
18 Gary who requested the
19 friction testing in 2014
20 and unfortunately I don't
21 have a copy of that
22 report. I'll follow up
23 with Gary on your request
24 when he returns to the
25 office on June 12."

1 And then, going back to
2 paragraph 536, at 5:08 p.m., all on the same day,
3 just keeping this in chronological order, you
4 respond to Ms. Cameron and Mr. Ribaric, copying
5 Mr. Conley, Mr. Moore and Mr. Ferguson:

6 "Sorry, I was not aware
7 of and have not seen the
8 results from the RHVP
9 pavement friction
10 testing. This will
11 probably have to wait
12 until Gary returns the
13 week of June 12."

14 And so, the first thing is:
15 Why did the response have to wait for Mr. Moore?

16 A. I wasn't aware of any
17 testing. And if you look, you went through and
18 recited it chronologically.

19 Q. Yeah.

20 A. Again, I'm covering
21 for -- I'm assuming I'm covering for Gary for the
22 month of June any time he would be off. We would
23 have rotations where each manager would cover for
24 the director if they were off. Again, like I said
25 before, my role is construction, we deal with 30

1 to 40 concurrent projects, we have the two-year
2 maintenance from 30 to 40 concurrent projects,
3 plus we're trying to help out, you know, reviewing
4 drawings and specs for mainly drawing reviews and
5 ideas for 30 to 40 projects for the upcoming year.
6 So, you know, I'm busy working. Even though I'm
7 covering for Gary doesn't mean that my work
8 doesn't stop. So, I would have responded back,
9 you know, if I go into my -- again, was I out in
10 the field? Was I at meetings? Couldn't tell you.
11 But then I would go and that request was at 1:46.
12 I would respond to that. So, just because I
13 responded at 5:08, I probably didn't see --

14 THE REGISTRAR: Sorry to
15 interrupt, but I think the live feed just stopped
16 for a second, so I just don't want you to speak
17 anymore.

18 THE WITNESS: Okay. Sorry.

19 THE REGISTRAR: Sorry. Do you
20 mind if we just take a quick five-minute pause so
21 I can ensure that Vince gets it up and running
22 again?

23 JUSTICE WILTON-SIEGEL: Okay.

24 Let's do that. We'll return in five minutes.

25 We'll return at noon.

1 --- Recess taken at 11:55 a.m.

2 --- Upon resuming at 12:01 p.m.

3 MR. LEWIS: We're back and I
4 understand the technical issue has been resolved.
5 May I proceed, Commissioner?

6 JUSTICE WILTON-SIEGEL: Yes,
7 please proceed.

8 BY MR. LEWIS:

9 Q. Mr. Oddi, I'm looking at
10 the transcript and I'll just go back to where you
11 were cut off when the technical issue arose. And
12 I was asking you about these e-mails on June 5.
13 And the last thing you were saying was:

14 "Even though I'm covering
15 for Gary doesn't mean
16 that my work doesn't
17 stop. So, I would have
18 responded back, you know,
19 if I go into my -- again,
20 was I out in the field?
21 Was I at meetings?
22 Couldn't tell you. But
23 then I would go and that
24 request was at 1:46. I
25 would respond to that.

1 So, just because I
2 responded at 5:08, I
3 probably didn't see -- "
4 And then it cut off.

5 A. No problem. I probably
6 didn't see the response that Diana Cameron had
7 sent because when you look at the e-mail queue, I
8 would have been addressing those earlier ones
9 first. And I believe your question was why did it
10 have to wait for Gary?

11 Q. Yeah.

12 A. Because I wasn't aware of
13 any testing and I think the councillor was also
14 asking about 2016 testing. I wasn't aware of the
15 2013, 2016 testing, so I wouldn't even know where
16 it is. So, I know sometimes the admins think, you
17 know, we need to respond right away, which we do,
18 but sometimes our response is I need more time, we
19 need to look into it. And in this matter,
20 unfortunately, you know, it would have to wait for
21 when Gary returned because he was the only one, I
22 believe, who was aware of it.

23 Q. Okay. So, there's a few
24 things there. The first thing is you said you
25 weren't aware of any testing, but I'm going to

1 come back. You were aware, because you were
2 copied on those e-mails back on November 19, 2013,
3 you were aware that there was friction testing at
4 that time?

5 A. Well, again, this is 2017
6 and, like I've said, Commissioner, counsel,
7 looking after quite a bit of projects, concurrent
8 projects, so I wouldn't have connected this 2017
9 request back to that 2013 November e-mail about
10 friction testing that I had no involvement in.
11 Had I maybe been involved more, yeah, it would
12 have connected, but I wasn't, so I wasn't aware of
13 the testing that he was looking for and I thought
14 it was better that it just waits until when Gary
15 comes back the following week.

16 Q. When you say you didn't
17 connect it, do you mean you didn't remember it at
18 the time?

19 A. Yeah, correct. I
20 didn't -- yeah. Again, I didn't even really pay
21 attention that we were doing friction testing
22 because my original contact was in May with Vimy
23 to give her, here, here is who you have to deal
24 with in corridor management and here is people in
25 traffic who can help you with traffic control.

1 So, you know, there's nothing -- there's no to-do
2 task for me, so I didn't recall it and wouldn't
3 have connected the two things.

4 Q. And what about the
5 friction testing done in 2007, prior to the
6 opening of the Red Hill --

7 A. You know, at this
8 point -- sorry, at this point, Commissioner,
9 counsel, I wouldn't even have recalled that the
10 MTO had done that friction testing. And, again, I
11 believe if you read the e-mail from the
12 councillor, it was requesting friction testing
13 that had been done in 2016, which I wasn't aware
14 of and, given my role in construction, that's not
15 something that I would be undertaking.

16 Q. Right. So, that's
17 certainly the first e-mail that came, was that
18 Mr. Ribaric, on behalf of Councillor Conley, said
19 was there pavement friction testing on the RHVP
20 last year, and if so, what were the results, so is
21 that what you were referring to, the last year,
22 being 2016?

23 A. Correct.

24 Q. Okay. But then there's
25 the subsequent e-mails where there's the

1 discussion that I took you through where
2 Councillor Conley refers to, on his update sheet,
3 saying that the pavement friction testing is
4 completed and what were the results of that
5 testing. And additionally, Ms. Cameron saying it
6 was Gary to requested the friction testing in 2014
7 and I don't have a copy of the report. So, I'm
8 appreciating that the initial request was
9 referring to the preceding year, but then there
10 were additional e-mail traffic.

11 So, after having seen those,
12 did that not twig you into your prior information
13 about testing that occurred in 2013?

14 A. No. Actually, I vaguely
15 recall then seeing this e-mail just saying, oh,
16 Diana has already responded. You know, I didn't
17 have to respond and, again, I just deleting it
18 because I've done what I had to do and now I'm on
19 to the next task. I'm going through my e-mails,
20 catching up and, you know, whatever, either
21 wrapping up for the day or trying to wrap up for
22 the day or prepping for the next day. I wouldn't
23 have connected the two. And you mentioned an
24 update and I wasn't aware on the update about that
25 there was additional friction testing done on the

1 Red Hill.

2 Q. Okay. Did you have an
3 understanding as to what the update sheet he was
4 there to was?

5 A. No. No, I don't.

6 Q. Did it occur to you that
7 it was an information update for council?

8 A. Again, if it was
9 information updates, depending what they are, I
10 might look at them. Is there a to-do thing for
11 me? You know, then I would pay attention to it.
12 If it was other stuff, you just kind of glance
13 through it and file it. We get quite a few
14 e-mails not just pertaining to the work alone we
15 do, but then all the other e-mails as well that
16 get distributed throughout public works and the
17 City.

18 Q. Did you have any
19 discussions with Ms. Cameron or anyone else
20 regarding this request between June 5 and June 12
21 when Mr. Moore returned?

22 A. No, I didn't. Again, I
23 believe Gary was CC'd on the response, so I would
24 have left it for Gary to respond when he returned.

25 Q. Did you have any

1 communications with Mr. Moore about it either
2 before or after his return?

3 A. No, I didn't.

4 Q. And why not?

5 A. Again, nothing for me to
6 do, so, you know. If Gary had wanted to talk to
7 me about it, he would have talked to me about it.
8 Right?

9 Q. Did you have no curiosity
10 about friction testing on the highway that you
11 were the construction project manager of?

12 A. No. No. Again, you
13 know, we don't have a friction management program
14 in the City. I'm not aware if any municipality
15 does. We all drive roads and highways and none of
16 us -- there is no central repository site in
17 Ontario that you can go look at what the friction
18 value of roads are. So, I look at roads more how
19 the general public does, you know. You see the
20 cracking, you see the potholes, you see the
21 deterioration of the roads that way. Friction is
22 not something that I think about when we're
23 building roads or designing them. The friction
24 actually comes as a -- depending on the mix you
25 pick is the friction you get. There is no

1 equation in there that says, here, you need to add
2 this much asphalt cement, this much granular, to
3 get the proper friction.

4 Q. You didn't feel it was
5 your responsibility to track this down, it having
6 been tasked to you at this point?

7 A. No, because I had pushed
8 it back to Gary. If it was something that I was
9 aware of, yeah, definitely I would have followed
10 up and got them the information in a timely
11 manner.

12 Q. Okay. And having worked
13 with Mr. Moore for years, I'm assuming you never
14 saw a resolution to this. Let's start with that.
15 Is that fair?

16 A. Yeah. No. And I
17 wouldn't have expected to be included in it
18 either. The only reason it was sent to me is
19 because I was covering for Gary while he was on
20 vacation.

21 Q. Right. And so, it didn't
22 occur to you just to follow up with Mr. Moore when
23 he returned, hey, is there a report from 2014
24 about this?

25 A. No. No.

1 Q. Registrar, if we would
2 take that down and pull up HAM64106.

3 So, this is an e-mail chain on
4 August 9, 2017 about an action in court, Hamilton
5 ats Bernat. Do you recall that matter, that
6 lawsuit?

7 A. Yeah. The name -- the
8 Bernat name rings a bell as one of the discoveries
9 I believe I was involved in.

10 Q. Okay. And at the bottom
11 there, Cheryl Morrison writes to -- and she's in
12 legal services -- Diana Swaby:

13 "Hi, Diana. Ron brought
14 to our attention a study
15 that may have been done
16 regarding the surface
17 material used on the red
18 Hill Valley Parkway. Are
19 you aware of this study
20 and do you know where
21 Dana and I can obtain a
22 copy?"

23 Then Diana Swaby responds at
24 the top:

25 "I fail to see how the

1 type of material used on
2 the road caused the tire
3 to blow."

4 I think there was an
5 allegation in the lawsuit that the tire blew:

6 "Thousands of vehicles
7 traverse this road every
8 day. In any event, I am
9 not aware of any study.

10 I would try Marco Oddi."

11 You did later become the
12 City's affiant for the affidavit of documents and
13 the deponent at examinations for discovery. And
14 did Ms. Morrison of legal services contact you
15 about this issue? Do you recall?

16 A. You know, what? I don't
17 recall her reaching out about it.

18 Q. Okay. You don't recall
19 any discussion about this with her or Ms. Swaby?

20 A. No. Something like this,
21 unless there was a foreign object on the road, the
22 asphalt itself shouldn't cause a tire to blow.

23 Q. No, I understand that,
24 but that isn't my question. My question is you
25 don't recall --

1 A. No. I don't recall being
2 contacted by -- I believe down in that e-mail it
3 looks like it's Dana, but I believe she had
4 pronounced it as "Donna." Dana was the legal
5 representative that I was always dealing with up
6 until about 2019 for any discoveries for the LINC
7 or Red Hill.

8 Q. Last name is Lezau?

9 A. Lezau, yeah. I believe
10 so. So, I don't recall any conversations with
11 either of them about this matter.

12 Q. Okay. Thank you. You
13 can take that down, Registrar. Thank you.

14 Just to change topics, can you
15 tell us your recollection of when the City first
16 began considering hot in-place recycling for the
17 Red Hill resurfacing?

18 A. You know what? It came
19 up sometime after, I believe it was the fall 2017
20 CTAA conference where I believe Gary and Ludomir
21 were both in attendance at that. So, sometime
22 after that it's like, oh, you know, hot in-place
23 could be a possible alternative on the mainline
24 portion of the Red Hill Valley Parkway. Because
25 at that point I think it was being programmed in

1 asset management to resurface the northbound in
2 2018 and the southbound in 2019.

3 Q. Okay. And it's in
4 evidence that the CTAA conference in Halifax was
5 in mid-November of 2017. Does that sound right
6 with your timing?

7 A. Yes, correct.

8 Q. And, Commissioner, I
9 should make that last e-mail that we were looking
10 at, HAM64106, that needs to be marked as an
11 exhibit. It's not in the overview document.

12 JUSTICE WILTON-SIEGEL: Okay.

13 MR. LEWIS: Registrar, I think
14 it's 140.

15 THE REGISTRAR: Noted,
16 counsel. Thank you.

17 EXHIBIT NO. 140: E-mail
18 chain dated August 9,
19 2017, HAM64106.

20 MR. LEWIS: Thank you.

21 BY MR. LEWIS:

22 Q. And did you attend at
23 that conference or is this something that you
24 learned after the fact?

25 A. I learned after the fact.

1 I didn't attend the conference.

2 Q. Okay. And there was
3 ultimately a meeting that took place, and I'm
4 going to take you to that in detail, on March 9,
5 2018 with a number of city staff and Dr. Uzarowski
6 from Golder, but what do you recall generally
7 about your involvement respecting the hot in-place
8 recycling and the Red Hill between that conference
9 and your learning about the idea of using hot
10 in-place recycling and then that meeting?

11 A. You know, not very much.
12 I don't recall any discussions. Yeah. Again,
13 this was just going to become another potential
14 project and we were just looking at did it make
15 sense to do it. Right? It's a good -- I know the
16 City or I believe it was the region prior to 2000
17 had done some hot in-place within the City and
18 it -- you know, very promising. I know the MTO, I
19 believe, was doing one in either North Bay or
20 Thunder Bay in 2018, so, you know, it's a good
21 alternative. It produces a good mix at an
22 economical price. It's environmentally friendly
23 because you're reusing, you know, the material
24 that's there, you know, but the main thrust is the
25 economical savings. It's about half the price of

1 a conventional shave and pave. So, given that,
2 you know, most municipalities don't have that much
3 money or have limited funds to deal with
4 infrastructure deficits, if you can save 2 to
5 \$4 million, that can do how many more additional
6 projects that you can get out the window. Right?

7 Q. Okay. But you're saying
8 you don't recall much involvement from your
9 perspective between those dates? There's another
10 meeting on February 28, but generally speaking
11 you're saying you didn't really have a direct
12 involvement? You were hearing about it. Did you
13 have input? What?

14 A. No. Just hearing about
15 it and I think the first time we really sat down
16 to discuss it was in that March 2018 meeting.

17 Q. Okay. I just want to go
18 first to February 28. If we go to overview
19 document 8, image 69. It's paragraphs 192 and
20 193. In paragraph 192, Mr. Becke, on February 28,
21 circulates a calendar invitation to a number of
22 people, including you, and he refers to:

23 "Further to the
24 presentation on Friday,
25 thanks, Ludomir, we had a

1 side discussion
2 afterwards regarding hot
3 in-place on the Red Hill
4 Valley Parkway. It
5 sounds like there will be
6 some challenges with this
7 approach that we need to
8 discuss moving forward."

9 And then he asks about setting
10 up another meeting. Do you recall if you were at
11 the meeting on February 23 and the side discussion
12 with Dr. Uzarowski?

13 A. No, I wasn't involved in
14 the side discussion and I'm trying to recall if
15 that February 23 was one of the PMTR, that
16 pavement and material technology review that
17 Golder was doing. At this point, I think they
18 were doing phase 3 of it. So, I can't recall if
19 that February 23 was a presentation on MSCR graded
20 asphalt.

