

1 STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF WASHTENAW
2 -----X
CAN IV PACKARD SQUARE LLC, a Delaware limited liability
3 company,

4 PLAINTIFF,

5
6 -against- Case No.:
16-000990-CB

7
8 PACKARD SQUARE, LLC, a Michigan limited liability company,
DEFENDANT,

9 And
10 ALLIED BUILDING PRODUCTS CORP., an Ohio
11 corporation, et al.,

12 ADDITIONAL LIEN CLAIMANT DEFENDANTS.
13 -----X

14 DATE: April 16, 2018

15 TIME: 10:58 A.M.

16
17 DEPOSITION of a Non-Party Witness, TINA
18 VAN CUREN, taken by the Defendants, pursuant to a Notice and
19 to the Federal Rules of Civil Procedure, held at the offices
20 of GETLER GOMES & SUTTON, 2 Executive Boulevard, Suffern,
21 New York, before Suzanne Pastor, a Notary Public of the
22 State of New York.

23
24
25

1 APPEARANCES:

2
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(Appearance by Videoconference)

ALSO PRESENT:
CRAIG SCHUBNER
CHRIS MARTIN, Videographer

* * *

1 THE VIDEOGRAPHER: Good morning, we're on the
2 record.

3 My name is Chris Martin. I am the videographer
4 here representing Hanson Renaissance Court Reporting. This
5 is the videotaped deposition of Tina Van Curen. It's being
6 taken at the office of Getler, Gomes & Sutton, 2 Executive
7 Boulevard, Suffern, New York.

8 Today's date is April 16th, 2018, and the time
9 on the video monitor is 10:58 a.m. The name of the case is
10 CAN IV Packard Square LLC versus Packard Square LLC,
11 defendant, and Allied Building Products Corp., et al.,
12 additional named claimed defendants.

13 At this time will counsel around the table
14 please introduce themselves for the record.

15 MR. MILLER: Certainly. My name is I. Matthew
16 Miller and I'm the attorney on behalf of the defendant
17 Packard Square LLP.

18 MR. DOLAN: Ben Dolan, I'm the attorney for
19 plaintiff.

20 THE VIDEOGRAPHER: And on the telephone, or the
21 video conference, could you introduce yourself.

22 MR. PASCOE: Michael Pascoe, attorney for
23 Quandel Construction.

24 THE VIDEOGRAPHER: At this time the court
25 reporter, Sue Pastor, will swear in the witness.

1 FEDERAL STIPULATIONS

2
3
4 IT IS HEREBY STIPULATED AND AGREED by and between
5 the counsel for the respective parties herein that the
6 sealing, filing and certification of the within deposition
7 be waived; that the original of the deposition may be signed
8 and sworn to by the witness before anyone authorized to
9 administer an oath, with the same effect as if signed before
10 a Judge of the Court; that an unsigned copy of the
11 deposition may be used with the same force and effect as if
12 signed by the witness, 30 days after service of the original
13 & 1 copy of same upon counsel for the witness.
14

15 IT IS FURTHER STIPULATED AND AGREED that all
16 objections except as to form, are reserved to the time of
17 trial.
18

19 * * * * *

1 TINA VAN CUREN, called as a witness, having been
2 first duly sworn by a Notary Public of the State of New
3 York, was examined and testified as follows:

4 EXAMINATION BY

5 MR. MILLER:

6 Q. Ma'am, will you please state your name for the
7 record.

8 A. Tina Van Curen.

9 Q. My name is Matthew Miller, and as I've just
10 introduced, I am representing the defendant in this matter,
11 Packard Square LLC. To the left is Craig Schubner, who, as
12 you may have met in the past, is one of the principals of
13 Packard Square LLC. I'm here to ask you questions with the
14 Michigan rules of evidence about your involvement in this
15 case, what led to this case and anything involving the
16 Packard Square project.

17 If you have any questions about what I'm asking
18 you, please let me know and I'll try to rephrase that
19 question. Sometimes I'll be very honest, my head gets ahead
20 of my mouth and by the time the words come out, nobody
21 understands my questions anymore. So don't be embarrassed
22 to ask me to rephrase because I'll be happy to do so.

23 A. Okay.

24 Q. As you can tell, it's being recorded and you're
25 being webcam'd to another attorney and the court reporter

1 here is taking down what you're saying. It's very important
2 to make sure that you answer audibly. No shrugs of the
3 shoulders or nods of the head so that we can take down the
4 words that you're saying, okay?
5 A. Yes.
6 Q. Also, it's also important that we try not to
7 talk over each other because it makes it really hard for the
8 court reporter to keep track of who's speaking, okay?
9 A. All right.
10 Q. Just to do a little bit of background with you,
11 did you bring any documents with you today?
12 A. I did not.
13 Q. Do you recall whether you were asked to bring
14 documents with you today?
15 A. I do not.
16 Q. Have been deposed before?
17 A. No.
18 Q. This is the first time?
19 A. Yes.
20 Q. Have you ever testified in a court of law
21 before?
22 A. I've been requested, but I have not.
23 Q. Testified actually?
24 A. Yes.
25 Q. Do you recall what that case was?

1 A. I do not.
2 Q. Have you worked for a company? Are you
3 currently working for a company?
4 A. Yes, my own.
5 Q. What is it called?
6 A. Hourglass Assessment Group.
7 Q. How many employees does Hourglass have?
8 A. Myself.
9 Q. What is its address?
10 A. 982 Main Street, Fishkill, New York.
11 Q. Do you ever work there with any other
12 contractors or subcontractors either for Hourglass
13 Assessment or for any related entity of Hourglass
14 Assessment?
15 A. No.
16 Q. Where do you reside?
17 A. In Fishkill, New York.
18 Q. What's your home address?
19 A. 37 Arcadian Place.
20 Q. Do you use e-mail in your job?
21 A. Yes.
22 Q. What is your e-mail address?
23 A. TVanCuren -- do you want me to spell it out?
24 Q. No. It's spelled like your name, right?
25 A. Yes. @HGAssessments.com.

1 Q. Do you use any other e-mail addresses?
2 A. No.
3 Q. Are you married?
4 A. No.
5 Q. How does your company store e-mail?
6 A. Store it? It comes through Outlook.
7 Q. Is it cloud-based or do you have a server?
8 A. No. I have a -- I'm not sure.
9 Q. Do you use cloud-based storage systems like
10 Dropbox for your business?
11 A. I don't personally use it. I receive links for
12 it.
13 Q. How do you store documents for your business?
14 A. On my hard drive.
15 Q. Of your own personal computer?
16 A. Yes.
17 Q. That's kept at your office in Fishkill?
18 A. Yes.
19 Q. How long have you been operating and working
20 for Hourglass Assessment?
21 A. Three years. Three and a half.
22 Q. How did you come to start that business?
23 A. I'm sorry, what exactly is the question?
24 Q. Well, what led you to open Hourglass
25 Assessment?

1 A. I've been in the industry for 25 years doing
2 construction consulting. And I decided to not be employed
3 and become a self employer.
4 Q. Who did you work for prior to starting
5 Hourglass?
6 A. Several companies. Exactly prior?
7 Q. Yes.
8 A. Prior to Hourglass I was with Newbanks Boston.
9 Q. How long were you with Newbanks?
10 A. Six years.
11 Q. What did Newbanks do?
12 A. Construction consulting.
13 Q. When you say Newbanks Boston, did you live in
14 Boston?
15 A. No.
16 Q. You still resided in New York State?
17 A. Yes.
18 Q. Prior to the six years working for Newbanks
19 Boston, where did you work?
20 A. I.VI.
21 Q. What's that?
22 A. Construction consulting firm.
23 Q. Where is that located?
24 A. White Plains, New York.
25 Q. How long were you there?

1 A. Five years.
2 Q. Why did you leave IVI Construction Consulting
3 to move to Newbanks Boston?
4 A. I had a baby.
5 Q. How did that affect --
6 A. I left the company because I was starting a
7 family.
8 Q. So did you take some time off between working
9 at IVI and Newbanks?
10 A. Just your standard maternity.
11 Q. So maybe I'm not following you. Why did having
12 a baby affect the changing of the job?
13 A. Because I needed to make more money.
14 Q. Oh, okay, so Newbanks offered you more money.
15 A. Yes.
16 Q. That's a valid reason.
17 A. Yes.
18 Q. Prior to IVI Construction Consulting, where did
19 you work?
20 A. Prior to IVI I was with KGD.
21 Q. How do you spell that?
22 A. KGD.
23 Q. Where is that located?
24 A. Mt. Kisco.
25 Q. Also in New York?

1 A. Yes.
2 Q. And what do they do?
3 A. It's an architectural firm.
4 Q. What was your role there?
5 A. Designing schools.
6 Q. I failed to ask you this. What was your work
7 responsibilities at IVI Consulting?
8 A. To review projects, applications for payments,
9 work in place, schedules, review pay applications. I think
10 I might have said that.
11 Q. Is that different than the type of design work
12 you were doing at KGD?
13 A. Yes.
14 Q. At KGD, I'm trying to cut through this. If I'm
15 skipping a step, please let me know. But at KGD it sounds
16 like you were performing architectural services.
17 A. Yes.
18 Q. And then at IVI it was no longer architectural
19 services?
20 A. Well, there are still architectural services.
21 One is actually involved in the design and the
22 documentation, and IVI is reviewing other people's drawings
23 and contractors' applications and the actual building being
24 built.
25 Q. Is there a reason you moved from KGD to IVI?

1 A. Growth.
2 Q. Did you not want to continue doing your own
3 designing?
4 A. No, I didn't. I wanted to be in the field.
5 That's where I started in the industry, in the field,
6 watching it being built.
7 Q. I see, so where did you work prior to --
8 A. Children's Village in Dobbs Ferry, New York.
9 Q. What's Children's Village?
10 A. It's a residential treatment facility for
11 children.
12 Q. What's that got to do with the real estate
13 business?
14 A. They had approximately 30 buildings that they
15 were rebuilding and renovating.
16 Q. Oh, okay.
17 A. So I was in the construction division.
18 Q. I see. What did you do there?
19 A. Worked closely with architects and engineers
20 and represented the owner to renovate these buildings that
21 children lived in.
22 Q. How long were you with them?
23 A. 14 years.
24 Q. Wow. And why did you leave Children's Village?
25 A. It was not for profit, so you have a ceiling

1 that you hit.
2 Q. So KGD gave you a better opportunity?
3 A. Yes.
4 Q. I see. Was Children's Village your first job
5 out of school?
6 A. Yes.
7 Q. Have you ever worked directly for any
8 Canyon-owned entity?
9 A. Yes.
10 Q. Which one was that?
11 A. None of them.
12 Q. So did we miss it in the chronology? Well,
13 let's ask it a different way. What Canyon-owned entities
14 have you worked for?
15 A. I'm not sure of the exact entity name.
16 Q. Okay.
17 A. Actually, I believe it was Canyon Agassi.
18 Q. And when was that?
19 A. 200, I want to say '13. I may have missed
20 that, sorry.
21 Q. So if you've been in this location -- not this
22 location, but working for Hourglass for about three years
23 and Newbanks Boston for five years, where did Canyon Agassi
24 fit in?
25 A. Between Newbanks and Hourglass.

1 Q. Is that the only --
2 A. No. So directly prior to me going out on my
3 own, I was with Turner Agassi for a year and a half.
4 Q. What's Turner Agassi?
5 A. They build charter schools.
6 Q. What's Canyon Agassi?
7 A. That division was building charter schools.
8 Q. Okay, so what was the work you were doing for
9 Canyon Agassi?
10 A. Working in the northeast building charter
11 schools, overseeing the construction of it.
12 Q. How many charter schools did you help build
13 with Canyon Agassi?
14 A. From start to finish?
15 Q. Yeah. I don't know how many -- I have no idea
16 what this is. I'm trying to learn.
17 A. Two.
18 Q. Two schools? And what was your role in that
19 construction project?
20 A. To oversee construction, manage the architects,
21 the contractors.
22 Q. And did you get hired to do that for Canyon
23 Agassi right out of working for Newbanks?
24 A. Yes.
25 Q. What was your relationship at that time to

1 either Canyon or Agassi to get that position?
2 A. Oh, I was consulting for -- they were one of my
3 clients to consult with. They retained Newbanks for
4 construction consulting.
5 Q. I see, so did then Canyon Agassi stop using
6 Newbanks and start using you? Is that what happened?
7 A. I do not believe that's so, no.
8 Q. Okay, so how did that transfer take place?
9 A. One thing had nothing to do with the other.
10 One company is for overseeing construction projects. The
11 other was a specific division for a very specific product.
12 Q. Which one was you?
13 A. I don't understand your question.
14 Q. Who is the one and who is the other?
15 A. So Newbanks Boston is construction consulting.
16 It's overseeing the projects for clients.
17 Canyon Agassi is building charter schools.
18 Q. Right, I understand that. I'm trying to
19 understand your role. How did you get into that position to
20 do that work for whatever you were doing for Canyon Agassi?
21 A. I'm sorry, but I don't understand exactly the
22 question.
23 Q. Okay, that's fair. You were working for
24 Newbanks.
25 A. Right.

1 Q. And then you were working for Canyon Agassi.
2 A. Right.
3 Q. I'm trying to understand how you got the job at
4 Canyon Agassi.
5 A. Oh. It was a new division that opened up so I
6 applied for it.
7 Q. So it was just a cold call -- was it a request
8 for proposals or something?
9 A. No.
10 Q. So how did you -- did you know somebody working
11 at Canyon or at Agassi?
12 A. Well, I was a consultant for them so I did
13 know -- I knew people at Canyon.
14 Q. Because of your relationship from Newbanks?
15 A. Yes.
16 Q. I see. That's what I'm trying to understand.
17 A. Okay.
18 Q. I'm trying to understand. So in the Canyon
19 Agassi framework, was Newbanks still also doing work with
20 Canyon Agassi and you or not -- was that work different?
21 A. Yeah, the work was different.
22 Q. And you were both on board for Canyon Agassi.
23 A. I left one and I went to another company. I
24 left Newbanks and I went to work for Canyon Agassi.
25 Q. So Canyon Agassi was not also retaining

1 Newbanks to perform construction services; they were
2 employing you. Is that what you're saying?
3 A. I worked for Newbanks, and Canyon employed
4 Newbanks, not me directly. Is that the question?
5 Q. Yes. So how did you -- I'm still at a loss as
6 to how you got to be employed by Canyon Agassi personally.
7 A. I applied for a job.
8 Q. And you were an employee of Canyon Agassi, not
9 through Hourglass Consulting?
10 A. Correct.
11 Q. I see. And what was Turner Agassi?
12 A. A different company.
13 Q. Is that related to Canyon?
14 A. I don't know.
15 Q. What did you do for them?
16 A. I continued building charter schools.
17 Q. Other than Canyon Agassi and prior to this case
18 at Packard Square, have you done any other work for any
19 other Canyon entity?
20 A. No.
21 Q. So Canyon Agassi was the first and only time,
22 and Packard Square was the second?
23 A. What do you mean -- employed by them or
24 performed --
25 Q. Provided any employment, provided any

1 contracted work, provided any independently contracted work
2 for any Canyon entity.
3 A. You're mixing it up. One is as an employee and
4 one is as a consultant.
5 Q. Well, I'm confused because I'm not sure when
6 you're the employee and when you're the consultant. That's
7 the problem that I'm trying to bridge.
8 A. Okay.
9 Q. So you as a person, as an employee or as a
10 consultant, in any way you would like to define yourself,
11 other than for Canyon Agassi, have you performed any work of
12 any kind for any other Canyon entity?
13 A. Other than Canyon Agassi and -- no. No other
14 entity. If that's the question.
15 Q. Okay, so have you done any consulting work at
16 all for any other Canyon entity?
17 A. Different entity name?
18 Q. Okay, let's try it a different way. Canyon has
19 a bunch of different entities.
20 A. Yes, exactly.
21 Q. I wouldn't even begin to know them all. I
22 probably wouldn't be able to begin to know any of them. So
23 for any entity in any way, shape or form related to this
24 larger umbrella we'll just call Canyon, other than for
25 Canyon Agassi and Packard Square, have you done anything for

1 any of them?
2 A. Okay. So I've been on other construction
3 projects whereby Canyon was involved.
4 Q. Okay, let's talk about those. Can you identify
5 them?
6 A. I don't know if I can.
7 Q. What do you mean you don't know if you can?
8 Your memory doesn't work?
9 A. What do you want to know? The specific project
10 names?
11 Q. Yes, I'd like to know the names of the projects
12 you've worked on.
13 A. I'm not really sure of the entity names because
14 the developer's create.
15 Q. I didn't ask for the entity names. If it would
16 be easier for you to identify the project by its trade name
17 or its location and where it's located, I'm not asking you
18 to identify the Canyon entity name because, as we discussed,
19 there's so many of them, that would be really tough.
20 A. Okay. So prior construction projects that were
21 completed?
22 Q. Prior construction projects having anything to
23 do with any Canyon entity.
24 A. Completed projects or --
25 Q. Well, I was hoping you would just give me a

1 list and then we can talk about whether they were completed
2 or not.
3 A. Oh, okay. Let's see. There's a Third Avenue
4 project, a 56th Street project, and LIC project.
5 Q. You say L --
6 A. IC, yes.
7 Q. Any others?
8 A. No.
9 Q. All right, so Third Avenue, is that Third
10 Avenue in Manhattan?
11 A. Yes.
12 Q. Third Avenue and what?
13 A. 39th.
14 Q. And what was that project?
15 A. Condos.
16 Q. What was your involvement in that?
17 A. Construction consulting.
18 Q. And some Canyon entity was the lender?
19 A. I'm not sure what their specific role was.
20 Q. What was your relationship to Canyon as far as
21 this project is concerned?
22 A. Construction consulting. Retained to oversee
23 the payment applications and the progress of the work.
24 Q. But you don't know what Canyon's involvement
25 was.

1 A. No.
2 Q. Do you know if there was litigation involved in
3 that project?
4 A. No. There's none.
5 Q. And when was this, approximately?
6 A. It's underway.
7 Q. Still -- okay. How long has it been -- how
8 long have you been working on this project?
9 A. Couple of years.
10 Q. When is it supposed to be finished?
11 A. This year.
12 Q. And 56th Street, is that also in Manhattan?
13 A. Yes.
14 Q. And what avenue?
15 A. Seventh.
16 Q. What's that building?
17 A. Office space.
18 Q. What's Canyon's involvement with that?
19 A. Lender.
20 Q. And what's your role?
21 A. It's the same, construction consulting.
22 Q. And is that project still underway?
23 A. Yup.
24 Q. And when is that set to be completed?
25 A. Three years.

1 Q. Oh, it just started?
2 A. Yes.
3 Q. I see. What's LIC stand for?
4 A. Long Island City.
5 Q. And where is that project located? Do you know
6 the address?
7 A. 44th. 44th Drive.
8 Q. What is that development?
9 A. Residential.
10 Q. Like single family houses?
11 A. No. Multifamily.
12 Q. Apartment or condominium?
13 A. Condos.
14 Q. Do you know how many floors it is?
15 A. Six.
16 Q. How many units?
17 A. I don't know off the top of my head.
18 Q. And is this completed?
19 A. No. Just started.
20 Q. Just started. Earlier in your deposition you
21 asked about -- you said completed or not completed.
22 A. Mm-hmm.
23 Q. None of these are completed.
24 A. Correct.
25 Q. So were there other Canyon projects that you've

1 worked on that have been completed?
2 A. Yeah, but that was through Newbanks.
3 Q. Oh, okay. So that was more than -- so
4 approximately how many years ago?
5 A. At least six. Yeah, about six years.
6 Q. And were any of those multifamily --
7 A. Yes.
8 Q. -- construction projects?
9 Were any of them involved in any litigation?
10 A. No.
11 Q. Was there a project that you worked on on Bond
12 Street in New York City?
13 A. I'm sorry?
14 Q. Did you work on a project on Bond Street in New
15 York City?
16 A. Bond Street in New York City. Yes. It wasn't
17 in New York City though.
18 Q. Oh, where was it?
19 A. Brooklyn.
20 Q. Well, that's New York City. What was that?
21 A. It's a borough.
22 That was apartments, multifamily luxury
23 apartments.
24 Q. I'm sorry, what kind of apartments?
25 A. Luxury.

1 Q. Do you know the address?
2 A. Bond Street in Brooklyn, New York. I don't
3 know the exact number.
4 Q. All right, and when was that completed?
5 A. Two years ago.
6 Q. Was that a project Canyon was involved with?
7 A. Yes.
8 Q. So that doesn't jive with your testimony a
9 moment ago when you said there weren't any others.
10 A. Yes, there's a lot of projects. I forgot that
11 one.
12 Q. How many more Canyon-based projects are there?
13 A. In three years? In the past three years? Do
14 you want the other ones from --
15 Q. Well, I'm not so concerned about the ones that
16 you worked on when you were working with Newbanks. I'm more
17 concerned about the ones that you didn't tell us about --
18 A. I think that's the only other one.
19 Q. How many do you think there were, Canyon
20 projects, while you were working for Newbanks?
21 A. I couldn't even project. I was there for five
22 years. There was hundreds of projects I worked on. I don't
23 know how many were Canyon or another client.
24 Q. I see. Were there any projects while you were
25 working at Newbanks that you recall being involved in any

1 litigation?
2 A. I'm not aware.
3 Q. All right, other than these entities that we've
4 discussed you've been working on with Canyon, how many other
5 companies do you provide consulting services for?
6 A. Ten. Approximately.
7 Q. And so how many projects are you overseeing at
8 any given time?
9 A. Presently, six or seven.
10 Q. Well, if four of them are these Canyon ones
11 that we've discussed and there's only two or three -- what
12 are the other --
13 A. It's not four. One is completed.
14 Q. I thought they were all still underway. Third
15 Avenue and 39th, 56th and Seventh avenue, and Long Island
16 City I thought were still underway.
17 A. Seventh Avenue.
18 Q. 56th Street and Seventh Avenue.
19 A. That's one building.
20 Q. Third Avenue.
21 A. Right.
22 Q. LIC.
23 A. Right.
24 Q. Packard Square.
25 A. Oh, all right. I didn't know you were

1 including that one.
2 Q. What are the other ten companies? They must
3 not all have projects going on right now.
4 A. Correct.
5 Q. So what are the other ones you're working on
6 right now?
7 A. Other projects?
8 Q. Yes.
9 A. A project in New Rochelle.
10 Q. What's that? What kind of project is that?
11 A. That's apartments, multifamily.
12 Q. Who's your client?
13 A. I represent the owner.
14 Q. Do you know who that is?
15 A. Yes. Chechile.
16 Q. How do you spell that?
17 A. C-H-E-C-H-I-L-E.
18 Q. And what else are you working on right now?
19 A. A project in Marshall Gardens.
20 Q. What kind of project is that?
21 A. Multifamily.
22 Q. Who are you working for there?
23 A. CPC.
24 Q. What's CPC?
25 A. It's a lender.

1 Q. This multifamily, why is that different than
2 apartments? Is there a difference between the New Rochelle
3 development and the --
4 A. No.
5 Q. They're just all still apartments?
6 A. Yes.
7 Q. Any of them have retail on the ground floor?
8 A. Yes.
9 Q. Which one?
10 A. New Rochelle.
11 Q. Do you know the address of that project?
12 A. Huguenot Street.
13 Q. Huguenot?
14 A. Mm-hmm.
15 Q. In New Rochelle.
16 A. Mm-hmm.
17 Q. All right, what else are you working on right
18 now?
19 A. Another multifamily in Owego, New York.
20 Q. How do you spell that?
21 A. O-W-E-G-O.
22 Q. And who are you working for there?
23 A. CPC.
24 Q. Also the lender on that project.
25 A. Yes.

1 Q. Do you know the address of that?
2 A. 200 Front Street.
3 Q. And Marshall Gardens, what's the address of
4 that one?
5 A. I believe it's Marshall Road.
6 Q. Do you know the number?
7 A. No. 21 -- I'm not sure.
8 Q. Okay, have you -- have any projects that you've
9 worked on ever been involved in any litigation? Other than
10 Packard Square.
11 A. Yes.
12 Q. Which ones?
13 A. Hanson.
14 Q. What's Hanson?
15 A. Hanson Place. It's in Brooklyn. 1 Hanson.
16 Q. What was your involvement in that entity?
17 A. I was doing construction consulting. I wasn't
18 involved in anything else.
19 Q. Who were you working for?
20 A. Newbanks.
21 Q. Do you recall what the basis of the litigation
22 was?
23 A. I'm not sure.
24 Q. How do you know it was in litigation?
25 A. I'm copied on e-mails.

1 Q. Do you know who the lender was on that job?
2 A. Yes. Canyon.
3 Q. Oh, okay. And do you recall when that was?
4 A. Ten years ago.
5 Q. Any other projects you've worked on that have
6 been involved in litigation?
7 A. No.
8 Q. Just this one and Packard Square?
9 A. Yes.
10 Q. Have you ever been a party to a lawsuit?
11 A. No.
12 Q. Okay, so let's talk about Packard Square for a
13 minute. Who do you work for at Packard Square?
14 A. I work for Sidley.
15 Q. You work for Sidley?
16 A. Yes.
17 Q. Sidley Austin, the law firm that appeared on
18 this case?
19 A. Yes.
20 Q. How did that come about?
21 A. They retained me to provide services.
22 Q. They retained you to provide services?
23 A. Mm-hmm.
24 Q. That's the first involvement you had with
25 Packard Square?

1 A. No.
2 Q. Oh, okay. When did they retain you to provide
3 services?
4 A. I believe January, or November. November of
5 '16 maybe.
6 Q. Do you have a contract with Sidley?
7 A. Yes, I have an agreement with them.
8 Q. Where is that agreement?
9 A. What do you mean where is it?
10 Q. Where would you have a copy of that agreement?
11 A. Would you like a copy of it?
12 Q. Yes.
13 A. Oh, sure. It's not a problem. I thought you
14 had all the documentation that was -- I believe that was
15 sent over to you. I saw that in an e-mail.
16 Q. Sent over to whom?
17 A. To you I believe.
18 Q. You and I have been e-mailing?
19 A. Not from me. From Sidley.
20 Q. Sidley and I have been e-mailing?
21 A. I thought so.
22 Q. Really.
23 A. Yeah.
24 Q. Okay, what is the scope of your retention from
25 Sidley?

1 A. It's to provide or opine on any construction
2 related matters.
3 Q. Is Sidley in the construction business?
4 A. No. Not that I'm aware of.
5 Q. So how are they in a position to ask you to do
6 anything?
7 MR. DOLAN: Object to the form of the question.
8 Q. Well, I'll rephrase it in a different way. If
9 Sidley -- Sidley's a law firm, right?
10 A. Yes.
11 Q. So they don't hire -- do they normally hire --
12 have you ever been hired by a law firm before?
13 A. I'm not -- I don't know.
14 Q. You don't know?
15 A. I don't recall.
16 Q. Well, has Hourglass Assessment ever been paid
17 by a law firm?
18 A. No.
19 Q. Has Hourglass assessments ever been paid by
20 Sidley?
21 A. No.
22 Q. So who pays you?
23 A. I get paid by the development entity.
24 Q. What's that?
25 A. Whatever the project name is.

1 Q. So why does Sidley need a construction
2 consultant?
3 MR. DOLAN: Object to the form of the question.
4 You're asking her why Sidley needs one?
5 MR. MILLER: Yes, I'm asking her. Presumably
6 she's talked to people at Sidley why they would want to hire
7 her.
8 MR. DOLAN: That would be the foundation for
9 that question, wouldn't it?
10 MR. MILLER: I was trying to save some 25
11 minutes we lost.
12 MR. DOLAN: It was 13, but that's okay.
13 MR. MILLER: No, it was 25. But that's okay.
14 MR. DOLAN: No, it wasn't. It was exactly 13.
15 MR. MILLER: 13 minutes?
16 MR. DOLAN: Correct.
17 MR. MILLER: We walked in here at 10:35, we
18 started at 11.
19 MR. DOLAN: 10:42.
20 MR. MILLER: No, it was --
21 MR. DOLAN: I heard the thing.
22 MR. MILLER: You're wrong.
23 Q. Nevertheless, who do you work with at Sidley?
24 A. Liz Walker.
25 Q. How often do you communicate with her?

1 A. Monthly.
2 Q. And what did she ask you to do?
3 A. Initially?
4 Q. Sure, initially.
5 A. To review -- it wasn't anything specific
6 requested initially.
7 Q. Well, what did it become?
8 MR. DOLAN: I'm going to object to the form of
9 the question. That calls for privileged information, which
10 is why Sidley engaged her. So I'm going to instruct the
11 witness not to answer.
12 MR. MILLER: I'm sorry, are you representing
13 Ms. Van Curen?
14 MR. DOLAN: Today I am.
15 MR. MILLER: On what basis are you doing that?
16 MR. DOLAN: On the basis that I'm her attorney
17 for today.
18 MR. MILLER: You're her attorney for today?
19 MR. DOLAN: Correct. For this deposition.
20 MR. MILLER: Aren't you plaintiff's attorney?
21 MR. DOLAN: Yes.
22 MR. MILLER: You don't think there might be a
23 potential conflict here?
24 MR. DOLAN: No.
25 MR. MILLER: I don't see what the basis is for

1 you to refuse to let her answer. The lawyer and Ms. Van
2 Curen --

3 MR. DOLAN: You're asking her a question that
4 would compromise the privilege, the attorney-client
5 privilege.

6 MR. MILLER: No I'm not. I'm asking her what
7 the lawyer asked her to do.

8 MR. DOLAN: Right.

9 MR. MILLER: The lawyer doesn't have privilege.
10 It's the client's privilege.

11 MR. DOLAN: That's a work product question.

12 MR. MILLER: No it's not.

13 MR. DOLAN: Yes it is.

14 MR. MILLER: No it's not.

15 MR. DOLAN: Absolutely it is.

16 MR. MILLER: No it's not.

17 MR. DOLAN: Well, we disagree. I'm going to
18 instruct her not to answer that question.

19 MR. MILLER: What else are you going to
20 instruct her not to answer?

21 MR. DOLAN: You can see the engagement letter.

22 MR. MILLER: When?

23 MR. DOLAN: Can we get it now?

24 MR. MILLER: Yes, let me ask you another
25 question.

1 Q. What did they ask you to do?

2 MR. MILLER: You said -- she testified at the
3 beginning they asked her to do one thing. I'm asking her
4 what they subsequently asked her to do.

5 MR. DOLAN: What you should ask her is what is
6 her engagement. That's the part where you ask the question.
7 Not what did somebody say to you, because that asks for
8 privileged information.

9 Q. Okay, he doesn't have an objection. Go ahead.

10 A. My engagement is nonspecific. It's to provide
11 construction consulting services. Or opine on -- my
12 understanding is to provide construction consulting and
13 opine on any construction related matters.

