

ETHEL B. KELLY, )  
)  
Plaintiff, )  
vs. )  
)  
MUNICIPALITY OF ANCHORAGE, )  
)  
Defendant. )  
) Case No.: 3AN-08-4271 Civil

Plaintiff has opposed the defendant's motion for summary judgment and has filed a cross motion for summary judgment. It is obvious that the issues raised by the plaintiff in her cross motion should be granted since they are undisputed. It is undisputed that the valve box cover was off, plaintiff stepped into the open hole, and she was injured. It is also undisputed that the city had a duty to cover the open valve box and it would be below their standards of care not to cover it. Finally, the plaintiff has affidavits and depositions in which witnesses say that the open valve box was reported to the city before plaintiff's fall and/or the city had employees working in the crosswalk which left the cover off the hole and the defendant was negligent. (Affidavit of James Griffin). Based on these affidavits and depositions, plaintiff's motion for

000134

**CHARLES W. COE**  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-6173

summary judgment on all issues should be granted and defendant's motion should be denied.

### Argument

Pursuant to Alaska R. Civ. Pro. 56(c), a court may grant a party's motion for summary judgment where the moving party has shown that "there is no genuine issue as to any material fact and that [the] party is entitled to a judgment as a matter of law." Where facts are in dispute, "all reasonable factual inferences must be drawn in favor of the non-movant." Lincoln v. Interior. Regional Housing Auth., 30 P.3d 582, 586 (Alaska 2001) (citing Bishop v. Mun. of Anchorage, 899 P.2d 149, 153 (Alaska 1995)).

Summary judgment should be granted in Ms. Kelly's favor because Ms. Kelly has demonstrated that there are no genuine issues of material fact. It is not disputed that Kelly stepped into a hole in the crosswalk at 3<sup>rd</sup> and F Streets and was injured. It is not disputed that the Municipality owned and maintained the valve box and lid, and that the lid was off at the time of the incident. The only possible area of issue that the Municipality pointed to in its Opposition is whether the city left off the lid or was notified that the lid was off and failed to recover the hole upon notice. Contrary to defendant's assertions, Ms. Kelly has demonstrated that the municipality either left the cover off of the valve box without putting it back on or had received notice that the cover was off and

failed to act. The affidavits of James Griffin, Charisse Lyons, and Terri Wakefield's as well as the depositions of Lyons and Wakefield present factual evidence supporting this position. The city's public works supervisors can only say that they do not have it in their department's records but cannot dispute it was not reported to the city's other departments or reported to their own employees who failed to prepare a work order.

**A. The Municipality had notice that the cover to the valve box was missing and it was negligent in failing to replace it.**

Taken together, the statements of Charisse Lyons, James Griffin, and Terri Wakefield and the records of maintenance provided by the Municipality show that at a minimum the Municipality knew that the cover to the valve box was missing. In response the public works department only says it is not in their records; however, they cannot state that they were not called about it nor is there any evidence that the city streets and maintenance did not know about the cover being off.

First, Charisse Lyons was a human resources manager at the Hilton at the time of Ms. Kelly's accident. Tr. Depo. Charisse Lyons 6:16-24 (Oct. 28, 2009). Lyons was working the day Ms. Kelly fell into the hole at 3<sup>rd</sup> and F Streets and when she learned that Ms. Kelly had been hurt after stepping into the hole, she recalled her recent encounter with the same hazard in the road before Ms. Kelly was injured. Id. at 9-10. Lyons had stepped in the same hole

within a week prior to Ms. Kelly's accident. Id. at 10; 15. After she herself had tripped in that hole, she had informed security that she tripped in the hole and asked them to put something over the hole to alert others of the danger. Id. at 10-11. Lyons testified that it was also the responsibility of the security department to report the accident to the municipality. 16:3-17. In response to her request to report the hazardous uncovered hole, security informed her that they were taking care of it. Id. at 24-25. Also, security officer, James Griffin, recalls Ms. Lyons' request and that it was done by his department before Ms. Kelly was injured. (Affidavit of James Griffin). Lyons remembers that the hole remained uncovered for a period of time, even after Lyons had reported it to security. Id. at 16-17. This occurred in spite of the fact that missing lids can be replaced within 15-20 minutes. Tr. Depo. Jamey Gilmore at 67.

The security guard states in his affidavit that Lyons' incident was reported to the Municipality. (Affidavit of James Griffin). Although the Hilton security department and Lyons recall making the report, the Municipality did not act to fix the cover until after Ms. Kelly was injured and the uncovered hole was reported a second time. (Affidavit of James Griffin). Work orders are supposed to be recorded, once the Municipality decides to go out and perform the work to cover the hole, but phone calls making reports of these uncovered holes are not recorded. Tr. Depo. Gilmore at 67-71. The fact

that there are no records of the call to the Municipality from the Hilton security does not mean that there was no call made by Hilton security, only that it was not recorded by the public works department to obtain a work order. In fact, no work was directed to be done at the intersection until after Ms. Kelly fell at 1456 on May 22, 2006, and was injured and even then it was not done until 0258 the following day. (Affidavit of James Griffin). Thus, the phone call in of itself from the Hilton after Lyons' fall was sufficient to put the Municipality on notice that the hole was a hazard and needed to be repaired in order to prevent Ms. Kelly's accident.

Terri Wakefield worked with Ms. Kelly at the Hilton and was walking with Ms. Kelly when she was injured from falling into the hole. 6-22; 8-24. Wakefield reported the incident to security so that security could report it to the Municipality. 28-29. Thus, there were two incidents within approximately a week of each other. First Lyons tripped in the hole and was uninjured, then about a week later Ms. Kelly tripped in the hole and suffered serious injuries. Both incidents were reported to the Municipality, but there was no one sent to repair the hole until about 14-15 hours after the plaintiff was seriously injured.

Finally, Lyons testified at her deposition that she remembered seeing city employees working at or near the intersection of 3<sup>rd</sup> and F, where Ms. Kelly was injured, just before Ms. Kelly's accident. Lyons Depo. at 18.

Similarly, Wakefield specifically recalls that city employees were painting the crosswalk in the area where Ms. Kelly was injured, just before Ms. Kelly's accident and that while they were painting they had a cone covering the hole, but when they left, they took the cone away. Wakefield Depo. 21-23; 24.