21 Q. I think it's the
22 latter --

23 A. Yeah. Because we were,
24 as part of their assignment basically, you know,
25 part of that PMTR Golder had done three phases

1 because the City had done Superpave back in 2007.
2 Ludomir looked at it, I believe, on the behest of
3 Gary to see, okay, how is our Superpave asphalt
4 performing. We made some spec changes and then he
5 did a second review maybe around 2014 to see,
6 okay, whatever spec changes we implemented, how is
7 our asphalt quality? Is it getting better? And
8 it was improving, but in this last round we
9 actually specified now -- we changed our specs so
10 that we specify a minimum level of asphalt cement
11 and we switched to MSCR graded asphalt cement as
12 opposed to just if you read the OPSS spec, it has
13 the same test parameter for all grades of asphalt.
14 This is a system that was being used, I think, in
15 northeast or northwest -- I think it was northeast
16 United States. It seemed to be successful because
17 all the data was more relevant to what happens in
18 the field. So, we were looking at implementing
19 these new things and basically --

20 Q. So, you attended that
21 presentation, though?

22 A. Yeah, I attended the 23rd
23 presentation, sorry, and I don't recall being in
24 that little side meeting about hot in-place, so I
25 didn't mean to ramble, Commissioner, counsel.

1 Q. That's okay. Thank you.
2 But Dr. Uzarowski said his recollection was that
3 you were at the side meeting on February 23, along
4 with Mr. Becke, Tyler Renaud and maybe one or two
5 other people, but not Mr. Moore. So, are you
6 saying that you weren't there or that you just
7 don't recall the meeting?

8 A. You know what? I just
9 don't recall. I recall the March 9 meeting, but I
10 do remember the PMTR because we talked about MSCR
11 graded, the minimum AC, so I don't recall the hot
12 in-place discussion, but, you know --

13 Q. I'll just put another
14 proposition to you. Dr. Uzarowski testified that
15 in this secondary meeting there was a discussion
16 about hot in-place and that Tyler Renaud expressed
17 concerns with using hot in-place recycling and
18 then he testified that he recommended or mentioned
19 shot blasting to improve the friction on the RHVP
20 in the interim before resurfacing occurred, and he
21 testified that this was the first occasion that
22 you said something along the lines that the City
23 couldn't do it because that would confirm there
24 was a problem with the Red Hill Valley Parkway and
25 the public would blame the City.

1 A. At the February 23
2 meeting?

3 Q. Yes.

4 A. I don't recall that at
5 all.

6 Q. Okay.

7 A. Like, I don't even recall
8 the discussion about hot in-place on February 23.
9 I recall the MSCR, the minimum --

10 Q. I heard about the --

11 A. And also we were
12 doing the -- Ludomir was giving us an end result,
13 very similar to how MTO does end result
14 specifications, so that -- because our spec had
15 been set up basically that if some of the
16 parameters didn't meet the test requirements, we
17 were getting extended warranties. So, we said if
18 we go this other way, we can get a value, penalize
19 the contractors, because again the asphalts, it's
20 okay to leave it in but it didn't quite meet spec,
21 so we wanted to have that end result information
22 so we could start clawing back money from
23 contractors. I recall those discussions. I don't
24 recall at all what you just said about the hot
25 in-place in my comment about not being able to do

1 it because of the liability.

2 Q. If you didn't say
3 something about it in that meeting, and we'll get
4 to the March 9 meeting, but did you say something
5 along those lines in the March 9 meeting?

6 A. I don't recall saying
7 that in the March 9 meeting either.

8 Q. Okay. And when you say
9 you don't recall, do you mean it's possible you
10 did but you don't recall or --

11 A. No, I don't recall saying
12 it.

13 Q. Okay. Dr. Uzarowski
14 writes in response, and this is at paragraph 193
15 at the bottom there, he writes a response to this.
16 And if you could expand that, paragraph 193,
17 please, Registrar. 193, the bottom paragraph.
18 Have we lost the registrar?

19 THE REGISTRAR: No. Sorry,
20 counsel. I'm still here. One second.

21 BY MR. LEWIS:

22 Q. If you can read it, I'm
23 just going to continue, Mr. Oddi. Are you able to
24 read it?

25 A. I can see it. I've got

1 my glasses, so I can see it okay.

2 Q. Oh, but now I see
3 Mr. Oddi's image has frozen. You're back.

4 A. I'm back? Okay. I guess
5 we're having a tough technical day today.

6 Q. We're having a tough
7 technical day. It's true. There we go. Right.

8 Right. So, Dr. Uzarowski
9 responds and he refers to having contacted
10 Pat Wiley, president of EcoPave, that does a lot
11 of HIR in BC. He refers to the MTO doing HIR in
12 Thunder Bay, as you mentioned, and then he
13 indicates:

14 "Pat has never done HIR
15 recycling of SMA and
16 thinks perhaps it's not
17 feasible."

18 And he goes on to provide an
19 explanation of that, including that reference from
20 the MTO guidelines about what it's recommended for
21 with HIR and that it shall not be used to recycle
22 SMA or composite pavements.

23 And do you recall at that time
24 what your view was about using HIR? You referred
25 to it before generally about the benefits of it --

1 A. Yeah. You know what? I
2 was -- one way or the other, I mean, if we could
3 do it. I don't believe I was copied in this
4 e-mail, was I? Like, I don't recall seeing this,
5 but I may have been. I don't know if this was
6 just sent from Ludomir to Mike.

7 Q. I believe it went to
8 everyone that was on the invitation, but --

9 A. Was it? Okay.

10 Q. Let me just pull it up.
11 Hold on.

12 A. Yeah. I just can't
13 recall. And I know -- but I don't know if we
14 talked about --

15 Q. No. You're correct. I'm
16 just looking at it. It just went back to
17 Mr. Becke.

18 A. Okay. Yeah. Because I
19 recall us -- I believe it was after the March
20 meeting, because I know the MTO spec says or it
21 indicates that it shouldn't be done, you know,
22 excludes SMA, and I can't recall when, so it might
23 have been later on when I remember talking to
24 Mr. Becke because I said, yes, definitely, if him
25 and Tyler wanted to go and, you know, drive out,

1 fly out, to when they're doing the hot in-place,
2 because I believe Pat's company had gotten that
3 contract --

4 Q. You mean the MTO project
5 in Thunder Bay?

6 A. By the time they got it,
7 we said it would be a good thing, especially if
8 we're thinking about doing it. And the MTO was
9 very interested that, oh, you might try it on SMA.
10 So, you know, it's not that it couldn't be done on
11 SMA, just they had never done it on SMA. And if
12 you look back when the region did it, we didn't
13 have any SMA asphalts or very few prior to, you
14 know, the year 2000.

15 Q. Okay. So, appreciating
16 you didn't see that e-mail, I just sort of bring
17 it to your attention as to the lead-in to the
18 meeting and to Dr. Uzarowski's perspective at the
19 time. What was your view from the way you
20 described it? If it's feasible, we should do it.
21 Is that --

22 A. No. It was more it
23 hadn't been done in Ontario, so, you know, do we
24 want to try it? Does it make sense? If this
25 contractor out in BC was comfortable with it and

1 thought it could be done, then yeah. You know, it
2 merited investigating it because of the cost
3 savings mainly. It does have the other benefits
4 of being a bit faster and environmentally
5 friendly, but again, it could only be used on the
6 mainline highway. Right? We still had to do the
7 traditional shave and pave for the on and
8 off-ramps.

9 Q. Okay. Do you recall a
10 meeting on March 9, 2018?

11 A. Yes. I have some
12 recollection of the meeting, yes.

13 Q. All right. And do you
14 recall who was there? The invitation was from
15 Mr. Becke to you and Mr. Perusin, Mr. Andoga,
16 Ms. Jacob, Dr. Uzarowski, Mr. Leon, Mr. Vala and
17 Mr. Renaud and we know that Mr. Moore was there as
18 well.

19 A. Can you repeat the last
20 name you just said?

21 Q. Mr. Renaud and
22 Mr. Moore --

23 A. Mr. Moore, yes.

24 Q. And he was there.

25 A. Yeah, I believe that was

1 everybody that was there. You did say Rick
2 Andoga, right, as well?

3 Q. I did. And what was the
4 focus of the meeting?

5 A. Basically it was a
6 discussion to see if hot in-place could be
7 feasible on the Red Hill Valley Parkway.

8 Q. Okay. And I'm going to
9 pull up notes of Dr. Uzarowski and Mr. Becke
10 respecting the meeting and I'll ask some questions
11 about that.

12 So, if you could pull up,
13 Registrar, RHV933 at image 823, and also please
14 pull up OD 8 at image 76. It's paragraph 207.

15 Dr. Uzarowski's notes continue
16 on. That's just the first page. So, the first
17 thing, maybe just generally tell us what you
18 recall of the meeting and how it proceeded?

19 A. I mean, to me it was just
20 a normal meeting. We were just talking about the
21 possibility. But there was definitely a different
22 recollection of the discussion with the BC
23 contractor, EcoPave. Gary had a different
24 recollection that Pat thought it could be done on
25 SMA roads and Ludomir said no and as well brought

1 up the thing about not being in the MTO spec.

2 Q. When you talk about the
3 different recollections, was that with respect to
4 discussions back at the CTAA conference or some
5 other --

6 A. Yes, correct, about CTAA
7 conference discussions, yes, because obviously
8 both had attended and then Gary had said after
9 some presentation they had gone and they had
10 talked about it and, you know, Gary's
11 recollections is that Pat was very excited about
12 it. I don't know if he had the MTO contract at
13 that point or if he was just bidding on it, but
14 Ludomir's recollection was, like, totally
15 different than Gary's.

16 Q. And was Mr. Moore's
17 understanding that it had been done on HIR or that
18 Mr. Wiley thought it could be done? Do you know?

19 A. I think it was the
20 latter, that it could be done on SMA, and that's
21 sort of, okay, if they think -- you know, have
22 they done it out there? Do they think they could
23 do it? I know MTO doesn't say, but again, I think
24 the MTO is saying, oh, you know, we haven't done
25 it, but if you're going to do it, we would be

1 interested to see how it turns out. So, there was
2 just this, you know, discussion back and forth.
3 Right?

4 Q. Okay. Can you
5 characterize the conversation in terms of tone --

6 A. You know what? I recall
7 the discussion getting louder as Gary's
8 recollection not coinciding with Ludomir's
9 recollection. Like, there wasn't any yelling. I
10 just remember it getting louder between the two
11 and, you know, Gary did use some profanity, but it
12 wasn't directed at anyone. You know, I guess you
13 would look like in the construction and trade
14 industry, colourful spirited language, sometimes
15 used as adjectives, adverbs, sentence enhancers,
16 and it's considered appropriate if it's used in
17 the right context with the right audience. So, at
18 a certain point I chimed in with profanity and
19 said, okay, like, can we just stop? You keep
20 being adamant that yes he thinks he can do it and
21 Ludomir says no. Just contact Pat. Call him.
22 Send him an e-mail. Get an answer. Right?
23 Because if Pat had said no, he doesn't think it's
24 possible, you know, then it starts to just give
25 you more to think about. If he thinks it's

1 possible, then it's like okay, you proceed to the
2 next level of doing the investigation.

3 Q. Okay. And who is that
4 addressed at? You said that you weighed in with
5 profanity and said, can we just stop. You keep
6 being adamant that, yes, he thinks he can do it,
7 and Ludomir says no. So, is the you in that
8 Mr. Moore?

9 A. Yeah. I'm talking --
10 yeah. I'm talking to Gary now, yeah. But, again,
11 I wasn't yelling at Gary, I wasn't swearing at
12 Gary; I was just using, you know, profanity as
13 those sentence enhancers. Right?

14 Q. Give me one moment.
15 Dr. Uzarowski, and I'm going to come back to some
16 of the detail on other issues, but he testified
17 that the colourful part of the meeting, using your
18 words, was between you and Mr. Moore and he
19 testified that he perceived that you were standing
20 up to Mr. Moore in some respect on the hot
21 in-place issue and that Mr. Moore wasn't happy
22 about Dr. Uzarowski's view on using HIR on SMA and
23 indicated that you had the courage to say it was
24 not suitable and agreed with Dr. Uzarowski, that
25 the meeting was heated, profanity was used and

1 that it was almost angry, and he said that the
2 profanity and anger was not addressed to him, but
3 was between you two. Can you comment on that?

4 A. Yeah. I mean, again, I'm
5 just, again, like I said, the conversation got
6 louder. The profanity wasn't directed at each
7 other. They were just being used as, you know,
8 adjectives, adverbs. So, it wasn't -- and it was
9 more, listen, before we try this, let's confirm.
10 Let's confirm what he says. EcoPave has done a
11 lot of hot in-place. It seems to be one of the
12 leading contractors. But, again, he's out in BC.
13 He's going to have to bid on this project if he
14 comes out. I don't think woe we talked about that
15 at the time, but it was more -- Gary was getting
16 very frustrated, very, very frustrated. And, you
17 know, after the fact I can appreciate the
18 frustration because, you know, it turns out he was
19 right. That Pat Wiley said yes, he believes it
20 could be done. So, you know, I think that's why
21 he was getting so upset. And all I'm saying is,
22 like, okay. Right now, we're not sure. The MTO
23 spec says, no, don't do it. Ludomir is saying
24 that this guy doesn't think it can be done. You
25 say he does. Let's just clarify that. Let's, you

1 know, just get that clarification. Then we can go
2 to the next phase. Right?

3 Q. Okay. And --

4 A. I wasn't defending
5 Ludomir. It's just no one was saying anything and
6 it gets to the point we're circling the drain.
7 Again, you know, I've got 30 to 40 concurrent
8 contracts, I have got to get back to work and do
9 stuff, so can we decide? You know, yes, no,
10 maybe? Let's go to that next step. Right?

11 Q. And just because we're
12 talking in euphemisms and we've done that before,
13 when you talk about the profanity used as an
14 advective and so forth, do you mean in the way of,
15 you know, "what the F are we doing here" as
16 opposed to "F you"?

17 A. Oh, yeah. Exactly,
18 exactly, yes. Exactly. So, it's not directed at
19 each other. Right? It's just, again, you know,
20 in our industry, I've had a few colourful spirited
21 conversations with contractors when they don't
22 agree with stuff. Right?

23 Q. No doubt. Okay. And so,
24 on that particular issue, you indicated that you
25 raised that, you know, you should talk to

1 Mr. Wiley. So, is that, on that particular issue,
2 is that the resolution?

3 A. Yeah, because we said if
4 Pat doesn't think it could be done, HIP is dead in
5 the water. Let's proceed with we're doing the
6 northbound in 2018, the southbound in 2019. If
7 hot in-place is an option, okay, you know, because
8 they talked about the other stuff we have to do.
9 You know, I get when you do hot in-place you don't
10 get back, you know, an SMA or a true Superpave
11 12.5 FC2, but you get a mix that -- you get an
12 asphalt mix that has the right characteristics to
13 meet the needs of the road.

14 And, again, it's the cost
15 savings, Commissioner, counsel, that was really
16 driving this. Because you said, okay, it's worth
17 investigating because you're going to save that \$2
18 million to \$4 million, which is quite a bit. It
19 is a bit faster. And, you know, the other side
20 benefits, it's faster and environmentally
21 friendly. Because at this point, we were still
22 looking at doing this over weekends, so that was
23 the idea of splitting it up, so we could do it
24 over two to three months in the summer of 2018 and
25 in the summer of 2019 when it was just strictly a

1 shave and pave, no other things being added to the
2 project.

3 Q. And would hot in-place
4 affect that schedule?

5 A. I mean, the only thing is
6 I wasn't -- I didn't know how long it would take
7 to assess the asphalt, so depending how long it
8 took to get that information back, there still was
9 a possibility you could do the northbound in 2018,
10 because we had until the end of basically -- you
11 know, our good weather season for surface works
12 usually starts from about May to the end of
13 October. You can go into November and December,
14 but, you know, you're into the colder weather, so
15 ideally on a road like the LINC and Red Hill, you
16 want to be in there in the appropriate weather
17 times. Right?

18 Q. So, if I unpack that, it
19 could cause a delay depending on how long the
20 investigation took --

21 A. Yeah, correct. Correct.
22 I mean, and I wasn't 100 percent sure what exactly
23 would be involved, how big the samples had to be,
24 how many, so those were details. But, again,
25 okay, let's address this once we get back the

1 answer from EcoPave.

2 Q. Okay. And do you recall
3 Dr. Uzarowski suggesting that microsurfacing be
4 applied if hot in-place recycling was used after
5 the HIR resurfacing took place?