14 Q. So in addition to Liz Walker, whom else do you
15 discuss those types of matters with?

16 MR. DOLAN: Object to the form of the question.
17 Go ahead and answer if you understand it.

18 A. I don't.

19 Q. Okay, well, you said you talked to Liz Walker
20 monthly. Who else do you speak with or communicate with in
21 any fashion about construction services at Packard Square?

22 A. That would be it.

23 Q. You don't communicate with anybody else?

24 A. Bruce I think is -- Bruce? Bruce.

25 Q. Bruce Frazier?

1 MR. DOLAN: You can ask the witness anything
2 you want.

3 MR. MILLER: I'm going to.

4 Q. Can we get the engagement now?

5 MR. DOLAN: Do you want to get it now?

6 MR. MILLER: We can get it while we're
7 proceeding. I'm not going to stop the dep.

8 Q. Is it readily available?

9 A. I could try to get it.

10 Q. Who's your lawyer?

11 MR. DOLAN: For what purpose?

12 MR. MILLER: For any purpose.

13 MR. DOLAN: For the deposition it's me.

14 MR. MILLER: So that means that Sidley is not
15 her lawyer so I can ask her anything I want about Sidley.

16 MR. DOLAN: No, for their consulting agreement
17 it's Sidley. They hired her. That happens all the time.

18 MR. MILLER: But I'm entitled to find out in
19 what capacity they've hired her.

20 MR. DOLAN: She has said exactly what capacity
21 they've hired her and offered to provide the engagement
22 letter. What more do you need?

23 MR. MILLER: I'm trying to find out what they
24 asked her to do.

25 MR. DOLAN: Okay.

1 A. Yes.

2 Q. You've never discussed anything at Packard
3 Square with anybody else?

4 MR. DOLAN: Wait, that's a different question.
5 You asked her if she consulted. Then you asked her if she
6 discussed. Those are two different things.

7 MR. MILLER: No, no. I'm not asking -- maybe
8 we're talking about two different things. Let me back up.

9 Q. I'm not asking you whether you were consulting
10 with them about legal information from them. I'm asking you
11 who you were communicating with in addition to Ms. Walker
12 about what you were doing for construction services. Were
13 you thinking that I was asking what they were talking to
14 you -- I'm asking who you were talking to.

15 A. Right. Bruce and Liz are the two people I
16 speak with.

17 Q. What about Mr. Dolan?

18 A. He's a different firm.

19 Q. No, no -- okay. I'm not asking who you're
20 talking to at Sidley Austin.

21 A. Oh, okay.

22 Q. I'm asking in general.

23 A. Okay.

24 Q. With whom do you communicate relative to the
25 Packard Square project?

1 A. Okay, Ben.
2 Q. Who else? Bruce you said.
3 A. Yes.
4 Q. Mm-hmm.
5 A. Liz.
6 Q. Mm-hmm.
7 A. And this firm here.
8 Q. What about Matthew Mason?
9 A. Matt Mason?
10 Q. Yes.
11 A. Is he an attorney?
12 Q. I didn't ask about an attorney.
13 A. Oh, I thought you were discussing attorneys.
14 Q. No, no.
15 A. Oh.
16 Q. No. Let's try this again. I acknowledge that
17 you said that you confer monthly with Liz Walker.
18 A. Mm-hmm.
19 Q. I'm asking who else in the entire world do you
20 discuss your consulting findings with related to Packard
21 Square.
22 A. Okay. So you have Ben, you have Bruce, you
23 have Liz, you have this firm, and Kevin Scholz, Canyon.
24 Q. Anyone else?
25 A. You want specific names?

1 Q. Yes, please.
2 A. Gerald.
3 Q. Gerald who?
4 A. Goldman. Marie Stamolis.
5 Q. Anyone else?
6 A. O'Brien Construction.
7 Q. That's it?
8 A. Yes.
9 Q. You've never talked to anybody at McKinley,
10 Inc.?
11 A. Well, Matt you said already.
12 Q. You didn't affirmatively state that you spoke
13 with him.
14 A. Oh, Matt McKinley. Matt and Trey.
15 Q. Trey?
16 A. Yes.
17 Q. Trey who?
18 A. Royal I think is his last name.
19 Q. Anybody else at McKinley?
20 A. I've spoken with Chris Allen. That's what I
21 recall.
22 Q. So when you talk to somebody, say, Kevin Scholz
23 for example, what are you discussing with him that's
24 different than what you're discussing with Liz Walker?
25 A. What I discuss with Kevin is the pay

1 applications and the payment -- recommending payment.
2 Q. Okay.
3 A. On the work that's in place.
4 Q. And how is that different from what you discuss
5 with O'Brien Construction?
6 A. It's not.
7 Q. How is that different with what you might
8 discuss with McKinley or Matthew Mason?
9 A. It's not.
10 Q. How is that different than what you discuss
11 with Liz Walker?
12 MR. DOLAN: You can tell him what the scope of
13 your engagement is with Liz and Bruce, but not the
14 specifics.
15 A. So we might discuss the schedule of the
16 construction --
17 MR. DOLAN: Let me stop because I think we're
18 getting into privilege. She's engaged, to help you out, for
19 consulting, expert services as part of the litigation by
20 Sidley. Those are different from reviewing draw requests
21 and pay apps.
22 So that's the distinction which she's having a
23 little trouble drawing, but that's it.
24 MR. MILLER: So am I because I'm at a loss as
25 to whether she's having different conversations about

1 different issues with Liz Walker than she's having with
2 Maria Stamolis for example.
3 MR. DOLAN: Well, what I'm telling you is she
4 is, but I don't want her disclosing the conversations with
5 Liz because that's the whole point of the privilege.
6 MR. MILLER: Let's try it a different way.
7 Q. What's the subject matter that you're
8 discussing, not the specifics, with Liz that's different
9 than what you're discussing with the folks from Canyon,
10 O'Brien or the receiver?
11 A. I'm sorry, ask the question again.
12 Q. Sure. You've named a number of people and
13 entities with whom you discuss or consult on the Packard
14 Square project.
15 A. Yes.
16 Q. And you talked about -- a couple of things you
17 talked about with Kevin Scholz for example. What I'm trying
18 to understand is what's the subject areas that you're
19 discussing with Liz Walker that's different than what you're
20 discussing with Maria Stamolis or Canyon or the receiver or
21 anybody at O'Brien for example.
22 A. It's all related to construction. Schedule,
23 payments, work in place. So it's all related to the same --
24 I'm a construction consultant so it's all related to the
25 same.

1 Q. So is it fair to say that you're having similar
2 conversations with Liz Walker as you're having with Gerald
3 Goldman?
4 A. Yeah, it's fair.
5 Q. So I'm trying to understand if there is any
6 difference at all between the types of conversations you're
7 having with Liz Walker or Bruce Frazier or any other
8 attorney versus what you're having with these other
9 non-attorneys.
10 A. I'm not really sure I understand the question.
11 Q. Okay.
12 A. I'm telling you that I discuss construction
13 related matters with all those parties, whether it's
14 regarding application or schedule or work in place or when
15 the project will be finished.
16 Q. Are there subjects that you only discuss with
17 Liz Walker that you don't discuss with the other people?
18 A. I'm not really sure.
19 Q. Do any differences come to mind?
20 A. No, not at the moment.
21 Can I take a break?
22 Q. I guess we can take like a five-minute break,
23 sure.
24 THE VIDEOGRAPHER: We're off the record. The
25 time is 11:42.

1 (Whereupon, a short recess was taken.)
2 THE VIDEOGRAPHER: We're back on the record.
3 The time is 11:54. This is the beginning of disk 2.
4 Q. Ma'am, we just took a break, we're back. And I
5 wanted to ask you about Packard Square. And I think you may
6 have discussed this.
7 You said that you review the pay applications,
8 correct?
9 A. Yes.
10 Q. What other items do you review on the Packard
11 Square project?
12 A. Drawings, liens, lien waivers, retainage.
13 Q. Do you inspect the property?
14 A. Yes.
15 Q. How often do you do that?
16 A. Monthly.
17 Q. The pay applications, do you approve those
18 before the payments are made?
19 A. Yes.
20 Q. And to whom do you communicate your approval or
21 disapproval?
22 A. Canyon.
23 Q. Who particularly?
24 A. Kevin.
25 Q. Kevin Scholz?

1 A. Yes.
2 Q. Do you review the receiver reports?
3 A. No.
4 Q. Have you ever seen a receiver report?
5 A. Yes.
6 Q. Do you see them -- in what context have you
7 seen the receiver reports?
8 A. I don't understand.
9 Q. Well, do you see the receiver report after it's
10 been issued? Is there a rhyme or reason to why you look at
11 the receiver report? I'm not really sure what you do with
12 the receiver report.
13 A. No, I've only seen one or two.
14 Q. When you say the drawings, what do you do with
15 the drawings?
16 A. Review them.
17 Q. In what fashion?
18 A. To review what's being built. The finishes.
19 Q. Do you change the drawings?
20 A. No.
21 Q. Oh. So the drawings were prepared a long, long
22 time ago. You're just looking at what's on the drawings?
23 A. Yes.
24 Q. You said the word "review." That may have been
25 where I got confused.

1 Have there been cosmetic design changes
2 different from the drawings at Packard Square?
3 A. Not that I'm aware.
4 Q. Well, who might be aware? Does somebody else
5 have the job to check the drawings other than yourself?
6 MR. DOLAN: Well, object to the form of the
7 question. She never said she had the obligation to check
8 drawings.
9 Q. Right. So if the drawings were changed, who
10 would -- is it your responsibility to compare any changes
11 made to the drawings?
12 A. Say it again.
13 Q. If there's a change made and the change is
14 different than what was in the drawing, do you review the
15 change before it's approved?
16 A. No.
17 Q. So who makes those decisions?
18 A. Well, that would be the architect.
19 Q. Who is that?
20 A. Tagle.
21 Q. Have you ever been involved in a conversation
22 with anybody from Canyon or the receiver about decisions
23 being made to change the building?
24 A. No. To just change it just for no reason?
25 Q. Change it for any reason. I'm asking about the

1 change first. Then we'll find out what it was for.
2 MR. DOLAN: You mean design changes?
3 Q. Design changes. Things that were changed from
4 the drawings.
5 A. Yes, I've seen that.
6 Q. Can you describe some of those design changes
7 from the drawings.
8 A. Well, some of them have to do with field
9 conditions.
10 Q. Well, I didn't ask you what they had to do
11 with. I asked you what they were. What were the changes?
12 MR. DOLAN: I think that's the answer, what
13 they were.
14 MR. MILLER: No, a field condition is not a
15 change. A field condition is a fact. I want to know what
16 the change was.
17 MR. DOLAN: Well, to accommodate field
18 conditions. I think that's what she's saying.
19 A. Yes.
20 Q. What was the change that was made to
21 accommodate the field condition? I asked what the change
22 was.
23 A. It has to do with shafts.
24 Q. Shafts?
25 A. Yes.

1 Q. What kind of shafts?
2 A. Mechanical shafts.
3 Q. How many shafts had to be changed because of
4 field conditions?
5 A. Well, they had to be increased in size.
6 Q. I didn't ask that. I asked how many shafts had
7 to be changed because of field conditions?
8 A. If that's the question, then none.
9 Q. Zero shafts had to be changed because of field
10 conditions?
11 A. Mm-hmm.
12 Q. Mr. Dolan seems to think it was field
13 conditions that caused the changes.
14 A. It is a field condition. There were new shafts
15 created and it changed it. I thought that's what your
16 question was.
17 Q. No. Ma'am, we're talking about the changes to
18 the design plan.
19 A. Yes.
20 Q. So I'm trying to understand what changes were
21 made to the design plans. You said you reviewed the design
22 drawings. I'm trying to understand what were the changes
23 that were made? Not why they were made. I'm trying to
24 understand what the changes were that were made.
25 MR. DOLAN: I'm just going to object to the

1 form and foundation of these questions. She identified the
2 architect who of course is responsible for design changes.
3 To the extent she knows the answer, she can answer.
4 A. Yes, in this particular matter there was a
5 steel beam in the way, and the original intended shaft could
6 not reach the rooms that it was supposed to because of the
7 steel beam being in the way. So new shafts had to be
8 created to allow heating and air conditioning to get to the
9 location that was planned.
10 Q. And what field condition caused this problem?
11 A. Steel beam.
12 Q. Do you know why the steel beam was in the way?
13 Was that on the drawing?
14 A. Yes.
15 Q. So it was just poorly designed?
16 A. It was a coordination. It wasn't coordinated.
17 Q. What does that mean?
18 A. The mechanicals weren't coordinated with the
19 structural drawings.
20 Q. So who installed the steel beam in the wrong
21 place?
22 A. I don't know.
23 Q. When did you notice the problem?
24 A. When the amenity space was being built.
25 Q. When did you notice the problem? I asked for a

1 time. When?
2 A. Oh, when?
3 Q. Yes. When. I've asked it twice now. Three
4 times. When did you notice the problem?
5 A. Couple months ago.
6 Q. And where in the building was the steel beam in
7 the way?
8 A. In the amenity space.
9 Q. What's your role, if any, in overseeing to make
10 sure that beams aren't installed in the wrong place?
11 A. That's not my role.
12 Q. Okay, so when you go to inspect every month,
13 what are you looking for if not mistakes like that?
14 A. Work completed.
15 Q. Work completed.
16 A. Yes.
17 Q. So who's overseeing to make sure that beams
18 don't get installed in the wrong place pursuant to the
19 drawings?
20 A. Well, the superstructure was up already prior
21 to my getting onto the site.
22 Q. That's not my question. That wasn't my
23 question at all.
24 MR. DOLAN: It is actually an answer to the
25 question. She said it was already up.

1 MR. MILLER: No, no. She just testified that
2 it was noticed a couple of months ago. So --
3 A. The duct work. Not the beam.
4 Q. When was the beam installed?
5 A. Prior to me getting on the site.
6 Q. What other changes did you find that were made,
7 cosmetic changes?
8 A. Cosmetic changes, I'm not aware of any.
9 Q. You're not aware of being on phone calls
10 discussing changing the ceiling tile?
11 A. No.
12 Q. Do you participate in weekly phone calls with
13 O'Brien Construction?
14 A. No.
15 Q. How often would you participate in those calls?
16 A. With who?
17 Q. With O'Brien.
18 MR. DOLAN: She just said she doesn't --
19 Q. You've never been on them?
20 A. No.
21 Q. Why are you listed in O'Briens notes as
22 participating in calls?
23 MR. DOLAN: You're asking her to speculate why
24 O'Brien did something?
25 Q. Have you ever met with them in person to

1 discuss these design changes?
2 A. I go to the site monthly and I meet with
3 O'Brien team.
4 Q. So you don't participate in the weekly OAC
5 meeting minutes?
6 A. Yeah, that's what takes place when I'm at the
7 site.
8 Q. You're not at the site weekly though.
9 A. Monthly.
10 Q. If you turn to Exhibit 28 in the book provided
11 for you as an example, are you familiar with this type of
12 document?
13 A. Yes. Mm-hmm.
14 MR. PASCOE: Is the exhibit going to go up on
15 the screen here?
16 THE VIDEOGRAPHER: Yes, I'm working on it.
17 MR. DOLAN: Can we have access to that?
18 MR. MILLER: You got it right there, Ben.
19 MR. DOLAN: No, but if there's something on
20 their screens --
21 MR. MILLER: It's the same thing on their
22 screen is the same thing that's in this book.
23 Q. Ma'am, I'm not really here to talk about the
24 substance of this document. I'm really just here to talk
25 about the document itself. It's defined as a weekly

1 meeting.
2 A. Yes.
3 Q. You're listed as the second person on the list.
4 Do you see that?
5 A. Yes.
6 Q. So are you saying that when you attend these
7 meetings you only attend them in person?
8 A. And I call in sometimes. Yes.
9 Q. So you do participate in weekly meetings?
10 A. I listen in, yes.
11 Q. Why did you just say you didn't?
12 A. You asked me if I have weekly calls with
13 O'Brien. This is a weekly meeting with a lot of other
14 people involved.
15 Q. Okay, but it's O'Brien -- O'Brien's the one
16 that sets the meeting, right? It's their meeting, is it
17 not?
18 A. No. It's an owner-architect meeting. OAC.
19 Q. Are there any owners on this call?
20 A. McKinley.
21 Q. McKinley is the owner?
22 A. Well, they're the receiver.
23 Q. But there's nobody from Canyon on the call,
24 correct?
25 A. No.

1 Q. And there's nobody from Sidley on the call, is
2 there?
3 A. No.
4 Q. So you're on the call. And these calls do
5 happen on a weekly basis, correct?
6 A. Yes.
7 Q. And during these times, are there ever
8 discussions about changing design specifications?
9 A. No.
10 Q. Never?
11 A. Not that I heard, no.
12 Q. Well, let's turn to the third page of Exhibit
13 28.
14 A. What page? I'm sorry.
15 Q. Third page. Page 3 of 6. Do you see that?
16 A. Yes.
17 MR. PASCOE: Can you put 3 of 6 on the screen
18 here so I can see the whole page.
19 Q. Do you see the box under 1/5/2018?
20 MR. DOLAN: The first text box at the top?
21 MR. MILLER: There's a box in the section under
22 January 5th, 2018.
23 MR. DOLAN: Yes, it's the first text box.
24 Well, there's a box above it. It has the same date.
25 Q. Do you see that, ma'am? Why don't you take a

1 second to read that to yourself.
2 A. (The witness reviews the document.)
3 Q. Have you read that?
4 A. Yes.
5 Q. So do you want to change your testimony about
6 changing design issues at these meetings?
7 A. This is a field condition.
8 Q. What's a field condition?
9 A. Why that was changed.
10 Q. Why was that changed?
11 A. Because of the ceiling height.
12 Q. Why would the height be relevant? This is
13 about --
14 A. Because the ceiling tiles have to end at a
15 wall, and there was openings in the partitions, which
16 wouldn't allow it. So in order to keep the continuity, it
17 had to be changed.
18 Q. So who made the decision to do this?
19 A. It says here McKinley.
20 Q. Well, do you recall this conversation?
21 A. No.
22 Q. Are there any other design changes that were
23 discussed at these meetings that you may now recall?
24 A. Well, the trash exhaust had to be changed.
25 That's a field condition.

1 Q. What was the condition that caused that to be
2 changed?
3 A. The inspector flagged it. And we had to change
4 it to meet the code.
5 Q. So what was the change?
6 A. The architect issued a drawing to enclose the
7 fire rated shaft.
8 Q. Just a quick question. How did you pick the
9 name Hourglass Assessment?
10 A. I just -- I don't know. There was no rhyme or
11 reason.
12 Q. It's an unusual name, that's why I asked.
13 We talked about this person earlier. Do you
14 know who Matthew Mason is?
15 A. Yes.
16 Q. Who is he?
17 A. The receiver.
18 Q. Is he the receiver? Or is he the agent for
19 McKinley who's the receiver?
20 A. I don't know.
21 Q. When did you first find out about Canyon
22 seeking a receiver over Packard Square?
23 A. I think in 2016.
24 Q. Can you be more specific, or no?
25 A. No.

1 Q. Do you recall how you were alerted to that
2 fact?
3 A. I don't recall.
4 Q. Do you even remember the person who made have
5 told you about it?
6 A. No.
7 Q. Well, you only deal with a few people. It had
8 to have been just one of a few people, right?
9 A. I'm sorry, I don't recall.
10 Q. When did you first learn about the -- that
11 McKinley and/or Matthew Mason would be appointed as the
12 receiver?
13 A. 2016.
14 Q. Right, I understand. Relative to learning
15 about a receiver being sought, did you at the same time find
16 out who the receiver was going to be?
17 A. No.
18 Q. Do you recall how much time elapsed before you
19 found out?
20 A. I really don't.
21 Q. When did you learn about O'Brien Construction
22 Company relative to the receiver being appointed?
23 A. It was around the same time.
24 Q. Who's Janine Getler?
25 A. Janine is an attorney.

1 Q. What's her relationship to you?
2 A. She's my attorney.
3 Q. She's your attorney.
4 A. Yeah. Well, this firm. Not Janine, this firm
5 is.
6 Q. Well, based on that document that you were just
7 looking at in front of you, number 28, she seems to be
8 involved in this case in some fashion. Can you describe her
9 involvement?
10 A. You'd have to look at her engagement.
11 Q. Well, you work with her -- how often do you
12 work with Ms. Getler on this project?
13 A. She visits the site.
14 Q. That's all she does?
15 A. She's an attorney, so she's involved in the
16 legal aspect of it.
17 Q. Then why does she visit the site?
18 A. I don't know, you'd have to ask her.
19 Q. Well, I'm asking you because you seem to work
20 together. What's her role with what you're doing? Does she
21 have a role in what you're doing?
22 A. No.
23 Q. What she does is different?
24 A. Yes.
25 Q. But she's not your attorney.

1 A. No.
2 Q. So you are on calls with her about this
3 project, correct?
4 A. Yes. We -- yes, we're on this call.
5 Q. Well, aren't you on more than just this call?
6 A. We're on this one -- yeah, we're on weekly
7 calls.
8 Q. So what's her --
9 A. Some she's on, some I'm on. Some we're on
10 together.
11 Q. What does she do -- what is the purpose of
12 her -- what does she do on these calls?
13 A. She listens and -- it depends on the call.
14 Q. Does she ever provide her opinion about how
15 things should be at the site?
16 A. Yes -- it's more what's going on on site.
17 Q. Like what? What types of things going on on
18 site?
19 A. What work is on -- how many workers are on
20 site, what's going on on site, if there's any delays.
21 Q. For whom does she work?
22 MR. DOLAN: Just objection to foundation. If
23 you know.
24 A. I don't know who she's retained by.
25 Q. You don't know if she works for Canyon or for a

1 different law firm?
2 A. I don't know.
3 Q. I see. How long have you two worked together?
4 A. On this project? Since 2016.
5 Q. No. I didn't ask that. How long have you two
6 worked together in any endeavor?
7 A. Seven years.
8 Q. What are the other projects that you and she
9 have worked together on?
10 A. We worked on Hanson together.
11 Q. Any others?
12 A. We worked on the Jefferson together. Third
13 Avenue, Long Island City.
14 Q. Any others? What's the Jefferson?
15 A. Condominiums.
16 Q. Where is that located?
17 A. New York City.
18 Q. Where in New York City?
19 A. 14th Street I believe.
20 Q. What was your role at the Jefferson?
21 A. I was a construction consultant.
22 Q. Who were you working for at that time?
23 A. Newbanks.
24 Q. What was Janine's role on that project?
25 A. I don't know.

1 Q. Well, what did she do at the Third Avenue and
2 39th Street project?
3 A. Third Avenue and 39th Street. She worked with
4 the developer.
5 Q. To do what?
6 A. I don't know.
7 Q. Well, what about the Long Island City project,
8 what did she do there?
9 A. I don't know her engagement scope.
10 Q. Well, how often are you on site with her at the
11 same time on any of these projects?
12 A. We -- you -- we work on the same projects but
13 it doesn't mean that we're doing the same thing together.
14 We don't work with each other. Like, we don't work -- she
15 doesn't engage me, I don't engage her. She's engaged for
16 one reason, I'm engaged for another.
17 Q. So I'm trying to understand what the reason
18 would be that somebody would engage her.
19 MR. DOLAN: Object to form.
20 A. She's an attorney.
21 Q. I understand that she may be an attorney by
22 trade. But when she's going to these projects and providing
23 opinion as to design, that's not acting as an attorney. So
24 I'm trying to understand what she does that's different than
25 what you do. And I'm asking you to describe it since you've

1 worked with her on three or four other projects already.
2 MR. DOLAN: I'm just going to object to
3 foundation and to form because she said although they worked
4 on the same projects, they don't work together. So it lacks
5 the foundation. But go ahead and answer if you can.
6 A. I don't know.
7 Q. After seven years you don't know what she does?
8 A. Yeah, I know she's an attorney.
9 Q. But is she out there trying the case?
10 MR. DOLAN: Same objection.
11 Q. I'm trying to understand what it is she's doing
12 on site. I'm waiting.
13 A. I don't have an answer for you.
14 Q. After seven years of working together on at
15 least four projects, you can't describe for me what it is
16 that she does at any of them?
17 A. I told you she's an attorney. She handles
18 legal matters. I don't know the exact scope of her
19 engagement.
20 Q. Do you ever travel with her to Packard Square
21 at the same time?
22 A. We did on -- initially, yes --
23 Q. What did you do when you'd go there?
24 A. -- in September.
25 Q. What did the two of you do when you went there?

1 I keep asking questions, you don't seem to want to answer
2 them.
3 A. We met with Craig.
4 Q. Okay.
5 A. And we looked at the project for the first
6 time.
7 Q. What was the purpose of her being there versus
8 the purpose of your being there?
9 MR. DOLAN: Again, objection to foundation. If
10 you know, go ahead and answer.
11 A. I don't know.
12 Q. Okay. Are you friends other than through
13 working together on some of these projects?
14 A. What does -- no, I mean --
15 Q. Do you socialize outside of work?
16 A. No, not really.
17 Q. Did you review anything prior to your
18 deposition today in anticipation of the deposition today?
19 A. I reviewed the deposition and some e-mails that
20 were shared with me by Ben.
21 Q. What deposition did you review?
22 A. The affidavit, I'm sorry.
23 MR. DOLAN: Her declaration.
24 Q. Oh, okay, the declaration. We'll certainly
25 talk about that.

1 Did anybody tell you what to say or what not to
2 say?
3 A. Regarding what?
4 Q. Your testimony today.
5 A. No.
6 Q. Did you speak to anyone at Canyon about today's
7 deposition?
8 A. No.
9 Q. Did you talk to any of the people at Sidley
10 about today's deposition?
11 A. No.
12 Q. What about anybody involved with the receiver?
13 A. No.
14 Q. Did you prepare for the deposition with
15 Mr. Dolan for example?
16 A. Yes.
17 Q. What about with Ms. Getler?
18 A. Yeah, we spoke.
19 Q. What did the two of you talk about?
20 A. Who?
21 Q. You and Ms. Getler.
22 A. What to expect from this because it's my first
23 one.
24 Q. What about the facts of the case or anything
25 like that?

1 A. No.
2 Q. Just to be clear, you're not an attorney.
3 A. No.
4 Q. Do you hold any licenses of any kind?
5 A. No.
6 Q. There's no architectural license or anything
7 like that?
8 A. No.
9 Q. You did go to school for architecture I think I
10 read, is that right?
11 A. Yes.
12 Q. Where did you go?
13 A. New York Institute of Technology.
14 Q. What was the degree that you got there?
15 A. A bachelor of science in architecture.
16 Q. Other than working for KGD, have you done
17 actual architectural work as far as drawing and designing of
18 buildings?
19 A. I've drawn, yes.
20 Q. For whom else have you done that?
21 A. Children's Village.
22 Q. Oh, okay. All right, great.
23 What does AIA stand for?
24 A. Architect Institute of America.
25 Q. Have you ever seen their construction forms?

1 A. Yes.
2 Q. Are you familiar with them as part of the
3 business that you perform?
4 A. With their forms, yes.
5 Q. In a standard development project --
6 A. Yes.
7 Q. -- what is a contractor and what do they do?
8 MR. DOLAN: You mean a general contractor?
9 Q. Yes, general contractor.
10 A. They construct the building.
11 Q. To whom do they normally report?
12 A. To whoever they're contracted to.
13 Q. What's a construction manager?
14 A. It's the same premise. It's just a different
15 format of the contract.
16 Q. What do you mean?
17 A. So a general contractor would be under a lump
18 sum agreement. Construction manager would be under a GMP
19 agreement.
20 Q. So they're both acting as general contractors
21 but they have a different name? Is that what you're saying?
22 A. Yes.
23 Q. What do developers rely on either a contractor
24 or construction manager to do?
25 A. What do what?

1 Q. What do developers rely on a construction
2 manager or a contractor to do?
3 A. To build the building.
4 Q. Can you describe how they get paid generally,
5 the contractor or construction manager?
6 A. Yes, they submit a requisition breaking down
7 the work, divisions, and that's how they get paid.
8 Q. Is there a fee involved for the construction
9 manager or the general contractor?
10 A. It's based on the total value of the contract,
11 yes.
12 Q. Is there a market rate for what that fee would
13 be? And if I'm not using the right phrase or term, if you
14 would correct me, I'd appreciate it.
15 A. Sure. It really depends on where you're
16 building. So yes.
17 Q. What's the standard general contractor fee in
18 New York City?
19 A. Well, again, it also depends on the size of the
20 project. If it's 10 million, the fee is higher. If it's 35
21 million, the fee would be lower.
22 Q. Okay, well, why don't --
23 A. So it just really depends.
24 Q. Well, are you familiar with the market in, say,
25 Ann Arbor, Michigan?

1 A. Yes, I am.
2 Q. What would be the going market rate for a
3 general contractor's fee in Ann Arbor, Michigan?
4 A. 5 percent.
5 Q. What are general conditions?
6 A. That's everything to get the building built.
7 That is not a hard cost.
8 Q. What's a hard cost?
9 A. The actual nuts and bolts of building the
10 building.
11 Q. So what are the types of things that wouldn't
12 be hard costs that would be general conditions?
13 A. A bathroom, Port-A-Potty, cleaning the road,
14 temporary utilities, labor.
15 Q. How does labor get paid for?
16 A. Through general conditions.
17 Q. Oh. Whose labor are we talking about now? Are
18 we talking about the general contractor or the
19 subcontractors?
20 A. It's both.
21 Q. Well, wouldn't the subcontractors' labor be
22 paid for through the subcontractors' own contract?
23 A. Right, but that's part of the overall contract.
24 Q. So if we looked at a pay application for a
25 subcontractor, would we be able to know how much of what

1 they were billing for was labor and how much was hard costs?
2 A. It depends on the subcontractor.
3 Q. What's a GMP?
4 A. Guaranteed maximum price.
5 Q. And what's a payment performance bond?
6 A. It's a -- there are two bonds, two separate
7 bonds that guarantee the performance of the work and the
8 payment of the work.
9 Q. Is that something you're used to seeing on a
10 construction project?
11 A. Yes.
12 Q. Are you aware of whether there's one in place
13 on the Packard Square project?
14 A. Yes.
15 Q. What do you know about it?
16 A. I know that there's one. There's a payment
17 bond and a performance bond.
18 Q. For whom? Whose bonds are --
19 A. Quandel.
20 Q. Are you aware of whether McKinley or O'Brien
21 has such a bond?
22 A. No.
23 Q. You're not aware or you're aware they do not?
24 A. They don't.
25 Q. Is that something that is of a surprise to you?