Also, James Griffin monitored this hole and said workers were leaving the cover off prior to Ms. Kelly's injury. (Affidavit of James Griffin). Finally, in its responses to plaintiff's first set of interrogatories, the Municipality has stated that "the Paint Shop crew from the Municipality painted the crosswalk on the north side of the intersection on May 3, 2006, but not the crosswalk where Ms. Kelly fell." Interrogatory No. 7. Even if this crew states that they did not remove the valve box cover, surely by being in that intersection they were close enough to notice the hole was left open by the missing valve box cover and were required to replace it. In fact, Wakefield and Griffin testified that while the crew was working they had covered the hole with a cone, but failed to place a permanent cover over the hole once they finished working. Here again, the Municipality, at a minimum, was at least on notice that the hole was uncovered when its workers were in the area and failed to check it out or replace it.

Both Ms. Kelly and the defendant have supplied evidence indicating municipal employees were indeed in the area and specifically in the

intersection before Ms. Kelly's accident. This alone is sufficient to provide the Municipality with notice that there was an open valve box that required covering and the Municipality had a duty to cover the hole. Taken together with the fact that the Hilton notified the Municipality of Lyons' fall and the city was working in the area prior to Ms. Kelly's fall, the Municipality had notice of the hazard prior to Ms. Kelly being injured. The Municipality fails to submit any evidence from the street and maintenance department that they did not know about this uncovered hole or that they did not remove it before Ms. Kelly's fall. Thus, summary judgment should be granted because the Municipality is liable for negligence and does not dispute it.

**B. The Municipality removed the lid from the valve box and failed to recover it.**

Lyons, Griffin, and Wakefield testified at their depositions and in their affidavits that they saw work being done at the corner of F and 3<sup>rd</sup> Streets by city employees near the time of Kelly's accident. Id. at 18; Wakefield Depo. 21-23; 24. Wakefield also recalls that the city had painted the crosswalk just before Ms. Kelly's accident and discovered that the hole was uncovered and put a cone on it to mark it, but when the workers left, they took the cone away, and did not recover the hole. Wakefield Depo. 21-23; 24. This observation was also identical to Hilton security personnel, James Griffin. (Affidavit of James Griffin).

In addition, in its responses to plaintiff's first set of interrogatories, the Municipality confirmed that "the Paint Shop crew from the Municipality painted the crosswalk on the north side of the intersection on May 3, 2006 but not the crosswalk where Ms. Kelly fell." Taken together, this evidence shows that the crew working in the intersection, removed the cover to the valve box, then covered it with a cone and removed the cone when it finished working in the area, but failed to recover the valve box. The city fails to provide anything from the streets and maintenance departments that dispute these facts. The affidavits and depositions of the city are not from the streets/maintenance department. Thus, the Municipality is liable for negligence for leaving the hole exposed, which caused plaintiff's injuries. Summary judgment should be granted in plaintiff's favor.

### **Conclusion**

Whether the Municipality uncovered the valve box and left it open, or upon notice failed to cover the valve box, is not material. The fact is that the valve box was uncovered and Ms. Kelly was injured when she fell into the hole. The testimony of Lyons, Wakefield, and James Griffin demonstrate that the Municipality had notice that the cover was off the hole well before Kelly fell into it. Also, the testimony of Lyons, Griffin, Wakefield, and the municipal records indicate that a painting crew was in the area just before Ms.



CHARLES W. COE

ATTORNEY AT LAW

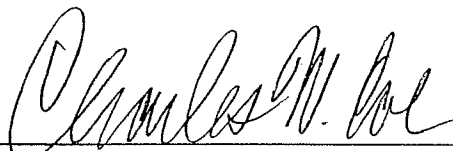
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501

(907) 276-6173

Kelly fell into the hole. If they did not remove the cover themselves, then they at least had or should have had notice that it was uncovered and covered it. Consequently, Kelly has put forth sufficient evidence to establish that there are no genuine issues of facts and that she is entitled to summary judgment.

DATED this 24<sup>th</sup> day of November, 2009.

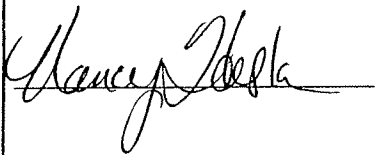
CHARLES W. COE  
Attorney for Plaintiff



Charles W. Coe  
ABA#7804002

I Certify that on November 24, 2009,  
I served a copy of the foregoing  
By U.S. Mail upon:

Pamela D. Weiss  
Assistant Municipal Attorney  
PO Box 196650  
Anchorage, AK 99519-6650



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY, )  
 )  
Plaintiff, )  
vs. )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Defendant. )  
 ) Case No.: 3AN-08-4271 CI

AFFIDAVIT OF JAMES GRIFFIN

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

I, JAMES GRIFFIN, being first duly sworn, deposes and states as follows:

1. I am employed for the Anchorage Hilton Hotel in their security department. I was working in security for the hotel during 2006.
2. I am familiar with Ethel Kelley's accident in which she injured her leg after stepping in an uncovered valve box while crossing the intersection of third and F Street on May 22<sup>nd</sup>, 2006.
3. I am familiar with this crosswalk and the uncovered valve box since I took pictures of it after Ms. Kelly was injured. The attached exhibit is a copy of a picture I took after her fall.
4. According to our records, Ms. Kelly's incident happened at 14:58 hours on May 22, 2006. The uncovered hole was reported to the Municipality of

Anchorage after Ms. Kelly fell, however Municipal personnel did not come out and place a cover on it until 02:58 in the morning of May 23<sup>rd</sup>, 2006.

5. I am aware of this valve box cover being left uncovered prior to Ms. Kelly's fall on other occasions. Prior to the day Ms. Kelly fell, Charisse Lyons (Hilton HR) reported to security that she had stepped in an uncovered hole in the crosswalk. This uncovered valve box hole was then reported to the city street maintenance by me and Douglas John, a security employee, after Ms. Lyons notified us of it. This occurred within a week prior to Ms. Kelley's injury.

6. After Charisse Lyons reported stepping in the hole, prior to Ms. Kelly's fall, I also observed city workers working on the crosswalk at Third and F. The valve box cover would be removed and left off at various times during the day.

7. Prior to Ms. Kelly's injury, I also observed the city maintenance workers leave a cone on top of the uncovered valve box at the cross walk where she fell.

8. Even after Ms. Kelly fell, I observed where the city workers on more than one occasion continued to leave the valve box uncovered.

9. The uncovered valve box in this crosswalk was a hazard since it was placed on the white stripe and was difficult to see.

DATED this 23<sup>rd</sup> day of November, 2009.

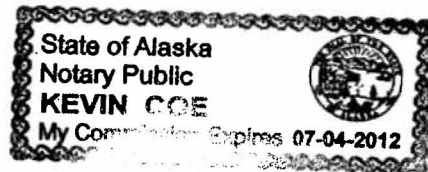
James Griffin  
James Griffin

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of November, 2009.