6 A. Yeah. Actually, you know
7 what? I do recall him bringing that up and,
8 again, I've told you my view on microsurfacing and
9 it didn't seem to make sense. You know, so, there
10 was some discussion then because we said it
11 doesn't make sense. Normally in the normal hot
12 in-place process, you don't then have to
13 microsurfacing it, right? But then Ludomir, then
14 they started talking about the aggregate friction
15 numbers and the PSV numbers and then Ludomir
16 brought up that the PSV numbers for the Demix
17 aggregate, which is a trap rock, is low, so, you
18 know, this discussion all of a sudden is going all
19 over the place and I'm like, who, are you saying
20 don't forget you approved that aggregate and now
21 you're saying it's no good? And then Gary and
22 Ludomir both chimed in and said it's a very good
23 aggregate, it's strong, it's durable, it's good.
24 And then at some point Gary said, you know what?
25 The friction numbers are inconclusive and no to

1 microsurfacing, after the HIP. And Ludomir and no
2 one else in the room disagreed with that at all.
3 So, I think Ludomir brought it up, but I think it
4 was because, you know, he's talking about -- I
5 think he's looking at the MTO specs and, you know,
6 what they're suggesting, so is it like belt and
7 suspenders that we need to do this to improve
8 the -- to make sure that it's the right surface
9 that will have the right frictional
10 characteristics. To me, it didn't seem to make
11 sense to do microsurfacing and all the other HIP
12 processes we have seen, they don't say, yeah, come
13 in and do that after you do the hot in-place.

14 Q. Right. Did you
15 understand that the issue was of course you're
16 recycling, when you're doing hot in-place
17 recycling, you're recycling the aggregates?

18 A. Right.

19 Q. And if there's an issue
20 with the frictional qualities of the aggregates,
21 then that could cause a --

22 A. Again -- yeah. No one
23 said anything. Ludomir went through all the
24 frictional, you know, numbers. So, dolomitic
25 sandstone has the best PSV numbers. Trap rock is

1 next and then you have your limestones. And that
2 makes sense. Right? That's why the trap rock and
3 the dolomitic sandstones are your premium
4 aggregates and usually those are used on the high
5 volume roads. Right? But a lot of the roads
6 within the City of Hamilton, a lot of arterial
7 roads, just have basically limestone used as the
8 aggregate because it's more than sufficient to
9 meet the needs and the traffic volumes.

10 Q. And you referred to
11 Mr. Moore saying that it was inconclusive. What
12 was he referring to?

13 A. He said the friction
14 numbers were inconclusive, and, you know, but I
15 recall they were talking about the aggregate
16 friction PSV numbers. And, again, he just said,
17 he's like, no, no microsurfacing after hot
18 in-place. And, again, no one at the meeting said
19 anything contrary to that. And you've seen if I
20 have a difference of opinion, I will speak up.

21 Q. Fair enough.
22 Dr. Uzarowski wrote in an internal Golder e-mail
23 reporting on the March 9 meeting. He stated, and
24 I can pull it up if you want, but I'll tell you
25 what he wrote:

1 "I then recommended using
2 Skidabrader or shot
3 blasting, at least the
4 worst areas indicated in
5 Tradewind Scientific
6 report, to improve
7 friction of the current
8 surface if they delay
9 resurfacing. Marco
10 rejected the idea for
11 various reasons. For
12 your information, I had
13 recommended this
14 treatment before when
15 they let me know about
16 friction concerns on the
17 RHVP."

18 Do you recall that discussion?

19 A. Yeah, I recall -- I don't
20 remember the Tradewind report being named. I
21 don't remember hearing that name at all during the
22 conversation, but I do recall Ludomir saying that
23 we should do some prior to the resurfacing. And,
24 again, at this point, Commissioner, counsel, we're
25 still thinking northbound in 2018 and southbound

1 in 2019. Right? So, he said, you know, maybe we
2 should do skidabrading, shot blasting, to improve
3 the friction. And I recall saying that doesn't
4 seem to be -- it seems like a waste of taxpayer
5 dollars. It doesn't seem good use of the limited
6 public funds that we have. We're going to go out,
7 shot blast the road and then a month or two later
8 I'm going to go hot in-place or resurface it?
9 It's, like, why would we do that? So, you know,
10 no one ever expressed any safety concerns, any
11 friction concerns. You know, and after I said my
12 comment, again, no one in the room said anything
13 different to the best of my recollection. Because
14 if someone had said there was a friction or a
15 safety concern, it would have been a totally
16 different conversation at this point.

17 You know, and these points
18 about the microsurfacing and the skidabrading,
19 shot blasting, were coming up as the meeting is
20 kind of, you know, winding down. Right? So, we
21 didn't spend a lot of time talking about it.

22 Q. Okay. Do you recall
23 saying something to the effect that they cannot do
24 shot blasting because this would show the public
25 that there was a problem with the RHVP pavement,

1 that it's admitting guilt?

2 A. No, I don't recall saying
3 it. I don't recall anyone else saying it. I just
4 recall saying it seems like a waste of taxpayer
5 dollars and not a good use of public funds. And,
6 again, we had limited dollars and what extra is it
7 really going to give you if we're turning around
8 and, you know, as the project progressed, because
9 after Pat got back and said, yes, I think it's
10 feasible, okay, good, Gary was right, let's move
11 on. At a certain point, you know, probably by the
12 end of May, in my mind I'm going this isn't
13 happening in 2018. It's, like, we're going to
14 have to do it all in 2019 because by the time we
15 get all the results back and everything, there's
16 just no way we're going to be able to get it done
17 by October. So, it's, like, okay, it's one of
18 another next year's 30 to 40 projects we would
19 have to deliver. And I don't recall anyone within
20 engineering services or, you know, Ludomir
21 expressing any concerns about delaying the
22 resurfacing to 2019.

23 Q. Except that he was
24 saying, as you said, that he was recommending
25 skidabrading or shot blasting as an interim

1 treatment?

2 A. Right. And, again, but
3 my comment was it seemed like a waste of taxpayer
4 dollars to go and do that. No one said anything.
5 But now as the project progresses -- so, again, my
6 point is that no one brings up later in the year
7 or at the end of the year that, oh, there's a
8 safety concern, there's a friction concern, we
9 need to do something, because if those concerns
10 had been brought up in March, Commissioner,
11 counsel, there would have been a different
12 discussion at that meeting.

13 Q. Okay. Do you recall
14 saying something to the effect, again on the issue
15 some interim treatment by skidabrading or shot
16 blasting, something to the effect of, gee, the
17 lawyers will have a heyday with you to
18 Dr. Uzarowski in response to his suggestion?

19 A. You know what? Not
20 really. You know, I might have been speculating
21 when I said that during our original thing. You
22 go back again where I had made the comment about,
23 you know, like Ludomir said the PSV numbers on the
24 Demix aggregate are low because it's a trap rock,
25 and it's like you approved the aggregate. Like,

1 you're all over the place. It's like, okay, yeah,
2 sure, let's try the HIP, but we should
3 microsurface it. The numbers are low, but it's a
4 good aggregate, it's a very strong aggregate, it's
5 good. So, I don't recall saying that comment,
6 Commissioner, counsel.

7 Q. You didn't say it or you
8 don't recall it?

9 A. I don't recall saying it.
10 I believe I said it when I did my initial
11 testimony, but I think I was speculating at the
12 time saying I might have said something along this
13 line. But it wasn't in reference to, you know,
14 it's like Ludomir, you're all over the place.
15 Right?

16 And, again, I feel comfortable
17 in saying that to Ludomir, just like I feel
18 comfortable, you know, using profanity with Gary,
19 you know. If it's used in the proper context and
20 within the appropriate audience, you know, it's
21 okay. Overuse of it, definitely not. In my
22 relationship with Ludomir, he had worked on us
23 with Red Hill, he had been working on us with this
24 pavement material technology review and, you know,
25 we were actually -- if you look at our asphalt

1 specifications for Superpave, we have a very good
2 specification. I remember at one point we weren't
3 getting the early cracking. Once we did the
4 changes to the specs and the tweaks, we were
5 getting good asphalt quality from all the local
6 contractors and, you know, Ludomir said, you know,
7 at one point, you know, would you guys mind if I
8 share this specification with other
9 municipalities? It's like, yes, no, go ahead,
10 because there's still that -- you know, the MTO is
11 Superpave, but most municipalities, there's not
12 very many that have on Superpave. A lot of them
13 use Marshall. So, Ludomir, we've had a good
14 working relationship, so I feel comfortable, you
15 know, joking with Ludomir, poking at him, and I
16 would expect him to do the same with me. If I,
17 you know, had a concern, I would say it to Ludomir
18 and I would hope that he felt the same way.

19 Q. Okay. So, you referred
20 to the Tradewind report, but I think you said that
21 you don't think that he mentioned it by name at
22 the meeting. Is that --

23 A. Yeah. Sorry, yeah.
24 That's correct. And, again --

25 Q. You talked about friction

1 test results --

2 A. From what I recall, we
3 were talking about the aggregate friction and the
4 PSV numbers. I don't remember anything about --
5 like, I don't remember the Tradewind report coming
6 up or the actual friction values.

7 Q. Because you'll notice his
8 notes there indicate at point 3:

9 "SN from Tradewind
10 Scientific have 35 and
11 38, but variable."

12 So, your evidence is that you
13 don't recall him talking about specific results
14 or --

15 A. No, I don't recall that
16 coming up at all.

17 Q. Okay. And, again, you're
18 saying that you don't recall it or that it didn't
19 happen?

20 A. To the best of my
21 recollection, it didn't happen. Again, no one
22 said anything about a safety concern, friction
23 concern. Again, like I said, if that had come up,
24 it would have been a different conversation.

25 Q. But you see on the right

1 hand item there under 207, the last note refers to
2 concerns about friction numbers in Mr. Becke's
3 note, so would you agree --

4 A. The only friction numbers
5 I recall in that latter discussion, it was after
6 we were talking about the microsurfacing after
7 HIP, and then them talking about the aggregate
8 friction numbers, the PSV numbers and, you know,
9 that's all I recall. I don't recall any other
10 numbers. I don't recall him saying those numbers
11 that are listed on image 76 there in points 3 and
12 4.

13 Q. Did he criticize -- I'm
14 going to back up. If he didn't mention the
15 Tradewind report by name that you recall and
16 didn't mention specific numbers, did he mention
17 that there was friction testing that was done?

18 A. I don't recall that.

19 Q. Okay.

20 A. I kind of recall also
21 near the end of the conversation we talked about
22 driver behaviours where, you know, people aren't
23 paying attention, they drive too fast, but that
24 wasn't just about Red Hill. We talked about it on
25 Red Hill, the LINC and on just regular arterial

1 roads. You say the world is changing, everybody
2 is in a rush, nobody wants to slow down, so I kind
3 of recall that. Because I always say I was
4 fortunate in my role. I would get to use a City
5 vehicle, so you try and be very cognizant of speed
6 limits, stop signs and things like that. You have
7 to show a good example for the public. And
8 there's times when I'm driving on arterial roads
9 and, you know, people are going by you and you
10 look at your odometer and you're going 70
11 kilometres in a 50 zone and people are honking at
12 you because you're driving too slow. That's what
13 society seems to be turning to. I vaguely recall
14 a quick conversation about that and then that was
15 the end of the meeting.

16 Q. Do you recall Ms. Jacob
17 leaving the meeting at some point?

18 A. I don't recall. She may
19 have but I don't recall one way or the other.

20 Q. Do you recall Mr. Moore
21 leaving at some point during the meeting?

22 A. No. I thought -- best of
23 my recollection, I thought Gary was there to the
24 end.

25 Q. Okay. Commissioner, it

1 is three minutes to 1:00, which is our traditional
2 lunch break. I was wondering if this would be a
3 good time to break?

4 JUSTICE WILTON-SIEGEL: Sure.
5 Let's break and we'll return at 2:15.

6 --- Luncheon recess taken at 12:58 p.m.

7 --- Upon resuming at 2:15 p.m.

8 MR. LEWIS: We're back from
9 lunch, Commissioner. May I proceed?

10 JUSTICE WILTON-SIEGEL: Yes,
11 please proceed.

12 BY MR. LEWIS:

13 Q. So, Mr. Oddi, we just
14 finished with the March 9, 2018 meeting and we
15 know that following that meeting, Golder made
16 further enquiries and had further discussions with
17 EcoPave and specifically Mr. Wiley about hot
18 in-place recycling and you were included in some
19 of these communications.

20 And if we could pull up,
21 Registrar, images 76 -- sorry. It's overview
22 document 8, images 76 and 77.

23 You see at the bottom of the
24 left hand side image at paragraph 209,
25 Dr. Uzarowski, on March 9, the same day as the

1 meeting, e-mailed Mr. Moore with his discussion
2 about his discussions with Mr. Wiley. Then in
3 paragraph 102, Mr. Moore responded, copying you.
4 And then Dr. Uzarowski indicated that he's more
5 optimistic now than he was a few days ago and
6 talks about how they can adjust the mix to make
7 HIR feasible. So, you get copied in?

8 And then there's subsequent
9 discussions, if we move to 80 and 81, Registrar.

10 And you see in paragraph 220
11 there there's a long e-mail to Mr. Moore, copying
12 you and Mr. Becke on March 15 regarding hot
13 in-place recycling.

14 So, where did you
15 understand -- what did you think was going to
16 happen at this point in time about the hot
17 in-place recycling? You're being copied on these
18 communications and I take it this arose out of the
19 meeting and what you said, why doesn't someone
20 talk to Mr. Wiley and figure out what's going on.
21 That's sort of where this flowed from, if I
22 understand you correctly?

23 A. Yes. Yes, that's
24 correct.

25 Q. All right, so, where did

1 you understand it going from here?

2 A. Basically that we would
3 have to do those field samples and look at how
4 much beneficiary agent they had to add in, again,
5 to see if it's feasible and are you actually going
6 to save funds or, you know, would it make sense
7 just to continue with conventional shave and pave.

8 Q. All right. Did you have
9 a sense of how long this was going to take, this
10 investigation was going to take, at the time?

11 A. No, I didn't. You know,
12 I wasn't -- if you read the e-mail, it says that
13 Golder would basically -- so, basically from
14 reading this, it's like Golder is putting in a
15 proposal to say here is what needs to be done if
16 we want to investigate the use of HIP, you know.
17 At the point I believe Gary responds back. Again,
18 we're a municipality and unfortunately unless, you
19 know, EcoPave was the only person in Ontario or
20 the country that did hot in-place, then you could,
21 you know, sole source a contractor --

22 Q. But that's paragraph 222
23 there on the right-hand image, Mr. Moore saying --

24 A. Yeah. So, we would have
25 to go to tender, because there are other hot

1 in-place companies out there.

2 Q. Right. All right. And
3 then at paragraph 224 on the right-hand image, on
4 March 27, Dr. Uzarowski e-mailed Mr. Becke,
5 copying you, requesting a call to discuss a
6 presentation about HIR and he wrote that he
7 thought he should attend the City to discuss with
8 Mr. Becke and with you. Did that take place? Do
9 you recall this?

10 A. You know what? I know we
11 had -- there was another hot in-place recycling
12 contractor who came in and gave a presentation.
13 And I don't recall who from asset management and
14 design was there, so I don't know if that's what
15 this was referring to. But I don't believe we had
16 any discussions, you know, or I don't know if
17 Michael Becke was thinking, here is another person
18 who can do hot in-place, you know, to let Ludomir
19 know about that.

20 Q. Okay. And then just to
21 keep the chronology, if you could take that down,
22 Registrar, and pull up an e-mail that's HAM64125.
23 And this starts off at the bottom with an e-mail
24 from April 30, 2019 from Ashley Cortiula, legal
25 assistant in legal services at the City, about the

1 Hansen/Bernat case, which is one that we've
2 briefly talked about earlier. She says:

3 "We'll require you to
4 come in and sign the
5 affidavit of documents on
6 the above noted files."

7 And she asks if you're
8 available Thursday to meet with Dana. That's Dana
9 Lezau. Is that right?

10 A. That's correct. I
11 believe she pronounces it "Donna."

12 Q. Sorry, "Donna." I
13 apologize. And then above there, the e-mail, your
14 reply is that you should be available and it says:

15 "I do not recall sending
16 information regarding
17 this case."