1 A. No.
2 Q. In what situations would there not be a
3 performance bond?
4 A. It's really at the discretion of the owner.
5 Q. Well, what would be the reason why somebody
6 would want a performance bond?
7 A. To guarantee the work would be completed.
8 Q. So wouldn't it be to the receiver's best
9 interests in this particular case to have such a bond with
10 O'Brien to make sure that the work is completed?
11 A. No.
12 Q. Why not?
13 A. Because this was a project that was underway
14 already. It's not from the ground up. So it was picking up
15 where someone else left off.
16 Q. Why would that affect having a bond?
17 A. Because there's just a lot of variables of what
18 work was in and what work was deficient or what work was not
19 done properly. So they're assuming a lot of that scope.
20 And it's difficult to get a bond for that type of project.
21 Q. Do you know if anybody tried in this case?
22 A. I don't know.
23 Q. Did you review the O'Brien contracts before
24 they were signed?
25 A. I saw them.

1 Q. Were you asked to give your opinion about them?
2 A. Certain parts of it, yes.
3 Q. What parts were you asked to give your opinion
4 on?
5 A. Retainage, withholding.
6 Q. What about their fees?
7 A. No.
8 Q. What about the scope of their work?
9 A. That's in direct proportion to the drawings.
10 Q. So that is something you looked at to compare
11 the drawings to what they were being asked to do?
12 A. No. It's in the -- document references the
13 drawings that it's linked to. So that's part of the
14 contract.
15 Q. Was there anything about any of the O'Brien
16 contracts that gave you pause in any way?
17 A. No.
18 Q. Everything about the contracts as presented you
19 thought were perfectly fine?
20 A. I didn't say that.
21 Q. Well, that's what I'm trying to understand.
22 Were there any problems -- I asked you if there were any
23 problems that you saw with the contracts.
24 MR. DOLAN: Well, object to the form of the
25 question. She didn't say she was responsible for reviewing

1 the contracts to determine if there were problems. She
2 didn't testify to that.
3 MR. MILLER: Okay, I thought she said she
4 reviewed the contracts.
5 Q. What was your purpose for reviewing the
6 contract?
7 A. I didn't say I reviewed the contract.
8 Q. You didn't?
9 A. No.
10 Q. What did you say?
11 A. I said that there's certain parts of the
12 contract that I saw. But I didn't actually review and opine
13 on the contract.
14 Q. Just so we're clear, not on any O'Brien
15 contract did you ever review or present an opinion to
16 somebody else about any of the terms of the contract?
17 A. Well, this project wasn't so clear cut where
18 there was a contract before the work. It was really
19 documented through the courts. And the court approval.
20 Q. I don't understand. Can you explain that to
21 me?
22 A. It was done in stages, so the first part of
23 this was winterization, which wasn't an actual AIA contract
24 to review.
25 Q. But at some point, whatever time of the

1 process, were you asked to review O'Brien's contracts before
2 they were signed by the receiver?
3 A. I honestly don't remember.
4 Q. If you had been asked to do that, who might
5 have asked you to do that?
6 MR. DOLAN: Objection. Calls for speculation.
7 MR. MILLER: Her own participation.
8 MR. DOLAN: She just said she doesn't remember.
9 Q. Do you recall ever reviewing the O'Brien
10 contracts and noticing anything that you thought were
11 problematic about them?
12 MR. DOLAN: I'm just going to object. She said
13 at least three times she did not review the O'Brien
14 contract.
15 Q. Ma'am, is that your testimony, you did not
16 review the O'Brien contract? That's what Mr. Dolan said you
17 said. Is that what you said?
18 A. I'm trying to remember, and I just don't
19 remember what I reviewed. Or what I didn't review regarding
20 the contract.
21 (Whereupon, CANIV 79047 through 79049 was
22 marked as Exhibit 57 for identification as of this date by
23 the Reporter.)
24 Q. Let's turn to Exhibit 57. Why don't you take a
25 moment and read this three-page e-mail string.

1 A. (The witness reviews the document.)
2 Okay.
3 Q. So it sure looks like based on your e-mail of
4 March 28th, 2017 at 12:59 p.m. which is on the last page of
5 this exhibit, that you were seeking to review the O'Brien
6 contract, isn't that correct?
7 A. No, I wasn't seeking to review it.
8 Q. You actually were asked to review it.
9 A. I don't see that here.
10 Q. Well, why would you respond with your comments
11 about insurance?
12 A. I know I wrote this, but this is not jogging my
13 brain as to why I sent this over.
14 Q. Well, it sounds like that Chris Allen from
15 McKinley sent it to you --
16 A. He sent it to a few people, yes.
17 Q. Regarding a conversation with contracts
18 attached and a \$9 million budget, and he's going to forward
19 you subcontractor contracts as well. Isn't that what it
20 states?
21 A. Yes.
22 Q. So clearly part of your obligation or what you
23 were asked to do is to review O'Brien's proposed contracts,
24 isn't that right?
25 A. No, because this ties into the payment

1 applications. So it was important to know what that dollar
2 value was and how it was actually bought out via the
3 subcontractor contracts.

4 Q. So why would you comment about "the second
5 phase of work is very light on insurance requirements"?

6 A. So this -- I'm not an insurance broker. And I
7 really don't recall why I sent this. This might have been
8 through an insurance broker that actually shared this
9 information and then I put it in here.

10 Q. Where is an insurance broker on this e-mail
11 string?

12 A. They're not.

13 Q. Okay, so here's what we have, Ms. Van Curen.

14 A. Yeah, I see that.

15 Q. You are under oath. We have an e-mail from
16 Chris Allen to you, Kevin, Gerald, Matt Mason and Liz
17 Walker.

18 A. Yes.

19 Q. You clearly must have had a conversation about
20 contracts.

21 A. Because we were switching from a winterization
22 cost of 2 point something from the court, and then we moved
23 to this 9.1.

24 Q. That's fine. That's not the question. The
25 question is, you were asked -- you must have been asked or

1 contract -- comments and revisions? If you look on the next
2 e-mail that was two and a half hours -- the next day and two
3 and a half hours later, he asked again, "Tina, did you have
4 any other comments? If not, we will move forward with the
5 contracts in order to proceed with the next phase." Do you
6 see that?

7 A. Yes, I see that.

8 Q. Because you had comments, because look at your
9 e-mail back just --

10 A. Yes, I did.

11 Q. -- 20 minutes later. What were your comments?

12 A. The form of the agreement was a question.

13 Q. What was your question about that?

14 A. That it was an open-ended agreement.

15 Q. And you said a GMP agreement is typically
16 required. Why were you concerned about it being an
17 open-ended agreement?

18 A. To control costs.

19 Q. So you were concerned that costs might be
20 excessive otherwise?

21 A. No. I just wanted to make sure that the
22 contract represented -- was something to control the cost.

23 Q. Can you explain why you were concerned that the
24 initial contract wasn't likely to control the costs?

25 A. I wasn't concerned that it wouldn't. It's just

1 you chose to take it upon yourself to offer that there was a
2 problem with the insurance requirements in the draft
3 contract. Do you see that?

4 A. Yes, I see that.

5 Q. Okay, so you obviously shared your opinion
6 about that; whether you were asked to or not you shared your
7 opinion, correct?

8 A. I sent an e-mail, yes.

9 Q. And then you were thanked by Mr. Allen, "Please
10 let me know if you have any further revisions I can
11 incorporate." So clearly you were involved in the
12 discussion of what the contract was ultimately going to say.
13 Otherwise, Mr. Allen would have had no reason to thank you
14 in that fashion, correct?

15 MR. DOLAN: Object to form and foundation.

16 Q. Correct, ma'am? If you can answer the
17 question.

18 A. What's the question?

19 Q. Clearly you were asked to review the contracts
20 if you were being invited to provide further revisions to
21 the contract.

22 A. No, I was not asked to review the contracts.

23 The lawyers were handling the contracts.

24 Q. Well, then why does Mr. Allen -- do you have
25 any explanation as to why Mr. Allen keeps asking you about

1 that my experience has been that it's best to have a lump
2 sum or a fixed price, a GMP in this case, as opposed to cost
3 of work plus a fee because then you don't know what the
4 costs are.

5 Q. Right. And then the next one, it sounds like
6 you were concerned about the contractor's fee as being 7.5
7 percent, is that right?

8 A. Yes.

9 Q. And why were you concerned about that?

10 A. It says right here, higher than typical for
11 size of project.

12 Q. Didn't you just testify that really the market
13 rate was only 5 percent?

14 A. Approximately, yes.

15 Q. And then the general conditions --

16 A. But that's for -- that percent, you said what's
17 the standard. That's based on a project that starts and
18 finishes with the same contractor, and there's no
19 interruptions. The whole fees and percentages, that all
20 changes when you start having a stop or remobilization or a
21 change in contractors or a change in subcontractors.

22 Q. But then why did you say this? You wrote this
23 in March of 2017.

24 A. Yes, I did write it.

25 Q. So you must have also been concerned. You're

1 not sharing the concerns you just raised with me now, you
2 didn't raise those then.
3 A. Raise what?
4 Q. You wrote that the fee is too high. You didn't
5 say well, it might be okay because of the type of project
6 that we're doing. No, no, that's not what you said. You
7 said it's higher than typical for the size of this project.
8 You didn't qualify it by saying well, but it's okay because
9 you're a new contractor. You were obviously concerned that
10 it was too high. Otherwise you wouldn't have written this,
11 right?
12 A. I flagged it, yes.
13 Q. So it was a concern to you. That's fair.
14 A. Okay.
15 Q. That's fair? You're agreeing with that?
16 A. That it was a concern?
17 Q. Yes.
18 A. Yes, that's why I wrote it.
19 Q. So let's look at the next one. "General
20 conditions total \$1,625,500 for a period of 14 months
21 covering March 1 to" I assume to April 30, 2018. "Amount
22 does not reconcile with amount in budget breakdown." Can
23 you explain that to me?
24 A. What exactly do you want explained?
25 Q. Ma'am, you wrote it. I don't know what it

1 means. Can you tell me what it means?
2 A. It means that the general conditions cover a
3 period of 14 months from March 1 to April 30th.
4 Q. Well, what about the next sentence that you
5 typed in bold?
6 A. Yes, it's referring to attachments. I don't
7 have the attachment here to opine on.
8 Q. That's not what it says. It says, "The amount
9 does not reconcile with the amount in the budget breakdown."
10 A. Attached, right. But that's not here.
11 Q. Well, that's true, it certainly isn't. But you
12 don't recall what you were referring to as what the
13 difference was in the budget breakdown?
14 A. I don't know the specific number, no.
15 Q. You don't recall?
16 You also noted that there were no attachments.
17 A. Yes. It was a draft.
18 Q. And were you concerned that there were items
19 that were omitted or missing?
20 A. No. It wasn't -- it was just a comment, a
21 comment to be sure that they're included. This was a draft.
22 Q. Okay, did you ultimately review and approve the
23 final version?
24 A. I did not, no.
25 Q. You're sure?

1 A. That's what I recall, yes.
2 Can I get more water?
3 MR. DOLAN: She wants to walk around for a
4 second.
5 MR. MILLER: I mean, okay. We can go off the
6 record for a couple of minutes.
7 THE VIDEOGRAPHER: We're off the record. The
8 time is 12:43. This is the end of disk 2.
9 (Whereupon, a short recess was taken.)
10 THE VIDEOGRAPHER: We're back on the record.
11 The time is 1:11. This is the beginning of disk 3.
12 MR. MILLER: So Ben, did you want to -- you
13 asked me something at the end of -- before the last break.
14 MR. DOLAN: Yes. I handed you the engagement
15 letter between Sidley Austin and Tina Van Curen. I needed
16 to review it and see if there were any redactions that
17 needed to be done to ensure that I didn't inadvertently
18 disclose something that's privileged. I will get back to
19 you tomorrow with either a complete unredacted version of it
20 or partially redacted. But I'll find that out within 24
21 hours.
22 MR. MILLER: Oh. I was under the impression
23 that you thought there was something for which you needed to
24 ask for it back. Now it's a little bit different.
25 MR. DOLAN: I need to determine that, so yes.

1 MR. MILLER: All right. Pressing on.
2 BY MR. MILLER:
3 Q. Welcome, everybody. Ma'am, are you familiar
4 with the phrase "force majeure"?
5 A. Yes.
6 Q. Do you know what it means?
7 A. I don't know the specific term.
8 Q. In what context are you aware of its existence
9 at all?
10 A. Due to uncontrollable events, something
11 happens.
12 Q. What does it mean for a project to be
13 competitively bid?
14 A. It means that it goes out to multiple vendors
15 to price out different scopes of work.
16 Q. Is that standard?
17 A. It's common.
18 Q. Is there a situation when you would not
19 competitively bid any scope of work?
20 A. I'm sure there is.
21 Q. Can you describe one of those reasons?
22 A. The size of the project might be one reason.
23 Q. Size too small?
24 A. If it's a small scope -- if it's a small scope
25 of work, or --

1 Q. Is there a situation here like in Packard
2 Square where you would believe that it would be appropriate
3 not to competitively bid the work that the receiver has been
4 doing?
5 A. There's some small scopes of work, yeah.
6 Q. Like, can you name one?
7 A. I can't really think of any at the moment.
8 Q. If not the bidder, can you think of the work
9 itself that you would think wouldn't need to have been
10 competitively bid?
11 A. Like sometimes if there's not enough companies
12 in the area that actually provide that service, that would
13 be a situation. Like metal is usually one of those areas.
14 Q. Metal?
15 A. Yes. Miscellaneous metals, decorative metal.
16 Welding.
17 Q. Does it depend on amount of money at issue, is
18 that one OF the factors you would consider appropriately to
19 bid or not competitively bid?
20 A. There's multiple variables.
21 Q. What are those variables?
22 A. Money, the size of the project, the scope being
23 bid. Or the fact if there's any viable -- multiple
24 subcontractors in the area.
25 Q. All things being equal, if everything was

1 perfect, what would your recommendation be to your clients
2 as to how many bids they should get for a particular sub or
3 a particular bid?
4 A. The industry standard is three.
5 Q. Three?
6 A. Mm-hmm.
7 Q. Why is that something you would suggest?
8 A. To make sure that the documentation is clear
9 that's being bid, and to see what the prices are.
10 Q. So by doing it, you could potentially get
11 better pricing.
12 A. Yes.
13 Q. Okay, that's a good reason.
14 When something has drawings completed and wants
15 to hire a contractor, is it common to have that whole scope
16 of work multiply bid?
17 MR. DOLAN: Can you repeat the question? Or
18 whoever does the repeating.
19 Q. I'll do it. If you're going to hire a general
20 contractor, you've got the whole thing drawn, would that
21 also be something that you would have bid by multiple
22 contractors? The whole general project as opposed to just
23 the subs?
24 MR. DOLAN: You mean the construction drawings
25 themselves?

1 MR. MILLER: No, I'm talking about doing the
2 work.
3 Q. The drawings are done, ready to hire a GC.
4 A. Mm-hmm.
5 Q. Would you agree with me that it would be
6 appropriate to competitively bid that as well as just a
7 particular sub for metals, for example?
8 MR. DOLAN: Just object to the form. Go ahead.
9 THE WITNESS: Answer it?
10 MR. DOLAN: Yes. If you understand what he's
11 asking, go ahead. I'm saying I don't but you might.
12 A. I'm sorry, can you repeat the question?
13 Q. Yes. Someone has drawings completed.
14 A. Yes.
15 Q. They want to hire a contractor.
16 A. Yes.
17 Q. Would they ever ask multiple contractors to bid
18 on the entire scope of work?
19 A. Would they ever? Yes, there's instances where
20 they would and then there's instances where they wouldn't.
21 Q. In which situations would you, as a
22 construction consultant, suggest to your client you
23 shouldn't bother, or you shouldn't go out and bid this to
24 multiple general contractors?
25 A. Well, see, the -- what contract are you talking

1 about? The overall GC?
2 Q. That's correct.
3 A. So it's bid within the divisions. Because the
4 actual contractor that oversees all of it isn't actually
5 performing the work. It's all through subs. So you would
6 bid all those subs out multiply.
7 So to say not to bid the GC contract,
8 ultimately what happens is if you were to do the GC
9 contract, the same subs are going to be called because
10 there's only a certain amount of subs in any given area. So
11 more than likely, if you had three GCs, those three GCs are
12 probably going to the same subs at some point because
13 there's only a certain pool of subs available in that area.
14 Q. Okay, but you would agree with me that it makes
15 sense to still competitively bid the general contract.
16 A. Yes, in a normal -- in a straightforward
17 ground-up, starting new contract, yes.
18 Q. How much time would you normally suggest, or
19 maybe what's normal in the industry to allow the proposed
20 general contractor to create their bid? Is there a general
21 timeline?
22 A. The process is six to eight weeks. Four to
23 six. It just really depends.
24 Q. Do parking lots always go in first in a
25 construction project like Packard Square?

1 A. Parking lots? Prior to what?
2 Q. First. I mean, is that the first thing that
3 would be installed in a multiuse project like Packard
4 Square?
5 A. As soon as you come into the site?
6 Q. Yes.
7 A. You have to demo whatever's there first.
8 Q. I'm talking about as construction goes.
9 Parking lots are first?
10 A. No. You would build the building first.
11 Q. How would emergency vehicles get access without
12 parking lots and roads?
13 A. They wouldn't.
14 Q. So what happens if there's a fire?
15 A. What's your -- I don't understand your
16 question. You asked me if that would be the first thing you
17 do when you come on a site? You have to build a building
18 first to have a parking lot around it. So you would build
19 the building -- you would do demo if there's demo,
20 obviously. Then you would build the building. Then you
21 would to have put in some type of means for the site for
22 vehicles to drive on.
23 Q. After the building is built?
24 A. Yes.
25 Q. So if in the midst of construction there were a

1 fire, the building would just burn to the ground because
2 there would be no way to access it for fire trucks? Because
3 there are no roads?
4 A. Is the building built?
5 Q. No, no. In the midst of building the building.
6 The building is not completed.
7 A. Okay. So there's fire extinguishers.
8 Q. Fire extinguishers.
9 A. Mm-hmm.
10 Q. What if there's nobody on the site when the
11 building starts to burn? How would the fire trucks get
12 there?
13 A. You would have to protect the site to keep
14 people from going into the site.
15 Q. Wouldn't you have to build temporary roads to
16 allow the fire trucks to get back there if they needed to or
17 other emergency vehicles?
18 A. Yes. You need a base for heavy vehicles to
19 drive on. But there's usually construction rip rap at the
20 entrances.
21 Q. What are frost laws?
22 A. Laws?
23 Q. Frost laws. Are you familiar with that phrase?
24 A. I don't know what frost laws are. Laws?
25 Q. Mm-hmm.

1 A. I know what frost is.
2 Q. Okay, what's frost?
3 A. When the ground freezes and thaws.
4 Q. Is there a situation where when the ground
5 freezes and thaws, that construction work can't be performed
6 on a building in the midwest?
7 A. Repeat the question.
8 Q. Yes. Is there a situation because the ground
9 is freezing and thawing that construction work can't be
10 performed in the midwest?
11 A. Well, when the ground is frozen it's hard to
12 dig.
13 Q. What if it's already been dug, what about other
14 construction, can't everything else be done during that
15 time?
16 A. Everything is in broad scope. So there's
17 certain trades that could be performed, yes.
18 Q. So what trades couldn't be performed while the
19 ground is freezing and thawing?
20 A. Utilities. Utility work you wouldn't normally
21 do. It's not that it can't be done. It's just that it's
22 not commonly done.
23 Q. When you're referring to utility work, you're
24 talking about underground utility work?
25 A. Yes.

1 Q. But if there's electrical work to be performed
2 in the building, that could certainly be done.
3 A. Yes.
4 Q. So what else can't be done?
5 A. When the ground is frozen?
6 Q. Because of -- are you not familiar with the
7 phrase "frost laws" in Michigan?
8 A. No.
9 Q. You're not, okay. So is there anything that
10 you're aware of that can't be worked on in the winter except
11 for digging into frozen ground?
12 A. In the winter, what can't you do. You can't
13 calk, can't do mortar -- anything that's subject to
14 temperature.
15 Q. So let's talk about construction. Is there a
16 benefit to be had for construction that moves faster versus
17 construction that moves more slowly?
18 A. Yes, you occupy it faster.
19 Q. What other savings are there?
20 A. Labor, general conditions.
21 Q. Insurance?
22 A. Well, my understanding of insurance is that you
23 buy it -- it doesn't matter the time that you buy it, as
24 long as buy it at the onset of the construction. So whether
25 you buy 18 months or 24 months, it's the same. That's my

1 understanding in the industry.
2 Q. Interest on money being lent to build the
3 building.
4 A. Yes.
5 Q. That would certainly be saved, sure. And you
6 said general conditions and construction fees would probably
7 be reduced.
8 A. General conditions I said.
9 Q. Not construction fees?
10 A. No, that's not what I said.
11 Q. Okay, would those be reduced?
12 A. Not normally, no.
13 Q. Have you reviewed a construction budget?
14 A. In my lifetime, yes.
15 Q. What types of things are normally included in
16 such a budget?
17 A. Hard costs, owner items, materials, labor.
18 Q. Would you expect to see support for the numbers
19 that are on the budget page, like bids and attachments?
20 A. Which page? I'm sorry.
21 Q. Okay, so if you look at a budget and the budget
22 has numbers on it and says we're going to spend \$500,000 for
23 this, 30,000 for this, \$2 million for this, when looking at
24 the budget as a construction consultant, would you expect to
25 see the support for those bid numbers, or do you just take

1 the page at face value?
2 A. It depends on what the budget was presented
3 for. If it's an initial estimate, no, it wouldn't.
4 Q. Well, I'm presuming -- my suggestion is -- what
5 I'm talking about is you have a budget created, it says this
6 is what we're going to do to build this building.
7 A. Mm-hmm.
8 Q. And it's going to cost X amount of dollars.
9 A. Right.
10 Q. Wouldn't it be appropriate to have the bids
11 that support the numbers or, as a construction consultant,
12 would you just be expected to assume that the numbers are
13 accurate on the budget itself?
14 A. No, you wouldn't have bids at that stage. Not
15 at early stage you wouldn't have that. You wouldn't have
16 bids available for that.
17 Q. Why does it have to be at an early stage.
18 A. You have to explain to me which budget you're
19 talking about, because through the life cycle of a
20 construction project there are multiple budgets that are
21 created. I'm not clear on which budget you're asking.
22 Q. In this case, for example, there have been
23 multiple budgets presented to the court.
24 A. Mm-hmm.
25 Q. Have you ever reviewed those?

1 A. The court documents? No.
2 Q. The budgets -- no, the budgets that were
3 submitted to the court for approval.
4 A. I've seen budgets, multiple budgets, yes.
5 Q. Okay, when you've reviewed those budgets, have
6 there been bids attached to them?
7 A. See, again, there's so many budgets, do you
8 have a sample of what budget you're referring to?
9 Q. No, because the budgets I have don't have bids
10 attached to them. I'm wondering if the bids you have --
11 A. No.
12 Q. You've never seen the bids themselves?
13 A. No. Not to the court, no.
14 Q. But you've seen budgets that have had bids
15 attached in this project?
16 A. No. An actual budget with bids, no.
17 Q. So what does your budget look like that you've
18 seen?
19 A. It's on an AIA form in G702. And it lists the
20 trades and the divisions and the costs.
21 Q. So you're relying on whatever the contractor of
22 that form has provided to you, but you haven't had the
23 opportunity to review to make sure that the numbers that
24 went into that form were supported by actual bids.
25 A. Well, it ultimately comes back -- it's

1 supported by subcontracts to engage them. That's how you
2 buy it out. That's a -- there's an initial budget and then
3 it develops and then as they get bids, that gets formalized.
4 So that's why I'm asking you. I'm not clear on which budget
5 you're referring to.
6 Q. Well, in the fall of last year, 2017 --
7 A. '17, okay.
8 Q. -- there was a budget presented to the court
9 for the costs it would take to finish Packard Square. Do
10 you recall reviewing such a budget?
11 A. Is this the GMP budget?
12 Q. I believe it is.
13 A. Because there's multiple budgets here. And can
14 I go back on something that you had inquired about with
15 regards to this?
16 MR. DOLAN: When you say "this," you gotta say
17 the number.
18 A. Number 57. You had inquired about it. You
19 realize this was the bridge amount, the \$9.1 million. This
20 wasn't regarding the actual GMP. This is the e-mail. I
21 just wanted to point that out.
22 And with regards to the insurance, this was
23 actually from -- there's an insurance specialist that
24 reviews the insurance work. And this was actually something
25 that I sent to them in trying to facilitate going forward to

1 review the actual insurance and get comments back faster.
2 So this was actually the words of Sterling that I cut and
3 pasted with regards to the insurance.
4 Q. Who's the insurance person?
5 A. Sterling. Sterling Insurance. So I just
6 wanted to clarify that to you.
7 Q. Okay, but I'm talking about the new receiver
8 loan --
9 A. Which is different from this one.
10 Q. Right. I'm done with that one.
11 A. Okay. I just wasn't sure it was clear.
12 Q. That's fine. No, I'm talking about the
13 receiver loan. There was a budget that was supplied to the
14 court that asked for a significant sum of additional
15 money --
16 A. Yes.
17 Q. -- to finish the building.
18 A. Yes.
19 Q. And my question to you is, did you review the
20 bids that went into that request based on the budget that
21 was presented to the court?
22 A. No, I did not review each and every bid, no.
23 Q. Okay, so did you just -- did you at all review
24 the bid itself? I'm sorry, the budget, did you review the
25 budget itself?

1 A. I saw the budget, yes.
2 Q. Did you think that the budget was high, low,
3 appropriate for the type of work that needed to be finished?
4 A. I didn't think of it either way. It's an
5 extenuating circumstance because the building was partially
6 done by another contractor and another -- and contractors
7 are picking it up. So it really is based on the current
8 market.
9 Q. But this was a year later you understand.
10 A. Yeah, I understand that. But yeah, exactly the
11 reason, the original GMP was probably two years prior to
12 that locked in. Labor prices change, material costs
13 increase. So I would expect it to be higher, yes.
14 Q. That wasn't my question. My question was,
15 looking at the budget that was presented to the court, did
16 you believe that the amounts and figures in it were
17 appropriate for the work that still needed to be finished at
18 the building?
19 A. Given the scope, yes.
20 Q. Okay, did you ever review any of the bids in
21 conjunction with that budget?
22 A. I received contracts. No. Not bids.
23 Q. So if there had been other bids, they were not
24 shared with you.
25 A. I don't recall seeing multiple bids presented

1 at one time.
2 Q. Was that something that -- were you hired to
3 review bids?
4 A. No.
5 Q. So that's beyond what you're supposed to be
6 doing.
7 A. Yes.
8 Q. That's what I didn't understand.
9 All right, is there a standard in the industry
10 of what a reasonable cost overrun would be?
11 A. No.
12 Q. So how do we determine what -- what is a cost
13 overrun? Is it a dollar? How is that defined?
14 A. A cost overrun is usually money, yes.
15 Q. But how much money?
16 A. It depends on the project and the position of
17 it. Every project is unique in its own situation.
18 Q. So in this project, for example, which is a
19 \$53 million project, what would be in your mind a reasonable
20 or appropriate, if there is one, cost overrun that would be
21 expected or acceptable?
22 A. It's not possible to answer that question.
23 Q. Why not?
24 A. Because it really depends on why it went over
25 budget and what the reasons were. If the same contractor is

1 staying in, if the same subs are staying -- I mean, there's
2 just so many different variables that it's not -- there's
3 not any set amount that you can expect. You set it up for 5
4 percent contingency. That's what you expect your overruns
5 in a perfect world where the building is built by the same
6 contractor that starts it and finishes it, that's what you
7 would expect.
8 Q. So anything less than that is within expected
9 norms, anything beyond that is beyond expected norms?
10 A. In a straightforward construction, yeah. I
11 mean, you prepare for 5 percent of cost overruns. That's
12 why you have a contingency.
13 Q. What is a cold dark shell?
14 A. A cold dark shell?
15 Q. Yes.
16 A. Is a structure that is cold and dark. I don't
17 know how to answer that.
18 Q. To what extent has there been construction done
19 in a space that's considered to be a cold dark shell?
20 A. Well, you can have an existing building where
21 the power is shut off and the heat is off and you walk in
22 and there's no lights and it's dark and cold.
23 Q. Does it have to do with whether there is or is
24 not flooring completed?
25 A. No.

1 Q. So it could have flooring, it could not have
2 flooring, it would be the same?
3 A. Yes.
4 Q. Do retailers ever need to put plumbing into the
5 ground under the ultimate flooring?
6 A. Usually, yes.
7 Q. And you would do that before the concrete is
8 poured so they don't have to cut it up and reinstall it
9 after the fact, right?
10 A. Usually. I've seen it done both ways.
11 Q. Which way is more economical?
12 A. To put it in before.
13 Q. Yeah, right. I have to ask this question
14 because it goes to the Michigan rules of evidence. Please
15 don't be offended. Have you ever been convicted of a
16 felony?
17 A. No.
18 Q. Have you ever been convicted of a misdemeanor
19 over the last ten years?
20 MR. DOLAN: It's for Michigan rules. He's not
21 trying to be offensive. It's just for rules that are unique
22 to depositions and testimony. Don't be offended by the
23 question.
24 A. Okay, I'm not.
25 Q. Have you been convicted of a felony?

1 A. No.
2 Q. Have you been convicted of a misdemeanor in the
3 last ten years?
4 A. No.
5 Q. Have you ever filed bankruptcy?
6 A. No.
7 Q. When did you first learn of Packard Square in
8 Ann Arbor?
9 A. When did I first learn? I'm still thinking
10 about your questions. I'm just trying to figure out the
11 placement of them.
12 When did I first learn about -- in 2016.
13 September I believe.
14 Q. And how did you learn about it?
15 A. Through Canyon.
16 Q. And who at Canyon contacted?
17 A. I believe Maria Stamolis.
18 Q. What did Marie ask you to do?
19 A. Needed assistance on a project.
20 Q. What about it?
21 A. Wanted to make sure that it was going to be
22 finished on time.
23 Q. Did she tell you she was concerned at that time
24 that the project wasn't going to be finished on time?
25 A. Oh, yes.

1 Q. What exactly did she say?
2 A. I don't recall.
3 Q. Do you recall why you first visited Packard
4 Square?
5 A. Yes.
6 Q. Why?
7 A. To review the project and get to understand
8 what was being built.
9 Q. And what were you directed specifically to do
10 when you arrived there?
11 A. Just to see what's going on in the project,
12 where it's at, what's being done. We met with Craig.
13 Q. Who all was there, if you recall, in addition
14 to yourself and Mr. Schubner?
15 A. Myself, Schubner, Gerald Goldman, Janine
16 Getler, and I think Kevin Scholz was there.
17 Q. Did Mr. Schubner take you around the project?
18 A. Yes.
19 Q. Where did you go in the project?
20 A. What do you mean? Throughout the whole project
21 we went --
22 Q. Every floor, every room?
23 A. Not every room. We went through the whole
24 building, through the corridors.
25 Q. Did you go up on the roof?