Kevin Coe  
Notary Public in and for Alaska  
My Commission Expires: 7/4/12

I Certify that on November <sup>25</sup>~~23~~, 2009,  
I served a copy of the foregoing  
By U.S. Mail upon:

Pamela D. Weiss  
Assistant Municipal Attorney  
Municipality of Anchorage  
Office of the Municipal Attorney  
PO Box 196650  
Anchorage, AK 99519-6650



Kevin Coe

CHARLES W. COE  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-6173

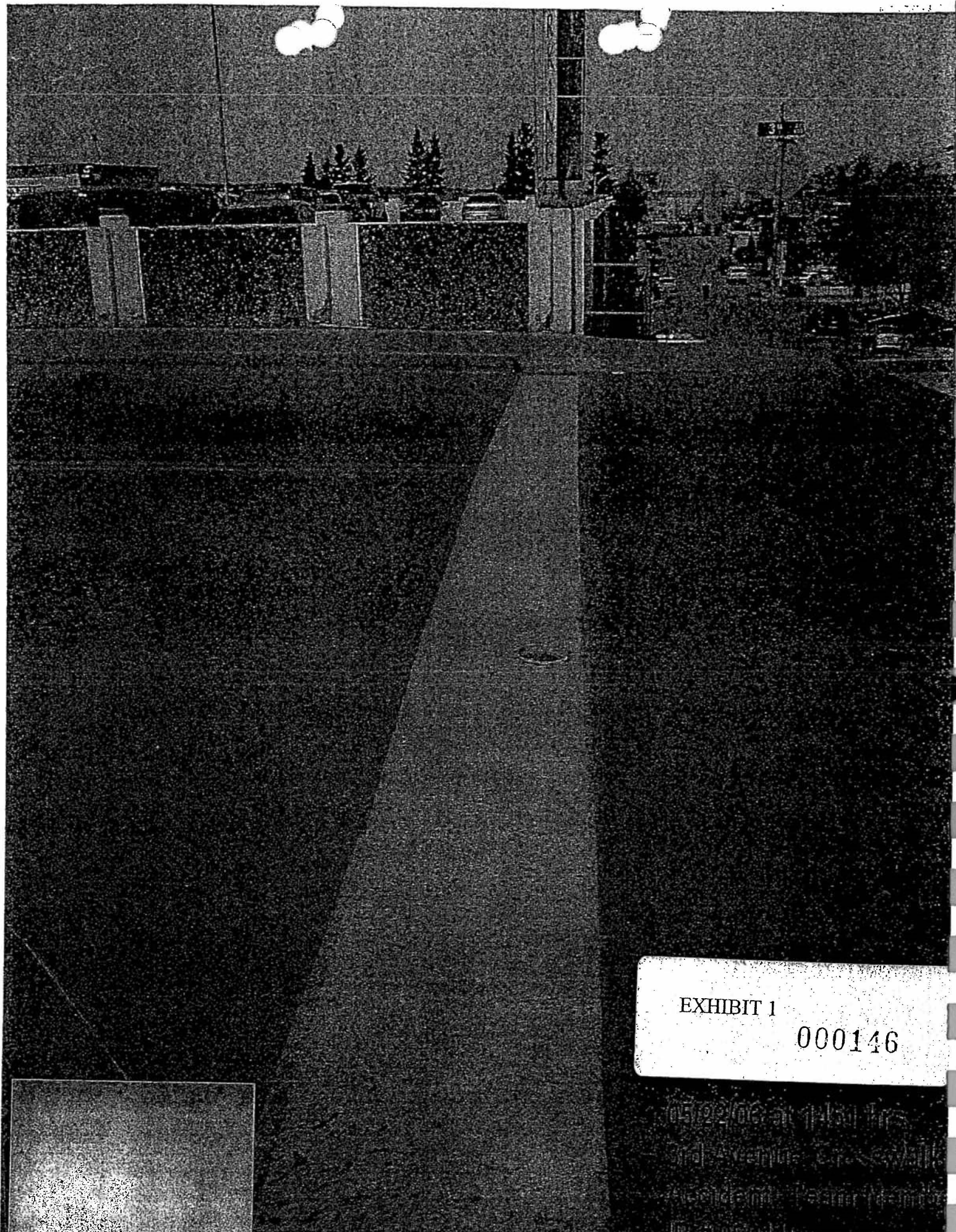


EXHIBIT 1

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

ETHEL B. KELLY,

Plaintiff,

vs

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-08-4271 CI

AFFIDAVIT OF CHARISSE LYONS

STATE OF TEXAS

COUNTY OF

Bexar

ss:

CHARISSE LYONS, being first duly sworn deposes and states as follows:

1. I worked for the Hilton during 2006.
2. When I worked at the Hilton I normally parked in a garage at the corner of 3<sup>rd</sup> Avenue and F Street, diagonally across from the Hilton on 3<sup>rd</sup> Avenue.
3. This required that I use a crosswalk at the corner of 3<sup>rd</sup> Avenue and F Street to go from the garage to the Hilton.
4. As I walked across the street using the crosswalk, my foot fell into an uncovered pipe hole. This hole had no lid cover. The lid cover was completely missing and could not be located.

Kelly v MOA  
Affidavit of Charisse Lyons  
Case No 3AN-08-4271 CI  
Page 1 of 3

CHARLES W. COE

ATTORNEY AT LAW

810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501

(907) 276-6173

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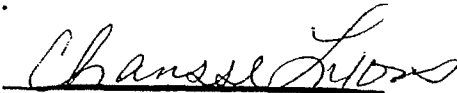
CHARLES W. COE  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 98501  
(907) 276-6173

5. I reported this condition to security who were to report it to the Municipality, since it was a hazard.


6. The hole remained uncovered for a period of time after I stepped into it. After the incident where I stepped into it and reported this condition, Ms. Kelly was injured in the same hole.

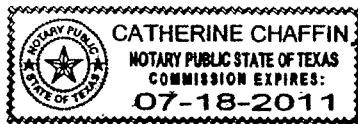
7. The hole was difficult to see and observe as you walked due to its location in the crosswalk and due to the traffic on this street. I know of no reasons why it could not have been marked or covered by the Municipality sooner to prevent Ms. Kelly from being injured. Also, I do not know why it could not have been covered by the municipal workers using that area of 3<sup>rd</sup> Avenue.

DATED this 28 day of October, 2009.

  
Charisse Lyons

SUBSCRIBED AND SWORN to before me this 28 day of October, 2009.