18 Typically, do you provide
19 information when you're a deponent or --

20 A. Yeah. Sorry. Yes. What
21 I would normally do was, depending what would
22 happen, where the incident was, instead of
23 providing all the contract drawings, say the
24 accident occurred around the King Street
25 interchange, I would go back a good distance north

1 or south of that interchange and then provide the
2 appropriate drawings. You've seen those
3 references to part A, part B, part C and part and.
4 I would actually pull out the appropriate
5 alignment drawings, grading drawings, typical
6 sections, pavement markings and put it all
7 together in one PDF, so, that way, you're not
8 combing through, you know, 100 pages of drawings
9 that aren't relevant to the particular motor
10 vehicle accident. So, in this one in particular,
11 depending where the location was, maybe they
12 already had drawings on file that were pertinent,
13 so they would put that into the affidavit of
14 documents. And then I would go in and sign
15 usually three or four copies, whatever, of the --
16 you would do a quick read and, you know -- so,
17 when they included, like, the CIMA report, I
18 didn't read the CIMA reports in detail, I would
19 turn to that tab, look at the cover, yeah, it
20 matches, okay, that type of thing.

21 Q. Okay. So, first of all,
22 this process with affidavits of documents is one
23 that you were familiar with, I take it, from the
24 way you've described it. Something you did a
25 reasonable --

1 A. Fortunately or
2 unfortunately, I had a lot of experience in it.
3 So...

4 Q. Okay. And if we could
5 mark that as an exhibit, Registrar. I think it's
6 141.

7 THE REGISTRAR: Noted,
8 counsel. Thank you.

9 EXHIBIT NO. 141: E-mail
10 dated April 30, 2019,
11 HAM64125.

12 MR. LEWIS: Thank you.

13 BY MR. LEWIS:

14 Q. And then if you could
15 pull up HAM64163. So, this is your sworn
16 affidavit in the Bernat/Hansen actions. Do you
17 recall swearing it on the 3rd of May?

18 A. Not really, but I'm sure
19 I did, though, yes.

20 Q. Okay. And just before we
21 opened this, you referred to, well, you know, I
22 would look at the CIMA reports and the cover and
23 see if it matched up. You said words along those
24 lines. Is this what you're referring to? Because
25 in the Schedule A to this affidavit, the CIMA 2013

1 and 2015 reports are there?

2 A. Yes, correct. And there
3 would also be, you know, if there were drawings,
4 if there were photographs, police reports, you
5 know, maintenance and operations reports, so you
6 are kind of doing a quick check to say, yes, they
7 match, they match, they match. But some of these
8 documents can get pretty thick and these were
9 all -- you're signing them. And then I would
10 physically get a copy and then Dana would then
11 distribute the other copies, I'm assuming, to the
12 Plaintiffs' lawyers and --

13 Q. If you go to --

14 A. Depending who was
15 involved, you know, there would be, you know,
16 several things that had to be sworn.

17 Q. If we could go to
18 images 3 and 4, please.

19 So, this is the Schedule A.
20 Lawyers will be familiar with these documents. At
21 item 6, we see October 13, Red Hill Valley Parkway
22 safety review by CIMA, 114 pages. And at item 11,
23 the November 2015 Red Hill Valley Parkway detailed
24 safety analysis, CIMA, 88 pages. Do you see
25 those?

1 A. Yeah, I do.

2 Q. And so, I think you said
3 that, you know, it wasn't until much later, I
4 think in 2019, that you actually reviewed the CIMA
5 reports. Is that right? Have I gotten you
6 correctly?

7 A. No. Those references in
8 2019 were to the Tradewind report and the CIMA --
9 I don't know if it was a report or a memo from
10 CIMA to the mayor. The information that had been
11 made public --

12 Q. Yes.

13 A. -- in the spring of 2019.
14 So, these reports, I did not read all 114 and 88
15 pages of the CIMA report, but it was like, okay,
16 if any questions come up, you know, you would
17 basically review it then.

18 Q. Had you seen them before
19 this or is this the first time that you had seen
20 the CIMA reports?

21 A. You know what? I can't
22 recall if this was first one they were in or -- it
23 was a recurring theme in the discoveries and once
24 the Tradewind report became public, if you now
25 look at our affidavit of documents, it's, like,

1 you know, thousands of pages of information that
2 legal is presenting to everyone. So, I don't
3 recall if this was the first time or -- it may
4 have been in other discoveries, but I can't
5 recall.

6 Q. Okay. And as the
7 Tradewind report and the Golder report are not
8 mentioned in here and nowhere are any of the other
9 items that Dr. Uzarowski discussed, you know, at
10 the meeting on March 9, is that something that you
11 considered?

12 A. No, because we were --
13 the March 9 was just to talk about hot in-place
14 and to see, you know, if they could be used on the
15 resurfacing of Red Hill.

16 Q. Fine, but you described
17 that although you did not recall a specific
18 mention of the Tradewind report or friction
19 numbers, that there was other tests that had been
20 done and were discussed, like the polished stone
21 value, the British pendulum testing, other sand
22 patch testing or all those things that were done,
23 and the one thing that you said you did not recall
24 being raised was the Tradewind report. So, were
25 those things -- did you consider whether those

1 should go into the affidavit?

2 A. No, I didn't consider it.
3 Similarly, we had the dip analysis, things like
4 that, I didn't think were relevant. It depended
5 on the nature of the accident. Right?

6 Q. Right. You also -- there
7 had been the enquiries made in 2017 in relation to
8 Councillor Conley's enquiries and the references
9 to friction testing having been done at that time.
10 That didn't occur to you either?

11 A. No. Again, I would rely
12 on legal to pull together whatever information
13 they wanted to present. Usually the information I
14 was giving legal was the information I had were
15 the drawings and specifications for Red Hill. So,
16 again, sort of the philosophy that Dana said --
17 because every time it seemed to getting more and
18 more, she said, I hope you don't mind that we call
19 you as the City's witness, but because of, you
20 know, my background in building it, I said to
21 Dana, if I don't attend the discovery and they're
22 disputing the design and construction, I'll have
23 to do it as undertakings. So, I said, for me, I
24 would rather, if they're disputing design and
25 construction, I would rather spend the time

1 meeting with you, swearing the affidavits and then
2 actually doing the discovery. And then we would
3 have, as a City, as a corporation, there would be
4 less undertakings if I couldn't answer any of the
5 questions related to, you know, police reports,
6 maintenance reports or, you know, things like the
7 CIMA reports.

8 Q. And then a couple weeks
9 later, a little less than that, a meeting on
10 May 14, 2018 that you attended. If we could go to
11 overview document 9. Sorry, we should make an
12 exhibit of this. This is HAM64163, Exhibit 142.

13 JUSTICE WILTON-SIEGEL:
14 Understood.

15 THE REGISTRAR: Noted,
16 counsel. Thank you.

17 EXHIBIT NO. 142:
18 Affidavit of Mr. Oddi for
19 the Bernat/Hansen
20 actions, dated May 3,
21 HAM64163.

22 BY MR. LEWIS:

23 Q. If we could go now,
24 Registrar, to overview document 9, page 10.

25 While he's pulling that up,

1 there's a meeting on May 14. Mr. Becke, you'll
2 see in paragraphs 11 and 12, in 12, Mr. Becke sent
3 a calendar invitation to a number of people,
4 including you, Mr. Andoga, Mr. Perusin,
5 Mr. Renaud, Dr. Uzarowski. And in the invitation,
6 Mr. Becke noted:

7 "I was wondering if we
8 could have a meeting to
9 get the sampling going
10 for the RHVP HIP
11 resurfacing."

12 Do you recall attending that
13 meeting?

14 A. I don't believe I
15 attended that meeting, but I do believe that I
16 think Dennis and Tyler attended it for
17 construction. And Mike was just looking, okay,
18 now we're at the point that, you know, we're
19 basically mid-May, we still have to go out and get
20 the samples for Golder to assess. This is about
21 hot in-place. Then I think before the meeting I
22 would have vaguely recalled saying to Dennis, for
23 us to do it, we would have to put out a quote.
24 Again, depending on the value of grabbing the
25 samples, if it's under \$100,000, we can get three

1 quotes, get it done. If it's over \$100,000, we
2 have to put it to tender. And, you know, I
3 believe operations and maintenance was going out
4 to do some repairs on some of the more severe dips
5 along the ramps and mainline portions of the Red
6 Hill Valley Parkway, so I had suggested to Dennis
7 to say, you know, maybe depending on the timing of
8 that work, is that a good possibility of maybe
9 using that to grab the samples that are required?
10 And I believe at this meeting they also talked
11 about -- because, again, I think when we're
12 thinking samples at first, we're thinking is it a
13 core, which is pretty small. But I believe after
14 this meeting, you know, Mike was -- they were
15 fairly large samples that had to be cut out and
16 sent for the analysis, so it was -- it wasn't as
17 simple as just doing cores. There was a little
18 more work to it. You know, and then you also had
19 to -- whatever asphalt you took out, you basically
20 had to fill in, but it made sense to use that
21 maintenance contract because they were basically
22 going to go in -- you would grind out and then
23 fill in the asphalt to make it level, touch up the
24 pavement markings and then move on.

25 Q. So, you said you don't

1 recall being at the meeting. Do you think you did
2 not attend it at all or you just don't recall one
3 way or another being there?

4 A. No. I'm pretty sure I
5 didn't attend that meeting.

6 Q. Okay. And if we could
7 pull up the next image as well as this one, leave
8 this one up as well, we see Dr. Uzarowski's notes
9 respecting the meeting and the notes in the last
10 point, it says:

11 "Mike is back on the
12 22nd.
13 - Gary, what is
14 outstanding
15 - breakdown for Mike
16 - PSV report-inconclusive
17 - MSCR
18 - HIR
19 - pav condition-blasting
20 no."

21 Dr. Uzarowski testified that
22 this reflects that after Mr. Moore left the
23 meeting, he again raised shot blasting to improve
24 the friction in the time period before the
25 resurfacing took place and that either you or

1 Mr. Becke, although he thought it was you but it
2 could have been either, again said no to that
3 proposal.

4 And I'm just putting that to
5 you. You've already said you don't believe you
6 were at the meeting, so I take it that you would
7 say you did not say that or does that refresh your
8 memory?

9 A. Yeah. At the time we
10 weren't doing virtual meetings, so I wasn't in
11 attendance is there.

12 Q. Okay. And then we know
13 Mr. Moore retired as the director of engineering
14 services in May 2018 and, as you said, you
15 reported to Mr. McGuire after that. Is that
16 right?

17 A. Yes. Yes. Yeah. There
18 was a competition and I think Gord started --
19 yeah. I think when Gary left, it was announced
20 that Gord was our new director of engineering
21 services.

22 Q. Okay. And how did their
23 management styles compare?

24 A. I mean, I didn't really
25 pay too much attention to it. Gary had a lot more

1 technical background. So, does Gord, but Gord,
2 it's more in relation to surveying, geomatics, the
3 use of different computer programs. But, you
4 know, Gary was more -- he understood construction
5 and, you know, what was involved in building the
6 infrastructure. So, I mean, you know, it was just
7 a matter of really just giving Gord more
8 background information. But in terms of style,
9 they were, you know, relatively the same, you
10 know. I don't know. I think Gord was trying to,
11 you know, learn, you know, what the other
12 sections were doing, but, you know, I mean, I
13 found Gord -- I didn't have any issues working
14 with Gary and I didn't have any issues working
15 with Gord. I said I'm glad someone within
16 engineering services got it and I'm here to make
17 you look good, so I operate pretty fast. We have
18 to make a lot of quick decisions. I'll keep you
19 in the loop. I do a lot of things verbally and
20 I'll follow up with e-mails later. I always said
21 if you don't like what I'm doing, you got to let
22 me know. Don't, you know, wait for a meeting
23 three months later and tell me we should have done
24 something. Right? I found Gord similar styles,
25 maybe slightly different. Right? Gord was -- you

1 know, with Gord maybe I would have to give him
2 more maybe e-mails and background, whereas Gary I
3 could just explain things. I think a lot of that
4 had to do as well with because when PO
5 requisitions had to be signed by the general
6 manager, Dan had come from the water industry,
7 which is very heavily regulated. You know, they
8 always look at things like root cause, what caused
9 it, is there something you can change, so, you
10 know, Gord would usually want a written background
11 on why we were increasing a purchase order, and a
12 lot of that was just to provide more explanation
13 to the higher-ups so when they were signing
14 something, they understood why something happened
15 and is it being -- is it a one-off? Is there
16 something you can correct?

17 Q. If we go to overview
18 document 9, still in there, I guess, and then it's
19 images 15 and 16, please, just a few pages on.

20 And, beginning at
21 paragraph 23, on May 25, 2018, so a couple of
22 weeks after the meeting that we were just speaking
23 of that you indicated you didn't attend, Nicole
24 O'Reilly, a reporter at the Hamilton Spectator,
25 e-mailed Mr. Moore regarding an updated contact

1 for RHVP enquiries and she says:

2 "I was looking for an
3 update on the asphalt
4 testing on the RHVP and
5 what's happening with
6 plans to shave and pave.
7 Hoping you can connect me
8 with the right person to
9 answer questions around
10 this."

11 And then Mr. Moore forwards
12 that to Jasmine Graham in communications and
13 passes it on. And then Ms. Graham then e-mails
14 Mr. McGuire in paragraph 26 about the status of
15 the rehabilitation and the Spectator's request,
16 and he indicates:

17 "We're waiting for a new
18 technology called hot
19 in-place. Marco Oddi may
20 have some insights. He
21 will be in soon."

22 She forwards in paragraph 27
23 his response to you and your response is at the
24 top of the image on the right there.

25 And if we could go to

1 HAM53161, so that's the e-mails themselves. This
2 is the chain that I was just speaking of. And
3 then at the top of the right-hand image, you
4 indicate that:

5 "We -- "
6 Meaning asset management:
7 " -- design, construction
8 and the geotechnical
9 consultant are reviewing
10 the hot in-place asphalt
11 recycling technology to
12 see if it's an option for
13 our RHVP mainline
14 resurfacing. The ramps
15 will be resurfaced using
16 traditional mill and pave
17 options. The Ministry of
18 Transportation is
19 undertaking a trial hot
20 in-place resurfacing
21 project this summer in
22 north Ontario. We should
23 know by late summer,
24 early fall, how we would
25 move forward on our

1 project."

2 And then in the left-hand side
3 image, Ms. Graham asks if we could provide this
4 information to the Spec, and you indicate:

5 "We should probably
6 respond that the RHVP
7 resurfacing is planned
8 for 2019 and that more
9 information should be
10 available later this
11 fall. This would avoid
12 questions regarding hot
13 in-place technology and
14 its use/not use."

15 And so, why did you want to
16 not provide information of that sort at that time?

17 A. It was more, you know,
18 again, we're at the end of May. We hadn't taken
19 the samples yet, so I felt the likelihood of
20 resurfacing in 2018 is going to be pretty tough.
21 And it was more to say, well, we're going to
22 resurface the road, so if that's what they're
23 looking for, then just say it's going to be moved
24 to 2019 because we're looking at different
25 options. And what I didn't want -- I didn't want

1 to mention the hot in-place because then it's
2 like, oh, now we have to answer more questions.
3 Right? So, this is where I'm saying if Gary is
4 still the director (technical interruption).

5 Q. Mr. Oddi froze.
6 Hopefully this will be brief like the other ones.
7 Do we know, Registrar, if this is a problem at
8 Arbitration Place's end or Mr. Oddi's?

9 THE REGISTRAR: Sorry,
10 counsel. I believe it's probably wherever he is
11 connected right now. Would you like us to pause
12 for maybe five minutes?

13 BY MR. LEWIS:

14 Q. He's back.

15 A. I'm back. Sorry about
16 that. It just went back out and then re-kicked
17 in. I apologize. If you could update me where we
18 were and then I --

19 Q. Okay. Yeah, you finished
20 off saying:

21 "I didn't want to mention
22 the hot in-place because
23 then it's like, oh, now
24 we have to answer more
25 questions. Right? So,

1 this is where I'm saying
2 if Gary is still the
3 director -- "

4 And that's where it cut off.

5 A. If Gary was the director,
6 he would be able to provide those responses. Gord
7 is new, so it's either myself or I would be -- and
8 the hot in-place, I don't know much about it. I
9 would probably be referring it to design to follow
10 up. But it was sort of like, well, you know,
11 we're resurfacing next year. That's all that
12 really matters if that's what the Spec is looking
13 for. Does the Spectator care how exactly we
14 resurface it? At this point, if it's going to
15 next year, all right, when are we going to do it?
16 You know, are we going to do it in May, June,
17 July, August? Are we going to do June, July,
18 August, September? Over the weekends? Right?
19 There's still details to work out, so, you know, a
20 high level response is just, yes, the resurfacing
21 has now been moved to 2019.