1 A. Yes, I did.
2 Q. How long did that all take?
3 A. I believe we were there five or six hours.
4 Q. What time did you arrive?
5 A. 9, 8:30.
6 Q. Did you leave to go to lunch?
7 A. I don't recall. Possibly.
8 Q. With Gerald and Kevin and Janine, you didn't
9 all go to lunch?
10 A. I don't recall.
11 Q. And so then you returned after lunch to the
12 project?
13 MR. DOLAN: I think she just said she doesn't
14 recall if she left for lunch.
15 A. I don't recall.
16 Q. You believe you believe there for five straight
17 hours?
18 A. Yes.
19 Q. And all of these other people were there
20 walking with you at the same time?
21 A. I don't know if Craig was with us.
22 Q. So it's your testimony that you, Ms. Getler,
23 Mr. Scholz, Mr. Goldman, I think that's all there were, all
24 walked through the project and it took you five hours to do
25 that?

1 A. We were at the site for five hours, yes. We
2 met with Quandel too afterwards in their trailers for a
3 while after that.
4 Q. After the five hours or inclusive of the five
5 hours?
6 A. No, inclusive.
7 Q. How much time was spent on the roof?
8 A. I don't recall. 30 minutes.
9 Q. You spent 30 minutes on the roof?
10 A. Yes.
11 Q. And how much time did you spend on each floor?
12 A. I don't recall.
13 Q. Did you go through the retail space?
14 A. Yes.
15 Q. How much time was spent there?
16 A. I don't know.
17 Q. How much time was spent in the parking garage?
18 A. I don't know.
19 Q. What was the mediation?
20 A. What's that?
21 Q. I'm asking you. What was the mediation?
22 A. I have no idea.
23 (Whereupon, CANIV 69231 through 69233 was
24 marked as Exhibit 64 for identification as of this date by
25 the Reporter.)

1 Q. Why don't you turn to Exhibit 64. Why don't
2 you take a moment and read through this three-page e-mail
3 string.
4 A. (The witness reviews the document.)
5 Q. Have you had a chance, ma'am, to review Exhibit
6 64?
7 A. Yes.
8 Q. Yes?
9 A. Yes.
10 Q. I'm going to direct you to the first e-mail
11 dated September 7 at 9:14 a.m. where it says, "Ed," I don't
12 know who Ed is, but Ed Schmitt I'm guessing from Canyon. Do
13 you know Ed Schmitt?
14 A. Yes.
15 Q. "Our two favorite people, Janine and Tina,
16 graciously offered to join the Packard Square team and
17 provide us with their industry knowledge and experience."
18 I mean, obviously you can't speak for Kevin
19 Scholz, but is there a reason why Kevin would refer to you
20 as Janine and you as his two favorite people?
21 A. He likes working with us.
22 Q. Well, was there something about the
23 relationship that was special?
24 A. No.
25 Q. Professionally. I'm not --

1 A. It is professionally, yes.
2 Q. I understand, but professionally special.
3 A. We work well together.
4 Q. Okay. And why does it seem again like it's
5 Janine and Tina as a team? You'll note that Ms. Getler
6 responds to the e-mail thanking Kevin and Ed.
7 A. Yup.
8 Q. So earlier we were talking about Janine's
9 role --
10 A. Yup.
11 Q. If you guys are a team or part of a team that
12 are two favorite people who seem to work together, I would
13 think that you'd be able to describe in more detail what it
14 is that Janine does.
15 A. I did -- I told you, she's an attorney. She
16 does legal matters. That has nothing to do with me. I'm in
17 construction, she's in legal.
18 Q. That's not what it says. It says "to provide
19 us with their industry knowledge and experience." It
20 doesn't say to provide us with additional legal authority.
21 A. Right, but it doesn't not say that.
22 Q. No, it doesn't not say that, that's true. But
23 I'm just -- didn't Canyon already have other lawyers? I'm
24 trying to understand if you know why they would need yet
25 another attorney.

1 MR. DOLAN: Object to foundation. Go ahead and
2 answer.
3 A. I don't know.
4 Q. Now, if you look at the Friday, September 9
5 e-mail from Ms. Getler, of which you were copied, it's the
6 top of page 2. Top of page 2, ma'am. Are you there?
7 A. I'm here.
8 Q. "The mediation timetable, Tina and I are
9 prepared to go out on Thursday." What is the mediation
10 timetable?
11 A. I have no idea.
12 Q. Well, when you got this e-mail, what did it
13 mean?
14 A. I was copied on it. It wasn't to me.
15 Q. Well, you've been copied on all of them.
16 A. Yes, but only one of them says something about
17 mediation.
18 Q. Well, no, let's look at page 1, Mr. Goldman
19 says, "I have not heard about the mediation." So evidently
20 Ms. Getler knew about the mediation but Mr. Goldman did not
21 know. And you don't know what the mediation is or was?
22 A. No. I wouldn't know.
23 Q. So you did not go out there for a mediation.
24 A. No. I'm not an attorney. I wouldn't be
25 involved in mediation.

1 Q. Well, do you have any idea what he's referring
2 to when he says "let's plan to meet Thursday and if we have
3 more information about the mediation, we can discuss and
4 react as needed"?
5 A. Where are you reading that from?
6 Q. The bottom of the first page.
7 A. That's the first page.
8 MR. DOLAN: Which e-mail is it?
9 MR. MILLER: The last sentence of the first
10 page. Right above --
11 A. Oh, this one?
12 Q. Yes.
13 A. Okay, what's the question?
14 Q. You don't have any idea what that means?
15 A. No.
16 Q. Now let's look at the top e-mail. It says you
17 could be in Ann Arbor by a.m. Were you at Packard Square by
18 10 a.m. or at 8:30, as you just testified?
19 A. I don't recall. I would say our flight was
20 very early in the morning. It was a 6:00 in the morning
21 flight, so 8:30, I would stick with that.
22 Q. You thought you were on site by 8:30 even
23 though Ms. Getler said you would be there by 10?
24 A. Yes. It also says our flights are very early
25 in the morning, which it was.

1 Q. Yes, and we could be in Ann Arbor by 10, does
2 that work.
3 A. Okay.
4 Q. So what were you asked to do -- let me ask it a
5 different way. Were you asked to do something different on
6 that date than Janine was asked to do that day?
7 A. I don't know what Janine was asked to do. I
8 know that I was asked to visit the site and see what was
9 going on.
10 Q. Okay, did you create a report?
11 A. Yes, I did.
12 Q. And to whom did you send the report?
13 A. I think it was to you. I think it was to Ben
14 Dolan.
15 Q. Why would you send a report to Ben Dolan?
16 A. Because I wasn't contracting with anybody at
17 that point. And that's who I sent it to.
18 Q. When did you send that report to Ben Dolan?
19 A. October.
20 Q. October.
21 A. Yes.
22 Q. You were there on September 16th and you sent a
23 report to Mr. Dolan in October.
24 A. Yes.
25 Q. Did you make notes when you were there on

1 September 15 or 16, or whatever the date was?
2 A. We took pictures.
3 Q. So other than the photos, there were no written
4 notes?
5 A. I don't recall. There's a good possibility
6 there was.
7 Q. Well, where would those notes be?
8 A. I don't recall. I honestly think it was photos
9 and just getting up to speed and listening to Craig on the
10 status of the project and what's going on. We were just
11 getting up to speed on the work that was underway.
12 Q. So then why would you give a report to
13 Mr. Dolan?
14 A. Because the report was inclusive of
15 documentation that I received afterwards, subsequently, from
16 Craig and Quandel.
17 Q. I'm still lost as to how Mr. Dolan gets into
18 this conversation.
19 MR. DOLAN: Yeah, and at that point, beyond
20 giving me the report, that's work product.
21 MR. MILLER: She wasn't your client then, sir.
22 MR. DOLAN: That doesn't matter.
23 MR. MILLER: Sure. It's her report. It's not
24 your report.
25 MR. DOLAN: I asked her to give it to me.

1 MR. MILLER: Where is the report? I've never
2 seen the report.
3 MR. DOLAN: Because it's work product.
4 MR. MILLER: When did you retain --
5 Q. Ms. Van Curen, when did Mr. Dolan retain you?
6 MR. DOLAN: It doesn't matter. Work product is
7 governed by attorney-client privilege. It's governed by the
8 work product doctrine. It's different.
9 MR. MILLER: I'm asking the question.
10 MR. DOLAN: Go ahead.
11 Q. When did Mr. Dolan or his firm retain you?
12 A. When he asked me for the report.
13 Q. And he paid you?
14 A. Did he -- no, he didn't pay me directly.
15 Q. Did you sign a retainer agreement with him?
16 A. No.
17 Q. Okay, so just so we're crystal clear, you
18 created a report.
19 A. Yes.
20 Q. And you think you created it in October.
21 A. Yes.
22 Q. So it was weeks after you were there.
23 A. Yes.
24 Q. And you didn't have notes. It was based on the
25 photos.

1 A. It wasn't based only on the site visit. It was
2 based on the documentation that Packard Square provided to
3 me. So it was based on the contracts that were in place
4 with Quandel. It was all work that was in place and
5 underway and ongoing. That's what the report was surfaced
6 around.
7 Q. When is the first time you communicated with
8 Mr. Dolan?
9 A. I don't recall.
10 Q. Was it within days of being on the site? Or
11 was it weeks?
12 A. I don't recall.
13 Q. What was completed at the site at the time of
14 that visit?
15 A. What was completed at the site? The
16 superstructure was up. There was no particular scope that
17 was fully completed.
18 Q. So nothing was completed as far as you're
19 concerned.
20 A. No, it was a construction site ongoing.
21 Q. Ongoing construction. Okay, did you assess the
22 status of the project at that point?
23 A. During the walk-through?
24 Q. Mm-hmm.
25 A. No.

1 Q. What were you looking for if not the status of
2 the project?
3 A. Well, you have to walk through the whole job
4 and you have to put it together. You don't just determine
5 right out in the field while you're standing there what
6 completion it is.
7 Q. When did you, if ever, do that and come to a
8 conclusion about what the status was at that point in time?
9 A. October.
10 Q. So in October you went back and reviewed it?
11 A. Yes.
12 Q. So going back a month in time, did you then
13 come to backdate in your mind what was the status back in
14 September when you were there?
15 A. Ask the question again.
16 Q. Yes. In October you just said you were able to
17 determine what the project status was --
18 A. Yes.
19 Q. -- at the point in time you were there in
20 September.
21 A. Mm-hmm.
22 Q. What was it? What was the status in September
23 when you were there after having reviewed the items in
24 October?
25 A. It was a construction project underway.

1 Q. Right.
2 A. The structure was up, there was very little
3 activity going on. There was maybe 20, 25 people working.
4 Quandel was there babysitting the project. There was panels
5 on the exterior going up or underway. They weren't actually
6 being -- I don't think they were being installed at the
7 time, I don't recall. There was some mechanical MEP roughs
8 started.
9 Q. Do you have an opinion at that time as to what
10 percent of the project was complete as of September 15th?
11 A. Yes.
12 Q. What is that?
13 A. That project with that current contractor and
14 the scope, because that plays a role into percent complete,
15 was probably at 55, 60 percent at best.
16 Q. Did you have an opportunity to make that type
17 of determination as it pertained to each of the major
18 trades? Like if I said what was the electrical as of
19 September 15th as far as percent complete, do you have an
20 opinion as to that?
21 A. You wouldn't do that. You would do month end.
22 And that was based on the applications for payment. That's
23 how you would do the electrical part of it.
24 Q. But you weren't there at the month end, were
25 you? You were only there the month middle.

1 A. After, right. So it would be projected through
2 August 31st for 9/15.
3 Q. Okay. So what was --
4 A. It would be based on the applications for
5 payment that were submitted.
6 Q. And you reviewed those?
7 A. I did.
8 Q. So do you recall what the status was of fire
9 suppression at that time?
10 A. I don't recall.
11 Q. Do you have it in your notes or report
12 somewhere?
13 A. It's part of the application process. So it
14 would be in the draw paperwork.
15 Q. That was presented by Quandel and the
16 developer --
17 A. By --
18 Q. -- in September?
19 A. By Craig, yes.
20 Q. Was the building substantially roughed in when
21 you were there in September?
22 A. No.
23 Q. It was not. To what extent do you think it was
24 roughed in? The fire suppression that is.
25 A. Fire suppression or mechanical rough-in?

1 Q. Fire suppression, and then we'll talk about the
2 others.
3 A. I don't recall.
4 Q. What about the plumbing, did you review the
5 plumbing?
6 A. Yes.
7 Q. And do you have a --
8 A. I don't recall.
9 Q. Where --
10 A. You're asking me for percent completes from two
11 years ago.
12 Q. Well, it was the first time you were there and
13 it sounds like you created a report. So it seems like it
14 would be a good starting point seeing it was your first
15 visit. Do you have those notes somewhere, or there are no
16 notes?
17 A. No.
18 Q. So would that also be true with electrical as
19 to what may or may not have been left to do with electrical?
20 A. The work was barely underway. It was in the
21 rough-in phase. There was very little mechanical MEP
22 rough-in in the job.
23 Q. When was the next time you visited?
24 A. January I believe.
25 Q. Why did you return that time?

1 A. I think there was concern about making sure the
2 building was protected because Quandel was fired at that
3 point. Or prior to.
4 Q. Were you aware of the arrangement that my
5 client had made to replace Quandel with a different
6 construction company?
7 A. I heard a name of another contractor, but I
8 wasn't -- I don't know any arrangements that were made. No.
9 Q. Gleason?
10 A. That was the name I heard.
11 Q. But you were not involved in any of that, you
12 didn't review their bid, you didn't review their contract,
13 nothing like that?
14 A. No.
15 Q. Did you agree with the pay applications that
16 Quandel had submitted that you reviewed?
17 A. No.
18 Q. You did not?
19 A. No.
20 Q. What didn't you agree about?
21 A. There's multiple. Usually I would send out an
22 e-mail. I'm sure that that was provided with a list of
23 items that needed backup or substantiation or didn't match
24 what was in the field.
25 Q. If Gaylor's pay application -- Gaylor was the

1 electrician.
2 A. Yes.
3 Q. If Gaylor's pay application said that they were
4 82 percent completed --
5 A. Yes.
6 Q. -- would you agree with that?
7 A. No.
8 Q. Do you have an opinion at all as to what they
9 were?
10 A. No.
11 Q. But not 82 percent.
12 A. Correct.
13 Q. Do you think it was even 50 percent?
14 A. There was quite a bit of material in a trailer
15 that they had. I understand. So without the inventory at
16 that point in time, no, I wouldn't be able to give you a
17 percentage.
18 Q. How many times have you been to the site?
19 A. Roughly 20.
20 Q. How often do you go?
21 A. Monthly.
22 Q. When is the next time you're scheduled to go?
23 A. May.
24 Q. Do you remember the date?
25 A. 3rd.

1 Q. May 3rd? And then not again until June?
2 A. Potentially the end of May. It depends on how
3 the schedule works.
4 (Whereupon, CANIV 71772 was marked as Exhibit
5 39 for identification as of this date by the Reporter.)
6 Q. Let me direct your attention to number 39,
7 please. Before we get to -- one more question back on
8 Gaylor. Did you subsequently learn what the inventory was
9 that Gaylor had in the trailer?
10 A. There was a lien process that was underway, and
11 that was submitted as part of that process.
12 Q. Did you go in and see what they had?
13 A. I did not. There was nobody available to
14 unlock it.
15 Q. 39. Have you -- do you recall this e-mail?
16 A. I don't recall it.
17 Q. Well, you were copied on it from Ms. Getler to
18 Mr. Mason. Do you see that?
19 A. Mm-hmm.
20 Q. And you're copied on it. "Hi, Matthew, I work
21 with Tina and Kevin whom you met on January 20th. Maria
22 Canyon has asked us to make two trips per month so I am
23 scheduled to make the next trip on February 10th."
24 Was there a time that you were going twice per
25 month?

1 A. No.
2 Q. Are you aware if there were times that Janine
3 was going twice per month?
4 A. Yes.
5 Q. So she was going twice per month but you were
6 only going once per month.
7 A. Yes.
8 Q. And you still don't know what she was doing
9 when she got there twice per month.
10 A. No, not specifically.
11 Q. Did you or Hourglass have a contract with
12 Canyon?
13 A. Yes.
14 Q. What were the terms of that contract?
15 A. To review pay applications.
16 Q. Did that arrangement ever change?
17 A. No.
18 Q. So when did you enter into the contract with
19 Canyon initially to review pay applications?
20 A. I think December or November.
21 Q. Nothing before that?
22 A. No.
23 Q. At the time that you went through the building
24 the first time on September 15th, what was the condition of
25 the drywall status?

1 A. Drywall was loaded in some areas but there was
2 no work underway.
3 (Whereupon, CANIV 69016 was marked as Exhibit
4 63 for identification as of this date by the Reporter.)
5 Q. Let me direct your attention to Exhibit 63.
6 Have you ever seen these e-mails before?
7 A. There's only one or two.
8 Q. There's two.
9 A. There's only one page.
10 Q. That's right. Two e-mails.
11 A. (The witness reviews the document.)
12 Okay.
13 Q. Do you see at the bottom where you were
14 directed to the e-mail from Kevin Scholz that there was
15 status of your amended engagement letter?
16 A. Mm-hmm.
17 Q. Do you see that?
18 A. Mm-hmm.
19 Q. That's a yes?
20 A. Yes.
21 Q. So this is September 26th. So in order to have
22 an amended engagement letter, there must have been an
23 initial engagement letter, wouldn't you agree?
24 A. Yes.
25 Q. So --

1 A. But I did not have an executed agreement at
2 all.
3 Q. So you went to work for Canyon without an
4 agreement?
5 A. That's correct.
6 Q. What was the terms of the unsigned agreement?
7 A. They were similar. And it was just a matter of
8 how often I would go.
9 Q. Well, when did you not -- when did you receive
10 the first engagement letter that you didn't sign?
11 A. Nobody signed it. Nobody signed the letter.
12 It was a draft attempt in determining the scope of the
13 engagement. And it got marked up. And then it had to be
14 revised. So amended isn't really the right word here.
15 Q. So what was in the original and what is in the
16 amendment and what was the final?
17 A. The only difference was between visiting the
18 site twice a month or once a month. That was the only
19 difference. Which is in the final engagement letter which
20 you have.
21 Q. Well, I don't because the final engagement
22 letter that I just gave back was from an entity that's not a
23 party to this e-mail string.
24 A. No, it was submitted to the court.
25 MR. DOLAN: Different engagement letter.

1 MR. MILLER: That's what I'm thinking. That's
2 not what she said.
3 Q. What's the engagement letter that you're
4 referring to? I got the one from Sidley he just handed me.
5 This one's from Canyon.
6 A. Right.
7 Q. I don't have an engagement letter from you from
8 Canyon.
9 A. Sure you do. It was issued through the courts.
10 Q. How would you know that?
11 A. Because they asked me for it. There was an
12 e-mail at one point about -- for the court and something was
13 discussed during court. And they needed a copy of it.
14 Q. How would you know if -- so somebody told you?
15 You don't have any personal knowledge.
16 A. Oh, yeah. I spoke with Ben about it.
17 Q. So Ben told you --
18 MR. DOLAN: Hold on.
19 MR. MILLER: It's her testimony. That's your
20 client.
21 MR. DOLAN: We're not testifying about what I
22 told you or you told me.
23 THE WITNESS: Oh, okay, I'm sorry.
24 MR. DOLAN: Those are privileged conversations.
25 But keep going. To the extent you can comment about other

1 things, that's fine.
2 Q. So ma'am, do you have any personal knowledge
3 that you ever -- it doesn't matter. Let's talk about the
4 engagement letter you didn't sign. What were the terms of
5 that letter? Did it provide a price, did it provide a scope
6 of work? What did it say?
7 A. It was to review the project status and to
8 review pay applications on a monthly basis.
9 Q. For how long?
10 A. There was no contract time.
11 Q. And what was the rate of pay?
12 A. Per visit was 5,500.
13 Q. And what were you going to -- what were you
14 charged to do or directed to do at each one of these visits?
15 Or was that up to you to decide?
16 A. I would meet with the contractor at the time
17 and review pay applications and subcontracts.
18 Q. How long did that take each time you visited?
19 A. Well, I didn't start -- that never happened --
20 it never materialized because Quandel was fired.
21 Q. So what was the amendment? That was just
22 instead of twice a month it was going to be once a month?
23 A. Yes.
24 Q. Did that letter ever get signed?
25 A. Yes.

1 Q. What were the terms of that letter?
2 A. The same letter.
3 Q. \$5500 to go once a month.
4 A. Yes.
5 Q. And to review pay applications with the
6 contractor.
7 A. Yes. The one prior was twice a month, \$7500.
8 Q. Per time? Per visit?
9 A. No. I'm not sure. I don't remember.
10 Q. And you go there for how long when you visit?
11 A. Four hours.
12 Q. And you include your travel time?
13 A. No.
14 Q. So you're getting \$1250 an hour?
15 A. Well, I go for four hours and then there's
16 travel time, right.
17 Q. I literally just asked you if that was
18 including travel time and you said no.
19 A. Well, I don't charge extra for the travel time.
20 So yes, it is included.
21 Q. How much time are we talking about for one of
22 these days for \$5500 including travel time?
23 A. It's probably like four days of work.
24 Q. Four days of work?
25 A. Mm-hmm. Three days.

1 Q. What do you do over the four days or three days
2 of work in addition to the visit? Or are you there for
3 three days?
4 A. No.
5 Q. Okay, can you describe what you do on a monthly
6 basis?
7 A. Okay, so I have to -- when I'm at the site I
8 walk the project, meet with the team to discuss the pay
9 application, review the pay application, and then afterwards
10 I -- I'll receive a finalized pay application, make sure the
11 changes were made and cross-reference all the documentation
12 that supports it and lien waivers and subcontracts for each
13 item.
14 Q. And how many hours does that take you to do
15 other than the site visit?
16 A. It's probably another two days of work, day and
17 a half of work.
18 Q. So it's 12 to 20 hours? I don't want to guess.
19 You tell me.
20 A. Yeah, it's about -- yeah, maybe 15 to 20 hours
21 overall.
22 Q. When did you first hear about a lawsuit
23 relating to Packard Square?
24 A. I don't know that. I don't know that I have a
25 date about it.

1 Q. Do you recall from whom you heard about it?
2 A. No.
3 Q. Do you recall the reason presented to you as to
4 why such a lawsuit was going to be filed?
5 A. No.
6 Q. You don't remember anything?
7 A. No. It's not my area of knowledge.
8 (Whereupon, CANIV 71799 was marked as Exhibit
9 38 for identification as of this date by the Reporter.)
10 Q. Let me direct your attention to Exhibit 38.
11 This October 20th and October 21st, 2016. Do you see that?
12 A. Yes.
13 Q. And so it looks like Maria Stamolis sends an
14 e-mail to you and Ms. Getler --
15 A. She copied me, yes.
16 Q. It's not really clear, but that's fine.
17 Can you recall and tell me why the last couple
18 of days/weeks have demanded a lot of your time?
19 A. Because we were getting up to speed on a
20 project that had been going on for a period of time and
21 there was a lot of documentation to review as far as the
22 contract -- the current contracts in place, the drawings,
23 where the pay applications were at.
24 Q. At this point were you aware that there had
25 been a change in the general contractors?

1 A. No. What contractors?
2 Q. Gleason took over for Quandt on October 17th.
3 MR. DOLAN: Object to the form of the question.
4 Q. You're not aware of that?
5 A. No.
6 Q. You're not aware of that?
7 A. No.
8 Q. Do you have an opinion as to what "this mission
9 critical" means?
10 A. I don't have an opinion for that, no.
11 Q. Do you have an opinion as to what "we are now
12 in a super time sensitive place" meant?
13 A. No, I don't.
14 Q. Do you know what -- what were the other things
15 you may have had going on at the time?
16 A. What's the question?
17 Q. What were the other things that you may have
18 had going on?
19 A. Life perhaps. I don't know.
20 Q. Did you have other business obligations, did
21 you have obligations to Canyon, did you have other site
22 visits you were going on? I mean, I don't know either.
23 A. Normal life. Course of life. Professional
24 life, yes.
25 Q. "Tina's affidavit must," all caps, "be

1 finalized and completed tonight or super early tomorrow."
2 What's that?
3 MR. DOLAN: What's the question?
4 MR. MILLER: What is she referring to?
5 MR. DOLAN: You're asking what Maria is
6 referring to?
7 MR. MILLER: Yes.
8 MR. DOLAN: Aside from what it says?
9 MR. MILLER: Yes.
10 MR. DOLAN: Object to the form of the question.
11 MR. MILLER: The e-mail is to her. It's
12 directed to Tina and Janine.
13 MR. DOLAN: You read the sentence and you said
14 what's that.
15 Q. I'll ask it a different way. What is Tina's
16 affidavit?
17 A. It's the affidavit submitted to the court.
18 Q. And why did it have to be finalized tonight or
19 super early tomorrow?
20 A. I have no idea.
21 Q. Did you ever ask what the rush was?
22 A. No.
23 Q. Did you just drop everything because Maria
24 asked you to?
25 A. No -- I worked on it. I didn't drop everything

1 I have to do. I worked on it.
2 Q. I meant in order to work on this. Did you drop
3 the other things you may have had going on?
4 A. I got it done is what I did.
5 Q. "Anything you have to move to make yourself
6 available for this so that by 9 a.m. PST tomorrow we are
7 complete with your affidavit. That's where this has to be."
8 You don't have any recollection as to why it was so urgent?
9 A. No, I don't know.
10 Q. No idea at all?
11 A. No.
12 Q. All caps, "Please, please coordinate with our
13 local counsel and be in communication about logistics now."
14 What was that referring to?
15 A. I don't know. It has to do with the affidavit.
16 Q. What were the logistics?
17 A. I have no idea.
18 Q. Okay, let's look at Janine's response. Do you
19 recall speaking with Janine about this "assignment"?
20 A. Yes.
21 Q. What did you guys talk about?
22 A. About the status of the project and what was
23 finished and what wasn't. Normal construction stuff.
24 Q. Why would you be discussing construction stuff
25 with Janine? That's not a legal issue, is it?

1 A. Well, the affidavit is.
2 Q. Did she draft the affidavit?
3 A. I don't know who drafted it.
4 Q. Did you draft the affidavit?
5 A. It was a legal form. I filled it in, yes. I
6 assisted in filling it in, yes.
7 Q. Okay, "We're going to turn this in the morning
8 and are scheduled to speak about it first thing tomorrow
9 morning to put the finishing touches on it. We are both
10 working on it and both sensitive to the timeline."
11 So Tina. What made you sensitive to the
12 timeline?
13 A. I don't understand.
14 Q. Maria is in a rush to get something done.
15 A. Yes.
16 Q. You testified that that's your affidavit.
17 A. Yes.
18 Q. You don't know why it was such a rush, but
19 according to Janine, you and she are both sensitive to the
20 timeline.
21 A. Right.
22 Q. What was it about the timeline that you were
23 sensitive about?
24 A. To get it completed.
25 Q. What was the rush?

1 A. I don't know what the rush was. Ask her.
2 Q. Well, I would love to. But I'm asking you
3 because according to this, you were sensitive to the
4 timeline.
5 A. I didn't write that. Janine wrote that. And I
6 was getting -- if I'm told to complete a task and there's
7 timelines in the professional world that you're given, you
8 try to hit them. That's all I know.
9 Q. And you have no recollection as we're sitting
10 here today why it was such a rush, why Maria needed it that
11 way?
12 A. No, I don't.
13 Q. "Please know we will do our best...thank you
14 for including us."
15 A. I don't see that part, but okay.
16 Q. It's the last sentence of Janine's e-mail.
17 "Thank you for including us and please know we will do our
18 best."
19 A. Oh, here it is. Okay.
20 Q. You found it?
21 A. Yes.
22 MR. DOLAN: You just read it backwards.
23 MR. MILLER: I acknowledge that.
24 Q. So what was your best that you were going to
25 do?

1 A. Complete the affidavit.
2 Q. That somebody else prepared for you. Don't
3 look at him.
4 MR. DOLAN: Object to the form of the question.
5 The reason she's looking at me is because she already
6 testified that she assisted in filling in the affidavit.
7 Now you're trying to get her to say that someone else did
8 it. You can ask these tricky kinds of questions all day if
9 you want, but I'm pretty sure she answered the question.
10 Q. Somebody else prepared the affidavit and you
11 had to review it and sign it.
12 MR. DOLAN: That's not what she said.
13 Q. Well, tell me.
14 MR. DOLAN: She already did. You're ignoring
15 her testimony, or you're just not listening. I don't know
16 which.
17 Q. Do you recall who prepared the affidavit?
18 MR. DOLAN: Object to the form of the question.
19 She already asked and answered that. Or you asked that, she
20 answered.
21 Q. Ma'am, you don't get to not answer. He lodges
22 his objection and then you answer it.
23 MR. DOLAN: You want a different answer or the
24 same one?
25 MR. MILLER: No, I want her to answer it.

1 Maybe I wasn't paying attention because I was reading the
2 e-mail. I'd like her to tell me the answer.
3 A. What's the question?
4 Q. Who prepared your affidavit?
5 A. I assisted in writing it, yes.
6 Q. Who prepared your affidavit?
7 A. I don't know.
8 Q. It just materialized out of thin air.
9 A. Just like earth, yes.
10 Q. Interesting.
11 MR. DOLAN: You have to change the tape?
12 THE VIDEOGRAPHER: Yes.
13 A. Good, because I'd like to take a break.
14 Q. You don't get a break. That's not how it
15 works.
16 MR. DOLAN: Yes it does.
17 MR. MILLER: There's no predetermined "I get to
18 take a break."
19 MR. DOLAN: She can take a break any time she
20 wants.
21 MR. MILLER: Well, the problem with that is
22 that we've wasted at least an hour of my time. And we've
23 got a lot to get to.
24 MR. DOLAN: I disagree with that.
25 MR. MILLER: You can disagree all you want.

1 MR. DOLAN: But she gets to take breaks. This
2 isn't a prison. You can't hold her here. If she wants to
3 get up and walk around and stretch her legs, she could do
4 that.
5 MR. MILLER: Is that what you told her?
6 MR. DOLAN: I'm telling you that. She also can
7 take a bathroom break or water break, whatever she wants.
8 The fact that you ask irrelevant questions that extend this
9 deposition as long as it should be your problem.
10 Q. In addition to the report that you prepared in
11 October, have you done any additional reports?
12 MR. DOLAN: I'm just going to object to the
13 extent it calls for privileged information. But beyond
14 that, go ahead and answer.
15 MR. MILLER: I didn't ask what was in the
16 report. I asked if she did any reports.
17 A. Yes.
18 Q. And how many reports have you done?
19 A. I don't know the exact quantity.
20 Q. Do you do one every month when you go to the
21 site?
22 A. Yes.
23 Q. To whom do you send those reports?
24 A. Liz.
25 Q. Directly to Ms. Walker?