  
Notary Public in and for Texas  
My Commission Expires: 7-18-2011



CHARLES W. COE

ATTORNEY AT LAW

810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501

(907) 276-6173

I certify that on October 27, 2009,  
I served a copy of the foregoing by  
Mail upon:

Charles W. Coe  
810 W 2<sup>nd</sup> Ave,  
Anchorage, AK 99501

Pamela D. Weiss  
Assistant Municipal Attorney  
Municipality of Anchorage  
Office of the Municipal Attorney  
PO Box 196650  
Anchorage, AK 99519-6650

---



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

ETHEL B. KELLY,

Plaintiff,

vs

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-08-4271 CI

AFFIDAVIT OF TERRI WAKEFIELD

STATE OF ALASKA

THIRD JUDICIAL DISTRICT

ss:

TERRI WAKEFIELD, being first duly sworn deposes and states as follows:

1. In May 2006 I was working for the Hilton at the time when Ethel Kelly stepped into the uncovered pipe hole.
2. I was walking with her at the time she stepped into this uncovered pipe hole or valve box and was injured.
3. The photograph labeled Exhibit 1 shows the uncovered pipe hole which was located in a striped area of the crosswalk on 3<sup>rd</sup> Avenue at the F Street intersection. This crosswalk was used by Hilton workers, including me and Ms. Kelly since our employee parking garage was at this corner diagonally across from the Hilton on 3<sup>rd</sup> Avenue.

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4. As I crossed the street, I noticed that Ms. Kelly was behind me. She yelled and I saw her lying on the street with part of her foot in the hole. I went to the Hilton security and obtained help to assist her. The lid for that pipe hole was completely missing and not on or around the street.

5. Security took the photograph labeled Exhibit 1 after she fell.

6. The hole had been left uncovered for days before Ms. Kelly stepped into it and I am aware that several Hilton employees had complained to security about it and that this was reported to the Municipality prior to Ms. Kelly being injured.

7. Prior to Ms. Kelly's fall, based on my observations as I walked in this area when I went to and from work, the lid for this pipe hole was removed when the city painted this crosswalk or performed maintenance in this area. The city maintenance crew put cones over the hole or near the hole for a period of time. After the cones were removed they left the hole in the crosswalk without putting a lid cover or marking on the hole. Since the uncovered hole was in the crosswalk, it created a dangerous condition when people used the crosswalk, especially since this is a busy street at this location.

8. Ms. Kelly's injury could have been prevented if the maintenance crew working on the crosswalk had marked/put a cover on this hole or if they had checked this area after they completed their work. Also, the hole was left

uncovered for days prior to Ms. Kelly's injury and should have been covered by the Municipality workers working or driving over this area.

DATED this 21<sup>st</sup> day of August, 2009.

Terri Wakefield  
Terri Wakefield

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of August, 2009.

Nancy R. Webb  
Notary Public in and for Alaska  
My Commission Expires: 11-16-2012

I certify that on August 21, 2009,  
I served a copy of the foregoing by  
Mail upon:

Pamela D. Weiss  
Assistant Municipal Attorney  
Municipality of Anchorage  
Office of the Municipal Attorney  
PO Box 196650  
Anchorage, AK 99519-6650

Nancy Webb

CHARLES W. COE  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-6173

DEPOSITION OF CHARISSE LYONS  
CONDUCTED ON WEDNESDAY, OCTOBER 28, 2009

1 (Pages 1 to 4)

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2	THIRD JUDICIAL DISTRICT		2	PAGE	
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11	WEDNESDAY, OCTOBER 28, 2009		11		
12	*****		12		
13	ORAL DEPOSITION of CHARISSE LYONS, produced as a witness		13	NO EXHIBITS MARKED FOR IDENTIFICATION	
14	at the instance of the Defendant, and duly sworn, was taken		14		
15	in the above-styled and numbered cause on the 28th day of		15		
16	October, 2009, from 12:45 p.m. to 1:23 p.m. before me,		16		
17	PATRICIA M. GREEN, CSR, in and for the State of Texas,		17		
18	reported by means of electronic machine shorthand in a		18		
19	conference suite at the Holiday Inn, 217 N. St. Mary's		19		
20	Street, San Antonio, Texas, pursuant to the Rules of Civil		20		
21	Procedure.		21		
22			22		
23			23		
24	Job No.: 24 - 167073		24		
25	Pages: 1 - 34		25		

1	APPEARANCES	2	1	PROCEEDINGS	4
2			2	CHARISSE LYONS,	
3			3	having been first duly sworn, testified as follows:	
4	FOR THE PLAINTIFF		4	MS. WEISS: This is Pamela Weiss,	
5	MR. CHARLES COE (APPEARING TELEPHONICALLY)		5	assistant municipal attorney for the Municipality of	
6	ATTORNEY AT LAW		6	Anchorage on behalf of the Defendant, Municipality of	
7	810 W. 2nd Avenue		7	Anchorage.	
8	Suite 100		8	MR. COE: I'm Charles Coe, and I	
9	Anchorage, Alaska 99501		9	represent Ethel B. Kelly, the Plaintiff.	
10	(907) 276-6173		10	EXAMINATION	
11			11	BY MS. WEISS:	
12	FOR THE DEFENDANT		12	Q Ms. Lyons, I want to thank you for -- for making	
13	MS. PAMELA WEISS (APPEARING TELEPHONICALLY)		13	the time to do this. And my first question is, have you	
14	ASSISTANT MUNICIPAL ATTORNEY		14	ever been deposed before in this kind -- well, not this kind	
15	MUNICIPALITY OF ANCHORAGE		15	of thing, but with a court reporter and attorneys asking you	
16	OFFICE OF THE MUNICIPAL ATTORNEY		16	questions?	
17	632 West 6th Avenue, Suite 730		17	A No, not at all.	
18	Anchorage, Alaska 99501		18	Q Okay. So I like to give people ground rules, and	
19	(907) 343-4350		19	I think the -- at least the first one will be really	
20			20	important for you. And, that is -- Number one, I don't	
21			21	expect this to take very long, but, obviously, if you need	
22			22	to take a break at any time to tend -- sounds like there's	
23			23	children nearby, if you need to attend to them or anything	
24			24	else, please let me know. I simply ask that if there is a	
25			25	question already been asked, that you answer that question	