22 Q. Okay. And then at the
23 top, Ms. Graham responds to you, copying
24 Mr. McGuire:

25 "The reporter is also

1 looking for the results
2 of the asphalt testing."

3 If we could then go to
4 HAM53162?

5 Q. So, this is a
6 continuation of that e-mail. You see at the
7 bottom of the that the image is the e-mail we just
8 looked at from Ms. Graham about looking for the
9 asphalt testing. Diana Cameron replies to that or
10 not to Ms. Graham but to you and Mr. McGuire
11 saying:

12 "Gary uploaded a lot of
13 Red Hill files in
14 ProjectWise under the
15 director's office
16 engineering services.
17 Not sure if the pavement
18 testing is there, but I
19 know it was Golder who
20 did it."

21 And then shortly after, she
22 replies again that she came across something else
23 from Golder and provides the link to, it says,
24 PMTR report in the S-drive. So, what did you
25 understand the request for the results of asphalt

1 testing or pavement testing to be?

2 A. I don't know if she was
3 referring to the original, like when we placed it,
4 so not 100 percent sure. And then when Diana
5 refers to that PMTR, that's the pavement material
6 technology review, which really has nothing to do
7 with Red Hill. That's looking at, you know, all
8 our Superpave. Right? That could have been
9 phase 1 of the report, of the assignment.

10 Q. Yeah. Okay. Did it
11 occur to you at that point that it was anything
12 about, especially the reference to Golder, but
13 about friction testing?

14 A. No. This is asphalt
15 testing, so I wasn't -- then again, you know, we
16 had done dip analysis, so I wasn't 100 percent
17 sure what Jasmine was looking at. I don't know if
18 I replied in e-mail or I may have even called
19 Jasmine or depending on, you know, the day, the
20 time, might have stopped by and talked to her at
21 her desk, but I don't recall having any
22 conversations about the asphalt testing. I
23 remember later there was, I think, under the FOI
24 enquiries, they were asking for the asphalt
25 testing from when the asphalt was originally

1 placed, but if we had any they would have been
2 paper copies up in the old Red Hill files.

3 Q. And --

4 A. That's something,
5 Commissioner, counsel, if I could mention. Like,
6 with Red Hill, it was also, because it was an
7 older project, we didn't store everything in the
8 corporate drives. There was a lot of paper and we
9 had structures for the different, you know, for
10 the designs, for the contract tenders, so there
11 were paper files as part of the Red Hill project
12 office.

13 Q. Right. Going back to
14 construction?

15 A. Correct, construction,
16 design, the approvals, you know --

17 Q. Okay. Did you have
18 access to the director's folder in ProjectWise
19 that Ms. Cameron referred to?

20 A. I don't believe I did. I
21 never would have tried going into it.

22 Q. Okay.

23 A. But if that's -- that
24 drive, I may have access, because, sorry, the
25 S-drive is --

1 Q. Not the S-drive. It's in
2 the middle e-mail where she says --

3 A. The ProjectWise file, I
4 don't know. With ProjectWise, you can put
5 protection on who can read what, who can open
6 what, who is allowed to -- you know, are you able
7 to extract documents, who could actually place
8 documents, so it's a pretty -- it's a document
9 management system. Right?

10 Q. I know. We talked about
11 that. Did I understand you correctly that you
12 don't think you had -- you said I don't believe
13 you had access, but in any event you didn't try
14 going in to check. Is that right?

15 A. That's correct.

16 Q. All right. And what
17 about in the S-drive folder? Did you go into
18 that? You already talked about the PMTR report
19 was not --

20 A. Yeah. No, I wouldn't
21 have, because looking at it, knowing the PMTR had
22 nothing to do with Red Hill, I wouldn't have
23 checked it out.

24 Q. All right. And did you
25 have any involvement in the sampling that was done

1 for the HIR testing for the --

2 A. No. Sorry. No, I
3 didn't. I believe Michael Becke coordinated that
4 with our operations group.

5 Q. If we could go to, back
6 to overview document 9, image 59, and I guess 59
7 and 60. Maybe go to 61 and 62. Yeah. Okay.

8 All right. So, the pages we
9 were just looking at, there was an audit services
10 e-mail from Mr. Pellegrini, which then Mr. McGuire
11 forwards in paragraph 139 to you and then
12 Ms. Waite, Ms. Jacob, Mr. Lamont and Gavin Norman,
13 with a copy to Ms. Cameron, and then asks some
14 questions about it. Do you recall this e-mail and
15 the audit enquiry?

16 A. Yes, I do.

17 Q. Okay. And was there
18 anything about this that was unusual that you --

19 A. For me -- sorry. I
20 apologize. Go ahead. Okay. For me, no. Our
21 group, the construction section, it seemed like
22 about every two to three years, Domenic Pellegrini
23 or someone who worked in his office would come
24 down and say, okay, we would like to audit certain
25 contracts, so we would give them -- you know,

1 there's a lot of paper information, so we would
2 give them the books, the diaries, any information
3 they need so that they would go through. So, I
4 was used to getting audited. It was sort of --
5 like I said, it seemed to happen every two to
6 three years. I don't know. Perhaps Gord's
7 section had never been audited, so this was new to
8 him. And I knew Domenic had come down earlier and
9 was asking questions, so a lot of it -- the way he
10 informed me was that, you know, it was a followup.
11 I can't remember the report that was done about
12 basically early cracking on MTO roads, so there
13 was a firm that had done that report and Domenic
14 was really curious to look at if we were getting
15 that with our Superpave asphalts.

16 And during this whole value
17 for audit money, he wanted to gather data from
18 projects from 2014 to 2016, and I said, Domenic, I
19 already know. Because Golder had done the PMTR
20 report, I said, you know, basically, you know, yes
21 we improved the asphalt, it got better in 2016.
22 The QA person we had was an older gentleman who
23 didn't really care about air voids, so I said,
24 Domenic, I just want to give you that heads-up
25 that if you come and tell me that, oh, you had a

1 lot of air void failures and we never dealt with
2 them, because I was always told everything was
3 fine. That was addressed in the third phase of
4 the PMTR and we had a new QA person that
5 started --

6 Q. I'm going to interrupt
7 you because it's more detail than we need on that
8 point.

9 A. My apologies.

10 Q. That's okay.

11 A. It wasn't unusual for
12 audit to come in and check our work.

13 Q. That, I got. Thank you.
14 In Mr. McGuire's e-mail, and this is August 24,
15 2018, the same as the e-mail from Mr. Pellegrini,
16 at the bottom of the left-hand image he asks the
17 recipients to read it, confirm you've read it by
18 replying to myself and Diana, we'll address it at
19 the next manager's meetings. Then he says:

20 "As well, somehow the
21 original message got to
22 Gary Moore. Do not
23 forward this message
24 beyond this circulation
25 list. My main concern is

1 that the auditor was on
2 the floor and talking
3 with staff about our
4 programs without my
5 office having any
6 knowledge of this
7 enquiry."

8 Do you know anything about his
9 concern about audit services attending and asking
10 questions without his knowledge? I think you were
11 referring to audit had been down earlier. Is that
12 what you were referencing?

13 A. Yeah. Yeah. Yeah. I
14 know Domenic, I think, had come down on a couple
15 of different occasions and was talking to
16 different staff, so -- and, again, for our
17 section, it wasn't unusual, so I didn't think
18 anything of it. Just trying to steer him to say,
19 great, maybe look at some of our new data that
20 we've collected because we've made some good
21 improvements.

22 Q. Then what about the part
23 about Mr. Moore? Did you know anything about
24 that, about the original message getting to
25 Mr. Moore?

1 A. No. I didn't really --
2 again, to me, the audit thing is not unusual.
3 Domenic had told me they were going to do this
4 value for audit money to see how our asphalt was
5 performing and I just said to him, we're not
6 getting the premature cracking and we've made it
7 better with the 2017 spec changes which were
8 implemented in 2018.

9 Q. All right. If we could
10 go, then, back to images 53 and 54. At the bottom
11 of the left-hand image, you'll see on August 27,
12 2018 Dr. Uzarowski e-mailed Mr. Becke, attaching
13 the Tradewind report, so that's an August 27,
14 2018. Were you aware of the Tradewind report by
15 that point in time?

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

17 Q. Did Mr. Becke tell you
18 about it at any point?

19 A. I recall him mentioning
20 it, but I can't remember if it was late 2018 or it
21 might have even been in 2019 because, again, we
22 were prepping, preparing, for the tender. And he
23 just mentioned that he got the Tradewind report,
24 but we didn't talk about details, didn't talk
25 about results, anything like that. And at that

1 point, I believe it was sometime in 2019, you
2 know, as we're prepping to get the tender out to
3 do the resurfacing, so I didn't pay much regard to
4 it.

5 Q. Do you remember before or
6 after the issues in this inquiry came to light in
7 early February of --

8 A. I believe it would have
9 been just before.

10 Q. Okay. But in 2019?

11 A. I believe. But, again,
12 I'm really -- I vaguely remember him mentioning
13 that Vimy had sent him a copy, because -- I
14 believe it was Vimy who had sent him the copy,
15 because I believe he was dealing with Vimy to do
16 the sampling and testing for the hot in-place.

17 Q. Was it in the context of
18 the resurfacing that he was mentioning this to
19 you, though? I think that's what you were saying.

20 A. No. I think we were
21 talking about the -- you know, at that point when
22 we talked about this, the hot in-place had been
23 ruled out. Right? So, we might have been talking
24 about what type of asphalt to put on the mainline
25 highway because, again, there's basically only two

1 types of asphalt you would use. It's either stone
2 mastic asphalt or SMA 12.5 FC2. So, I remember us
3 speaking saying it might be a good idea to use --
4 we're going to put it on the ramps anyway. Why
5 don't we put it on the shoulders, put it on the
6 mainline, so we have one mix the contractor has to
7 do the design mix for. It will be easier. He's
8 producing one mix and we could look at maybe using
9 hot in-place because it, you know, can be done on
10 12.5 FC2. And I had said to Mike at that time,
11 you know, that I'll reach out. I knew the
12 Ministry had been doing some shave and paves on
13 the QEW, the 403, and I said I'll reach out to the
14 contact I had at MTO just to see -- you know, he
15 would be able to tell me -- he's the area
16 construction engineer and he would tell me that --

17 Q. Sorry. What does that
18 have to do with the Tradewind report and him
19 telling you that he received it?

20 A. Yeah. No. He just told
21 me he got it from there. I'm sorry. I'm just
22 giving you background as to --

23 Q. And I'm trying to
24 understand why he's telling you that. What is the
25 context? What is the significance that caused him

1 to tell that to you? Was it possibly in the
2 context of the decision about using HIR or not?

3 A. I can't recall.

4 Q. All right. If we could
5 go to -- keep 54 up and pull up 55, please.

6 On paragraph 128 -- sorry,
7 129, this is an August 30, Mr. McGuire e-mails you
8 and a number of others under the subject line
9 "RHVP Road Material Testing and Reports," and this
10 is a couple of days after, a few days after,
11 Mr. Becke received the Tradewind report. He wrote
12 at the top of 55:

13 "Prior to asking Gary,
14 are there copies of the
15 asphalt text reports that
16 reviewed the material on
17 the RHVP? I believe
18 there were samples sent
19 overseas for testing.
20 Please advise if you have
21 copies that we can use in
22 the assessment of the hot
23 in-place review and
24 RHVP/LINC works underway.
25 Let me know one way or

1 another if you have
2 these, please."

3 Do you recall replying?

4 There's no e-mail that we've seen of --

5 A. I might have -- I don't
6 recall replying. I just might have told Gord that
7 I don't have any of those reports and to check
8 with either design or asset management.

9 Q. Okay. Did you know what
10 reports he was talking, other than asphalt testing
11 reports?

12 A. No. He's just looking
13 for any reports, you know, and there were --
14 Golder had assignments, you know, so he's just
15 looking for any information. Again, I'm not sure
16 why he's asking for it, but -- I would have
17 thought that asset management and design had the
18 information that they needed, but I think we
19 were -- again, the big thing was to get the
20 information back from Golders as to how far do we
21 have to mill down and how much beneficiary ament
22 do we have to add? Is it economically feasible to
23 do hot in-place? And, again, my understanding is
24 that the cracking was still up in the top 40
25 mills.

1 Q. If we could go to
2 image 73, at paragraph 174, you'll see that an
3 September 10, Ms. Cameron sent a calendar
4 invitation to Mr. McGuire, Mr. Becke and you
5 titled "Discuss Asphalt Audit" scheduled for
6 30 minutes on September 11. Then there's some
7 further e-mails between Mr. McGuire and Mr. Becke
8 that you're involved in.

9 Do you recall if you attended
10 a meeting on --

11 A. I believe I attended. I
12 think that would have been, like, a meeting in his
13 office, I believe.

14 Q. Do you recall what -- do
15 you have any specific recollection of the
16 discussion?

17 A. Not really, but again,
18 the PMTR report was -- I know -- I think Gord was
19 asked if it was ever presented to council. I know
20 once we had switched to MSCR, kind of the
21 presentations that Ludomir had prepared, I don't
22 think we shared them with council, but I know we
23 shared them with the -- an association of the
24 contractors who bid on our projects called the
25 HAND Association, so it's just -- again, the

1 pavement material technology review reports, it
2 was done in three phases and it was basically
3 assignments that Gary had given to Golder for
4 improving our Superpave asphalt. It had nothing
5 to do with Red Hill or hot in-place.

6 Q. If we could go to
7 images 135 and 136. In paragraph 324 on the
8 left-hand image, there's a calendar appointment
9 and an agenda for a meeting on November 26, 2018
10 sent from Sarath Vala about the resurfacing of the
11 Red Hill and asking for people to attend. And he
12 refers to the core team that will be closely
13 involved and impacted by the resurfacing. What
14 was your role with respect to the resurfacing?

15 A. Basically it was one of
16 the -- it was another one of the 30 to 40 tenders
17 that we delivered in 2019, so in our normal
18 process with asset management and design, we would
19 provide input to specifications, you know, if any,
20 like, changes that need to be made, review drawing
21 reviews. At this point, though, I think what they
22 were trying to do, because the project had also
23 now gone from -- it's not just resurfacing.
24 Operations, you know, was talking about updating
25 the guide rail end treatments to the new MASH

1 standard. MASH is, I believe it stands for manual
2 for assessing safety hardware. It's a new way
3 of -- basically guide rails changed because
4 vehicles have changed. So, this project was
5 getting bigger now and Mr. Vala wanted a --
6 basically, I believe Mr. Perusin, who is our
7 senior project manager, would have been part of
8 the core team. Again, any input that I could
9 help, I know I took Sarath out on a drive. I have
10 a City vehicle equipped with lights so it's safe,
11 we'll drive on the shoulder and review the dip and
12 bump analysis to just confirm everything, to make
13 sure that that stuff was all picked up in the
14 repaving, resurfacing contract.

15 Q. And at that point, what
16 was your understanding of the status of the HIR
17 investigation and the decision about using it or
18 not for the resurfacing?

19 A. You know, at this point I
20 think we were back to that it was just going to be
21 a traditional shave and pave, but we were still
22 looking at delivering this over -- you know,
23 shutting down the one direction over a weekend and
24 working on that, so we were looking at trying to
25 get this work done over four months.

1 Q. In 2019 at this point?

2 A. Yeah, in 2019. Yeah.

3 Q. Do you know who made the
4 decision to go with the traditional shave and
5 pave?

6 A. You know, I can't recall.
7 I don't know if it was anyone in particular or if
8 it was just once we got the results back from
9 Golder, it was, like, okay, consensus is we're
10 going too deep, we're adding too much
11 rejuvenating, so it just didn't -- it wasn't
12 economical to do it the hot in-place, so all the
13 things that made it attractive, now we couldn't
14 do.

15 Q. But did you see the
16 results of that report?

17 A. No. No. I think it was
18 just told verbally about them probably by
19 Mr. Becke.

20 Q. Okay.

21 A. Again, because I think at
22 this point, you know, it's like okay. And, again,
23 the scope is growing, so it's, okay, you need to
24 get all this information. Is there funding? And
25 it has to go in the tender. Right?