1 A. Yes.
2 Q. Anybody else?
3 A. I don't recall.
4 Q. What about to Ms. Getler?
5 A. I'm not sure.
6 MR. MILLER: Let's take that break then.
7 THE VIDEOGRAPHER: We're off the record. The
8 time is 2:14. This is the end of disk 3.
9 (Recess taken.)
10 THE VIDEOGRAPHER: We're back on the record.
11 The time is 2:25. This is the beginning of disk 4.
12 BY MR. MILLER:
13 Q. All right, ma'am, we were talking about reports
14 when we took that break. I would like to direct your
15 attention to Exhibit 86, please.
16 (Whereupon, CANIV 59851 was marked as Exhibit
17 86 for identification as of this date by the Reporter.)
18 Q. This again is an October 19 in the afternoon.
19 A. Mm-hmm.
20 Q. And it talks about photos.
21 A. Mm-hmm.
22 Q. Do you see that?
23 A. Yes.
24 Q. It's interesting, she sent -- maybe I should
25 ask it a different way. Did Janine have the photos?

1 A. I don't know.
2 Q. Well, it says she wrote "doing that now" a few
3 minutes after the request was made. And then you responded
4 four and a half hours later. Do you see that?
5 A. Yes.
6 Q. Do you have an explanation as to what took you
7 so long to respond?
8 A. No.
9 Q. Do you believe that Ms. Getler had the photos,
10 or you had the photos?
11 A. I'm not sure.
12 Q. Is it normal --
13 A. Apparently we both had them.
14 Q. Oh, okay, did you give them to her?
15 A. I don't know.
16 Q. Is it normal for her to speak for you, to imply
17 that when it says "doing that now" and it was directed to
18 the both of you, that that just meant she would ask you to
19 take care of it?
20 A. No.
21 Q. Let's look at Exhibit 79, please.
22 (Whereupon, CANIV 59859 was marked as Exhibit
23 79 for identification as of this date by the Reporter.)
24 Q. We talked about this earlier. According to
25 your e-mail, same day, October 19, you never sent a formal

1 report with pictures.
2 A. Okay.
3 Q. So did you prepare a report when you saw
4 Packard Square in September thereafter, or you did not send
5 a -- create a report?
6 A. No, I did.
7 Q. When did you do that?
8 A. After October 19th.
9 Q. And you sent that to whom again?
10 A. I don't recall.
11 Q. I thought you testified a moment ago that you
12 sent your reports to Liz Walker.
13 A. Yeah, I'd have to look and see who the report
14 is to. I don't recall. I do send my reports to Liz Walker.
15 Q. But you were not retained by Liz Walker in
16 October of 2016.
17 A. That's correct.
18 Q. Why would you send them to her?
19 A. I didn't say I sent it to her. I said I -- you
20 made a comment that I send my reports to Liz Walker, and I
21 concur yes, I do. Now I do.
22 Q. But from September 2016 to February 2017 you
23 did not.
24 A. February when?
25 Q. 2017. That's when you got retained.

1 A. Right.
2 Q. So who did you send your reports to then? You
3 don't remember?
4 A. Yeah, I don't know.
5 Q. Prior to today, have you been represented by
6 the Dickinson Wright law firm?
7 A. No.
8 Q. Is it possible to get from you the engagement
9 letters, the reports, the other documents you made reference
10 to today?
11 A. Sure. I don't see why not.
12 Q. Are they stored on Dropbox or are they at your
13 office on your hard drive?
14 A. They are not on Dropbox.
15 Q. They're on your hard drive?
16 A. Mm-hmm.
17 Q. Are you aware of any foundation settlement in
18 the retail wings at Packard Square?
19 A. Yes.
20 Q. What do you know about those?
21 A. I know that one of the footings was not
22 installed as it was required to be. And it caused the floor
23 above to have cracks in it.
24 Q. Do you recall if that was repaired?
25 A. Yes.

1 Q. Do you recall when it was repaired?
2 A. In 2017 at one point.
3 Q. Do you know by whom?
4 A. I don't know the name of the sub off the top of
5 my head.
6 Q. Do you recall what it cost?
7 A. No.
8 Q. Well, I'm going to address your attention to
9 Exhibit 82 and see if that might refresh your recollection.
10 (Whereupon, CANIV 59805 was marked as Exhibit
11 82 for identification as of this date by the Reporter.)
12 Q. The first e-mail dated December 14, 2016 at
13 10:49 p.m., the one on the top talks about Kent Companies
14 invoicing \$66,695 for install of helical piers.
15 A. Mm-hmm.
16 Q. And that was fully funded, correct?
17 A. Mm-hmm. Right. That was prior to.
18 Q. Prior to what?
19 A. This work was prior to me visiting the site.
20 Q. So is it your testimony that there was
21 additional installation after this work was done?
22 A. Yes.
23 Q. And you have no recollection as to who did that
24 or how much it cost?
25 A. This particular e-mail trail was trying to

1 determine who actually installed it to begin with and what
2 the amount that was paid out. So that's what this was.
3 This was research to determine who was involved in the
4 process to begin with when it was built.
5 Q. Well, it was ELS Construction I believe that
6 installed the piers and footings to begin with. But I think
7 the Kent Companies was there to do, like, a repair job on
8 what somebody else didn't do. Do you have any recollection
9 of that?
10 A. Here it says that they did -- they installed
11 helical piers. So I don't know -- I don't recall.
12 Q. Do you know anything else about the foundation
13 settlement or any of the repairs that were done to it?
14 A. Yeah, I know that helical pier was installed
15 underneath the footing that was not -- was failing. And
16 there was some ground vibration put into place, equipment
17 put into place to monitor the movement of the building.
18 Q. So you're saying that there were additional
19 helical piers installed after the ones installed by Kent
20 Companies.
21 A. One.
22 Q. One pier.
23 A. Yes.
24 Q. But you don't know by whom.
25 A. I don't recall.

1 Q. Did you ever review the Quandel GMP statement
2 of cost?
3 A. They submitted that with their prior
4 applications.
5 Q. Did you ever review it?
6 A. Not all of them. Only I think rec 19. I
7 believe.
8 Q. Let's look at Exhibit 6.
9 (Whereupon, Statement of Proposed Guaranteed
10 Maximum Price was marked as Exhibit 6 for identification as
11 of this date by the Reporter.)
12 Q. Have you ever seen this document before?
13 A. No.
14 Q. Did you ever do an analysis of the owner direct
15 hard costs when you went in there in September-October 2016?
16 A. Yes.
17 Q. Did you compare it to the Quandel GMP in order
18 to figure out what the dollar amounts were?
19 A. Yes.
20 Q. But not this particular version of it?
21 A. I don't believe so, no.
22 Q. Were you aware of what Quandel's budget was for
23 base and casing material? In this version it's in division
24 6.
25 A. Yes, it's an allowance. And on this particular

1 form it's an allowance for 50,000.
2 Q. Right. And millwork a million. Do you see
3 that?
4 A. Yes.
5 Q. What about off-site sanitary? Looks like
6 200,000, on the next page.
7 A. Okay.
8 Q. And then there were toilet accessories also,
9 \$60,000, also on page 2. Right?
10 A. Yes.
11 Q. So you add those up, it's about \$1.3 million.
12 A. Okay.
13 (Whereupon, CANIV 59757 and Attachment was
14 marked as Exhibit 78 for identification as of this date by
15 the Reporter.)
16 Q. Let's look at Exhibit 78. Have you had a
17 chance to review those two pages? "Attached is a
18 spreadsheet I previously created." Do you see that?
19 A. I'm still reading it. (The witness reviews the
20 document.)
21 Okay.
22 Q. So did you create the document that's page 2 of
23 Exhibit 78?
24 A. Yes, it looks like my form.
25 Q. Is that the spreadsheet that you previously

1 created showing owner direct items and monies paid toward
2 those line items totalling \$3.4 million? I'm reading that
3 on your other e-mail.
4 A. Yes.
5 Q. So what is the actual rec cost?
6 A. Red cost? I don't understand.
7 Q. Rec cost. It's one of your columns there.
8 A. Rec cost.
9 Q. Yes.
10 A. This is recommended cost.
11 Q. What's the total?
12 A. 5.5.
13 Q. \$5,586,991.87.
14 A. Yes.
15 Q. Correct?
16 A. Yes.
17 Q. And you showed the Quandel budget as being
18 \$4,056,442. Do you see that?
19 A. Where is that?
20 Q. Same document.
21 A. Yes.
22 Q. So on October 2016 you showed a \$1.5 million
23 cost overrun, correct?
24 A. Where do you see that?
25 Q. I'm subtracting actual rec cost from Quandel

1 budget.
2 A. Yes.
3 Q. It's a million and a half difference, right?
4 A. Yes. But these are owner related items.
5 Q. I'm sorry?
6 A. You're mixing up Quandel budget and owner
7 items.
8 Q. Explain, please.
9 A. So Quandel had a budget to provide certain
10 scopes of work. Certain scopes of work were removed from
11 Quandel's budget and being performed directly by the owner.
12 Q. Okay.
13 A. So originally Quandel was to perform that work,
14 but it was being removed from them and taken over by
15 ownership. So I just want to be clear on what the budgets
16 are that you're looking at.
17 Q. Right, but is that -- if you're not you and you
18 didn't create this, doesn't it look like there's a \$2.2
19 million overrun?
20 A. It says that that's the balance to finish.
21 Q. Right, but that's --
22 A. No, it doesn't look like a 2.2. It looks like
23 2.2 is the balance to finish paying for those items.
24 Q. Right, but that's assuming that the Quandel
25 budget number of \$4,056,000 is accurate.

1 A. No, it's based on the actual recorded cost --
2 the recommended cost of 5.5.
3 Q. Right, but doesn't it look like that this is a
4 million and a half over budget?
5 A. But it was no longer in Quandel's budget so it
6 doesn't matter what Quandel's budget was. Quandel budgeted
7 \$4 million for these items. The owner took it over. And
8 based on the purchase orders and any documentation related
9 to purchasing those items is what's in the actual
10 recommended cost.
11 And then the paid to date, it was -- it was an
12 automatic of what's been paid to date against them based on
13 the draw process. And that was the balance to finish paying
14 for those unrelated items.
15 Q. Where is the column that shows the million
16 dollars of millwork that you say the owner had taken over?
17 A. It's right there. Flooring and tile.
18 Q. No, it's blank. Millwork is blank. Next to
19 Quandel budget it says nothing. It says --
20 A. Which exhibit is that, the other one that
21 you're referring to millwork?
22 Q. 6.
23 A. This isn't my chart though.
24 Q. This is Quandel's chart.
25 A. Right.

1 Q. You just testified that the owner was taking it
2 over.
3 A. Certain scopes, right. But millwork is not
4 here because Quandel hadn't released it yet.
5 Q. But you didn't put anything in for millwork in
6 the budget, so it looks like when you look at the second
7 page of 78, if you're not aware of the additional
8 information that you're telling us right now that somebody
9 else was taking care of it, it looks like that the actual
10 rec cost is million and a half dollars over the budget.
11 MR. DOLAN: I'm just going to object to the
12 form of the question. Go ahead.
13 A. So this is material.
14 Q. Yeah?
15 A. And then somebody has to install it.
16 Q. Mm-hmm.
17 A. This doesn't include installation. And Quandel
18 still had numbers in their budget. This is specific to
19 owner direct costs and what was paid for as far as whether
20 it's material or material and installation. So Quandel
21 still had numbers involved in their budget still for
22 install. Or both or one or the other. So we can't mix
23 apples and --
24 Q. Okay, but then why is millwork on here then
25 if --

1 A. Because he bought material. So that's the cost
2 of the material he was buying and he paid towards some of
3 it. So I'm capturing what he contracted to buy on a -- for
4 the material to get installed. So there was a material cost
5 that he paid. The owner paid. And then there was money
6 paid against it, and that was the balance to pay on it.

7 Q. Right, I understand.

8 A. It's a snapshot of where you're at at that
9 present time because you're in the middle of construction.
10 So if one person buys it and someone else is installing it,
11 you have to account for both because it has to get
12 installed. So this is the material that the owner purchased
13 and had actual contracts and proposals or whatever
14 documentation he supplied for it.

15 Q. Right, but the Quandel budget had these items
16 in it and so by not --

17 A. But this chart is specific to owner. It's
18 headed "owner direct hard costs." It's not direct to
19 Quandel. Quandel still had -- there was another chart that
20 had Quandel costs associated with it.

21 Q. I understand, but if you're not as
22 sophisticated as you are, Ms. Van Curen, and you look at
23 this and you just look at the snapshot, it looks like it's
24 significantly over budget because if the 1.3 million that
25 was on the Quandel budget for millwork and for toilet

1 accessories and for plumbing was on here, then the numbers
2 at the bottom would be much, much closer.

3 My concern is that the gap here doesn't
4 completely tell the story.

5 A. Right, but this is also one component of a
6 budget. The budget -- the overall budget is almost
7 \$40 million. This is only a \$4 million picture of it. So
8 you're not looking at all the documents that go with it.

9 Q. Because that's what was allegedly spent to
10 date.

11 A. No, that was what was paid to date.

12 Q. Right. Spent, paid, same thing. Paid to date.

13 A. Right.

14 Q. But it looks like that because the money is not
15 in the Quandel budget but it's showing up on the rec cost,
16 that there's a million and a half dollars not accounted for.
17 It looks like a million and a half dollar overrun.

18 MR. DOLAN: I'm just going to object to the
19 form of the question.

20 Q. Could you see how somebody could come to that
21 conclusion?

22 A. Yes.

23 Q. I just want to confirm -- just make a note of
24 the dollar figure there, the \$5,586,000 for the actual rec
25 cost. If you would please turn to Exhibit 43.

1 (Whereupon, Cost to Complete Summary was marked
2 as Exhibit 43 for identification as of this date by the
3 Reporter.)

4 Q. Have you ever seen that document before?

5 A. Yes.

6 Q. Did you create that document?

7 A. Yes.

8 Q. And so the figure that sets forth as owner
9 direct hard costs is that same figure.

10 A. Yes.

11 Q. So is it looks like -- by looking at this,
12 there's a significant cost overage, doesn't it?

13 A. There was a cost overage.

14 Q. Well, but one could argue that it's inflated
15 because some of the figures that might have been in your
16 document, number 78, didn't get accounted for in this
17 document, Exhibit 43.

18 A. Yeah, but in order -- see, Quandel included it
19 in their scope. It was part of their GMP. The only way to
20 officially contractually remove it from their scope is by a
21 change order moving it out. If that hasn't happened, then
22 technically it hasn't moved and it's not available in this
23 budget.

24 And so there was a lot of cases and instances
25 where that occurred, whether it was -- only 14 change orders

1 executed. And some of it included removing scope from
2 Quandel, which there may be a zero next to it because it did
3 technically move into an owner budget. But there's other
4 cases where Quandel did not actually accept that or did not
5 execute a change order that would allow that transfer or
6 reallocation of funds to occur.

7 So this number for owner direct cost is solely
8 predicated on what contractually the owner was buying and
9 purchasing and purchase orders that they had in place for
10 scope they were buying out. But there's still a whole other
11 process here where the contractor has to allow it.

12 Q. Right, but again, for the unsophisticated,
13 which I will freely admit that I am --

14 A. Okay, fair enough.

15 Q. -- it looks like when you look at Exhibit 43,
16 that this is not an actual -- a true and accurate statement
17 of the extent of the over -- alleged overrun because the
18 \$1.3 million that was in the Quandel budget is not accounted
19 for in this Exhibit 43.

20 A. But it is. It's accounted for through the
21 change orders that are on this page. The change orders 1
22 through 14 executed to date. Some of those were adds and
23 some were credits. So depending on the items, there's a
24 multitude of items, then on those change orders -- the
25 change order wasn't for one scope. There were 20 change

1 orders. Some were adds, some in credits. So you come up
2 with 3 million, so that accounts for it.

3 I could not list every single change order here
4 because there was just too many various trades with it. So
5 it's all in one line item to simplify it for people that do
6 not understand stuff like this.

7 Q. But I don't see that explained in your Exhibit
8 78 though. That's where my confusion lies. It's not
9 explained there. I don't see \$3 million in change orders.

10 A. Because this is an owner direct hard cost
11 template. It's one piece of 20 pieces. It's one part of
12 the equation. This is the summary of it.

13 Q. Do you know what Quandel's general conditions
14 and fee were?

15 A. Off the top of my head I don't know.

16 Q. Well, according -- let's look at Exhibit 6.
17 While you're looking, do you know what the other 20 pieces
18 are?

19 A. Yeah, it's a \$35 million budget. What I'm
20 saying is 4 million is only one part of a bigger picture, of
21 \$35 million. So it's the difference between 35 and
22 4 million. That's what the other piece is.

23 Q. I guess I asked it badly. I'm asking where are
24 the other documents that you created that would reflect
25 that? Do you have additional documents much like the

1 A. Okay. You have to do the math for it.

2 Q. I did.

3 A. I'm not doing it now.

4 Q. Did you review O'Brien's budgets before they
5 were presented to the court? I think I asked you that. We
6 talked about --

7 A. I think you did. I don't know if I recall.

8 Q. The bids weren't attached I think is what you
9 said.

10 Do you recall if there was money in those bids
11 for settlements with prior subcontractors?

12 MR. DOLAN: Do you mean bids or budget?

13 Q. Sorry. In the budgets.

14 MR. DOLAN: That's what I thought you meant.

15 Q. For settlements with prior subcontractors?

16 A. I don't believe so.

17 Q. How about were there money in the budgets for
18 legal fees?

19 A. In O'Brien's --

20 Q. Budgets.

21 A. I mean, there's always some type of legal fees
22 included in general conditions.

23 Q. As we talked about earlier, and I don't want to
24 belabor this, there was an e-mail that you had questioned
25 the amount of the contractor's fee. We can look at that

1 exhibits we just talked about that would reflect that?
2 Because I didn't find those.

3 A. There's another chart for Quandel which gives
4 you -- what --

5 Q. 78.

6 A. No, what was the other one? 6? This one?

7 MR. DOLAN: 6.

8 A. No, there was another one with a summary sheet.

9 Q. 43 was the cost to complete summary.

10 A. Yeah, this.

11 MR. DOLAN: When she says "this," she means 43.

12 A. This is all part of their report in October
13 that you requested. There's another chart I believe, which
14 is Quandel's break-out of costs. And that is a very similar
15 premise. It's what Quandel has as a budget and what their
16 actual contracts were. Which can be different at times.

17 Q. Okay, so let's just look at the last page of
18 Exhibit 6, please. Quandel's guaranteed maximum price,
19 \$32,271,582. Their general conditions and fee, \$1.9
20 million. Do you see that?

21 A. Yes.

22 Q. I did the math. It's about 6 percent.

23 A. Okay.

24 Q. Does that seem to make sense? That's close to
25 the market rate that we discussed earlier of 5 percent?

1 again if you want, but you said it was higher than typical
2 for the size of the project at 7.5 percent. Do you recall?

3 A. Yes.

4 Q. So I'm not going to make you go back to that
5 one. But what I would like to do is, I'd like to direct you
6 to Exhibit 84, please.

7 (Whereupon, CANIV 59639 through 59640 was
8 marked as Exhibit 84 for identification as of this date by
9 the Reporter.)

10 Q. It looks like you were asked to review a
11 construction draw request in October of 2017, and you had
12 some comments. Do you see that?

13 A. Yup.

14 Q. I'm taking this that by making these comments
15 that you were not readily approving the proposed
16 construction draw. Or am I reading into that?

17 A. You're reading into that.

18 Q. What are you saying there?

19 A. I'm flagging documentation numbers that just
20 weren't accurate. And it had to do with formulas on a
21 spreadsheet.

22 Q. So is it your opinion that testing engineers
23 was 357 percent over their budget by mistake, or was it a
24 clerical error?

25 A. No. It was just the percentage -- it's a

1 formula. It's all formula driven. So if a number gets
2 entered or the formula gets corrupted or gets changed, it
3 will skew the percent complete. It's one column of ten
4 columns on a form.
5 Q. So were these not massively overcharged?
6 A. No, it wasn't overcharged. This is based on a
7 9.1 million budget. So this was -- there was three budgets
8 here. There was the winterization budget, which was roughly
9 2 million, and then it moved -- it evolved into an added 9.1
10 million budget, which is what this is discussing, and a
11 requisition regarding that. And then after the bankruptcy,
12 there was then another budget that came after that.
13 So that's why earlier when you asked about
14 budgets, there's a multitude of budgets here. So I just
15 want to be specific on which one. This one is referring to
16 a \$9.1 million budget and a requisition to do with that. So
17 that's what this is. And it's a formula issue ultimately.
18 Q. So was O'Brien charging 119 percent for their
19 general conditions instead of --
20 A. No, it's a formula issue.
21 Q. I don't understand what that means. Did you
22 approve that the money got paid?
23 A. I'll explain this to you. I'll break it down
24 for you.
25 Q. Please.

1 A. On an application for payment, which is a
2 requisition from the contractor, they have a budget and then
3 they have a previous payment and then they have a current
4 payment. And then those numbers are then -- there's a
5 formula that says percent complete for each line item. If
6 that formula is corrupt or changed or doesn't align with the
7 cells, it will spit out a percent that's not correct.
8 Q. So how did this get fixed?
9 A. Correct the formula in the chart.
10 Q. So it didn't affect the amount of money that
11 was paid out? It just affected the percentage?
12 A. Correct. It says right here it's likely due to
13 the need to get the budget updated by the court.
14 Q. I just want to make sure that we weren't
15 overpaying the general conditions.
16 A. No.
17 Q. As significantly as it suggests that we did.
18 A. I didn't suggest that. I'm flagging that
19 there's a discrepancy on the percent complete.
20 Q. Okay. So ultimately --
21 A. It's a percent complete, that's what it is.
22 Q. So ultimately, was the draw request rectified
23 and then approved?
24 A. Correct.
25 Q. What does it mean when units are ready to

1 deliver?
2 A. It means that they're punched out and cleaned
3 and the work is finished.
4 Q. Does that mean that residents are able to move
5 in?
6 A. You get a TCO when residents are ready to move
7 in.
8 Q. During the time from September 15 until all
9 this talk started by these e-mails on October 19 --
10 A. I'm sorry, which year?
11 Q. '16. Prior to the filing of a lawsuit. There
12 was your visit September 15 or 16, and then all those
13 e-mails about getting your affidavit that we looked at that
14 were -- I think it was October 21st or something.
15 Do you recall e-mailing Canyon describing your
16 concerns about the conditions on site between those times?
17 A. I don't recall.
18 Q. Was there something that you were concerned
19 about that you wanted to alert them to during that time?
20 A. I don't recall.
21 Q. If you had seen something that you would have
22 thought was problematic, would you have normally informed
23 Canyon of that after doing your initial assessment on
24 September 15?
25 A. Ask the question again.

1 Q. Yes.
2 A. Please.
3 Q. If you don't recall from this situation, in a
4 normal situation, if you did an assessment on Canyon's
5 behalf of a property and you saw that there were issues that
6 were of concern to you --
7 A. Yes.
8 Q. -- would you have normally communicated that to
9 someone at Canyon?
10 A. Yes.
11 Q. Okay, is there any -- do you have any
12 recollection that you did that in this situation?
13 A. I don't recall.
14 Q. Did you communicate with Canyon about the
15 project in other areas during that time frame? Talking
16 about other things, not about problems with the building.
17 A. Ask the question again, I'm sorry.
18 Q. Sure. If you don't recall informing Canyon
19 that there were issues with the project between the time you
20 first visited and the time the lawsuit was filed, did you
21 communicate with Canyon about other issues or items relating
22 to the project?
23 A. No. I don't recall that.
24 Q. So if there was nothing -- if there was nothing
25 to complain about, there would have been no reason to

1 communicate with Canyon? I'm just trying to understand what
2 you were supposed to do there.
3 A. We were there to visit. I mean, it was not an
4 adversarial situation. It was to -- we met with Craig, we
5 walked through the site, we looked at what was going on. We
6 heard that he had to share about his experiences with
7 Quandel and what was going on at the project. What he
8 wasn't happy with or what he was happy with. And that's
9 pretty much what occurred.
10 Q. What were your impressions after that meeting
11 as far as now things were going?
12 A. I was just getting up to speed on the job, so I
13 didn't have any initial impression at first. I thought that
14 there wasn't enough manpower on the job, which is what Craig
15 was saying.
16 Q. Okay. So --
17 A. And I knew that -- I believe there was a
18 projected November completion date, and I knew that that
19 wasn't happening by walking through the job.
20 Q. Did you ever see a revised schedule from the
21 subsequent contractor Gleason?
22 A. I recall something being created. I don't
23 remember opining on it.
24 Q. Did you ever recall seeing it with a completion
25 date of March of 2017?

1 A. I don't recall.
2 Q. Back to the e-mails, I just want to make sure
3 that we're clear on this. You may or may not, or you did or
4 did not communicate with Canyon between September 15th and
5 October 21st about anything having to do with the project.
6 A. I said I don't recall. Yes.
7 Q. But if there was something negative to report,
8 is it safe to say that you would have shared that with
9 Canyon?
10 A. Yes.
11 Q. There are a couple of instances that I did find
12 where you did communicate with them, and I just want to go
13 through those with you.
14 A. Okay.
15 Q. Let's go to Exhibit 46.
16 (Whereupon, CANIV 3883 was marked as Exhibit 46
17 for identification as of this date by the Reporter.)
18 Q. Here's an e-mail from you --
19 THE VIDEOGRAPHER: Counsel, I'm sorry, I don't
20 have this particular one. It just says couldn't open it.
21 Can we just continue with it? The file is there but it
22 just --
23 MR. MILLER: Doesn't open?
24 THE VIDEOGRAPHER: It says it won't open.
25 MR. MILLER: We'll get it to Mr. Pascoe later.

1 Q. This e-mail dated October 10th, 2016 at 6:16
2 p.m. Tina to Kevin and Gerald, it looks like you're
3 forwarding an e-mail. Do you see that?
4 A. Mm-hmm.
5 Q. Yes?
6 MR. DOLAN: You have to say yes or no.
7 A. Yes.
8 Q. There's nothing in this e-mail saying, or is
9 there, something negative about the condition of the project
10 or the construction as it was proceeding in your e-mail.
11 A. In my e-mail?
12 Q. Yes.
13 A. What's the question?
14 Q. Is there anything in this e-mail from you to
15 Canyon which sets forth that there's a problem at the
16 Packard Square project or with the construction that you
17 notified Canyon about?
18 A. Yeah, there's an indication that the paperwork
19 is difficult to track. That's what my e-mail says.
20 Q. But that's about the paperwork, not about the
21 construction, is it?
22 A. That's what the e-mail is about. It's not
23 about construction. It's about the paperwork.
24 Q. But I'm asking about construction. There's
25 nothing in your e-mail saying to Canyon we've got a real

1 problem here with the construction progress and the
2 construction.
3 A. Correct.
4 Q. Let's look at number 50.
5 (Whereupon, CANIV 51939 was marked as Exhibit
6 50 for identification as of this date by the Reporter.)
7 THE VIDEOGRAPHER: It's the same situation.
8 It's looking -- I'm sorry for interrupting. I just want to
9 say it's a TIF file. It just says Windows Photo can't open
10 this picture.
11 MR. MILLER: Michael, when we get back, I will
12 copy these and scan them to you.
13 MR. PASCOE: Okay, thanks.
14 Q. This is dated Tuesday, October 11, 2016.
15 Again, these are e-mails from you to people at Canyon. Do
16 you see that?
17 A. Yup.
18 Q. Is there anything in there that sets forth a
19 problem with the construction or the continuation of
20 construction or anything having to do with the project not
21 proceeding in an appropriate fashion?
22 A. Yeah, it indicates on the bottom of the e-mail
23 that there's pipe repairs from Craig.
24 Q. But I'm talking about your e-mails to Canyon,
25 is there anything in here from you to Canyon alerting Canyon

1 there's a problem at Packard Square?
2 A. No. It's discussing unconditional lien
3 waivers. It has nothing to do with that.
4 Q. I'm just noting that there's nothing about that
5 in this e-mail. That's fine.
6 Let's look at Exhibit 53.
7 (Whereupon, CANIV 59992 was marked as Exhibit
8 53 for identification as of this date by the Reporter.)
9 Q. Here's an e-mail dated --
10 THE VIDEOGRAPHER: Same situation. I'm sorry.
11 MR. MILLER: Really?
12 THE VIDEOGRAPHER: It's just a group of them in
13 the 50s.
14 MR. MILLER: They're all the TIFs?
15 THE VIDEOGRAPHER: Yes.
16 MR. MILLER: The format that we got them,
17 unfortunately.
18 Q. Exhibit 53 is an October 7, 2016 e-mail from
19 you to Gerald and Kevin. "Please see correspondence below
20 from electrician Gaylor regarding mechanic's lien." Do you
21 see that?
22 A. Yes.
23 Q. Is there anything in your e-mail that says to
24 Canyon that there's a problem with construction or a problem
25 with the project?