<p>1 and then let me know that you need to take a break.</p> <p>2 A Okay.</p> <p>3 Q The other thing is we also all -- we all need to</p> <p>4 do -- I need to do it, too. We all need to be careful about</p> <p>5 talking over one another. We need to make sure to let the</p> <p>6 other person finish before we start so that we don't get</p> <p>7 overlap on the record. It'll make it easier to decipher.</p> <p>8 And, also, the court reporter will probably remind you of</p> <p>9 this, but because this is only being recorded by audio and</p> <p>10 we are not even present in the room, we can't pick up any</p> <p>11 body language. So nodding heads or anything like that won't</p> <p>12 be picked up and none of us will know. So we have to do our</p> <p>13 best to say yes or no audibly and not -- not just nod or say</p> <p>14 uh-huh, things like that.</p> <p>15 A Okay.</p> <p>16 Q So any other -- If you have any questions -- If I</p> <p>17 ask you a question that doesn't make sense, please ask me to</p> <p>18 rephrase it. This is not a guessing game. And if you need</p> <p>19 me to kind of explain a word or a term or something, just</p> <p>20 feel free.</p> <p>21 A Okay.</p> <p>22 Q You're aware that Ms. Kelly has filed a lawsuit</p> <p>23 against the Municipality?</p> <p>24 A Yes, I am.</p> <p>25 Q And do you know what the basis for this lawsuit is</p>	<p>5</p> <p>1 Q When were you employed with the Hilton?</p> <p>2 A I was employed from 2003 till 2006.</p> <p>3 Q When did you leave that position?</p> <p>4 A I left in 2006 when my husband retired.</p> <p>5 Q Which month; do you remember?</p> <p>6 A It was, I believe, June. The end of June.</p> <p>7 Q So it sounds like you left -- you left Hilton</p> <p>8 shortly after this incident would have occurred?</p> <p>9 A That's correct.</p> <p>10 Q Okay. So are you saying, then, that you knew Ms.</p> <p>11 Kelly for, approximately, a year prior to your leaving? So</p> <p>12 maybe mid-2005?</p> <p>13 A Yes.</p> <p>14 Q Okay. And what was your position at Hilton with</p> <p>15 respect to Ms. Kelly's position? Were you her supervisor?</p> <p>16 How did your position relate to hers?</p> <p>17 A I wasn't in her -- in her line. She was in</p> <p>18 housekeeping, I was in Human Resources.</p> <p>19 Q Did Human Resources have any oversight or</p> <p>20 connection with housekeeping?</p> <p>21 A Just -- just the Human Resources; just for the</p> <p>22 employees: Hiring, firing, that kind of thing.</p> <p>23 Q And have you talked to Ms. Kelly any time</p> <p>24 recently?</p> <p>25 A She contacted me just -- I want to say -- Oh, it's</p>	<p>7</p>
<p>1 or what the -- the incident is that gave rise to this</p> <p>2 lawsuit?</p> <p>3 A Yes, I am familiar with it.</p> <p>4 Q And can you tell me, just in very, very brief</p> <p>5 terms, what you understand this lawsuit to be about?</p> <p>6 A She injured herself in a hole that was in the</p> <p>7 street. From what I gather, she fell in the hole and she</p> <p>8 injured herself.</p> <p>9 Q Do you know when this incident occurred?</p> <p>10 A 2006, I believe. Exactly what month, no, I'm not.</p> <p>11 Q Okay. To the best of my knowledge, it's in May,</p> <p>12 but that doesn't -- Does that sound consistent with your</p> <p>13 memory? That it would have been in May of 2006?</p> <p>14 A That should be about right. It was towards the</p> <p>15 end of winter.</p> <p>16 Q How long have you known Ms. Kelly?</p> <p>17 A She started working at the Hilton, I want to say,</p> <p>18 maybe less than a year before I left. So I want to say I've</p> <p>19 known her for maybe a year.</p> <p>20 Q A year from --</p> <p>21 A I'm sorry.</p> <p>22 Q When did you first meet her?</p> <p>23 A At the Hilton. I was a Human Resources manager.</p> <p>24 Q Okay.</p> <p>25 A And she --</p>	<p>6</p> <p>1 been a few months, I believe. I don't know exactly when,</p> <p>2 but she -- she did -- she was able to contact me and she</p> <p>3 told me what was going on and I gave her my -- my number and</p> <p>4 she -- we followed through on this.</p> <p>5 Q Do you recall what she told you?</p> <p>6 A She told me that she -- she was -- she brought</p> <p>7 back my memory when she was hurt in a situation and she told</p> <p>8 me how much she was hurt and how much was going on with her</p> <p>9 and then she asked me if I would just tell -- tell them what</p> <p>10 happened with me.</p> <p>11 Q Did she remind you at all about what happened?</p> <p>12 A No. I remembered what happened.</p> <p>13 Q Were you working the day that Ms. Kelly was hurt?</p> <p>14 A I believe. I'm not sure. I don't remember. I'm</p> <p>15 not sure.</p> <p>16 Q Okay. That's fair enough. It has been a while.</p> <p>17 A Yeah, it has been.</p> <p>18 Q So is it fair to say that you did not see this</p> <p>19 incident occur?</p> <p>20 A No, physically, I did not see it happen.</p> <p>21 Q Do you remember when you were first alerted to it</p> <p>22 or made aware of it?</p> <p>23 A During the injury report, and I know when she -- I</p> <p>24 know she was in a wheelchair. She was injured. She had to</p> <p>25 be brought in through the wheelchair.</p>	<p>8</p>

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3 (Pages 9 to 12)