1 Q. Do you recall when
2 Mr. Becke told you that?

3 A. No, I don't. Again, I
4 don't know if it was Mr. Becke, if it was Gord or,
5 you know, if it would have been Rick or Erica, who
6 were in asset management.

7 Q. Fair enough, but you just
8 said that it was probably by Mr. Becke --

9 A. More than likely would
10 have been -- Mike at this point, I think, was
11 handing over the project and Mr. Vala was
12 basically going to get -- now we're down -- I also
13 remember giving Sarath, I'm old school, I had the
14 paper copies of parts A, B, C, and, so I gave
15 those contract documents to Sarath because there's
16 things in there called the quantity sheets, so I
17 said here, here is the links where they are in the
18 corporate drive, you know, you don't have to
19 calculate the quantities. They're all here. It's
20 all listed in the Q sheets. So, I had done
21 something similar and actually it was Michael
22 Becke at the time who had done the LINC tender, so
23 I had given Mike the LINC paving drawings, so it
24 saved them time from doing the calculations of,
25 you know, how much asphalt was in each lift.

1 Q. If we could go to
2 HAM62010 and if we go to image 3, please.

3 And see in the last paragraph
4 there, this is an e-mail from Byrdena MacNeil is
5 in the legal services division. It's not copied
6 to you, and this is sent on September 10. In the
7 very last paragraph at the bottom there:

8 "Finally, please note
9 Marco Oddi was examined
10 for discovery on Friday
11 December 7 and the Hansen
12 and Bernat matter and
13 gave answers as to the
14 state of the RHVP. I do
15 not know what his answers
16 were, but they would bind
17 the City."

18 Do you recall being examined
19 for discovery in the Hansen and Bernat matter on
20 December 7, 2018?

21 A. I vaguely recall that
22 one.

23 Q. This is a collision
24 between King and Greenhill. Do you recall that?

25 A. Yeah.

1 Q. Okay. You can take that
2 down, please. And have you reviewed the
3 transcripts from that examination?

4 A. No, I haven't.

5 Q. And you didn't read them
6 in preparation for today. Is that right?

7 A. Yeah. I didn't have
8 them. They would have been paper copies. Right?
9 And I didn't see them in the overview documents.
10 You know, but I do recall this one because it was
11 one where they were -- Plaintiff's lawyer was -- I
12 believe the CIMA report was saying how many --
13 there was a lot of -- the Red Hill seemed to have
14 more accidents compared to MTO roads and I just
15 said I didn't prepare this study, I don't know
16 what highways. Are they comparing Red Hill to all
17 the provincial highways? The Ministry has -- it's
18 not really fair to compare Red Hill and the LINC
19 to -- well, the LINC is pretty straight. You can
20 compare it to QEW. So, I said, you know, this is
21 statistics, so I don't know what data they used
22 from the Ministry, but if I wanted to compare
23 apples to apples, I would say, look at Highway 403
24 going through Hamilton, look at Highway 406 in St.
25 Catharines, look at the Don Valley Parkway in

1 Toronto, similar highways that, you know, have
2 curving, winding alignments and look at those
3 accident statistics. So, I kind of remember, you
4 know, jousting with the lawyer about that and
5 there was also discussion about guide rail, I
6 believe, in it as well.

7 Q. So, if we could go to
8 HAM64297. And, Commissioner, we don't have the
9 discovery transcript itself for today as it's
10 subject to the motion before your designate
11 respecting the City's assertion of privilege,
12 which was yesterday, and so I'm not able to ask
13 any questions about the transcript and I'm going
14 to ask questions based on a passage in the summary
15 of December 18, 2018 from Dana Lezau, who Mr. Oddi
16 has already referred to, to Diana Sabatos in risk
17 management services. Most of this has been
18 redacted as it deals with personal information and
19 so forth.

20 If we could go to images 10
21 and 11, and there's a description of the
22 examination that took place and some of the stuff
23 I think that you've already referred to are
24 mentioned there about a guide rail and posted
25 speed and so forth. And then in the last bullet,

1 it says:

2 "On the question of
3 friction testing, Marco
4 testified it was done as
5 part of the maintenance
6 and performance of the
7 roadway. Overall, the
8 roadway is functioning as
9 it was intended, however,
10 the City cannot prevent
11 people from going over
12 the speed limit and
13 creating accidents."

14 Do you recall specifically
15 answering questions about friction testing?

16 A. You know what? I vaguely
17 remember them asking about friction testing and I
18 said I wasn't aware of any friction testing, and
19 it's not usually done by the City, so I did not
20 say it was done as part of the maintenance and
21 performance of the roadway. But, I would have
22 said that I'm not aware of -- you know, I know the
23 City doesn't have a friction management program
24 and I'm not aware of any municipality in Ontario
25 that has one. I may have said the road is

1 functioning as it was intended and, you know, the
2 comment about I can't, you know, because I
3 remember the Plaintiff's lawyer was saying here is
4 a high prone area, you should put guide rail, and
5 I said if I have to worry about people not driving
6 properly, I would have to have guide rail all over
7 the whole City everywhere because unfortunately
8 accidents happen. You know, sometimes it's
9 medical, sometimes it's due to excess speed, you
10 know, sometimes alcohol is involved and drugs.
11 So, I might have said something similar to that,
12 but I did not say that friction testing was done
13 by operations and maintenance.

14 I can't recall if he asked,
15 you know, who would -- if you were to do it, who
16 were to do it? I may have said something -- you
17 know, if you're going to do friction testing --

18 Q. I don't want you to
19 speculate.

20 A. I'm totally speculating,
21 but I know I didn't say that for sure.

22 Q. All right. Thank you
23 very much. Commissioner, I was hoping to be done
24 by the break. I have very little left, maybe, at
25 the most, ten minutes, and from the estimates from

1 counsel, I don't anticipate any issue being done
2 by the end of the day. But it's 3:15, so perhaps
3 this would be a good time for the break.

4 JUSTICE WILTON-SIEGEL: Okay.

5 MR. LEWIS: Rather than
6 breaking out -- it will be fine, unless counsel
7 have a revised estimate for any of them. If
8 anyone has a -- no, okay.

9 JUSTICE WILTON-SIEGEL: Then
10 let's take a break. We'll return at 3:30.

11 --- Recess taken at 3:16 p.m.

12 --- Upon resuming at 3:31 p.m.

13 MR. LEWIS: We are back. May
14 I proceed, Commissioner?

15 JUSTICE WILTON-SIEGEL: Yes,
16 please proceed.

17 MR. LEWIS: Thank you.
18 Commissioner and Registrar, that last document, we
19 do need to mark as an exhibit, which is HAM64297,
20 and that would be 143, I believe.

21 JUSTICE WILTON-SIEGEL: Okay.

22 THE REGISTRAR: Noted,
23 counsel. Thank you.

24 EXHIBIT NO. 143: Summary
25 dated December 18, 2018

1 from Dana Lezau,
2 HAM64297.

3 BY MR. LEWIS:

4 Q. Mr. Oddi, when was the
5 first time that you saw the Tradewind report?

6 A. I believe it would have
7 been -- it was preparing for a discovery in
8 November of 2019. It was for an accident around
9 the Mud Street interchange, because at that point
10 all these -- everything became public.

11 Q. Sorry, things became
12 public in early February 2019?

13 A. Correct. Sorry. So, now
14 it was referred to in the documents. Right?

15 Q. Yeah. So, you referred
16 earlier to a CIMA memo and then the Tradewind
17 report was released publicly on February 7, so did
18 you see it at that time?

19 A. I would have gotten the
20 e-mail, but I didn't read them at that time.

21 Q. Okay. And was that also
22 the first time that you saw the CIMA February 4,
23 2019 memo? Did you read it at the time it was
24 released to the public?

25 A. No. I didn't read any of

1 those documents until the discovery in November of
2 2019.

3 Q. Okay. And did you ever
4 discuss the Tradewind report with Mr. Moore?

5 A. No, I didn't.

6 Q. And if we could go to
7 overview document 9, image 344, please. And this
8 is at paragraph 850. You send three calendar
9 invitations dated February 5, 2019 and they were
10 titled "Tyler, Friction Testing Info," but they
11 don't identify a recipient, and then appointments
12 were scheduled for February 11, February 19 and
13 March 19. Do you know what these are about? Do
14 you recall?

15 A. No, I don't. I know what
16 I would do is if I had -- I use my Outlook
17 calendar as my to-do list, so I would put in -- a
18 lot of times there would be appointments which
19 would either be half an hour or no time. It would
20 be from 8:00 in the morning to 8:00 in the
21 morning. The subject would be -- sorry. The
22 status would be free, so that way it was just
23 to -- it was my way of doing a to-do list rather
24 than setting it up. I know there's another things
25 you can do within Microsoft Office, but I said

1 instead of opening up another program, Outlook is
2 always open, I can always look at my calendar.
3 And I don't even recall speaking to Tyler about it
4 after -- even I asked Tyler after the initial
5 interviews just to see if he -- did we ever have a
6 meeting to discuss friction testing, because I
7 couldn't recall it.

8 Q. So, your purpose, then,
9 as you explained it, would be a reminder to talk
10 to Tyler Renaud about friction testing info.
11 That's the first thing here. Is that fair?

12 A. Yeah. And why I would
13 have been talking to Tyler about friction testing,
14 I don't know.

15 Q. Okay.

16 A. I can't recall if it
17 was -- I don't know if -- I know Gord had talked
18 about doing friction testing before we resurfaced
19 and I think they wanted to do it after as well, so
20 it could be related to that. I really don't know.

21 Q. All right. The last
22 thing I want to ask you about is an anonymous
23 letter that was sent to the City auditor and
24 received on March 22, 2019, and this is at RHV890.
25 As I said, March 22, 2019. Have you read this

1 letter in at least preparing for your testimony?

2 A. Yes. I saw the version
3 that was in the overview documents.

4 Q. Yeah. Okay. And did you
5 write this letter?

6 A. No, I did not.

7 Q. Do you know who wrote
8 this letter?

9 A. No, I don't.

10 Q. Okay. And then if we
11 could go to the second page, image 2, there are a
12 number of quotes attributed to Mr. Moore on that
13 page. And if you could expand that, the
14 italicized comments, I'm just going to ask you a
15 few questions about these.

16 Are any of these things that
17 you heard Mr. Moore say?

18 A. No.

19 Q. Okay. So, if you didn't
20 hear Mr. Moore say them word for word, did you
21 hear him say things along those lines for any of
22 those particular quotes that are given?

23 A. The third one, he would
24 say something similar to that once in a while, but
25 usually --

1 Q. That's, "When I want your
2 opinion, I'll tell you what it is"?

3 A. Correct, yeah, but it was
4 usually done in a joking thing. He would say,
5 hey, it doesn't say director on your door. You
6 know, but the other ones, no.

7 Q. Okay. Thank you. Those
8 are my questions. Thank you, Mr. Oddi.

9 Commissioner, I note that
10 counsel for Golder, Ms. Roberts, will have
11 questions, and I know counsel for the City of
12 Hamilton will as well. So, I think Ms. Roberts,
13 given the time estimate, would go first.

14 A. I think I've lost you.

15 Q. You lost me? Can others
16 hear me?

17 A. I can hear you now.
18 Sorry.

19 Q. Okay. Thank you.

20 A. I don't know if it was
21 your computer or mine. I apologize.

22 Q. I just wonder if counsel
23 for Dufferin and the MTO, if they have any
24 questions, just could you let us know?

25 MS. MCIVOR: I can confirm

1 that MTO has no questions.

2 MR. LEWIS: Mr. Buck?

3 MR. BUCK: And I'll confirm

4 that Dufferin has no questions.

5 JUSTICE WILTON-SIEGEL: Okay.

6 Thank you.

7 MR. LEWIS: So, I think, then,

8 Ms. Roberts for Golder first and followed by

9 Ms. Talebi from the City.

10 EXAMINATION BY MS. JENNIFER ROBERTS:

11 Q. Mr. Oddi, I'm not sure
12 what's happened. We're missing -- okay. I think
13 we're good.

14 Commissioner, may I begin?

15 Mr. Oddi, we met briefly in
16 the spring and I'm counsel for Golder and I do
17 have a number of questions for you.

18 First of all, I want to go to
19 a point, you said during your testimony today that
20 your understanding was that the cracking that was
21 observed on the Red Hill was in the top 40
22 millimetres. And I take it that you would know
23 that from cores that were taken on the Red Hill?

24 A. Yes, that's correct.

25 Q. And you knew that cores

1 were taken by Golder as part of the five-year
2 review?

3 A. Yes. Yeah. I thought
4 they did cores a couple of times, not just after
5 the five-year review.

6 Q. I am --

7 A. But I -- I thought they
8 did some cores later on as well.

9 Q. As part of the bump and
10 dip analysis, you're suggesting?

11 A. Yeah, perhaps, or --
12 yeah. I don't recall specifically, but --

13 Q. Certainly samples were
14 taken very late in the chronology, in 2018, for
15 the hot in-place, but I think the evaluation of
16 top-down cracking goes back to the Golder report,
17 that work that was done in 2013?

18 A. Okay. Yeah. Maybe they
19 mentioned it from the samples. I don't recall.

20 Q. That's what I want to get
21 at. So, your recollection that you have testified
22 to today is that there was top-down cracking and
23 your understanding was it was in the first 40
24 millimetres. Do I have that right?

25 A. That's correct. That was

1 my understanding at the time, yes.

2 Q. Okay. And here is my
3 question to you: From whom did you understand
4 that?

5 A. I can't recall if it was
6 Gary or even Ludomir who might have said it.

7 MS. TALEBI: Sorry. I didn't
8 want to interrupt. Mr. Oddi seems to be frozen
9 for us. I don't know if it's just us or if
10 everyone else is --

11 MS. JENNIFER ROBERTS: Us,
12 too.

13 MS. TALEBI: Okay.

14 THE WITNESS: Am I back?

15 MS. TALEBI: So, we can hear
16 you but we can't see you. You're frozen.

17 THE WITNESS: Okay. My video
18 is on. I just don't know if there's a delay. Is
19 it back now?

20 MS. JENNIFER ROBERTS: You're
21 still frozen, sir.

22 THE WITNESS: Still frozen,
23 okay.

24 MS. TALEBI: Could we have you
25 just turn your camera on and off, Mr. Oddi? That

1 might help. Okay.

2 THE WITNESS: Is that any
3 better?

4 BY MS. JENNIFER ROBERTS:

5 Q. Magic.

6 A. There you go. Sorry, it
7 must be the metal plate in my head that keeps
8 messing up the signals.

9 Q. Okay. So, I asked you
10 from whom did you know that and you said Gary
11 Moore, it might have been Ludomir, but you
12 understood that it was -- the top-down cracking
13 and how deep that top-down cracking was important
14 to the question of whether water was getting into
15 the deeper layers of the perpetual pavement?

16 A. Yes, definitely. I mean,
17 a top-down cracking is in general wear and tear.
18 It gets concerning if we had a -- and it happens.
19 It starts to happen at the, you know, five,
20 six-year mark. And if we had a crack sealing
21 program in the City, it would have been nice to
22 have that. That way, you could have preserved the
23 life of the asphalt even further.

24 Q. Right. Okay. So, if it
25 were the case that, in fact, the cracking had gone

1 down through the first two lifts, that would be
2 something that you would have wanted to know.

3 That's correct?

4 A. Yeah, it would have been
5 nice to know. And I know there was that stress
6 strain gauge that was installed around the
7 Queenston, just north of Queenston Road, so,
8 again, that was another indicator, is the
9 perpetual pavement doing what it's supposed to do?
10 Right? And I believe Ludomir was looking at that
11 data for at least the first five years. I don't
12 know what happened after, but --

13 Q. Let's just stay on the
14 topic of the top-down cracking, sir.

15 A. Okay. My apologies.

16 Q. Would it surprise you to
17 know that, in fact, Golder reported in the Golder
18 report of 2014 that cracking had gone down two
19 layers in at least some of the cores that it had
20 tested?

21 A. Well, I wasn't aware of
22 that, but, I mean, it can happen.

23 Q. The question is whether
24 you knew that.

25 A. No, I didn't. I wasn't

1 aware of that fact.