1 A. Well, there's a lien on the building. That
2 signifies that there's a problem right there.
3 Q. We're going to talk about how liens got
4 appointed at another time. But there's no statement from
5 you saying --
6 A. Well, this is one -- there's obviously multiple
7 e-mails that were -- are not attached to this exhibit.
8 Q. Yes, I'm sure there are.
9 A. So. There's clearly saying something that
10 there's an issue with Gaylor Electric on this e-mail.
11 Whether or not I reiterate what's in the e-mail, I did not
12 reiterate. But I am indicating there's a mechanic's lien
13 which automatically signifies there's a problem.
14 Q. But you didn't overtly say anything about it.
15 A. I did not reiterate what's in the e-mail trail,
16 no.
17 Q. We talked about this earlier. Gaylor contends
18 that the work was 81.5 percent complete as of October 7th.
19 But when we talked about it earlier, you thought just a
20 couple weeks earlier that it was I think, what, less than
21 half complete at that time.
22 A. Okay.
23 Q. So would you agree that Gaylor was overstating
24 what it claimed it had done at that point?
25 A. This includes the labor and material. So there

1 was a trailer of materials that were on site, which this
2 includes.
3 Q. All right, let's look at Exhibit 85.
4 (Whereupon, CANIV 59965 was marked as Exhibit
5 85 for identification as of this date by the Reporter.)
6 Q. October 10, 2016, again, an e-mail to Kevin and
7 Gerald. Nothing about there's a real problem at the Packard
8 Square project, construction, anything like that, correct?
9 A. This is reviewing a requisition.
10 Q. I understand what it says. I'm just confirming
11 that there's nothing in there that's setting forth a warning
12 of, wow, we've got a real problem at Packard Square.
13 A. It's regarding a review of an application. So
14 it would not include that detail, no.
15 Q. Well, are there other e-mails that did? I
16 think I asked you that and you said you didn't think so.
17 A. I don't recall. I mean, I don't recall.
18 Q. Do you know who O'Brien hired to be its
19 electrician?
20 A. Yes.
21 Q. What was the name of that? Hopp?
22 A. Hopp.
23 Q. Hopp Electric?
24 A. Yes.
25 Q. What was their scope to finish? Just the last

1 18 percent and no materials?
2 A. The materials that were on site were
3 incorporated into any subcontracts.
4 Q. So all Hopp had to do -- they didn't have to
5 get any materials because the materials were already there.
6 A. No, not all the material for the job were
7 there.
8 Q. Do you know what additional portion Hopp had to
9 purchase?
10 A. I don't know specifically. Wire.
11 Q. There needed to be some wire?
12 A. A lot of wire. Feeders. Normal standard stuff
13 for an electrician.
14 Q. Was 82 percent of the work done when Hopp took
15 over?
16 A. No.
17 Q. So what percent was done when Hopp took over?
18 A. I answered that question already.
19 Q. It was like half.
20 A. Yes.
21 Q. Do all the units at Packard Square have
22 insulation?
23 A. Do all the units at Packard Square have
24 insulation? Yes.
25 Q. Do they have sound insulation and thermal

1 insulation?
2 A. No, it depends on the locations.
3 Q. There are some apartments that don't have sound
4 and thermal insulation?
5 A. You wouldn't put on exterior wall sound
6 insulation.
7 Q. On an exterior wall there's thermal insulation,
8 on an interior wall there's thermal insulation on all the
9 units?
10 A. Yes.
11 Q. Insulation first, then drywall, correct?
12 A. That's usually the sequence.
13 Q. Is there any other way to do it?
14 A. Not that I'm aware of.
15 Q. Let's look at Exhibit 4.
16 (Whereupon, PACKARD 006 was marked as Exhibit 4
17 for identification as of this date by the Reporter.)
18 Q. Have you ever seen this document before?
19 A. I don't know if I've seen this specific
20 document. I've seen this budget though, 9.1.
21 Q. Do you have any idea who created this document?
22 A. I'm not really sure.
23 Q. Do you see anything on it for insulation? Any
24 bid I should say for insulation.
25 A. Potentially drywall could include it.

1 Q. Do you know if these drywall contractors
2 install insulation?
3 A. I don't know.
4 Q. Down a little bit under concrete, Albanelli
5 Cement, \$748,040. Do you see that?
6 A. Mm-hmm.
7 Q. Is it odd to you that there's no other cement,
8 concrete contractor bid on this document?
9 A. No.
10 Q. Why not?
11 A. It could be that they didn't bid or they
12 couldn't find contractors. As I previously stated, there's
13 not all trades. Some people weren't even interested in
14 bidding on the job.
15 Q. What about the contractors that were on site
16 before the receivership? They weren't given the opportunity
17 to bid, were they?
18 A. Yeah, I recall that there were several that
19 weren't interested in bidding. I don't know exactly who,
20 but I know that that was definitely mentioned.
21 Q. So you believe that Albanelli -- your belief
22 was that Albanelli was the only potential bidder who was
23 interested, and it couldn't have been competitively bid?
24 A. I don't know specifically for Albanelli, or any
25 of these for that matter.

1 Q. This is the one that jumps out to me because
2 it's one of the very few that doesn't have competitive
3 bidding. That's why I'm asking.
4 A. Okay.
5 Q. Have you ever met Matthew Mason personally?
6 A. Yes.
7 Q. In Ann Arbor or New York or where?
8 A. Ann Arbor, at the site.
9 Q. Have you ever met him in New York City?
10 A. No.
11 Q. Have you ever met him in New York State?
12 A. No.
13 Q. Have you ever gone to dinner with him and with
14 Janine and Lauren Leech?
15 A. No. I don't know who Lauren Leech is.
16 Q. What subcontractor at Packard Square is
17 responsible for the building envelope?
18 A. Could you be more specific on "building
19 envelope"? Which material?
20 Q. Well, it's a phrase you used in your
21 declaration, which we'll get to in a few minutes, "building
22 envelope."
23 A. Mm-hmm.
24 Q. Who are you referring to?
25 A. Construction Ahead.

1 Q. Are you aware of settlement agreements entered
2 into between the receiver McKinley and certain
3 subcontractors?
4 A. No.
5 Q. You don't review any of those lien claims?
6 A. No.
7 Q. Were there monthly draws for O'Brien and their
8 subcontractors?
9 A. There was requisitions. Not draws.
10 Q. So they're all based on pay applications?
11 A. Yes.
12 Q. And they pay for the preceding month.
13 A. Yes.
14 Q. Have you ever been notified after the
15 receivership came into effect of letters that my client sent
16 to the receiver about issues with the construction progress
17 or the manner by which things in the construction were
18 proceeding?
19 A. I'm sorry, say that again. It was a very long
20 question.
21 Q. Are you aware of my client ever having sent
22 letters to the receiver about how construction was
23 progressing or how items were being changed in the project
24 and complaining about things that were going on on site?
25 A. I heard that there was e-mails being sent.

1 From Matt I heard that from.
2 Q. Did you ever see the letters?
3 A. Not really.
4 Q. Not really or no?
5 A. No.
6 Q. Has the idea of selling the property been
7 discussed on any of the calls on which you participate?
8 A. Not with me.
9 Q. Are you aware of whether or not somebody is
10 interested in selling the property?
11 A. I don't know.
12 Q. If this building were going to start, start to
13 finish tomorrow, how long should it reasonably take?
14 A. This project? It's a two-year project at
15 least.
16 Q. Sorry what?
17 A. It's at least a two-year project.
18 Q. At least a two-year project. Were you involved
19 in the discussion of the -- how O'Brien and the receiver
20 were going to initiate construction once they were put on
21 the job?
22 A. No.
23 Q. So they created their own timeline of what they
24 were going to do and they did not include you in that
25 conversation?

1 A. Well, the initial -- it was done in phases, so
2 the initial scope was winterization. So there wasn't
3 necessarily a timeline associated with that.
4 Q. Was Starky's the winterizing contractor?
5 A. I don't know. He's one of the subs on the job.
6 But I don't know --
7 Q. Do you know who the winterizing contractors
8 were?
9 A. It was multiple people that did work. I don't
10 know exactly the names. It had to do with --
11 Q. It had to do with what, I'm sorry?
12 A. It had to do with getting the building sealed
13 up, so there was multiple trades involved in that.
14 Q. Let's look at Exhibit 11, please.
15 (Whereupon, CANIV 62513 was marked as Exhibit
16 11 for identification as of this date by the Reporter.)
17 Q. I don't think that you were party to this
18 e-mail. But let's just read what Matt Mason wrote to Gerald
19 Goldman. It says in the second paragraph, "This amount
20 includes the immediately winterization and stabilization of
21 the project, technical evaluation of the engineering, and
22 prep work so that we can begin construction in earnest once
23 the frost laws are lifted." This is October 26th, 2016. Do
24 you see that?
25 A. Mm-hmm.

1 Q. Yes?
2 A. Yes.
3 Q. So were you party to discussions that the plan
4 was to not earnestly construct this project until the
5 spring?
6 A. No.
7 Q. Is this the first you're seeing this?
8 A. I'm not on this e-mail so yes.
9 Q. I mean, had you been aware of this concept that
10 there was not an intention to move quickly through the
11 winter on construction?
12 A. It was -- the court approved a certain amount
13 of scope. And my understanding is the court approved
14 winterization.
15 Q. Yes, but that was 2.4 million. They're only
16 talking about spending 1 million. Do you see that?
17 A. Okay.
18 Q. And then shutting it down, basically, from
19 November, December, January, February, March, for, like, six
20 months.
21 A. I don't see where it says that.
22 Q. Well, it does. "We can begin construction in
23 earnest once the frost laws are lifted. So in essence, it
24 sounds like we're going to do prep work and not really much
25 for about six months." Do you see that?

1 MR. DOLAN: Object to the form of the question.
2 A. I don't know.
3 Q. Wouldn't a better use of the time have been to
4 proceed with construction in earnest rather than not do very
5 much for six months? Especially when Gleason said they
6 could have the building finished by March of 2017?
7 MR. DOLAN: Object to form of the question.
8 A. I don't know.
9 Q. What's your definition of "winterization"?
10 A. Making sure the building is watertight and
11 protected from the elements.
12 Q. And on September 15, 2016, it in your opinion
13 was not?
14 A. No, it was not.
15 Q. And of course, you testified earlier that this
16 was a construction project in the midst of construction.
17 A. Yes.
18 Q. How do you know that those problems would have
19 been -- would not have been taken care of prior to winter?
20 A. Because Quandel got fired. How would they do
21 it if they were fired?
22 Q. Because Gleason came in on October 17th --
23 A. But I was not aware of Gleason's information.
24 Q. Nobody told you that Gleason had been put on
25 the job the same day Quandel was fired?

1 A. No --
2 MR. DOLAN: Object to the form of the question.
3 You gotta let him ask the question, let me object and you
4 can answer.
5 A. No.
6 Q. Are you hearing that for the first time today?
7 MR. DOLAN: Object to the form. What's "that"?
8 Q. Are you hearing the fact that Quandel was fired
9 and Gleason replaced them on the same day, am I telling you
10 something you had not heard before?
11 A. Yes.
12 MR. DOLAN: Object to the form of the question.
13 Go ahead.
14 A. Okay. Yes.
15 Q. Knowing that now, might that have changed your
16 opinion on where this project was going after you were there
17 on September 15th?
18 MR. DOLAN: Object to the form of the question.
19 Go ahead.
20 A. I don't know.
21 Q. Well, if you had seen a -- ma'am, if I could
22 direct your attention to 14, please.
23 (Whereupon, Gleason Contract Schedule was
24 marked as Exhibit 14 for identification as of this date by
25 the Reporter.)

1 Q. I'm going to guess that your answer is that you
2 have not, but have you ever seen a Gleason contract
3 schedule?
4 MR. DOLAN: Object to the form of the question.
5 And foundation.
6 A. I'm not familiar with this document.
7 Q. No, I didn't think you would be. But if you
8 look at the top of the first page of it, it says "March
9 2017, final C of O and turnover of project." Do you see
10 that? Looks like March 26 maybe.
11 A. Okay.
12 Q. If you had been aware of the fact that the
13 developer had a new contractor in place who projected that
14 it would finish the project by March of 2017, would that
15 have changed your opinion in your ultimate declaration?
16 A. No.
17 Q. Why not?
18 A. Because my declaration is based on the
19 conditions that were there -- present at the time I was
20 there. Which was in September. This is in -- I don't even
21 know what date this is. March?
22 Q. October.
23 A. October?
24 Q. Right, but let's assume for the moment -- you
25 just testified no one told you about this.

1 A. No, I didn't see this.
2 Q. Okay, so let's assume that somebody did tell
3 you about this. Hey, Ms. Van Curen, Quandel got fired,
4 Gleason is on the job. It's now October 17th, 2016, and
5 they've got a schedule that says they're gonna be done in
6 less than six months. Might have that changed your opinion
7 on where the progress of this project was or might have been
8 before winter had come on?
9 MR. DOLAN: Object to form and foundation. Go
10 ahead and answer if you can.
11 A. I can only comment on what was present at the
12 time. I was not familiar with this document. And no.
13 Q. Not only were you not familiar with this
14 document, you weren't familiar with the fact that there had
15 been a new contractor hired.
16 A. Correct --
17 MR. DOLAN: Object to the form of the question.
18 Q. So here we are, it's now another -- it's April
19 of 2016. So -- I'm sorry, what year is it? '18. April
20 2018. Another year has gone by and this project isn't done.
21 A. Mm-hmm.
22 Q. How do you feel about the progress that's
23 proceeding?
24 MR. DOLAN: Object to the form of the question.
25 Go ahead.

1 A. The work's getting done.
2 Q. At an appropriate time rate?
3 A. It's been performed in phases. So it's not
4 crystal cut pattern where it would be two years or X amount.
5 It's been done in phases and it's developed along the way.
6 Q. Well, what's taking so long?
7 A. I just said that it's been getting done in
8 phases, in sequences, so it's different. It's not straight
9 construction. It's not a straight construction timeline
10 anymore.
11 Q. Well, why isn't it?
12 A. Because it had to go through court approvals.
13 Q. So? What had to go through court approvals?
14 A. The budget. It went from 2 million, then it
15 was 9, then there was a GMP. There was stages of a budget
16 approval.
17 Q. And you know this how?
18 A. Because I look at the requisitions.
19 Q. Do you know that -- okay. But you're not
20 intimately familiar with the court process and what comes
21 first, the chicken or the egg.
22 A. No, but I just know that the original budget
23 was 2.4 for winterization. And I do know the next one was
24 9.1. And my main purpose is to keep track of the costs in
25 accordance with whatever budget it is that I'm told it is.

1 So that's how I know that.
2 Q. Was there a conscious decision for Canyon to
3 dole out money slowly to build this project slower than
4 normal?
5 A. No.
6 Q. Do you think that everybody is working at the
7 appropriate speed for this project?
8 A. For payments?
9 Q. No, for construction.
10 A. Yes, given the circumstances.
11 Q. How long is the circumstances that there's been
12 a new contractor in place are we going to rely on that as an
13 excuse for the project going at such a slow rate of speed?
14 MR. DOLAN: Object to form.
15 Q. They've been on the job for a year and a half,
16 have they not?
17 A. Yes.
18 Q. So I don't understand. If the project was --
19 what percent was it completed when you were there in
20 September of 2016?
21 A. 55, 60.
22 Q. Okay, so 45 -- 40, 45 percent left to be done
23 and it's still been a year and a half and you don't think
24 there's a problem with that?
25 A. No.

1 Q. You think that's normal and appropriate?
2 A. For this project, yes.
3 Q. Let me turn your attention to Exhibit 3.
4 (Whereupon, Amendment 1-Scope of Work was
5 marked as Exhibit 3 for identification as of this date by
6 the Reporter.)
7 Q. Have you seen this document?
8 A. No.
9 Q. This isn't something you would have reviewed as
10 part of the scope of work phasing and the payment plans?
11 A. Nope.
12 Q. Having looked at it now, are you surprised that
13 you haven't seen it before?
14 A. No.
15 Q. Why are you not surprised that you haven't --
16 A. It's a legal form.
17 Q. Well, it's -- is it? It looks like it's a
18 funding form.
19 A. It does?
20 Q. Yes. Look at page 2, "release of funds, scope
21 of work phasing."
22 A. No, it's not a funding form.
23 Q. It's a scheduling form.
24 A. It's a scope of work phasing.
25 Q. Yes. You review the long AIA forms, don't you?

1 A. I review the applications for payments.
2 Q. Well, you said you also reviewed the AIA forms
3 I thought.
4 A. The application for payment is an AIA form.
5 Q. I thought you reviewed the contract, like the
6 GMP contract that O'Brien signed. Didn't you review that?
7 A. No, I never said that.
8 Q. You didn't review that?
9 A. No, I did not review the GMPs.
10 Q. Let me direct your attention to the fifth
11 paragraph of the first page, last sentence. "The receiver
12 acknowledges the release of multiple tranches may reduce or
13 eliminate efficient and economical implementation of the
14 work which may increase the contract sum and contract time
15 generally typical to industry standards." Do you know what
16 that sentence means?
17 A. No.
18 Q. Have you ever seen a sentence like that where a
19 contractor and I guess developer, as the receiver might be,
20 would agree in advance that we're going to do this slowly on
21 purpose?
22 A. You're asking me if I've ever seen this before?
23 Q. No, I'm asking if you've ever seen anything
24 like it where a contractor and developer made an agreement
25 that says we're going to eliminate efficient and economic

1 implementation of the work which will increase the amount of
2 money and time, basically not what you would normally do in
3 construction industry standards?
4 A. Well, the way I understand this statement in
5 reading it now is that because it's being released in
6 multiple phases, because the project was phased, is that
7 it's not -- it's gonna reduce the efficiency and the cost.
8 Because you're doing it in sections as opposed to doing the
9 building as a whole. Which would make perfect sense.
10 Q. Do you know who made the decision to do the
11 phasing?
12 A. I do not.
13 Q. Were you involved with drafting or setting of
14 any schedules in this project?
15 MR. DOLAN: Construction schedule?
16 MR. MILLER: Yes.
17 A. No, not the construction schedule.
18 Q. Were there other schedules that you were
19 involved with?
20 A. Perhaps overall projected completions. But not
21 the day-to-day construction schedule. That comes from the
22 contractor.
23 Q. Did you ever review those and comment on them?
24 A. No.
25 Q. The overall schedule that you just referred to,

1 when did you see one of those?
2 A. An overall schedule? Maybe late last year.
3 Q. Of -- near the end of '17?
4 A. With the GMP. This isn't even the GMP budget.
5 This language is for the \$9.1 million scope of work.
6 Q. I know that. I'm asking you -- this is from
7 much longer ago. I'm asking you, you said there was a
8 general schedule that you saw. And I was just trying to
9 figure out what the date of that was.
10 A. It would be part of the GMP schedule.
11 Q. And when was the estimated completion date?
12 A. I believe November.
13 Q. Of '18?
14 A. Yes.
15 Q. So a full two years since the receiver was
16 appointed.
17 A. Yes.
18 Q. To finish a building that only needed to be 40
19 percent finished in the amount of time that you said it
20 would take to build the entire building.
21 A. Completed in phases, yes. And switching
22 contractors.
23 Q. Well, that happened in November of 2016.
24 A. But that's part of the whole timeline that
25 you're presenting.

1 Q. But how long do they get a pass on that? I
2 mean, they started in November of 2016. Does it take them
3 two years to get up to speed? I don't understand.
4 A. But I indicated that it would be approximately
5 a two-year project if it was the same contractor from start
6 to finish. But in this instance it took two years. But
7 it's also switching contractors, doing the work in phases.
8 So it changes the timeline.
9 Q. Who benefits by that delay?
10 A. I have no idea.
11 Q. Well, does the lender benefit by getting more
12 interest and longer interest payments?
13 A. I think it's in everybody's interest to get the
14 building completed.
15 Q. Really?
16 A. I don't see how it benefits anybody.
17 Q. Let's think about this. Does it benefit the
18 receiver? Because the receiver keeps getting its fees every
19 month regardless of what happens. It's not a construction
20 based fee. It's an actual fee so it's in their benefit to
21 go slowly, isn't it?
22 A. I don't believe that, no.
23 Q. Well, if they finish the building, then they
24 don't get paid any longer, right?
25 A. I don't know what their terms of their contract

1 or how they get paid.
2 Q. They get paid monthly. They get a fee every
3 month.
4 A. Okay.
5 Q. So for them it's in the receiver's best
6 interest not to finish because the longer it goes, the more
7 they get paid, right?
8 MR. DOLAN: Just object to the form of the
9 question.
10 Q. Correct?
11 A. I don't know.
12 Q. It's in the lender's best interest because the
13 longer it goes on, the more interest they accrue. Correct?
14 MR. DOLAN: Object to the form.
15 A. I don't know.
16 Q. And the longer it continues, the better it is
17 for O'Brien because of the manner by which they're paid
18 pursuant to their contract, isn't that right?
19 MR. DOLAN: Same objection.
20 Q. Ma'am, I'm waiting.
21 A. I don't know.
22 Q. Are you aware of any penalties in any O'Brien
23 contract based on time?
24 A. I don't recall.
25 Q. Are there any -- when you say you don't recall,

1 is that because you're not familiar if there are any?
2 A. I'm not familiar.
3 Q. So other than -- I think I got misled
4 somewhere. Other than Starky's, did you tell us who else
5 you thought did winterization contracting?
6 A. No, I did not.
7 Q. Do you know who else did?
8 A. I don't know. I don't know the names of the
9 subs off the top of my head.
10 Q. Let's look at Exhibit 8, please.
11 (Whereupon, E-mail and attached Lender Cost
12 Detail was marked as Exhibit 8 for identification as of this
13 date by the Reporter.)
14 Q. Exhibit 8 is a three-page document. I'm really
15 most interested in the second page. Winterization budget.
16 Do you see that? It's the second item on the second page.
17 A. Where are you looking?
18 Q. Hard costs --
19 A. Oh, I see, okay.
20 Q. According to this document that was created by
21 the attorney for the receiver --
22 A. Yes.
23 Q. -- the winterization budget as referenced in
24 applications 1 through 6, \$2,396,874.32. Do you see that?
25 A. Yes.

1 Q. What was that money used for?
2 A. For winterization.
3 Q. What exactly?
4 A. Sealing up open windows or broken windows,
5 securing broken glass, closing up the doors, sealing up the
6 facade, repositioning the leaders which were from the roof
7 directly into a unit and hanging out of a window, an open
8 window to get the water off the roof. Items of that nature.
9 Making sure there was safety protection in front of the
10 elevators or wherever else needed it. Locking it up making
11 sure nobody can get in there and vandalize.
12 Q. A lot of those things don't have anything to do
13 with winterization.
14 A. Sure it does.
15 Q. Locking the door? That has nothing to do with
16 the weather.
17 A. Yeah, but it has to do with securing -- it's
18 winterization and securing the property.
19 Q. Well, then maybe your definition of your
20 winterization and my definition are different. I thought
21 winterization was to prevent it from being damaged as a
22 result of inclement weather, right?
23 A. Yes.
24 Q. Locking the door has nothing to do with the
25 weather, does it?

1 A. Yeah, but you have a responsibility to make
2 sure the site stays safe and nobody can get into it that's
3 just walking by.
4 Q. How did you know that wasn't going to happen in
5 the normal course of business? Hmm?
6 A. What was the question?
7 Q. How did you know that wasn't going to happen in
8 the normal course of business?
9 A. I never said it wasn't going to happen.
10 Q. Weren't there gates surrounding the property at
11 all times? Or fencing with gates?
12 A. There was construction fencing along Packard,
13 yes.
14 Q. Nowhere else?
15 A. There was -- there is a fence in -- I don't
16 recall the fence on the other street. And there was
17 definitely not fencing on the sides.
18 Q. Were gates locked on a nightly basis?
19 A. I don't know if they were locked every night.
20 Q. So how do you know there was a problem? How do
21 you know access was a problem?
22 A. Because Quandel was no longer on site. There
23 was no contractor on site.
24 Q. There was, ma'am. There was.
25 MR. DOLAN: Listen, don't argue with the

1 witness. That's the witness' testimony.
2 Q. To me, ma'am, your entire testimony changes if
3 you knew about the other contractor.
4 MR. DOLAN: I'm just going to object to the
5 question as argumentative.
6 MR. MILLER: It's not argumentative. I'm
7 feeling bad for the witness, Ben, with all due respect.
8 MR. DOLAN: That's fair.
9 Q. When was the winterization completed, ma'am?
10 A. I believe April 2017. May -- March. March or
11 April.
12 Q. So wait. The winterization was completed after
13 the winter was completed?
14 A. The winterization was completed in March.
15 Q. That doesn't sound like it was in imminent harm
16 in October.
17 A. Okay.
18 Q. What was so imminent in October that it could
19 wait until March to be finished?
20 A. I don't understand your question.
21 Q. Yeah. You testified, and we're going to get to
22 that in a minute, that there were things that had to be
23 dealt with right away or things were going to be terrible at
24 the project. That's part of your declaration.
25 A. Yes.

1 Q. Well, that was in October.
2 A. Yes.
3 Q. Why was it okay that those things weren't
4 completed until March when the winter is already almost
5 over.
6 A. But it was underway through that whole process.
7 Q. What was underway through that whole process?
8 A. Closing of the doors, sealing up the exterior,
9 making sure the water was rerouted to where it needed to go.
10 Q. I'm at a loss as to why that would take four
11 months to do or six months -- wait, five months. Why would
12 it take five months to do that? What was the harm -- what
13 would have happened if it wasn't done? Would the building
14 have fallen down?
15 A. Which scope?
16 Q. Any of them. I'm still at a loss as to what
17 this winterization is.
18 A. The existing structure if it is subjected to
19 the element can be damaged.
20 Q. Okay.
21 MR. DOLAN: Before we go into the declaration,
22 can I use the rest room? Whenever it's convenient to stop.
23 MR. MILLER: Yes.
24 THE VIDEOGRAPHER: Do you want to take a break?
25 THE WITNESS: Yes.

1 THE VIDEOGRAPHER: I'll just wait until he says
2 okay.
3 MR. DOLAN: No, we don't have to wait.
4 MR. MILLER: Okay, we can take that break.
5 THE VIDEOGRAPHER: We're off the record. The
6 time is 3:43.
7 (Whereupon, a short recess was taken.)
8 THE VIDEOGRAPHER: We're back on the record.
9 The time is 3:55. This is the beginning of disk 5.
10 BY MR. MILLER:
11 Q. All right, we're ready. Ma'am, before we took
12 a break you had listed a number of items that were involved
13 in a plan for winterization. I just want to ask you about
14 some of them. I'm going to go through them. I took them
15 off the court reporter's list.
16 You said sealing plastic on the windows. Do
17 you know who the contractor was who did that job?
18 A. No.
19 Q. Do you know when that was completed?
20 A. I don't recall the details, no.
21 Q. Were you involved in overseeing any of those
22 details?
23 A. Yes.
24 Q. Do you have a record somewhere that would
25 establish that?

1 A. Yes. In my report to Sidley.
2 Q. Of course this was before Sidley -- this was
3 before Sidley.
4 A. I wasn't at the site in November and December.
5 Q. So your testimony is that when you went back in
6 January you saw that it had been done? Is that what you're
7 saying?
8 A. It was started.
9 Q. So as of January, is it your testimony that the
10 plastic sealing on the windows had yet to be completed?
11 A. I don't know. I'd have to check.
12 Q. Was Starky's the contractor that would have
13 done that?
14 A. There is a lot of work that was performed by
15 different subs. I don't know exactly the names.
16 Q. Well, I'm going to go through them, maybe it
17 will be quick. Securing the glass, do you know who would
18 have done that?
19 A. No.
20 Q. Do you recall when that was completed?
21 A. No.
22 Q. But you think you might have a record from
23 January of 2017 that might show that?
24 A. Yes.
25 Q. And you don't know who the sub was.

1 A. I don't recall.
2 Q. Well, okay.
3 You said closing doors. What did you mean by
4 "closing doors"?
5 A. Putting temporary doors on openings.
6 Q. Do you recall how many there were that needed
7 that?
8 A. Not off the top of my head, no.
9 Q. Do you have any idea who the sub was who did
10 that?
11 A. No.
12 Q. Do you have any idea how much it cost to do
13 that?
14 A. I do not have the specifics at this moment, no.
15 Q. Do you know when it was completed?
16 A. All that work was completed by March.
17 Q. Sealing the facade, what were you referring to
18 there?
19 A. Sealing the facade?
20 Q. Yes.
21 A. Making sure water didn't get into the building
22 from the outside.
23 Q. Okay, do you know who did that work?
24 A. No.
25 Q. Do you know when that work was completed?

1 A. All the work was completed by March. I don't
2 know the specific details.
3 Q. And repositioning leaders, what does that mean?
4 A. The roof drains were routed into the top floor
5 units and out a window. So it was to connect them so that
6 they flowed out of the building, not via an open window.
7 Q. And what would that have done if that hadn't
8 been addressed prior to winter?
9 A. It would have fell off -- the connection was
10 temporary. It would have fell off the attachment to the
11 roof and all the water from the roof would have come into
12 the building.
13 Q. And do you know who did the work on that?
14 A. No.
15 Q. Do you know when that work was completed?
16 A. I don't recall.
17 Q. Do you have any idea how much it cost to do
18 that work?
19 A. No.
20 Q. Safety on elevators. The elevator shafts? Is
21 that what you're referring to?
22 A. Yes.
23 Q. What needed to be done? Just put wood up in
24 front of them?
25 A. To make sure somebody doesn't fall down the

1 shaft, yes.
2 Q. And you believe that would be a winterization
3 issue?
4 A. A security issue.
5 Q. Was there a history of people traipsing around
6 the project while it was under construction other than
7 construction workers?
8 A. The site was not -- there was nobody on the
9 site during this time.
10 Q. What time?
11 A. Quandel was fired.
12 Q. Yeah, I know.
13 A. Okay.
14 Q. But you're still going with there was nobody on
15 the site because you didn't know that there was somebody on
16 the site.
17 A. Quandel was fired. Who else would be on the
18 site?
19 Q. Gleason was hired the same day.
20 A. But I'm not familiar with Gleason and I
21 didn't -- I'm not aware of them being on any site.
22 Q. So when you say no one was there, you have no
23 personal knowledge that no one was there because you weren't
24 there to see that no one was there, correct?
25 A. No. I know that Quandel was the contractor,

1 they were terminated, and I'm not familiar with Gleason.
2 Q. Who told you Quandel was terminated?
3 A. There was I believe an e-mail.
4 Q. From whom?
5 A. Craig.
6 Q. And it was directly from Craig to you?
7 A. No.
8 Q. Oh, so who --
9 A. That's not what I said.
10 Q. Okay, well, then Craig didn't tell you that
11 they were terminated. Who told you that they were
12 terminated?
13 A. It was in the body of an e-mail that he sent to
14 Canyon I believe.
15 Q. So you think Canyon forwarded it to you?
16 A. No, I think I was copied on the e-mail from him
17 to everybody.
18 Q. Okay. And you don't believe that that e-mail
19 said anything about a replacement contractor taking over?
20 A. I didn't see that.
21 Q. But you weren't back on site from
22 September 15th to January, so you would have had no way of
23 knowing whether there was or wasn't anyone there, correct?
24 A. No.
25 Q. I am correct. I asked you if I were correct.

1 A. I would have no way of knowing if anybody was
2 there.
3 Q. And then locking it up --
4 A. Unless of course there was a contract that was
5 sent to indicate that.
6 Q. Indicate what?
7 A. That there was a contractor on site. I don't
8 have to physically see it to know that there's a
9 contractor -- a contract showing an agreement between
10 another contractor being on site would indicate that.
11 Q. Well, if they were working based on existing
12 contracts, why would you see a new contract?
13 A. Quandel was terminated. What other contracts
14 were there?
15 Q. The Gleason contract.
16 MR. DOLAN: Object to the form of the question.
17 There was no Gleason contract.
18 Q. Uh-huh. Okay. Did you tell me who the
19 contractor was who would have been responsible for the
20 elevator safety?
21 A. I didn't say that.
22 Q. Do you know who it would be?
23 A. No.
24 Q. Do you know when that issue was taken care of?
25 A. That scope was completed by March.