<p>9</p> <p>1 Q When -- when was that in relationship to the date 2 of the incident? Was it the same day? 3 A I guess I was working because I was -- I was in 4 the building when the incident occurred. So, yes, I was 5 working 'cause I remember when Security had to go out there 6 and bring her in on the wheelchair. 7 Q Okay. Well, tell me what happened. What do you 8 recall, you know? 9 MR. COE: Just for the record, Pam, 10 you're kind of talking over her so kind of finish -- Ms. 11 Lyons, let her finish the question and then answer it. 12 It'll work a lot easier. 13 THE WITNESS: Okay. 14 Q What do you recall about -- if maybe you can just 15 start at the beginning about what you recall happening on 16 the day of Ms. Kelly's fall. 17 A What I do recall is -- I know some people -- I was 18 in the office, if I'm correct, 'cause some people came in 19 and said that someone was hurt outside. They fell in the 20 hole. And I remember saying, 'Wow, that -- that same hole.' 21 Security went out to have to go get her because they had 22 to bring her in in a wheelchair. And from what I recall, 23 they -- I believe they went to go do the report. It 24 wasn't -- That was a security issue. It wasn't really 25 anything that had to do with me.</p>	<p>11</p> <p>1 A Security. 2 Q Do you remember, approximately, when you tripped 3 in that hole? 4 A No, I don't. I know it wasn't -- it wasn't long 5 before she did. 6 Q And who did you report that to? 7 A Security. 8 Q Anyone else? 9 A No, huh-uh. That's all that we were supposed to 10 do. 11 Q You mentioned something about there being a 12 director. Do you know the name of the director? 13 A Angela Yager. 14 Q And what was her position, to the best of your 15 knowledge? 16 A Human Resources Director. Like I said, I don't 17 know if she was there or on her way out, but I know -- like 18 I said, we were in transition. So there was a lot going on. 19 Q And what's your understanding about what Angela 20 would have did with respect to this incident, if any? 21 A She would have made sure there was a report done. 22 At that time, there was the -- that was the -- the length of 23 our responsibility, to make sure that an incident report was 24 done. 25 Q And, again, when you talk about the report, you're</p>
<p>10</p> <p>1 And at that time we had a director and I was the manager, 2 but she was the director. We was in transition because the 3 hotel was being bought or it had -- it was bought. I'm not 4 sure if it was bought then or afterwards. But we were in 5 transition with management. So she pretty much took care of 6 a lot of the situation. But I do know that I did remind 7 Security to do the report and follow through. 8 Q When you say report, what report do you mean? 9 A They have to do incident reports when an employee 10 is hurt. 11 Q So this is a document for the Hilton or for the 12 hotel? 13 A Yes. 14 Q You said something about some people came in and 15 said someone was hurt. Do you remember who told you that? 16 A No, I don't. Huh-uh. 17 Q Okay. Again, fair -- fair enough. And then you 18 also said something about that you thought to yourself that 19 same hole. What did you mean by that? 20 A Because I fell in that -- Well, I tripped in that 21 hole before that incident. And I do -- 'Cause I was telling 22 them that they needed to put something up or something 23 needed to be there to alert people that the hole was there 24 'cause it was dangerous. 25 Q Tell me who when you say "them."</p>	<p>12</p> <p>1 talking about the incident report for the Hilton? 2 A Yes. 3 Q Okay. Do you remember talking with Ms. Kelly 4 after? When she -- it sounds like she was brought in in a 5 wheelchair. Did you talk with her at all afterwards? 6 A No, I didn't have much conversation with her on 7 this matter. 8 Q Did you call anybody after this incident? 9 A No. 10 Q Have you talked to plaintiff's attorney, Mr. Coe, 11 who's also on the line? 12 A Just -- No. Actually, I believe I was talking to 13 his assistant, asking me about this affidavit. 14 Q He talked to you before the affidavit? 15 A Just asking me what happened. I'm not sure if I 16 was speaking with Mr. Coe or his assistant Kevin, but they 17 just asked me what happened and I explained it to them. 18 Q Have you seen a copy of this affidavit? 19 A I have it in front of me. 20 MS. WEISS: Ms. Court Reporter, is it 21 possible to -- I mean, I don't know whether or not we want 22 to mark this as an exhibit. Charlie, do you have a 23 preference? 24 MR. COE: Well, I was going to go over 25 it and see if she -- have her sign it. I mean, it's outside</p>

<p>1 affidavit that we prepared over the phone with her. 2 Q (By Ms. Weiss) Is this a document that's there, 3 but does it have any of your handwritten notes or anything 4 on it or is it just ready to be signed, Ms. Lyons? 5 A It's just ready to be signed. 6 MS. WEISS: I don't know how this works 7 the best, the deposition over the telephone to mark as an 8 exhibit. Maybe what we can do is I can read a line and then 9 we don't need to mark it as an exhibit. 10 Q Well, if you can look at this exhibit -- at this 11 affidavit, I wanted to ask you a couple of questions about 12 some of the things -- 13 A Okay. 14 Q -- that are written in there. 15 A Okay. 16 Q I'll read them so that we'll have them on the 17 record, but I think it'll also be easier if you also have it 18 in front of you so you can see what I'm referring to. The 19 first thing is, can you -- do you know who drafted this 20 affidavit? Did you write this or did somebody in Mr. Coe's 21 office? 22 A Let me see -- I didn't write it, no. 23 Q Okay. 24 A But I was asked to make sure that I agree with 25 everything on it.</p>	<p>13 1 what, but we parked on one level and the rest of it was 2 public parking. 3 Q So anybody could use the garage? 4 A Correct. 5 Q And guests of the Hilton, did they park in that 6 garage? 7 A I believe they could have, yes. 8 Q But that wasn't -- that wasn't Hilton's exclusive 9 garage or was it? 10 A No, we did lease it out. 11 Q Number -- paragraph 4, you say, "As I walked 12 across the street using the crosswalk, my foot fell into an 13 uncovered pipe hole. This hole had no lid cover. The lid 14 cover was completely missing and could not be located." And 15 we talked a little bit -- You said this was not too long 16 before the incident involving Ms. Kelly. Do you have any -- 17 So you don't recall the exact day or how long before? 18 A I'm not sure when. I know it was -- maybe a week 19 or a few days or something. It wasn't a long time. 20 Q Prior to your fall or tripping and falling, had 21 you noticed that there was this hole? 22 A No, I don't. I didn't notice it. I don't recall. 23 Q And after you fell, you said that you reported it 24 to Security? 25 A Yes.</p>
<p>14 1 Q And have you done -- have you looked at it and 2 determined whether you agree with everything on it? 3 A Yes. 4 Q Do you think it accurately reflects what you told 5 them? 6 A Yes, it does. 7 Q And so you intend to sign this affidavit as it is? 8 A Yes, I am. 9 Q Okay. What I want to do is I just had a couple 10 questions about some of the paragraphs in the affidavit to 11 make sure I understand. 12 A Okay. 13 Q Paragraph -- I guess it's sort of paragraph 2 and 14 3 talks about you said, "When I worked at the Hilton, I 15 normally parked in the garage at the corner of 3rd Avenue 16 and F Street, diagonally across from Hilton." And paragraph 17 3 says, "This required that I was the crosswalk at the 18 corner of 3rd Avenue and F Street to go from the garage to 19 the Hilton." Can you tell me is that garage where all 20 Hilton employees parked? 21 A Yes. We had to. 22 Q To your knowledge, did anybody else park in that 23 garage? 24 A We parked on the top level or the -- we had one 25 level. So I'm not -- I'm sorry. I'm not recalling exactly</p>	<p>16 1 Q Did you call anybody else? 2 A No. 3 Q Did you call the Municipality? 4 A No. That was -- Security's supposed to do that. 5 Q Okay. You said in paragraph 5, which is 6 consistent with what you just told me, you said, "I reported 7 this condition to Security," you said, "who were to report 8 it to the Municipality...." 9 A Yes. 10 Q And what's that based on, when you say were to 11 report it? I guess, what do you mean by they were to report 12 it? 13 A 'Cause it wasn't property of the Hilton, but the 14 Hilton employees would be injured in it. So they -- it 15 was -- they were supposed to report to the Municipality. 16 Whether they did or not, I'm not sure. But in the meantime, 17 because Hilton employees were going to be impacted by it. 18 Q Okay. So you're saying that they were supposed to 19 do it because it could have an impact on Hilton employees? 20 A Correct. 21 Q And then in paragraph 6, you say, "The hole 22 remained uncovered for a period of time after I stepped into 23 it." Did you do anything between the time that you stepped 24 into it up until Ms. Kelly's accident? Did you report it to 25 anybody else? And I'm not saying you're right or wrong for</p>