2 Q. You'll have to forgive me
3 for jumping around. I'm going to try not to be
4 repetitive, but it does mean I'm going to move
5 around. I want to go forward in the evidence to
6 2017.

7 And, Registrar, can you please
8 go to overview document 7, image 192, page 568.
9 Right.

10 So, on August 15, 2017,
11 Mr. Moore e-mailed Ms. Crawford, who I understand
12 is at Shillingtons, and we can go to that, the Red
13 Hill friction report, the Tradewind report.

14 Registrar, can we just go to
15 the footnote 593, which is -- so, the document
16 you've got or it may not have been called up.

17 THE REGISTRAR: Sorry,
18 counsel, which document are you --

19 BY MS. JENNIFER ROBERTS:

20 Q. Sorry. Let's just look
21 at it. It's 569. Mr. Moore attached a copy of
22 the Tradewind report to his e-mail. Do you see
23 that, Mr. Oddi?

24 A. Sorry. I see the 568 and
25 569 comments. Yes, I do.

1 Q. Okay. And we just went
2 to it, but the Gawrylash pleadings, perhaps we can
3 go to Golder 7514. This is a third-party claim.
4 Can you please go to the last page of that
5 document. Registrar, are you able to turn to the
6 last image? Thank you.

7 So, you'll see, Mr. Oddi, that
8 Shillingtons was counsel for the City of Hamilton
9 on that proceeding. Do you remember that?

10 A. I see it now, yes. I
11 wouldn't have recalled that, though.

12 Q. All right. Well, but you
13 worked with Shillingtons in the defence of motor
14 vehicle claims against the City of Hamilton, did
15 you not?

16 A. Yeah. Again, it's
17 whoever risk management or legal assigns to it, so
18 I don't choose the firms.

19 Q. I'm not suggesting you
20 do, but on this case, the Gawrylash litigation,
21 which you've testified about already, Shillingtons
22 was counsel. Is that true?

23 A. Yes. Yeah. And they
24 might have even been the counsel on one previous
25 to the Gawrylash one.

1 Q. Okay. And I'm just
2 challenging -- so, we know that Shillingtons has
3 the Tradewind report, Shillingtons is counsel for
4 Hamilton on a number of claims against City of
5 Hamilton, and you said that you didn't see the
6 Tradewind report until 2019. Are you saying that
7 the Tradewind report was not included in the
8 affidavit of documents for any of the cases in
9 which you were the witness for Hamilton?

10 A. Yeah. It only started
11 being -- once it became public in the spring of
12 2019, anything after that date, it would have been
13 included. But anything prior to, we weren't aware
14 it existed, so it wasn't presented. I don't know
15 the date of this Gawrylash -- I believe that's how
16 you say it -- what the date of this was, but
17 usually these documents are signed, you know, in
18 advance of the discovery. So, I don't know the
19 date and the date from that e-mail that you had
20 shown me previously from Shillingtons and Gary
21 Moore, and I don't even recall who the lawyer's
22 name from Shillingtons that I was dealing with.

23 Q. That's fine. It was
24 August 15, 2017 that Shillingtons has it and
25 although this claim is originally issued in 2014,

1 I think it's 2016 that the third-party claim is.

2 Registrar, can you please go
3 to the second image in this document.

4 It says 2014 it's issued,
5 okay. You talked about testifying in it. So,
6 until the Tradewind report was public, it wasn't
7 part of the affidavits of documents produced on
8 behalf of the City of Hamilton. Do I have your
9 testimony right?

10 A. That's correct.

11 Q. Thank you.

12 A. In any discoveries that I
13 was involved in anyway. I wasn't necessarily at
14 every single discovery for accidents on the Red
15 Hill.

16 Q. I'm not suggesting you
17 were, sir, and my question was confined to those
18 in which you were the witness for City of
19 Hamilton.

20 Registrar, you can take this
21 down. Thank you. Can we please go to overview
22 document 8, image 67, 186. Okay.

23 This is the first invitation
24 for the February 23 meeting about the MSCR
25 specification. If I understand your evidence, you

1 testified that you remembered there was a
2 discussion about the MSCR specification, but you
3 didn't recall whether you were a participant in
4 the side meeting that was held on that day. Do I
5 have your evidence correct?

6 A. Yes, that's correct.

7 Q. Okay. Commissioner, I'm
8 going to have to ask for leave to raise a document
9 that isn't in the list of documents that we
10 provided to all counsel in advance and I frankly
11 didn't realize that this was in issue until
12 listening to the testimony of the witness today.
13 It's HAM62425. I see Mr. Lewis is up.

14 JUSTICE WILTON-SIEGEL: Have
15 you given this to other counsel?

16 MS. JENNIFER ROBERTS: I did
17 over the break.

18 JUSTICE WILTON-SIEGEL: Over
19 the break, okay.

20 MR. LEWIS: I don't have any
21 objection to it.

22 MS. TALEBI: Commissioner, we
23 don't have any objection to it either.

24 JUSTICE WILTON-SIEGEL: I was
25 going to ask if anyone had an objection. If

1 there's no objection, let's proceed.

2 MS. JENNIFER ROBERTS: Thank
3 you.

4 BY MS. JENNIFER ROBERTS:

5 Q. Is there a way of showing
6 that in a native format so that you can see the
7 invitations, Registrar?

8 THE REGISTRAR: Sorry,
9 counsel. One second. I'll open it in a native.

10 MS. JENNIFER ROBERTS: Thank
11 you. Thank you, Registrar.

12 BY MS. JENNIFER ROBERTS:

13 Q. So, Mr. Oddi, this is an
14 Outlook invitation issued by Claudio Leon to
15 Mr. Becke, yourself and Tyler Renaud and the
16 invitation says:

17 "I just spoke with
18 Ludomir and he suggested
19 to meet prior to the
20 presentation on Friday to
21 go over a few things."

22 Do you see that?

23 A. Yes, I do.

24 Q. Does that refresh your
25 memory as to whether you attended a side meeting

1 on February 23?

2 A. Not really. I don't
3 remember going over anything besides the whole
4 MSCR presentation.

5 Q. Okay. Thank you.

6 A. And I'm almost certain I
7 would -- I remember seeing the presentation from
8 Ludomir, whether it was at this meeting or another
9 meeting, you know, because we did we did use it
10 eventually to present to the HAND Association and
11 to let everyone know that we were switching to
12 MSCR graded asphalt cement.

13 Q. Right. I'm going to
14 stick to the side meeting right now, Mr. Oddi.

15 A. I don't recall attending
16 the side meeting.

17 Q. Thank you. Registrar,
18 can we please go to overview document 8, image 69.
19 192, can you please call that up.

20 So, this is the calendar
21 invitation for that March 9 meeting, calendar
22 invitation, and you're included as one of the
23 invitees. Do you see that?

24 A. Yes.

25 Q. And, again, the

1 invitation includes an introduction to the topic.

2 It says:

3 "Further to the
4 presentation on Friday,
5 thanks, Ludomir, we had a
6 side discussion
7 afterwards regarding hot
8 in-place on the RHVP. It
9 sounds like there will be
10 some challenges with this
11 approach that we need to
12 discuss moving forward."

13 Do you see that?

14 A. Yes, I do.

15 Q. And does that refresh
16 your memory as to the discussion about hot
17 in-place that took place on February 23?

18 A. Yeah. I don't believe we
19 had the discussion before and I don't recall -- I
20 don't recall talking about hot in-place that day.

21 Q. Okay. Can we please just
22 take down the call out, Registrar, thank you, and
23 go to 193. Can you please call out paragraph 193.
24 Okay.

25 So, this is a reply,

1 Dr. Uzarowski to Michael Becke, and I acknowledge
2 that you were not included in the reply, but he
3 seems to be the case that Dr. Uzarowski is saying:

4 "As discussed and
5 requested after Friday's
6 presentation, I contacted
7 Pat Wiley, the president
8 of EcoPave asphalt
9 recycling. Pat does a
10 lot of HIR in BC and will
11 likely we doing some HIR
12 for MTO in Thunder Bay
13 this year. Pat has never
14 done HIP recycling on SMA
15 and thinks perhaps this
16 is not feasible."

17 Do you see that?

18 A. Yes, I do.

19 Q. And so, when you recalled
20 that one of the outcomes to the March 9 meeting
21 was that there was an agreement to contact
22 Mr. Wiley, I suggest to you that, in fact, that
23 was an outcome for the February 23 e-mail, first
24 and foremost?

25 A. No. It was a pretty

1 colourful discussion. Gary was getting pretty
2 frustrated during the March meeting because he had
3 a completely different recollection of the
4 conversations with Pat than Ludomir did. Also, it
5 definitely wasn't at the February meeting --

6 Q. Wait a second. It
7 appears:

8 "As discussed and request
9 after Friday's
10 presentation."

11 That suggests, reads frankly,
12 that Dr. Uzarowski was requested to contact Pat
13 Wiley on February 23. Do you agree with that?

14 A. Oh, yes, but I guess that
15 would have been through his conversations with
16 Mike. I don't know if -- I don't know who else
17 would have stayed around for that hot in-place
18 discussion.

19 Q. You're saying that you
20 don't recall --

21 A. Yeah, I don't recall.
22 And I'm pretty sure when we checked this e-mail, I
23 wasn't included in it.

24 Q. You're not. I'm not
25 suggesting otherwise.

1 A. All right.

2 Q. So, there are two
3 questions about the hot in-place. The first is
4 whether anyone has done hot in-place of SMA, and
5 the second one was whether it would be feasible?

6 A. I'm not aware of -- I
7 would have to actually talk to the contractors,
8 but I'm not aware of anyone doing any hot in-place
9 on SMA. I know it has been done, you know, in
10 Ontario. I'm not sure how much the MTO did it.
11 I'm not aware of other municipalities. The
12 region, before the year 2000, had done a little
13 bit of it --

14 Q. Wait a second, Mr. Oddi.
15 I'm not disputing --

16 A. But not on SMA. I'm not
17 aware of any on SMA.

18 Q. Thank you.

19 A. And in terms of it being
20 feasible, that's a design thing. I know the MTO
21 specs doesn't recommend it, but it's also because
22 they haven't done it. And like I had said before,
23 from conversations with Mike Becke, the people at
24 MTO are actually very interested if we did, in
25 fact, do hot in-place on SMA because, for them,

1 they do have some SMA roads that maybe it would be
2 an application that they could use.

3 Q. Thank you. I want to go
4 to the March 9 meeting. Registrar, you can take
5 down that call out. Can we please go to overview
6 document 8, image, I think it's 75 and 76 but my
7 note is not perfect here, Registrar, so please
8 just bear with me. Okay. Can we please go to
9 image 74 first. 73. 72. There's lots of notes.
10 There we go. Okay.

11 So, Dr. Uzarowski has lots of
12 notes about that meeting. I want to first talk to
13 you about the PSV. So, you understand that PSV is
14 polished stone value?

15 A. Yes.

16 Q. And that's a test to
17 assess the polishability of an aggregate?

18 A. Yes. I'm vaguely aware
19 of it. Yes.

20 Q. Okay. And you knew it
21 was a test that's used by the MTO to assess
22 polishability of aggregates?

23 A. Yes, I believe I knew
24 that.

25 Q. Did you know that MTO

1 requires a PSV for virgin aggregate for its
2 contracts to be over 50?

3 A. No, I wasn't aware of
4 that.

5 Q. Okay. And you reference
6 in your testimony the fact that the aggregate that
7 was used in the Red Hill Valley Parkway was
8 considered an excellent aggregate and you
9 testified about that. Do you remember?

10 A. Yes.

11 Q. So, I'm not talking,
12 Mr. Oddi, today about what was found when the
13 aggregate was qualified in 2007. I'm talking
14 about what the state of the aggregate was in 2018,
15 just to keep the timeline fresh for you.

16 So, did you understand that
17 the purpose of a PSV testing of the aggregate in
18 2018 that had been in service for more than ten
19 years was to assess whether it was a good
20 candidate for being reused as part of a new
21 asphalt surface? Did you understand that?

22 A. No, I did not.

23 Q. You didn't?

24 A. No.

25 Q. Okay. I take it, though,

1 sir, you wouldn't expect an aggregate that had
2 been in service for ten years to still retain the
3 qualities of a virgin asphalt, would you?

4 A. No. Whether it was an
5 SP12.5 or an SMA, you know, the aggregates would
6 wear down, you would assume, through wear and use,
7 but the softer rock would wear faster and the
8 harder rocks, which are the trap rocks and the
9 dolomitic sandstones, would last longer.

10 Q. But nonetheless, an
11 aggregate in use for ten years is going to show
12 wear. That's correct, sir, is it not?

13 A. Yeah. That sounds
14 logical. But, again, hot in-place uses the
15 existing aggregates that are there, adds some
16 rejuvenators. Right?

17 Q. Right. And so, but you
18 understood that an aggregate that had been in
19 service for ten years was not going to have the
20 same PSV value as a new one?

21 A. I mean, that sounds
22 logical, but I really wasn't aware of it. When
23 they got into that part of the discussion, it was
24 kind of -- you know, it wasn't very long and it
25 was more, you know, Ludomir, Gary, going back and

1 forth over it. The rest of us were just kind of
2 sitting there going, okay, is the meeting done?
3 What are we talking about?

4 Q. Well, hold on here. It's
5 actually an important conversation here because
6 the quality of the aggregate bears on lots of
7 things, including --

8 A. Absolutely. That's why
9 when you made the comment about the number being
10 low, my comment was are you saying the Demix
11 aggregate wasn't a good aggregate, and Gary and
12 Ludomir both chimed in and said, no, the reason
13 the number is so good or high is because it is a
14 good aggregate. It's very hard. So, it's like,
15 oh, okay. So, I didn't really know what they were
16 getting at. It was just, you know, I'm not into
17 that technicality. I would rely on, you know,
18 either the hot in-place contractor and Ludomir's
19 expertise to say whether or not it made sense.

20 You know, that's why during
21 that whole conversation it's like, okay, Gary,
22 you're saying one thing, Ludomir is saying another
23 thing, we need to clarify this because if it's
24 what Ludomir is saying, we're not going to look at
25 HIP on the mainline or Red Hill and, given the

1 geometry of the ramps, hot in-place isn't a
2 good -- it's not a good candidate for hot
3 in-place. So, to me, it was just clarifying. So,
4 when we did clarify it, you know, EcoPave
5 confirmed that they thought it was feasible. So,
6 in the end, Gary was correct. His recollection of
7 the discussions they had had --

8 JUSTICE WILTON-SIEGEL:

9 Mr. Oddi, it's a long day.

10 THE WITNESS: Sorry. I
11 apologize.

12 JUSTICE WILTON-SIEGEL: I
13 think you're getting tired. I would volunteer
14 that at least some of the rest of us are also
15 getting tired and we don't have to make it any
16 longer than is necessary, so --

17 THE WITNESS: I understand.

18 JUSTICE WILTON-SIEGEL: -- I
19 would ask that you listen to the question which
20 was given about five minutes ago and simply
21 confine your responses to the question.

22 THE WITNESS: Understood,
23 Commissioner.

24 JUSTICE WILTON-SIEGEL: Thank
25 you. Please proceed, Ms. Roberts.

1 MS. JENNIFER ROBERTS: Thank
2 you, Commissioner.

3 BY MS. JENNIFER ROBERTS:

4 Q. So, you understood the
5 importance of the PSV, but you didn't understand
6 that it was having a good polished stone value was
7 important to the feasibility of using the
8 aggregate in the hot in-place recycling?

9 A. No. I'm not a hot
10 in-place recycling expert, so I wasn't aware of
11 that.

12 Q. All right. But one of
13 the characteristics of whether an aggregate --
14 sorry, let me rephrase this.

15 Ludomir's evidence was that he
16 considered it somewhat risky to reuse an aggregate
17 that was worn. Did you understand that?

18 A. I don't recall that in
19 the conversation.

20 Q. But did you recall a
21 discussion between Dr. Uzarowski and Mr. Moore
22 about whether the polished stone value was
23 adequate for using it in hot in-place?

24 A. Vaguely. Like I said,
25 there was those comments and Gary said friction

1 numbers were inconclusive and no to the
2 microsurfacing.

3 Q. No. I'm not talking
4 about friction numbers. That's a different
5 conversation. I'm going to get to --

6 A. I don't recall. I don't
7 recall.

8 Q. Thank you. Okay. Did
9 you understand that the recommendation to use
10 microsurfacing on the hot in-place was because
11 there was uncertainty as to whether a worn
12 aggregate would provide good characteristics when
13 incorporated in the new surface?