1 Q. By March. And do you know how much that cost?
2 A. No.
3 Q. And then locking it up. Do you know who would
4 have been responsible for that subcontractor-wise?
5 A. No.
6 Q. And do you have any idea how much it would cost
7 to make sure that the fence and gates were locked?
8 A. I do not recall at this time, no.
9 Q. So what did the \$2.4 million get spent on?
10 A. There was work -- there was other work that was
11 completed within that 2.4 for winterization. It wasn't just
12 solely winterization. It was winterization, security,
13 making sure the site was secure. There was some repairs to
14 the garage piping that was damaged. Which was with the same
15 sub that was working on it prior.
16 Q. Anything else done during that time?
17 A. There was some investigation work that was
18 performed to make sure the area where the foundations were
19 settling wouldn't further collapse.
20 Q. So are you saying to me that this \$2.4 million
21 for winterization was not all hard costs?
22 A. No, that's not what I said. It's all hard
23 costs.
24 Q. The 2.4 million was all hard costs?
25 A. Yes.

1 Q. Okay. Ma'am, I'm going to hand you, because it
2 didn't fit in the book, what's been marked as Exhibit 127.
3 It should be online but I couldn't put it in the book.
4 (Whereupon, Contractor's Application for
5 Payment was marked as Exhibit 127 for identification as of
6 this date by the Reporter.)
7 MR. DOLAN: What number?
8 MR. MILLER: 127.
9 Q. Ma'am, have you seen that document before?
10 A. Yes.
11 Q. What is that?
12 A. It's an application for payment.
13 Q. Is there anywhere in that document where it's
14 reflected the \$2.4 million winterization budget?
15 A. Yeah.
16 Q. Where?
17 A. Right here, number 1. 2.4.
18 Q. Okay, turn to the next page. Is there a
19 breakdown there of what the hard costs are?
20 A. Yes.
21 Q. What are they?
22 A. Do you want me to read them all to you?
23 Q. Well, I thought there was a summary. Maybe
24 it's on the third page, excuse me. Yeah, maybe the third
25 page is easier because it's all on one page.

1 THE VIDEOGRAPHER: I'm not sure it's the same
2 document I'm looking at.
3 MR. MILLER: 127?
4 THE VIDEOGRAPHER: That's what I have up on the
5 screen but the first page starts where it says Packard
6 Square Apartments. Oh, it is the same. Thank you, I'm
7 sorry to bother you.
8 Q. Page 3. There's a list going down the left
9 hand column of contractors and, frankly, non-contractors.
10 Can you point out to me which of those items that are there
11 of that 2.4 million were actually for winterization?
12 A. So which -- all of them had involvement in
13 this.
14 Q. Well, we just went through a whole list of
15 things that you said were done. I'm just trying to figure
16 out who did what and for how much money.
17 A. Paving would be part of it.
18 Q. Paving would be part of it?
19 A. Yeah.
20 Q. What needed to be paved prior to the winter
21 starting?
22 A. The soil.
23 Q. Why did the soil need to be paved before the
24 winter started?
25 A. To prevent erosion onto adjacent properties,

1 because it wasn't paved. It wasn't excavated and it was all
2 hilly and dirt and mounds of dirt. That creates freeze and
3 thaw. Snow melting and running off into adjacent
4 properties.
5 Q. And that was something that had to be done
6 before winter started?
7 A. Yes.
8 Q. So it was completed by March.
9 A. A portion -- yeah, not all of the pavement.
10 There was a portion of preparing it, yes.
11 Q. What portion was prepared and completed before,
12 say, December 5th --
13 A. I don't recall.
14 Q. But you think it was all done by March?
15 A. This scope -- what this scope of work was, yes.
16 Q. So if it didn't get done until March, what made
17 it imminent to be needed to be done before winter?
18 A. Regardless of the time duration that it took
19 and the timeline, it needed to be done and performed prior
20 to the onset of the weather. The structure is exposed to
21 element. That's known. So if the building is not
22 watertight or there's no windows, the windows weren't
23 completed, the doors weren't completed, the storefront
24 wasn't completed, that allows water, snow, wind, intrusion
25 into the property.

1 Q. But we weren't talking about any of those
2 things. We were talking about soil erosion.
3 A. Okay.
4 Q. That's what we were talking about.
5 MR. DOLAN: Read the question back. That's not
6 what the question was. Read the question back before her
7 answer, please.
8 (Whereupon, the referred to testimony was read
9 back by the Reporter.)
10 Q. I was talking about the pavement. That's all I
11 was talking about. She changed it to something else.
12 MR. DOLAN: Well, you're saying "it" and
13 "that." If you want to be specific, you need to be
14 specific.
15 Q. Ma'am, I was talking about the pavement. So
16 what of that payment was completed by December 5th, if
17 anything? Or you don't know because you weren't there until
18 January?
19 A. I said I don't recall.
20 Q. You don't recall. What are the other items
21 that were done as part of the winterization here?
22 A. Roofing.
23 Q. What did CentiMark Corp. do for the roofing for
24 winterization purposes?
25 A. Applied tape at the joints, seams, to prevent

1 the water from coming in, which was coming in.
2 Q. And that cost \$37,000?
3 A. Yup.
4 Q. What did Albanelli do for \$391,000?
5 A. They poured the basement garage.
6 Q. What did that have to do with winterization?
7 A. That was to protect the pipes that got damaged
8 prior. And the pipes were prepared and they poured it so
9 that that wouldn't happen again.
10 Q. How would the pipes be damaged if nothing's
11 happening at the building?
12 A. They were damaged prior to us getting the
13 building.
14 Q. Right, but what did that have to do with
15 winterization?
16 A. I said there was more than just winterization
17 performed.
18 Q. Okay --
19 A. Security. Making sure the building was safe.
20 Q. Time out. So just so we're clear, did any of
21 Albanelli's work have anything to do with winterization?
22 A. I don't know for sure.
23 Q. So I'm sorry, where were you next? You talked
24 about CentiMark, DMV, excavate to expose footing. Do you
25 know what that was?

1 A. Yes.
2 Q. What was that?
3 A. For where the building settled to expose the
4 footing.
5 Q. Did that have to be done before the winter
6 started?
7 A. Yes.
8 Q. Why?
9 A. The building was settling. It was showing
10 cracks on the floor.
11 Q. So that's \$3,000. What did Eagle do for earth
12 work?
13 A. Earth work, to level out the land so that it
14 wasn't trespassing water or any type of -- from the freeze
15 and thaw and water coming onto other people's properties.
16 Q. And that had to be done before winter.
17 A. Yes.
18 Q. And was it completed before the winter began?
19 A. Scope was completed by March.
20 Q. So that's a no to my question. Correct?
21 A. Yes.
22 Q. Did you ever provide a statement or a warning
23 or anything at all to Mr. Schubner or anyone at Packard
24 Square notifying the developer that there were these items
25 that had to be completed before winter?

1 MR. DOLAN: Object to the form of the question.
2 Go ahead.
3 A. I don't recall.
4 Q. Well, in other words, I guess I'll try to ask
5 it a different way. In your position as construction
6 consultant, if there was something that you saw as being a
7 construction deficiency, is it something that you would take
8 upon yourself to inform a developer if you were aware of a
9 problem that you felt needed to be corrected to please
10 correct the problem? Is that what you do as part of your
11 job?
12 A. If it's an imminent safety issue to a person
13 where they would fall down a shaft or they would get
14 injured, then I would do it at the site. But otherwise, no.
15 Q. So if, for example, you had a different
16 project, say, the Long Island City project, and you happened
17 to note last fall that there were in your mind a requirement
18 that there needed to be plastic sheeting on windows, you
19 would not take it upon yourself to call up the contractor
20 and say hey, Bill, you might want to get some plastic
21 sheeting on those windows?
22 A. No.
23 Q. Who does that?
24 A. The developer.
25 Q. So if there's a deficiency, nobody points it

1 out to the developer?
2 A. I don't know.
3 Q. You don't.
4 A. No, I don't.
5 Q. So the next item here is environmental
6 specialist, vapor barrier repairs for \$6,000. What was
7 that?
8 A. That was in the retail space.
9 Q. What needed to be done before winter for that?
10 A. The vapor barrier was repaired, and that had to
11 do with the city being very upset that it wasn't completed.
12 Q. So it had nothing to do with -- anything having
13 to do with winter or the damage that might come from a
14 winter issue, correct?
15 A. Yup. Like I said, there was more than
16 winterization performed.
17 Q. I know, but I'm talking about winterization
18 right now.
19 A. Okay.
20 Q. So there was silt fencing around the site to
21 protect against erosion, wasn't there?
22 A. Yes. It was failed in some portions, yes.
23 Q. How many feet of portions would you say it
24 "failed"?
25 A. I don't recall exactly how much.

1 Q. Storm drains, Evergreen Civil, what was that?
2 A. I believe -- I don't recall but I believe this
3 has to do with off-site work.
4 Q. Okay, so it's got nothing to do with
5 winterization.
6 A. Well, it has to do with the adjacent
7 properties.
8 Q. How so? If it's off site, how would it effect
9 winterizing this property?
10 A. It has to do with the connections for the
11 other -- timelines that were promised to adjacent properties
12 I believe.
13 Q. Okay, but just so we're clear, there's nothing
14 about that that had to be done by winter or else the
15 building would suffer imminent harm. Is that true?
16 A. Yes.
17 Q. Jermor I think is next. Plumbing -- did I skip
18 one? Fastdecks, shoring. What is that? What did they do?
19 A. They installed shoring in the garage.
20 Q. What did that have to do with something
21 necessary for winter?
22 A. It was to bring -- because the courtyard was
23 not accessible. So in order to allow the weight of the
24 equipment to come into the courtyard and to provide the
25 drainage within that courtyard to mitigate any water coming

1 into the building, the shoring had to be installed to allow
2 for the equipment to actually go in.
3 Q. But if work wasn't being performed --
4 construction work wasn't being performed, that wasn't really
5 necessary, was it? At that time.
6 A. Yes, it was. It mitigated water. The
7 courtyard is open to the air so rain gets in there and water
8 gets in there.
9 Q. So what would happen?
10 A. It would come into the building.
11 Q. Into the building.
12 A. Yeah.
13 Q. I thought this was in the courtyard?
14 A. It is. In the center of the building.
15 Q. How would it get in the building from the
16 courtyard?
17 A. Through the foundation.
18 Q. Oh. And that was something that had to be done
19 by wintertime?
20 A. Yes.
21 Q. And it was performed by December.
22 A. March.
23 Q. By March. Okay.
24 Jermor Plumbing, \$57,000 in plumbing it says.
25 Do you know what that was for?

1 A. Yes. As I said before, it was to repair the
2 plumbing that was damaged prior.
3 Q. Prior to what?
4 A. To the receiver taking over.
5 Q. Again, that had nothing to do with -- anything
6 having to do with imminent harm --
7 A. Well, the drains had to be connected to
8 something that were connected from the roof. So it can't go
9 through a broken pipe. So they had to correct the pipes.
10 They had to fix them.
11 Q. What broken pipes were broken? How many were
12 there?
13 A. I don't know.
14 Q. 2? 12? 100?
15 A. I don't know.
16 Q. John Tagle, building assessment. That wasn't a
17 hard cost, right?
18 A. That's the architect.
19 Q. That's not a hard cost, right?
20 A. It depends on how you look at it.
21 Q. No it doesn't. You defined what a hard cost
22 was. Architecture is not a hard cost, right?
23 MR. DOLAN: Objection to the form of the
24 question. If you're just going to argue with her --
25 MR. MILLER: I'm not arguing.

1 MR. DOLAN: She said no it doesn't. That's
2 argumentative. If you want to ask her a question ask her a
3 question. If you want to argue with her, do it after the
4 deposition.
5 Q. It's your testimony that John Tagle's building
6 assessment for \$5100 is a hard cost?
7 A. Yes.
8 Q. How so?
9 A. It's necessary to do the other work.
10 Q. So if that differs from your definition of a
11 hard cost from before, that was a misstatement?
12 A. It's part of the process to build the building
13 and get it fixed.
14 Q. We'll go back and look at your definition of a
15 hard cost later.
16 Underpinning work --
17 A. You do that.
18 Q. I will. Underpinning work by Kent Companies,
19 what's that?
20 A. Underpinning work. Exactly what it says.
21 Q. Well, can you describe it for the lay people in
22 the room?
23 A. For the who?
24 Q. The lay people in the room.
25 A. It's underpinning.

1 Q. I don't know what that means. You can tell me
2 it's chemical engineering, I wouldn't know what that means.
3 A. It's underpinning underneath an existing
4 concrete structure to support the building. It was where it
5 was failing.
6 Q. And that had to be done before wintertime?
7 A. Yes.
8 Q. If it hadn't been done before winter, what
9 would have happened?
10 A. The building would have settled more.
11 Q. And that couldn't have been repaired?
12 MR. DOLAN: Is that a question?
13 Q. Yes. It couldn't have been repaired?
14 A. What do you think that is?
15 Q. How much more would it have settled?
16 A. I don't know.
17 Q. Were you aware of whether TEC performed any
18 reports about settling?
19 A. I don't recall.
20 Q. Is it possible that the TEC reports said that
21 there was no settling?
22 A. I don't recall.
23 Q. The retaining wall, Landtek, for \$61,665. What
24 was that?
25 A. A retaining wall at the front of the property

1 to hold back dirt. That's what a retaining wall does.
2 Q. And that had to be done before winter or else
3 what would have happened?
4 A. It's part of soil. Preparing the site for
5 soil.
6 Q. And did it get done before winter?
7 A. Got done through the date of this application.
8 Q. So by April 30th.
9 A. March -- well, it was a little earlier in
10 April, yes.
11 Q. It says period from --
12 A. Yup. That's how they work.
13 Q. Okay. Moving tile materials, Metro Plus. What
14 is that?
15 A. That's to move tile materials from whether it
16 was outside into the garage to keep it safe. Keep it from
17 breaking.
18 Q. And it cost \$8,000 to move something from
19 outside the house to inside the house?
20 A. Yes, that's what it says.
21 Q. Are you sure that's what it was for?
22 A. Yeah.
23 Q. Nagle Paving, asphalt paving, \$112,713.90.
24 What was that for?
25 A. Paving.

1 Q. And why was that needing to be done prior to
2 winter?
3 A. To allow fire truck to get in there if the
4 building was burning down.
5 Q. Didn't we talk about that earlier --
6 A. Yeah, we did.
7 Q. You don't need it just to be paved. You just
8 need to have a manner by which they can drive it. It
9 doesn't have to be paved, correct?
10 A. Well, it has to support a truck.
11 Q. Doesn't compacted rock support a truck?
12 A. Not necessarily, no. And not all fire
13 departments will allow that.
14 Q. And that had to be done by winter or else --
15 A. During this time frame, yes.
16 Q. Ma'am, the time frame I'm talking about is
17 before winter started. Your time frame, I just want to make
18 sure we're clear, is by April, or the end of April. So
19 which time frame are you referring to?
20 A. This time -- March. By March/early April.
21 Q. They did the asphalt?
22 A. They did this scope of work. Not all the
23 asphalt.
24 Q. Are you aware of a City of Ann Arbor
25 requirement that you're relying on to make the statement

1 that you just made?
2 A. No. My experience is based on fire
3 departments; they will not drive their truck unless they
4 know it's not going to sink.
5 Q. And it had to be done or else the building was
6 in imminent harm.
7 A. Yes.
8 Q. Really. So have you seen an Ann Arbor Fire
9 Department requirement that supports that statement?
10 A. No.
11 Q. So you're just assuming it.
12 A. My experience tells me that.
13 Q. I see.
14 A. Yes.
15 Q. What is Nowak & Fraus?
16 A. An engineer.
17 Q. And so that \$51,126.75 certainly did not go to
18 hard costs of the project, correct?
19 A. I believe that was involved -- my recollection
20 is that that was part of the process for the underpinning
21 work.
22 Q. Okay, that's your recollection.
23 A. Yes.
24 Q. Could you be mistaken about any of this stuff?
25 A. I could recall incorrectly, yes.

1 Q. Just checking.
2 Forensic accounting, \$16,166.81. Certainly
3 that didn't add any value to the building, correct?
4 A. That cost was so that they could track the
5 paperwork and figure out what was purchased, what was on
6 site and to figure out the trail of paperwork prior to.
7 Q. So the answer to my question is no, it had
8 nothing to do with hard costs to the project.
9 A. No, that's not true. I just said that it had
10 to do with them reviewing paperwork associated with hard
11 costs. So that wouldn't have nothing to do with hard costs.
12 They were trying to figure out the hard costs.
13 Q. So their scope of work for \$16,000 added
14 exactly what in value to the building?
15 MR. DOLAN: Object to the form of the question.
16 A. I don't know.
17 Q. Nothing, right? You can't get that back out of
18 the building.
19 A. I just said I don't know.
20 Q. Ma'am, you've been doing this for how many
21 years? You must have an opinion.
22 A. I just explained to you what it was for. Your
23 question I don't have an answer to.
24 Q. The curb and the gutters, Saladino
25 Construction. I'm assuming that means they put in some

1 curbing and some gutters, correct?
2 A. That would be correct.
3 Q. And that had to be done before winter why?
4 A. So that the water doesn't flow to the adjacent
5 properties.
6 Q. And that would affect imminent harm to the
7 building how?
8 A. That would affect the adjacent properties.
9 Q. But that's not even close to responsive to my
10 question. I'm asking about this project. How would it
11 affect this project? The imminent harm to this project if
12 it hadn't been done by winter.
13 MR. DOLAN: Her answer was it will affect the
14 adjacent properties.
15 MR. MILLER: I'd like her to answer the actual
16 question.
17 MR. DOLAN: I think she did answer that
18 question.
19 MR. MILLER: I don't.
20 MR. DOLAN: You can't figure out how hurting
21 the adjacent properties hurts this project? Creating
22 liability on the neighbor, you can't see how that hurts this
23 project?
24 MR. MILLER: I can't wait to take your
25 deposition, Ben, but it's not happening today.

1 MR. DOLAN: You said she didn't answer the
2 question. I'm saying she did. You can't figure it out.
3 MR. MILLER: Because you think I'm a moron, I
4 got it.
5 MR. DOLAN: I might. But if you can't figure
6 that out, you've got problems.
7 MR. MILLER: Whatever.
8 MR. DOLAN: These are nonsensical objections.
9 We're just dragging this out for no reason. But that's
10 fine. But don't yell at me for taking breaks when you're
11 asking questions like that.
12 MR. MILLER: I have nothing but time now. My
13 flight's been delayed for three hours.
14 MR. DOLAN: That's apparent by these questions.
15 Q. So ma'am, could you answer my question about
16 how the curbs and gutters not being completed before winter
17 caused potential imminent harm to this project?
18 A. The curbs and gutters would affect this project
19 because if water flowed into the adjacent properties, there
20 would be an issue with the adjacent properties to the
21 property. That's your answer.
22 Q. I see. I don't find that to be completely
23 responsive, but that's fine.
24 Select Construction, stairwell footing and
25 walls. What was that for?

1 A. It's for footings and walls. It's for footings
2 and walls.
3 Q. Why did that have to be done before winter?
4 A. That was part of the retaining wall. Part of
5 the same thing.
6 Q. Which same thing?
7 A. Retaining wall above.
8 Q. With Landtek?
9 A. Yes.
10 Q. Starky Construction, weatherproofing and
11 temporary doors. Ah-hah. Now it looks like something
12 having to do with "winterizing." \$70,790.91. Is that what
13 you were referring to with the plastic on the windows and
14 closing the doors?
15 A. Yes.
16 Q. So \$70,790.91 of that amount of money was for
17 "winterizing" in my estimation. Am I reading that right?
18 A. That's our estimation, yes.
19 Q. Is there a different estimation that you have
20 that these other items were similarly situated?
21 A. We just went through all of them as to how they
22 affected the building, so yes.
23 Q. Fine, I'll stick with your answers. Concrete
24 and soil testing for \$18,823. What did that have to do with
25 for winterizing?

1 A. That has to do with the underpinning work. And
2 you have to test the soil to make sure that it can support
3 what's getting put in. And you have to test the concrete to
4 make sure it reaches the PSI that is needed to support the
5 building.
6 Q. And then professional services from testing
7 engineers for \$33,500. What was that for?
8 A. I don't recall. I would have to look at the
9 engagement.
10 Q. You would agree with me that that doesn't have
11 anything to do with hard costs added to the building? Your
12 answer, ma'am?
13 A. It does because it coincides with the above.
14 Q. What are unassigned funds?
15 A. Those are savings. Money we didn't spend.
16 Q. So I'm very curious about the last two items.
17 O'Brien general conditions and builder's overhead and profit
18 of \$730,000. Do you see that?
19 A. Yes.
20 Q. \$730,000 of \$2.4 million is almost -- is more
21 than 30 percent, is it not?
22 A. I don't know. I'm not doing the math. You
23 clearly did it already, so if you'd like me to figure out
24 the math for you, I can do that.
25 Q. That's true, it's worse than that. I'm wrong.

1 It's \$730,000 based on the \$1.7 million. Do you see that?
2 The whole contract -- right. Let me rephrase that.
3 2.4 million was the total amount. 1.7 was
4 supposedly spent, and the other \$730,000 was spent by
5 Starky's -- I'm sorry, spent by O'Brien on their general
6 conditions and builder's overhead and profit. Do you see
7 that?
8 A. Yes.
9 Q. So let's see. Siri, what percentage is 730 out
10 of 1.7 million?
11 Siri tells me it's 43 percent. So by my
12 estimation here, O'Brien paid themselves 43 percent of their
13 amount billed for their general conditions and overhead and
14 profit. Do you see that? Do you agree with that?
15 A. I see the numbers, yes.
16 Q. Do you think that's high?
17 A. It's what it was. I don't know what to tell
18 you.
19 Q. I do, because you told me that the industry
20 norm was about 5 percent, 6 percent, maybe 7 and a half
21 percent.
22 A. Right.
23 Q. Why are they entitled to get 43 percent?
24 A. But what's normal about this project. Nothing.
25 Q. Who approved that O'Brien would get 43 percent

1 in general conditions overhead and profit?
2 A. I don't know. But there's nothing normal about
3 this project. So we can't mix normal projects with this
4 project. This is different.
5 Q. So your position is that O'Brien's entitled to
6 that type of return?
7 A. No. What I'm telling you is that is what the
8 cost was. That's it. I don't know --
9 Q. Well, is there a document somewhere that shows
10 us --
11 A. There's general conditions. That includes
12 staffing, putting in trailers, putting this -- it's all the
13 stuff I mentioned earlier.
14 Q. And you're okay with the 43 percent number.
15 That doesn't give you pause at all.
16 A. Yeah, it's high but it's also not a normal
17 project. Someone's stepping in and protecting the property
18 and putting work in place.
19 Q. Who decides what is an appropriate amount for
20 general conditions on this project?
21 A. I don't know.
22 Q. Does O'Brien just get to pick any number it
23 wants?
24 A. I don't believe that's accurate.
25 Q. Well, do you review it?

1 A. They're engaged to McKinley.
2 Q. Did you review it?
3 A. Their contract is with McKinley.
4 Q. What do you review on a monthly basis? All the
5 contracts are with McKinley.
6 A. I review the requests and make sure the work is
7 actually completed.
8 Q. So did you approve \$448,934 in general
9 conditions based on this document?
10 A. Yes.
11 Q. And you thought that was acceptable?
12 A. They substantiate their payrolls and their
13 costs that contributed to that.
14 Q. And the builder's overhead and profit of
15 \$280,000, you think that was substantiated as well?
16 A. That's part of their contract.
17 Q. Do you think it's a fair contract for the
18 receiver or do you think O'Brien's getting away with
19 something here?
20 MR. DOLAN: Objection. Relevance, form and
21 foundation. Go ahead.
22 A. I don't know.
23 Q. So is it true that looking at this document,
24 that for the six months prior to April 30th, so from when
25 the receiver took over, because I think that's what -- this

1 is the 2.4 million, that was the first requisition, right?
2 A. Mm-hmm.
3 Q. There's nothing here for HVAC, correct?
4 A. No.
5 Q. What's here for HVAC?
6 A. There's nothing here for HVAC.
7 Q. Oh, okay. Is there anything here for
8 electrical work?
9 A. No.
10 Q. Is there anything here for insulation?
11 A. No.
12 Q. Is there anything here for drywall?
13 A. No, you can't put drywall in a building that
14 doesn't even have heat.
15 Q. Is there anything here for fire suppression?
16 A. No.
17 Q. And there's just the \$57,000 from Jermor having
18 to do with plumbing, correct?
19 A. Yes.
20 Q. Let's move now to Exhibit 1.
21 (Whereupon, Declaration of Ms. Van Curen was
22 marked as Exhibit 1 for identification as of this date by
23 the Reporter.)
24 Q. Have you gone to Exhibit 1?
25 A. I'm in it.

1 Q. Let's start with your findings, paragraph 6.
2 "When I inspected the building and the site on September 15,
3 2016 I observed the following conditions. The roof has not
4 been completed. The coping, roof membrane terminations, and
5 associated waterproofing, all of which are contingent upon a
6 completed facade, have not been commenced." Do you see
7 that?
8 A. Yup.
9 Q. When did that get finished?
10 MR. DOLAN: What's that?
11 Q. Those items. When did those items get
12 finished?
13 MR. DOLAN: Objection to relevance. Go ahead.
14 A. When did the roof -- it was protected by
15 March -- the end of March to prevent water from coming in.
16 Q. When --
17 A. It was temporarily protected by March.
18 Q. It was temporarily protected by March.
19 A. Mm-hmm.
20 Q. How was it temporarily protected?
21 A. By taping any seams that were open and applying
22 any type of vinyl vapor barrier.
23 Q. And the completed facade, when was that
24 completed?
25 A. Where are you reading from?

1 Q. The third line of Section A. It's the only one
2 I've been on. I haven't skipped anything.
3 A. Yeah, what I'm stating here is that is all --
4 this is discussing the roof and that it's all part of -- in
5 order to complete the facade, the roof has to be completed.
6 Q. Okay, I'm asking a different question now.
7 When was the facade completed?
8 A. It was temporarily -- everything was
9 temporarily protected by the end of March/early April.
10 Q. When was the facade completed?
11 A. That work is -- that work is still going on.
12 Q. That's what I thought, okay.
13 A. The caulking of it is.
14 Q. So here we are over a year and a half later and
15 the facade is still not completed, correct?
16 A. Right. Well, let me rephrase that. All of the
17 panels are installed. The caulking part of it is underway
18 currently. So all the panels are installed currently.
19 Q. When did all of the panels get completely and
20 finally installed?
21 A. Recently.
22 Q. So during the winter?
23 A. Is that a question?
24 Q. Yes.
25 A. What's the question?

1 Q. So it was completed recently. I'm asking you
2 if it was completed during the winter.
3 A. We're in April. It got completed, like, last
4 month.
5 Q. March of --
6 A. March of 2018.
7 Q. -- 2018.
8 You're familiar with the winter conditions that
9 were in place in Ann Arbor in March of 2018, were you not?
10 A. Yeah, but there's multiple facades on this
11 building and elevations. So I would have to say
12 three-quarters of the elevations had been completed prior.
13 The main work that's been ongoing in the last several months
14 is the courtyard facade. So to be very specific, there are
15 portions that were completed and then there's the facades
16 within the courtyard that were still going on and recently
17 completed.
18 Q. Let's look at the last sentence. "Open windows
19 and the likely failure of this temporary system." What
20 temporary system?
21 A. The roof.
22 Q. And freezing temperatures will lead to water
23 infiltration and ultimately interior system failures.
24 A. Mm-hmm.
25 Q. That's a yes?

1 A. Yes.
2 Q. Okay, so --
3 A. Yes.
4 Q. What was necessary to protect by temporarily
5 protecting the roof? What had to be done?
6 A. All the open seams had to be closed up with
7 tape.
8 Q. And --
9 A. And flashing.
10 Q. If that hadn't been done, what would have
11 happened?
12 A. Water would have got into the building.
13 Q. And what would have happened?
14 A. It would have damaged the wood and rotted out
15 the wood.
16 Q. Throughout the entire building --
17 A. Wherever the water landed. Mold would have
18 developed.
19 Q. Are you a mold expert?
20 A. No. Are you?
21 Q. I've litigated a number of cases. It doesn't
22 make me an expert but I'm familiar with it.
23 B, "The building's envelope is not watertight
24 or fully enclosed." When did the building's envelope
25 finally get to be watertight or fully enclosed?

1 A. I don't know the exact date.
2 Q. Was it within the last six months?
3 A. As of today it is.
4 Q. Okay, but that's not very helpful. Was it true
5 in, say, November of 2017?
6 A. Yes. The area that they were working on is
7 actually closed up.
8 Q. What area who was working on?
9 A. The north wing.
10 Q. Who was working on it?
11 A. O'Brien.
12 Q. Oh. And so was it made watertight or fully
13 enclosed by the winter of 2016?
14 A. No. This was issued in 2016. All the work
15 was -- the temporary work to make sure it was watertight was
16 completed by the end of March. The actual final facade and
17 completion is complete -- is watertight now.
18 Q. Was your declaration when you wrote it only
19 referring to the north wing, or was it referring to the
20 entire building?
21 A. No, the entire building. You asked me if it
22 was watertight and I'm telling you that, yes, it was.
23 Q. So back to the fall of 2016 --
24 A. Okay.
25 Q. -- what --

1 A. The fall? That was when I visited the site.
2 Q. Yeah, that's when you wrote this. This is from
3 October of 2016 when you hadn't visited since you had been
4 there since September. I got it. So what portion of the
5 building's envelope was not watertight or fully enclosed
6 when you wrote this?
7 A. The facade, the windows, the roof, the
8 terraces, there was mechanical openings on the roof. The
9 roof drains were not connected properly.
10 Q. And all of these were addressed and taken care
11 of before the winter of 2016.
12 A. They were addressed during the winterization
13 scope, which was completed in March of 2017.
14 Q. I thought you said April some of these items
15 were --
16 A. It's end of March/early April. Please put that
17 in there.
18 Q. Did you ever notify the owner at any point
19 between September 15 or -- between September 15 and
20 October 21st that there was an issue at the building
21 relating to the envelope not being watertight or fully
22 enclosed?
23 A. Which owner?
24 Q. Well, there's only one owner.
25 A. I know. Who are you speaking to? You're

1 asking if I sent any communication to somebody. Which
2 person are you referring to?
3 Q. Anybody at Packard Square LLC. That's the
4 owner.
5 A. And the question is if I submitted at what
6 time?
7 Q. Any time --
8 A. During this affidavit I did.
9 Q. Well, this wasn't directed to the owner. This
10 was directed to the court. So I'm asking if you reached out
11 in any -- communicated in any way with anybody associated
12 with Packard Square LLC about this problem at the property.
13 MR. DOLAN: Object to form. Other than this
14 affidavit?
15 A. I don't know.
16 MR. MILLER: First of all, it's a declaration.
17 It's not even called an affidavit. And second of all, I'm
18 just asking if she communicated directly with Packard
19 Square. It's a very easy question.
20 MR. DOLAN: She wasn't hired by Packard Square
21 to do anything. Why would she communicate with anybody at
22 Packard Square?
23 MR. MILLER: I'm asking her that. I would
24 think that that would be something that the lender might do
25 before taking the very forceful action that it took. I'm

1 simply asking.
2 Q. The answer is no, ma'am, you did not?
3 A. No. I didn't communicate with Packard Square
4 directly.
5 Q. Well, about this. You did communicate with
6 Packard Square on other matters. We've seen e-mails that
7 you've sent, correct? In fact, you testified to some.
8 Right?
9 A. I'd have to look at those again if you're going
10 to revisit them.
11 Q. I don't want to revisit them.
12 A. So if that's what my testimony says, yes.
13 Q. The majority of the ground floor remains open
14 to the elements. How so? The majority of the ground floor.
15 A. The retail space was open, there was no
16 storefront windows in the entire retail space, the door
17 openings didn't have anything on them, they were open. So
18 exactly what it says. The ground floor openings were not
19 covered.
20 Q. And when were the doors finally installed to
21 the ground floor?
22 A. Temporary doors were put in to protect it.
23 That's part of the winterization.
24 Q. How about the windows, when did the storefront
25 windows go in?