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<p>1 doing it. I'm just trying to get the facts.</p> <p>2 A No. I reported it immediately. After that, no, I</p> <p>3 didn't do anything else.</p> <p>4 Q Okay. You said the hole was difficult to see and</p> <p>5 observe as you walked. Do you recall the location of the</p> <p>6 hole with respect to the crosswalk? Can you describe the</p> <p>7 crosswalk and where the hole is in the crosswalk?</p> <p>8 A I think it was, like, in the middle. It was in</p> <p>9 the middle. I'm not -- It was -- I know it was in the</p> <p>10 middle, but it was in a location where, if you weren't</p> <p>11 paying attention, if you were running across, you would fall</p> <p>12 into it.</p> <p>13 Q So was it in the painted line or was it in the</p> <p>14 part that's asphalt colored?</p> <p>15 A That I don't recall.</p> <p>16 Q So you said the hole was difficult to see and</p> <p>17 observe as you walked due to its location in the crosswalk.</p> <p>18 What about it made it difficult to see?</p> <p>19 A I'm going to say that maybe because it was -- it</p> <p>20 was all black like -- Okay. The asphalt. I don't think</p> <p>21 there was any painted lines.</p> <p>22 Q Okay. Can you -- Do you know about,</p> <p>23 approximately, how many inches across the hole is? I mean,</p> <p>24 obviously, I don't expect you to have a tape measure in your</p> <p>25 head, but to the best of knowledge, or if there's an object</p>	<p>17</p>	<p>1 that identified them as being a municipal worker?</p> <p>2 A The yellow vests, I know. They had yellow vests</p> <p>3 on. I remember that.</p> <p>4 Q Did they say anything on them?</p> <p>5 A No, I don't recall.</p> <p>6 Q And do you know when, approximately, that was that</p> <p>7 you saw those folks?</p> <p>8 A Around the same time.</p> <p>9 Q You said they weren't right at 3rd and F. Do you</p> <p>10 remember where they were working?</p> <p>11 A I don't recall.</p> <p>12 Q And then I have one final question. Did you, as</p> <p>13 Human Resources -- You were the manager, correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. I just want to make sure I got that right.</p> <p>16 Did you accept or receive any documents from Ms. Kelly about</p> <p>17 terminating her employment?</p> <p>18 A No. I wouldn't have.</p> <p>19 Q Who would that go to?</p> <p>20 A It would have gone to the Director, but she was</p> <p>21 still working when I left.</p> <p>22 Q And you left, you thought, at the end of June?</p> <p>23 A Right about that time, yes. She was -- she was</p> <p>24 still employed.</p> <p>25 Q To the best of your knowledge, if there was any</p>	<p>19</p>
<p>1 that you can use as a reference point for how big this hole</p> <p>2 is.</p> <p>3 A No. I know it was big enough for my foot to fit</p> <p>4 in it. That's all I know.</p> <p>5 Q Was it as big as a basketball? Or is it smaller</p> <p>6 than that?</p> <p>7 A No. I think it was bigger than a basketball.</p> <p>8 Q And then in your paragraph 7 of your affidavit, it</p> <p>9 says, "I know of no reasons why it could not have been</p> <p>10 marked or covered by the Municipality sooner...." Do you</p> <p>11 know for sure that the Municipality even knew about it?</p> <p>12 A No, I don't.</p> <p>13 Q And you said, "Also, I do not know why it could</p> <p>14 not have been covered by the municipal workers using the</p> <p>15 area...." What workers are you referring to?</p> <p>16 A There was construction work being done or some</p> <p>17 kind of -- I know there were people -- the workers out</p> <p>18 there, 'cause I seen the yellow -- I remember the yellow</p> <p>19 vests. Exactly where they were, I don't -- I don't know.</p> <p>20 Q So you don't recall whether they were at the</p> <p>21 intersection on 3rd and F?</p> <p>22 A I know they weren't right there at -- at that</p> <p>23 location, on that corner. I know they weren't. But I know</p> <p>24 they were in the area.</p> <p>25 Q Do you know what -- Did they have anything on them</p>	<p>18</p>	<p>1 decision to terminate her, who would make that?</p> <p>2 A At that time, because of the transition, it would</p> <p>3 have been the hotel manager. I couldn't tell you his name</p> <p>4 right now.</p> <p>5 Q Okay. But while you were there, you never</p> <p>6 partici- -- Did you ever make any decision or participate in</p> <p>7 any decision to terminate her?</p> <p>8 A No, I did not.</p> <p>9 Q Because of her injury?</p> <p>10 A No, I did not.</p> <p>11 Q Okay.</p> <p>12 MS. WEISS: And I think that may be just</p> <p>13 about all I have to ask, but let me see real quick. Just</p> <p>14 'cause we did depose Ms. Wakefield, Terry Wakefield, in here</p> <p>15 and so there are a few places where she referred to things</p> <p>16 she thought you had said and I just want to make sure we</p> <p>17 asked you, personally. But it looks so far that you had</p> <p>18 fallen in it.</p> <p>19 Charlie, I don't think that I have any other questions</p> <p>20 until I hear what you have to ask.</p> <p>21 EXAMINATION</p> <p>22 BY MR. COE:</p> <p>23 Q Okay. Ms. Lyons, does the affidavit in front of</p> <p>24 you look clear and accurate?</p> <p>25 A Yes, it is.</p>	<p>20</p>