14 A. No, I did not.

15 Q. Okay. Now we can go to
16 the discussion about friction, Mr. Oddi. Just in
17 case I understand it, you do have a recollection
18 that friction was discussed? There was
19 uncertainty in your tone.

20 A. My recollection was that
21 they were talking about the aggregate friction,
22 like the PSV.

23 Q. Okay, so you don't recall
24 a discussion about friction numbers on the Red
25 Hill?

1 A. No. No, I don't recall
2 any safety or friction concerns being brought up.

3 Q. I'm not talking about
4 safety. This is a discussion about the frictional
5 characteristics of the top, the surface, of the
6 aggregate.

7 Can we please, Registrar, go
8 to image 76.

9 Mr. Becke's notebook does
10 include an entry, if you look at 207. Do you see
11 that? Thank you. His notes include a reference
12 to concerns with friction numbers. Do you see
13 that?

14 A. Yes, I do.

15 Q. But you have no
16 recollection of a discussion about concerns with
17 friction numbers?

18 A. That's correct.

19 Q. Thank you. You can take
20 that down, Registrar. So, I just want to touch
21 briefly on the evidence about skidabrading or
22 blast tracking. Do I understand your evidence
23 correctly that you recall a discussion and you
24 recall -- is that true, that you recall a
25 discussion? Do I have that right?

1 A. I recall Ludomir
2 suggesting we should do skid abrasion or shot
3 blasting before the resurfacing.

4 Q. And your response was
5 that you didn't think that that made sense, given
6 the cost and the potential benefit and the pending
7 resurfacing. Do I have that right?

8 A. I said that it seemed
9 like a waste of taxpayer dollars, not a good use
10 of public funds to do that right before we were
11 doing the resurfacing, because the resurfacing
12 basically does the same thing for you.

13 Q. Thank you. In your
14 witness interview, we have a witness statement and
15 commission counsel took you to it and you
16 testified -- sorry, in your interview, you said
17 words to the effect of, gee, the lawyers will have
18 a heyday with you.

19 MS. TALEBI: Mr. Commissioner,
20 I don't mean to interrupt. I'm not sure if
21 Ms. Roberts is referring to Mr. Oddi's statement
22 of anticipated evidence. Is that -- I wasn't sure
23 what she meant by your interview.

24 MS. JENNIFER ROBERTS: Yes.
25 Sorry. Yes, I am. Exactly.

1 MS. TALEBI: And so I
2 understand that Ms. Roberts would probably need to
3 seek leave to refer to anything from those notes.

4 MS. JENNIFER ROBERTS: Wait a
5 second. The witness has testified this morning
6 that that is something that he said and it is part
7 of the witness statement.

8 MS. TALEBI: Sorry. Maybe I
9 was unclear on were you referring to an earlier
10 testimony that Mr. Oddi gave this morning?

11 MS. JENNIFER ROBERTS: Yes.

12 JUSTICE WILTON-SIEGEL: Yes.

13 MS. TALEBI: Because I
14 understood that you were looking to refer to
15 something outside of that. I think I may have
16 misunderstood. I'll let Ms. Roberts continue.

17 JUSTICE WILTON-SIEGEL: Thank
18 you.

19 BY MS. JENNIFER ROBERTS:

20 Q. You testified this
21 morning that you recalled that you said this, but
22 you thought that you were probably speculating.
23 Do I have your evidence of this morning correct?

24 A. Yes. What I had said was
25 that I recalled saying it at the statement at the

1 SAE stage, but I can't recall if I was speculating
2 that I may have said something like that or
3 something similar, you know, because of that
4 interaction where, you know, Ludomir is concerned
5 about the PSV numbers, but he's saying it's a good
6 aggregate. It was in that context, so I don't
7 recall saying it at the meeting. I think I was
8 suggesting that I may have said something like
9 that.

10 Q. Okay. Is it the case --
11 because you've been a witness for the City of
12 Hamilton in a number of proceedings. That's true?

13 A. Yes, I have.

14 Q. And is it the case that
15 it's your understanding that it might create a
16 liability risk to remediate or change one thing on
17 a highway because it might create a perception
18 that there was a problem? Is that something that
19 you understand?

20 A. I'm sorry, can you repeat
21 the question?

22 Q. For sure I can. Is it
23 the case that it's your understanding that it may
24 create a liability risk if you remediate or change
25 something on the highway because that would create

1 a perception that there was an admission that
2 there was a problem?

3 A. No. No, that's not my --
4 no.

5 Q. That's not your --

6 A. Like, when you're doing
7 contract work, right, it's like if you're going in
8 to resurface a road, if the scope is just to
9 resurface, you know, if you're reconstructing, you
10 have to bring everything back up to standards.

11 Right? So, it's like if you're in an old country
12 road and you have cable guide rail, that's not a
13 current standard. Do you replace that guide rail?
14 But if all you're doing is the road, do you
15 replace that guide rail separately or do you look
16 and replace them at the same time?

17 Q. I think your short answer
18 would be no, that's not your understanding.

19 A. Yes, that's not my
20 understanding. Just because you go out and do
21 something -- like, standards change and, you know,
22 when you're out doing a project, you try and bring
23 them up to the current standard.

24 Q. Got it. Thank you. I
25 just want to go to one other place and it may be

1 me who is confused about this, in which case I
2 apologize. The May 14, 2018 meeting, can we
3 please, Registrar, go to overview document 9,
4 image 10, paragraph 12. Thank you.

5 So, you testified and you were
6 asked questions by commission counsel about the
7 May 14, 2018 meeting.

8 Actually, can you take down
9 the call out because we don't have the date on it.
10 Okay. It's in the prior, I think. So, the
11 calendar invitation is to a number of people,
12 including you, sir. And did I understand your
13 evidence correctly that -- sorry, let me just
14 start.

15 Do you see that you were
16 included in an invitation for the May 14, 2018
17 meeting?

18 A. Yes.

19 Q. Okay. And did I
20 understand your evidence that notwithstanding that
21 you were invited, you were not able to attend?

22 A. That's correct. I don't
23 recall attending that May 14 meeting.

24 Q. Okay. Thank you and
25 thank you for your patience, Mr. Oddi. Those are

1 my questions.

2 A. Sorry that I dragged on a
3 bit and caused some grief for everyone. My
4 apologies.

5 JUSTICE WILTON-SIEGEL:
6 Ms. Talebi?

7 MS. TALEBI: Great. Thank
8 you, Mr. Commissioner.

9 EXAMINATION BY MS. TALEBI:

10 Q. Good afternoon, Mr. Oddi.
11 I just have a couple questions for you this
12 afternoon.

13 Just going back in time a
14 little bit, in November 19, 2013, Mr. Moore copied
15 you into an e-mail chain that discussed the Golder
16 friction testing on the RHVP, and commission
17 counsel took you through that e-mail chain, and
18 your evidence earlier today was that you were not
19 involved with the request around the testing
20 because others who were copied on that e-mail were
21 dealing with the request more directly given their
22 roles and you said that you were not responsible
23 for any tasks in relation to the request in that
24 e-mail. Do you recall having that discussion with
25 commission counsel earlier today?

1 A. Yes, I do.

2 Q. Okay. Did you have any
3 involvement beyond being copied on those e-mails
4 that we saw earlier?

5 A. No. That was it. I was
6 just copied. Once you're in, sort of, a chain of
7 e-mails, you get stuck in them sometimes.

8 Q. And at that time, did you
9 get any follow-up e-mails from anyone, including
10 Mr. White or Mr. Shebib, with respect to anything
11 needing your attention in relation to the requests
12 in that e-mail?

13 A. No, I did not.

14 Q. And so, now moving
15 forward in time a little bit, in June 2017, you
16 received e-mails from Ms. Cameron related to
17 Councillor Conley's request for friction test
18 results and you had that discussion with
19 commission counsel earlier and your evidence was
20 that you did not quite connect Councillor Conley's
21 request to the friction testing done on the
22 RHVP -- sorry, Councillor Conley's request to the
23 friction testing that was done on the RHVP three
24 and a half years earlier where you were copied on
25 those e-mails that we just discussed and

1 commission counsel asked you whether you didn't
2 feel it was your responsibility to track this down
3 given that it was tasked to you at this point.

4 My question for you, Mr. Oddi,
5 is whether you understood that as a result of
6 Ms. Cameron's e-mails on June 5, 2017, obtaining
7 or providing a copy of the test results was,
8 quote, unquote, tasked to you at that time?

9 A. Yes, it -- well, no.
10 Basically my understanding, I was covering for
11 Gary and Diana asked if I could help out and
12 respond to the council. I wasn't aware of the
13 testing, didn't know where the information would
14 be, so, you know, my response was it should wait
15 until Gary came back next week.

16 Q. And did you understand a
17 request from Councillor Conley to be urgent in any
18 way?

19 A. No, I didn't perceive it
20 to be urgent, but again, you know, sometimes
21 things take time. Our general practice in
22 construction is we respond normally the same day.
23 Sometimes you're dealing with the issue, get the
24 problem solved, and sometimes it's I need some
25 time, I'll get back to you.

1 Q. Okay. And so,
2 Mr. Registrar, maybe we could just pull up this
3 e-mail, HAM998.

4 Mr. Oddi, while Mr. Registrar
5 is pulling that up, that's just your response to
6 the e-mail chain. You see at the very top here at
7 5:08 p.m., your response states that this would
8 probably have to wait until Gary returns, as you
9 can see.

10 Did you get any response from
11 Councillor Conley or his staff indicating that
12 this could not wait until Gary returns in response
13 to this e-mail?

14 A. Sorry. No, I did not.

15 Q. Thank you, Mr. Registrar.
16 You can bring that down.

17 Mr. Oddi, you attended a
18 meeting with Dr. Uzarowski and a number of other
19 city staff members on March 9, 2018 and commission
20 counsel asked you a number of questions about that
21 and your evidence was that Dr. Uzarowski did not
22 communicate any concerns about the safety or
23 frictional characteristics of the Red Hill to you
24 at that time. Do you recall having that
25 discussion?

1 A. Yes.

2 Q. Okay. And so, Mr. Oddi,
3 what steps would you have expected Dr. Uzarowski
4 or Golder to take if they in fact did have any
5 concerns about the frictional characteristics or
6 safety of the Red Hill?

7 A. Well, I would have
8 expected, given our relationship, that either
9 Ludomir would have called me to discuss it if
10 there was a real concern or, you know, would he
11 have followed up with an e-mail saying here is my
12 recommendation, you should really do this, this
13 needs to be done. It's not unusual -- like, the
14 City gets condition assessments all the time and
15 usually they give you timelines in those. They'll
16 say this here, here is the state, this needs to be
17 done, you know, immediately, this needs to be done
18 within a year or two. So, if in fact there was a
19 concern and if it was brought up during a meeting,
20 it would have been a lot different discussion at
21 the meeting. I do not recall Ludomir or anyone
22 bringing up any safety or friction concerns with
23 the Red Hill Valley Parkway.

24 Q. Okay. Thank you. And,
25 Mr. Registrar, if we could just have you pull up

1 Golder document 6453 and if it could be called up
2 in native format.

3 Mr. Oddi, this is a draft of
4 the Golder pavement evaluation report dated
5 December 14, 2018. As I mentioned, this will be
6 the draft version. And so, while Mr. Registrar is
7 pulling that up, your evidence again, as you just
8 mentioned, was you did not understand any concerns
9 to have been raised by Dr. Uzarowski and Golder
10 about the frictional characteristics of the Red
11 Hill.

12 Mr. Registrar, if we could go
13 to image number 3 here. Perfect, thank you.
14 That's great. Thank you.

15 And so, Mr. Oddi, you see a
16 comment here on the side from Michael Maher
17 that -- I don't know if we can call that up or if
18 you're able to see it clearly, then that's fine,
19 but as you can see, the comment states that:

20 "We should avoid the word
21 'restores' as it implies
22 that we have concluded
23 that the friction is
24 inadequate. We have
25 previously stated that

1 there is no strict
2 guidelines."

3 Do you see that?

4 A. Yes, I do.

5 Q. And maybe I'll just --
6 maybe you can take a moment to just read the first
7 couple sentences of the paragraph right under the
8 chart here, if you can see it, just to familiarize
9 yourself with the content in relation to what that
10 comment is actually about. You can see, I think
11 in the second or third sentence where it says
12 improves and then it crossed out restores. Do you
13 see that?

14 A. Sorry, I'm just trying to
15 follow the changes there.

16 Q. So, this is on the fourth
17 line.

18 A. Yes, I see it now. Yes.

19 Q. And so, my question for
20 you, Mr. Oddi, is whether this is consistent with
21 your understanding that Golder had not advised the
22 City that it had concluded that friction testing
23 on the Red Hill Valley was inadequate?

24 A. That's correct.

25 Q. Okay. And so -- thank

1 you, Mr. Registrar. We can bring that down and if
2 we can just very briefly go to the final version
3 of this document, and that's Golder 6612,
4 image number 3, please.

5 And so, Mr. Oddi, this is just
6 the final draft of the draft version that I just
7 took you to moments ago. As you can see, those
8 changes have now been implemented in the first
9 couple sentences in that paragraph right under the
10 chart. And as you can see now, the sentence
11 reads:

12 "As was brought to the
13 City's attention a number
14 of times previously, an
15 immediate effective
16 treatment to address a
17 concern with frictional
18 characteristics of the
19 SMA surface course on the
20 RHVP would be to carry
21 out shot
22 blasting/skidabrading of
23 areas of concern on the
24 existing pavement
25 surface. This treatment

1 is quick and relatively
2 low cost. It improves
3 the skid resistance
4 immediately; however, it
5 does not address pavement
6 cracking or bumps and
7 dips in the pavement and
8 is not a structural
9 rehabilitation
10 treatment."

11 Do you see that?

12 A. Yes, I do.

13 Q. Okay. And so, is this
14 consistent with your recollection that
15 Dr. Uzarowski had not advised the City that it had
16 concluded that Golder or Dr. Uzarowski had
17 concluded that friction on the Red Hill Valley
18 Parkway was inadequate?

19 A. Yes.

20 Q. Great. Thank you. Those
21 are all of my questions for you this afternoon,
22 Mr. Oddi. Thank you, Mr. Commissioner.

23 MR. LEWIS: I just have one
24 question and then we need to mark a document as an
25 exhibit.

1 FURTHER EXAMINATION BY MR. LEWIS:

2 Q. My question is: With
3 respect to the last two documents that Ms. Talebi
4 took you to, have you ever seen those documents at
5 the time until preparing for your examination?

6 A. No, I didn't see them
7 prior.

8 Q. Thank you. And the
9 exhibit, this is just the invitation that
10 Ms. Roberts brought. I forgot to mark at least
11 two today until they were brought to my attention
12 by Ms. Hendrie, so I'll give her credit. This
13 would be HAM62425 and it's the February 23
14 calendar invitation.

15 THE REGISTRAR: Noted,
16 counsel. Thank you.

17 MR. LEWIS: It's 144.

18 THE REGISTRAR: Thank you.

19 EXHIBIT NO. 144:
20 February 23 calendar
21 invitation, HAM62425.

22 MR. LEWIS: I don't have any
23 other questions or items.

24 JUSTICE WILTON-SIEGEL: Okay.
25 I'm just looking for that reference. I'll just

1 ask you which document? Oh, I found it.

2 MR. LEWIS: Yes. It was the
3 invitation to the pre-meeting on February 23.

4 JUSTICE WILTON-SIEGEL: And
5 that's exhibit what now?

6 MR. LEWIS: 144.

7 JUSTICE WILTON-SIEGEL: 144,
8 okay. So, then there are no other questions?

9 MR. LEWIS: No.

10 JUSTICE WILTON-SIEGEL: Well,
11 we've conveniently arrived at 4:30. Mr. Oddi,
12 thank you very much for attending. Re-attending,
13 I suppose I should say. You're excused.

14 And, the rest of us, if
15 there's no further business we have to attend to
16 tonight, we'll stand adjourned until 9:30 tomorrow
17 morning. Have a good evening, all.

18 --- Whereupon the proceedings adjourned at
19 4:29 p.m. until Thursday, August 11, 2022,
20 at 9:30 a.m.

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