1 A. They were covered.
2 Q. When did the storefront windows go in
3 ultimately?
4 A. My recollection is they started this year. I
5 could be off a month or two on the timing, but they were
6 started this year. The final product. But prior to that
7 there was temporary material applied over it to enclose it.
8 Q. Plastic, in other words.
9 A. Yes, mm-hmm.
10 Q. Did the plastic ever fail?
11 A. It has to be maintained.
12 Q. Did the plastic ever fail?
13 A. That's typical in construction, yes, it's
14 temporary and it gets replaced. Yes.
15 Q. And if that plastic and temporary doors hadn't
16 been installed, "There would be interior system failures."
17 A. Yes, because there was no slab on the inside of
18 the retail space. It was all dirt. So the water would get
19 in and it could undermine the foundation as it eroded.
20 Q. We talked about that earlier as to why in a
21 dark shell you might want to have dirt there because we
22 don't have the retail space prepared yet, correct?
23 A. The retail space is prepared now.
24 Q. When?
25 A. It's covered.

1 Q. No, but at the time, back in September, it
2 wasn't -- there was nothing to put in yet because the retail
3 space hadn't been leased or prepared yet, isn't that right?
4 A. At the time there was dirt in there, yes.
5 Q. We talked about how that would be appropriate
6 because you don't want to put in the concrete and then have
7 to rip it up again.
8 A. For piping.
9 Q. Yes.
10 A. Yes.
11 Q. If you -- so would it have been your
12 recommendation to pour the concrete in the retail spaces at
13 that time?
14 A. You're mixing up two things. You're going
15 through a sequence of construction, which is where you put
16 plumbing in the ground and then you pour concrete.
17 This is referencing how the window openings
18 were open and because there was no concrete because of the
19 stage of construction it was at, therefore the water could
20 get in, it could erode the dirt because dirt washes away
21 when water hits it and it could therefore explode the
22 foundation and undermine the foundation. That's just how it
23 works.
24 You're mixing it up. You're saying isn't it
25 okay to have soil. That's not the case. The case is that

1 the building was not ready for the concrete so therefore the
2 openings had to be closed up. That's what that's saying.
3 Q. And if it hadn't been done, what would the
4 damage have been?
5 A. It could have ultimately undermined the
6 foundation of the building.
7 Q. D, "The site remains incomplete and the soil is
8 bare, not stabilized and unprotected. Emergency vehicle
9 access is limited, improper drainage, soil erosion will
10 occur. Completion work on all barriers must be immediately
11 commenced or, at minimum, covered with straw, mulch, erosion
12 control blankets or other suitable erosion prevention
13 measures. Emergency vehicle entry path and means of access
14 must be put in place." When did that get taken care of?
15 A. That was implemented during the same period of
16 the winterization. They put hay bales over the street, they
17 had to put silt bags to protect any dirt from going into the
18 drains. So that was implemented.
19 Q. My question was when.
20 A. During the same period of the winterization.
21 Q. So at some point between November 1 and
22 April 30th.
23 A. Yes.
24 Q. "With the exception of temporary power," why
25 would there be permanent power at this point? Isn't

1 temporary power all there should have been?
2 A. No. There's jobs that have it at 30 percent
3 and there's jobs that have it at 70 percent.
4 Q. What was the problem if there was only
5 temporary power?
6 A. I'm not saying -- I'm saying that there's an
7 exception. I'm not saying there was a problem. I was
8 indicating that the utilities and mechanical systems were
9 incomplete. Therefore the building could not be heated on
10 its own. It had to have generators brought in to heat the
11 systems. That's what that says.
12 Q. When was the heating installed that would allow
13 for that generator not to be necessary?
14 A. The heating is in place now. I don't know the
15 exact date when it was turned on.
16 Q. You just testified when we were looking at
17 Exhibit 127 that there was nothing in there for HVAC.
18 Remember?
19 A. Okay.
20 Q. So nothing could have been done --
21 A. That's what that says. It says mechanical
22 systems are incomplete.
23 Q. So what's the problem?
24 A. It's indicating what the status was there. I
25 don't see me writing anything that says it's a problem.

1 Q. What were you asked to do in this declaration?
2 A. To document the site conditions at the time of
3 the visit.
4 Q. For what purpose?
5 A. I don't recall exactly what purpose. To
6 document what was there and what was going on and if the
7 structure was vulnerable in any way.
8 Q. And nobody asked you to do this for a reason?
9 Nobody said we're doing this because we're going to try and
10 take the property back?
11 A. No, I'm sorry, that didn't happen.
12 Q. Well, it's written by a lawyer with a law firm
13 and a case caption on the front page. You didn't just do
14 this in a vacuum, ma'am.
15 A. Yeah, but I'm not aware of what you just said.
16 Q. Well, look at the front. There's a lawsuit
17 being prepared, and you were competent to attest to these
18 matters.
19 A. You just said yourself that this was a
20 declaration, not anything else.
21 Q. Are you aware --
22 A. It's a declaration.
23 Q. Are you aware of how the court saw your
24 declaration?
25 A. No.

1 Q. Are you aware that the court relied upon your
2 declaration to decide that it was imperative that a receiver
3 be appointed?
4 MR. DOLAN: Object to the form and foundation.
5 She just said she doesn't know.
6 Q. Do you know?
7 A. I don't know.
8 Q. Did anybody at Canyon say Maria, we need you to
9 do this declaration so that we can take this property back?
10 MR. DOLAN: This is Tina.
11 Q. I'm sorry, did anyone at Canyon say Tina, we
12 need to take this property back, we need you to do this
13 declaration so that we can make that happen?
14 A. No. The main point of this was to make sure
15 the site was protected and that it was not harmed by the
16 elements.
17 Q. Wouldn't that have been solved by picking up
18 the phone or sending an e-mail to the developer and saying
19 hey, we've got these seven things that need to be taken care
20 of, please take care of them?
21 MR. DOLAN: Objection.
22 Q. Wouldn't that have the same result?
23 MR. DOLAN: Form and foundation.
24 A. I don't know.
25 Q. But as far as you're aware, nobody tried that

1 tactic.
2 A. I don't know.
3 Q. Weren't there foundations for columns that were
4 exposed to the elements for a year after the receiver was
5 put in place?
6 A. Not that I'm aware of. What columns?
7 Q. By Packard Street.
8 A. The underground drive-through?
9 Q. Yes.
10 A. They're underneath the overhang.
11 Q. But they were exposed to the elements.
12 Winter --
13 A. They're designed that way.
14 Q. Well, ultimately they were protected, weren't
15 they?
16 A. Well, from cars hitting it. It's steel.
17 Q. "Structural remediation work within the retail
18 section, severe settlement may occur if this work is not
19 completed and snow loads could potentially increase and
20 accelerate settlement of the structure; thus it is
21 absolutely imperative that these conditions be addressed
22 prior to winter weather." Is that a true statement?
23 A. Yes.
24 Q. Was that all taken care of prior to the
25 inclement weather starting in December of 2016?

1 A. That work was addressed during the period of
2 November 2016 through March 2017.
3 Q. So if it wasn't done until March 2017, then it
4 wasn't absolutely imperative that the conditions be
5 addressed prior to winter weather.
6 MR. DOLAN: Object to the form of the question.
7 Q. Ma'am?
8 A. I don't know.
9 Q. What don't you know?
10 A. I don't know what you're asking.
11 Q. I'll ask it again. If the work wasn't in fact
12 done until March or April --
13 A. But do you -- go ahead, finish your question.
14 Q. If the work wasn't done until March or April,
15 then it wasn't absolutely imperative that it be done prior
16 to the winter weather starting.
17 A. Yes. So what I'm saying is that this work
18 doesn't just get done overnight. It's not like painting a
19 wall. You have to inspect it, you have to analyze it before
20 you start excavating a foundation. The building was
21 showing -- already had signs of settlement. And that was
22 clear in one of the floors. Craig pointed that out to us
23 during our tour.
24 So this work was completed during that process
25 and that's what that whole list we just went through on that

1 other exhibit that you handed me, it shows that there was
2 testing, there was concrete testing, there was soil testing,
3 and so therefore this isn't something that gets done
4 overnight or in a week or in two weeks.
5 So yes, it was completed between the period of
6 November, and that includes the investigation of it and the
7 completion of the work. And it was absolutely important to
8 be done.
9 MR. DOLAN: I need to take five minutes. I'm
10 sorry, guys. I don't mean to delay this.
11 THE VIDEOGRAPHER: We're off the record. The
12 time is 4:55. This is the end of disk 5.
13 (Whereupon, a short recess was taken.)
14 THE VIDEOGRAPHER: We're back on the record.
15 The time is 5:03. This is the beginning of disk 6.
16 BY MR. MILLER:
17 Q. All right, ma'am, we're still in Exhibit 1.
18 The items that were allegedly stored in the open and exposed
19 to the elements, Section G, that you were not able to
20 inventory, how do you know that those weren't put inside
21 prior to winter starting?
22 A. This is information that's based on my visit
23 and on that day.
24 Q. So it might have been or could have been, but
25 at the time hadn't been because it was still summertime,

1 correct?
2 A. On the day of my visit they were not.
3 Q. Right, because it was still summertime when you
4 visited.
5 A. It was fall. Yes.
6 Q. Fall doesn't start until September 22nd, ma'am.
7 You said in paragraph 7, "Immediate
8 recommencement of construction." This again is based on
9 your presumption that construction had stopped, correct?
10 A. Yes.
11 Q. And you did not confirm with anybody anything
12 differently, correct?
13 MR. DOLAN: Object to the form of the question.
14 Go ahead and answer if you understand it.
15 A. I don't know.
16 Q. You didn't speak to anybody to confirm or deny
17 whether there had been recommencement of construction,
18 that's your phrase.
19 A. What is your question?
20 Q. Did you confirm with anybody that that is a
21 true statement when you wrote it, that there had not been
22 recommencement of construction?
23 A. Yes, that was my understanding.
24 Q. Based on what you had been told by someone that
25 you haven't named.

1 A. It's saying absent any immediate
2 recommencement.
3 Q. How do you -- well, okay. But you don't know
4 whether there was any or not, correct?
5 A. I know that Quandel was fired.
6 Q. Okay. The items that are set forth in
7 paragraph 8, I'll let you go through them and I'll let you
8 tell me which of them were completed prior to the winter
9 commencement of 2016.
10 A. (The witness reviews the document.)
11 MR. MILLER: Is this better, Ben?
12 Q. I was sort of hoping you'd go through them one
13 by one, ma'am, and tell me that A, B, C, D, E, F or G were
14 or were not completed prior to the winter commencement.
15 A. This work was completed during the
16 winterization period, which is November 2016 through March.
17 Q. Okay, so which one of them was completed prior
18 to the commencement of winter 2016?
19 A. Is that a different question?
20 Q. You didn't answer the first question.
21 A. I'm telling you they were all completed.
22 Q. I didn't ask that. I asked which of them were
23 completed prior to the winter commencement. Call it
24 December 22nd, which is the first day of winter. Which of
25 these were finished before that date?

1 A. What does that matter? They were all completed
2 during that period of time that they were allocated to be
3 done, which is November through March.
4 Q. I'm not -- so is it your testimony that none of
5 them were completed by December 22nd?
6 A. No. It's not. I'm telling you they were
7 completed during the period of -- you want me to pinpoint a
8 day for you for each item? I don't know.
9 Q. Which of these were completed by December 22nd?
10 A. I don't know.
11 Q. What would you have reviewed to determine when
12 they were completed? Just the pay applications in April?
13 MR. DOLAN: She's never testified that she's
14 charged with reviewing when things are done. Just pay --
15 draw requests and pay applications.
16 MR. MILLER: Yes, except it's her declaration
17 that put us in this lawsuit. So I want to make sure --
18 MR. DOLAN: Her declaration says these things
19 need to be done. They don't say anything about when they
20 are supposed to be done or when they were done. That's what
21 you're asking her, which isn't her job.
22 MR. MILLER: Then if they were done, then it
23 sort of undermines --
24 MR. DOLAN: But it's not on her.
25 MR. MILLER: I'm not putting it on her. I'm

1 asking her to tell me when they were done.
2 MR. DOLAN: It wasn't her job.
3 MR. MILLER: If she doesn't know, that would
4 have been fine.
5 MR. DOLAN: You keep asking her and she keeps
6 telling you she doesn't know.
7 MR. MILLER: I disagree.
8 MR. DOLAN: Sometime between November and when
9 the draw-out was made. That's when they were all done.
10 Q. Ma'am, the building envelope itself, which you
11 make reference to in Exhibit 1, show photos of it. Let's
12 find the right photo. Like photo 11 for example, or even
13 photo 10 maybe is a better one. The vinyl siding not
14 installed. Do you see that, photo 10?
15 A. Yes.
16 Q. When was that finally completed?
17 A. I don't know the exact date.
18 Q. Was it sometime prior to this past winter?
19 A. Prior to the 2017-'18 winter?
20 Q. Yes.
21 A. Yes.
22 Q. Was there any damage that was caused by the
23 fact that it was not completed prior to the 2016-2017
24 winter?
25 A. It was taped up and there was flapping -- at

1 the time there was flapping vapor barrier on it that had to
2 be re-adhered and connected to protect it.
3 Q. But it wasn't -- was there any damage to the
4 building as a result of it not having been completed?
5 A. When?
6 Q. During the winter of 2016-2017.
7 A. It was protected -- the vapor barrier, it was
8 temporarily protected so it wasn't unprotected.
9 Q. The whole facade was temporarily protected?
10 A. Yeah. In this picture it already had some of
11 it on. But at the rooftop from the wind it was pulled off
12 so it had to be reattached.
13 Q. So the fact that it was just a Tyvek, that was
14 okay?
15 A. Yeah. It's protecting the wood.
16 Q. Todd Swash from ELS testified that there was a
17 change order signed by Quandel relative to the building
18 foundation that I think we discussed about the settlement
19 today.
20 A. Okay.
21 Q. Are you familiar with that?
22 A. No.
23 Q. Do you think it's appropriate for Quandel
24 and/or ELS to enter into a change order without knowledge of
25 the architect, the engineer, the developer or the city? If

1 that's what happened?
2 A. I don't know the details on that to --
3 Q. Assuming that's what happened and that's what
4 he testified to --
5 A. Who's ELS?
6 Q. The foundation contractor.
7 A. Okay. Entered into a contract -- into a change
8 order with?
9 Q. Quandel, the general contractor.
10 A. Sure. The change order is for additional
11 money.
12 Q. They changed the foundation from the plans.
13 A. Okay.
14 Q. If they did that without the city's approval or
15 the architect's approval, the engineer's approval or the
16 developer's approval, is that a problem for you? Do you
17 think that's wrong?
18 A. That's not the normal course.
19 Q. What's not the normal course?
20 A. To just change it prior to the design team
21 looking at it.
22 Q. There was a trailer on site. Why don't you
23 just turn to Exhibit 30.
24 (Whereupon, Photographs were marked as Exhibit
25 30 for identification as of this date by the Reporter.)

1 Q. Just flip through these pictures real fast.
2 Have you ever seen this before?
3 A. Not this picture, no.
4 Q. No, not the picture, I meant the trailer. This
5 is the interior of the trailer. The trailer is depicted on
6 the last page.
7 A. Yes.
8 Q. Do you know what happened to the items that
9 were in this trailer?
10 A. I don't.
11 Q. Do you know what happened to the trailer?
12 A. It's not there anymore.
13 Q. Do you know why it was removed?
14 A. I don't know exactly why, no.
15 Q. Do you know who removed it?
16 A. No.
17 Q. Do you know if there are any retail leases that
18 have been signed?
19 A. I do not.
20 Q. Is that something you would even work over?
21 A. No.
22 Q. Do you know anything about inspections and C of
23 Os? Do you oversee any of that?
24 A. I would get a TCO if it happens.
25 Q. Temporary certificate?

1 A. Yes.
2 Q. Let me ask it a different way. Do you work
3 with the city in any way, shape or form to coordinate
4 certificates of occupancy?
5 A. No.
6 Q. So would you know about inspections that have
7 been done by the city, what has been done, what hasn't been
8 done, what has been finished, what hasn't been finished?
9 A. They're tagged on the doors. When the city
10 comes there's date a on the doors.
11 Q. Are you aware of any of them having been done?
12 A. Yes.
13 Q. There have been some temporary certificates of
14 occupancies?
15 A. No. There's been inspections.
16 Q. Are there any certificates of occupancies yet?
17 A. No.
18 Q. Are there any final certificates of occupancy?
19 A. No. In order to have a final you need a
20 temporary first.
21 Q. Have you walked through the apartment units
22 recently?
23 A. Yes.
24 Q. Are you aware of the number of which there have
25 been no construction done, or very little construction done

1 in them? Or do you think they're all progressing at the
2 same rate?
3 A. The project was done in phases.
4 Q. Let me ask it a different way. There's a
5 number of apartment units. I think 249.
6 A. Yes.
7 Q. Are all of them progressing at the same rate or
8 are some being completed before others are being started?
9 A. Yes, it's a phased project. So yes, some would
10 be completed and some would be in the rough stages.
11 Q. Okay. So have there been MEP inspections in
12 all of the apartment units?
13 A. Every single one of them?
14 Q. Yes.
15 A. Fire suppression has been done in all of them.
16 The MEPs, it depends on the unit so I wouldn't say all but a
17 lot.
18 Q. Would you say about 150 haven't had any yet?
19 A. Haven't had any?
20 Q. Yes.
21 A. No, I wouldn't say that.
22 Q. How many do you think haven't had any
23 inspections yet?
24 A. I don't know.
25 Q. If somebody said last fall, in September, that

1 there were 30 units ready to deliver at that time for
2 occupancy, that would not have been a true statement,
3 correct?
4 A. Last fall.
5 Q. September.
6 A. September.
7 Q. 2017.
8 A. 2017. That there were 30 units to be
9 delivered?
10 Q. Ready to deliver at that time. That would not
11 have been a true statement, correct?
12 A. I'm not sure.
13 Q. Are there 30 units ready to deliver today?
14 A. Yes.
15 Q. There are?
16 A. Mm-hmm.
17 Q. With certificates of occupancy and ready to go?
18 A. They need the certificate of occupancy. But
19 they're --
20 Q. Okay, when did those 30 units become just
21 awaiting certificates of occupancy?
22 A. There's about 46 units awaiting that.
23 Q. Again, when were they ready for delivery?
24 A. I don't know the exact date.
25 Q. Well, within the last month, two months, three

1 months?
2 A. Yes, within the last month.
3 Q. Do you know who decided to tear out the walls
4 in the OA and OB units?
5 A. I do not know who made the decision.
6 Q. Were you a party to any conversation about it?
7 A. I'm aware of it. I wasn't directly involved in
8 the conversations.
9 Q. What was your opinion of that decision?
10 A. I didn't have an opinion of it either way.
11 Q. Do you know if the whole project with O'Brien
12 has been fully bought out at this point?
13 A. Yes.
14 Q. It has been?
15 A. Yes.
16 Q. Do you know when that was done? Completely
17 finally bought out?
18 A. No. I mean, it's typical for it to be within
19 90 percent bought out and there's always a little -- some
20 that have to be bought out throughout the process.
21 Q. Do you know when that was done finally?
22 A. No. I would say honestly it's about 90 percent
23 bought out at this point. Not fully.
24 Q. Have you received any gifts from Canyon?
25 A. No.

1 Q. Have you received any gifts from McKinley?
2 A. No.
3 Q. Have you received any gifts from Matt Mason?
4 A. No.
5 (Whereupon, CANIV 79622 through 79633 was
6 marked as Exhibit 36 for identification as of this date by
7 the Reporter.)
8 Q. Let's go to Exhibit 36. Have you ever seen
9 this before?
10 A. No.
11 Q. Well, it seems to be a report issued by John
12 Tagle Associates. Would this be something that you would
13 normally see on a job if an architect issued a report like
14 this?
15 A. No. Is this normal? Is that the question?
16 Q. No. If there were such a report issued by the
17 architect about issues similar to those that we discussed
18 today, would you have normally been -- would you normally be
19 shown this report?
20 A. No.
21 Q. Have you worked with Mr. Tagle or Tagle
22 Associates on this job?
23 A. Prior to this job?
24 Q. No, no, on this job. Do you work directly with
25 them?

1 A. Not directly. He attends the requisition
2 review.
3 Q. So how would you describe his role as it
4 pertains to your role? You're just sort of peripherally
5 involved in the same conversations but not really working
6 together?
7 A. No. We're involved -- as far as what we're
8 involved with together is the requisition.
9 Q. Okay, let's just look -- this is dated February
10 1, 2017. So within that zone of winterization you're
11 describing, okay? True?
12 A. Yes.
13 Q. Let me direct your attention to page 3. Why
14 don't you read the last full paragraph to yourself that
15 starts "despite."
16 A. (The witness reviews the document.)
17 Okay.
18 Q. So having read that paragraph, do you think
19 that that in any way contradicts your declaration?
20 A. No.
21 Q. Why not?
22 A. First of all, this was issued in February. My
23 declaration is based on a September visit.
24 Q. Yup. But it says work was halted six months
25 ago, allegedly.

1 A. Okay.
2 Q. So it says the condition that had been of the
3 materials that had been installed appeared good. This
4 afforded them the greatest protection from the elements.
5 The building appeared to be relatively watertight.
6 MR. DOLAN: Misrepresenting that paragraph so
7 I'm objecting.
8 Q. Okay, well, Ms. Van Curen, tell me how I'm not
9 accurately reading, or misrepresenting this paragraph based
10 on --
11 MR. DOLAN: That was my objection.
12 Q. I know. Compared to your declaration.
13 A. This is based on February. This has a February
14 date. My declaration is based on a September visit.
15 They're two totally different points in time. And the fact
16 that the winterization had started and commenced in November
17 and was underway at the time that this was actually written.
18 So it just goes to show that the winterization work that was
19 put in place actually helped.
20 Q. But is Mr. --
21 A. That's what this says to me.
22 Q. But it says here that work had been halted six
23 months ago. So this implies that no winterization work had
24 been yet done in February. Does it not?
25 A. That's your assumption. That's not how I'm

1 reading it, no.
2 Q. You're reading that it had been done.
3 A. I'm reading that he noted that it was halted
4 six months ago.
5 Q. So when did it restart?
6 A. But the normal course of construction was
7 halted six months ago. That's how I'm interpreting it.
8 Again, I didn't write this and this is an interpretation.
9 Q. Let's turn the page. Let's look at page 4,
10 second paragraph under conclusions. It starts, "Although
11 all construction on the building had been stopped for a
12 period of approximately six months, the condition of the
13 areas observed appeared, with minor exceptions, to be sound,
14 stable and showing of no deterioration." Doesn't that lie
15 in the face of your declaration?
16 A. No.
17 Q. You think it's consistent with your
18 declaration?
19 A. I think this was written several months after
20 my declaration. My declaration is based on what I saw. The
21 pictures support what I saw. It was basically documenting
22 what could potentially happen to the project now that there
23 wasn't a contractor on the site and work had stopped.
24 Q. Okay.
25 (Whereupon, Receiver's Payment Report was

1 marked as Exhibit 2 for identification as of this date by
2 the Reporter.)
3 Q. We're almost done. Let's just go to Exhibit 2,
4 ma'am. Ma'am, Exhibit 2, have you ever seen these documents
5 before?
6 A. The form of it. I don't know if it's this
7 specific document because they're not dated.
8 Q. These came from the receiver's reports.
9 A. Okay.
10 Q. And what I'd like to just have you point out,
11 because I don't want to go through each page, is if you can
12 establish by looking at these documents when the work for
13 which payment is sought was done.
14 A. Please ask the question again. I don't
15 understand what you're asking.
16 Q. Yeah. Start at the first page. There's a
17 vendor with due dates. Do you see that? Does that reflect
18 when the work was done?
19 A. No. That's the payment date.
20 Q. So the work was done before that date.
21 A. Or a part of it.
22 Q. So is there any way to look forward, like
23 application 1 detail, application 2 detail, application 3
24 detail, is there any way to determine the dates that this
25 work was done by looking at these documents, or that's not

1 possible?
2 MR. DOLAN: I'm just going to object to
3 foundation. I don't think this witness created these
4 documents, so.
5 A. I didn't.
6 Q. Aren't these similar to the pay applications?
7 MR. DOLAN: I'm just objecting again to
8 foundation to the extent this witness doesn't know who
9 created this document or how it was created.
10 MR. MILLER: I understand. It came from the
11 receiver report. I grant you that.
12 Q. So wouldn't there be payouts that would match
13 these that you would have reviewed?
14 A. Yes.
15 Q. These would, I think based on your prior
16 testimony, have paid for work that was done in the month
17 prior to when they were requested, isn't that right?
18 A. It would be based on the application number and
19 whatever period that application number covered.
20 Q. Okay, so if you look at the application itself,
21 that would show the answer to that question.
22 A. That would show the time frame that the work
23 was done, yes.
24 Q. Better than this document would.
25 A. Yes.

1 Q. Give me one second.
2 (Pause.)
3 THE VIDEOGRAPHER: We're off the record. The
4 time is 5:27.
5 (Whereupon, a short recess was taken.)
6 THE VIDEOGRAPHER: We're back on the record.
7 The time is 5:30.
8 (Whereupon, Application for Payment was marked
9 as Exhibit 143 for identification as of this date by the
10 Reporter.)
11 Q. Ma'am, I'm handing you what's been marked as
12 Exhibit 143. Are you familiar with this document?
13 A. Yes.
14 Q. What is it?
15 A. Application for payment.
16 Q. What's the date on it?
17 A. 8/1 through 8/31/2017.
18 Q. In flipping through that document, can you tell
19 me what the hard costs at the project for the receiver were
20 through that date?
21 A. The total?
22 Q. Yes.
23 A. 9.1.
24 Q. Where does it say that?
25 A. Up here.

1 Q. No, that's the contract sum. The payments are
2 within the affidavit.
3 A. Okay.
4 Q. So if you'd flip to the last page of Exhibit
5 143, does it say what's been completed to date?
6 A. Which page?
7 Q. The last page.
8 A. The sworn statement?
9 Q. Yes.
10 A. That's a different document.
11 Q. It's not. It's all tied together as Exhibit
12 143.
13 MR. DOLAN: It's part of the same exhibit. But
14 she's saying it's another document. That's all.
15 MR. MILLER: That's fine. I appreciate that.
16 A. Yeah, this is different.
17 Q. So what was the amount spent to date as of the
18 sworn statement of August 31st, 2017?
19 A. What do you want to know, the amount completed
20 to date?
21 Q. Yes.
22 A. 5,387,009.36.
23 Q. 5,387,009.36?
24 A. Yes.
25 Q. And that's what had been spent on construction

1 through August 31st, 2017, is that correct?
2 A. No. This is for one budget -- one part of the
3 budget. This is based on the \$9.1 million.
4 Q. Right, but there was no other budget yet.
5 A. Sure there was. There was the 2.4.
6 Q. So you're saying the 2.4 million is not
7 inclusive of the 5.3 million?
8 A. Correct.
9 Q. That's in addition?
10 A. Yes.
11 Q. So you add the two together.
12 A. Yes.
13 Q. I see. So what portion of the 5.3 million went
14 to O'Brien for general conditions and fees?
15 A. What portion of general conditions?
16 Q. How much of the 5.3 million went to general
17 conditions and fees?
18 A. General conditions was 345,000. And the fee
19 was 366,000.
20 Q. All right, thank you, ma'am. We're done.
21 We'll get you out of here faster than I anticipated.
22 MR. DOLAN: Appreciate it very much.
23 THE VIDEOGRAPHER: Any other questions?
24 MR. DOLAN: No questions from me.
25 THE VIDEOGRAPHER: Mr. Pascoe?

1 MR. PASCOE: No questions at this time.
2 THE VIDEOGRAPHER: This is the end of today's
3 deposition. The time is 5:34. We're off the record.
4 (Whereupon, at 5:34 P.M., the Examination of
5 this witness was concluded.)
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1 DECLARATION
2
3 I hereby certify that having been first duly sworn
4 to testify to the truth, I gave the above testimony.
5
6 I FURTHER CERTIFY that the foregoing transcript is
7 a true and correct transcript of the testimony given by me
8 at the time and place specified hereinbefore.
9
10
11
12 _____
13 TINA VAN CUREN
14
15 Subscribed and sworn to before me
16 this ____ day of _____ 20__.
17
18
19 _____
20 NOTARY PUBLIC
21
22
23
24
25

1 EXHIBITS
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4
5 EXHIBIT EXHIBIT PAGE
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1 CERTIFICATE
2
3 STATE OF NEW YORK)
: SS.:
4 COUNTY OF WESTCHESTER)
5
6 I, SUZANNE PASTOR, a Notary Public for and within
7 the State of New York, do hereby certify:
8 That the witness whose examination is hereinbefore
9 set forth was duly sworn and that such examination is a true
10 record of the testimony given by that witness.
11 I further certify that I am not related to any of
12 the parties to this action by blood or by marriage and that
13 I am in no way interested in the outcome of this matter.
14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 24th day of April 2018.
16
17
18 _____
SUZANNE PASTOR
19
20
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24
25

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4 3 Amendment 1-Scope of Work 179
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25 (None)

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