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<p>1 Q Okay. You feel comfortable signing it in front of 2 the court reporter? 3 A Yes. 4 Q Court reporter, I think, is a notary and she can 5 notarize it. The reason I want you to sign it is it depends 6 on if this deposition is going to be transcribed or not, so 7 I ask that you sign it, then the court reporter notarize it. 8 A Okay. 9 Q Okay? 10 A Okay. 11 Q Ms. Lyons, who was -- who was your -- who was your 12 boss? You said it was Andrea Yager? 13 A Angela Yager. 14 Q Angela Yager? 15 A Right. 16 Q And what was her position? 17 A She was Human Resources Director. 18 Q Okay. And then what was your job? 19 A I was the Human Resources Manager, but, again -- 20 I'm sorry. Once -- Right before I left, she was no longer 21 there because of the transition. They terminated her 22 position. So before I left, my boss was the hotel manager. 23 Q Now, would Ms. Yager have been there when 24 Ms. Kelly fell? 25 A I believe she was, if I'm correct.</p>	21	<p>1 wheelchair; is that right? 2 A That's correct. 3 Q Then you would have had to go back over that -- 4 over that area in order to get back to your car in the 5 parking lot that afternoon? 6 A That's correct. 7 Q So when you went back from the hotel to go to your 8 car after Ms. Kelly fell, did you notice if the hole was 9 covered at that time? 10 A It was not. 11 Q Okay. Now, at that time, prior to Ms. Kelly's 12 fall, you said that you don't know exactly if it was within 13 a couple days or a week, but you had tripped in the same 14 hole; is that correct? 15 A That's correct. 16 Q And why did you trip in it? In other words, was 17 it something that -- it was something that was easy -- was 18 it easy to see or not see or... 19 A It was not easily visible. I would have walked 20 around it. 21 Q Okay. In other words, if you were paying 22 attention to the traffic, is it something that you can miss? 23 A That's correct. 24 Q Now, let me ask you, Ms. Lyons, after you tripped 25 in the hole, I take it, you didn't get -- you weren't -- you</p>	23
<p>1 Q And Ms. Yager would have been aware of this 2 incident; is that correct? 3 A Yes, she would have been. 4 Q Okay. Now, you remember Ms. Kelly's incident 5 because you remember her being brought in to the hotel in a 6 wheelchair? 7 A That's correct. 8 Q Is that correct? And from what you understand, 9 did you go out and look at the hole that she fell in or were 10 you -- was it your understanding you fell in the same hole? 11 A I knew it was the same hole from what they were 12 telling me. 13 Q Okay. And, actually, when you went back out that 14 evening, was the hole -- had the hole been covered? 15 A Nope. 16 Q So in other words -- 17 MS. WEISS: I just want to object 'cause 18 I don't think you've established that she did go back out 19 that evening. 20 A I did when I left to go to work. 21 Q Okay. Let me rephrase this, okay. You're in the 22 hotel and then -- when you find out that Ms. Kelly fell; is 23 that correct? 24 A Correct. 25 Q And they bring her in to the hotel in a</p>	22	<p>1 weren't badly injured? 2 A No, I was not. 3 Q Okay. And did you get any medical care? 4 A No. I didn't need to. 5 Q Okay. But from -- after you tripped in the hole, 6 you told the security people; is that correct? 7 A That's correct. 8 Q Who would -- who would have been the security -- 9 some of the security people you worked with then? 10 A Wow, I'm sorry. I don't know not one name. I was 11 trying to bring my memory to them and I could remember not 12 one name. 13 Q Do you know what they looked like at all other 14 than they're probably big guys? 15 A Yes. I can -- I can -- I knew what they looked 16 like if I seen them again, yes. 17 Q Okay. And you would report to Security and the 18 hole would have been pointed out to them? 19 A That's correct. 20 Q Was there anything -- any indication that -- any 21 indication whether security was already put on notice by 22 other people there? 23 A I'm not aware of it. 24 Q In other words, when you said, 'Hey, there's a 25 hole out there that we need to -- something needs to be</p>	24

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<p>25</p> <p>1 done,' did they say anything about, 'Yeah, we know about it.</p> <p>2 We called somebody. We did this. We did that.' Anything</p> <p>3 like that?</p> <p>4 A I know he said, "We're taking care of it." That's</p> <p>5 all I know. "We're taking care of it."</p> <p>6 Q Is that what they said?</p> <p>7 A That's what was said.</p> <p>8 Q Okay. In other words, you told them about the</p> <p>9 hole and they said, "We're taking care of it"?</p> <p>10 A That's correct.</p> <p>11 Q Okay. And they would have been the people that</p> <p>12 would have in charge of contacting the City about it; is</p> <p>13 that right?</p> <p>14 A That's correct.</p> <p>15 Q Now, let me ask you, in the last paragraph, had</p> <p>16 you seen people working on 3rd Avenue after you fell?</p> <p>17 A Yes, I did. I remember seeing yellow vests or</p> <p>18 those construction vests, yes.</p> <p>19 Q Okay. And did it appear they were working --</p> <p>20 doing some work on the street or somewhere in that area?</p> <p>21 A Somewhere in that area, yes. I don't know if it</p> <p>22 was the street or somewhere else.</p> <p>23 Q Okay. And as far as the area where you fell, did</p> <p>24 you see any reason they couldn't have fixed that hole?</p> <p>25 A No, I see no reason.</p>	<p>27</p> <p>1 MS. WEISS: I just have a few follow-up</p> <p>2 questions just to -- I wanted to clarify some of the</p> <p>3 questions you were just asked by Mr. Coe.</p> <p>4 RE-EXAMINATION</p> <p>5 BY MS. WEISS:</p> <p>6 Q You mentioned that on the day of Ms. Kelly's</p> <p>7 accident that, obviously, the hole was not covered when she</p> <p>8 tripped and fell. Do you recall, approximately, what time</p> <p>9 of day it was that she had the accident when you saw her</p> <p>10 brought in in the wheelchair?</p> <p>11 A No, I don't.</p> <p>12 Q You don't remember whether it was morning or</p> <p>13 afternoon?</p> <p>14 A No, I don't recall.</p> <p>15 Q Do you recall what time you left that day when you</p> <p>16 would have seen that hole?</p> <p>17 A I don't -- The days and nights all mixed in</p> <p>18 together with me because of how dark it gets so early in the</p> <p>19 day because of the Alaska time. So it just --</p> <p>20 Q Well, in this case, it was May, I believe. So I</p> <p>21 thought we established this was May.</p> <p>22 A Okay.</p> <p>23 Q So maybe it was an opposite problem. It hardly</p> <p>24 ever gets dark.</p> <p>25 A I couldn't tell you because, at that time,</p>
<p>26</p> <p>1 MS. WEISS: Objection.</p> <p>2 Q Let me break this down. Let me rephrase this.</p> <p>3 Did you see anything that would have prevented them from</p> <p>4 fixing the hole? In other words, there was -- it would have</p> <p>5 taken -- they would have needed a piece of equipment or</p> <p>6 there was something -- there was water coming out of the</p> <p>7 hole or something that would have prevented them?</p> <p>8 MS. WEISS: Objection, foundation.</p> <p>9 Q Go ahead. And answer the best you can.</p> <p>10 MS. WEISS: Don't worry about my</p> <p>11 objections. That's for Charlie and I to sort out later.</p> <p>12 MR. COE: That's a legal thing between</p> <p>13 her and I.</p> <p>14 A Okay. I don't see any reason that something</p> <p>15 should not have been put up to alert people walking by there</p> <p>16 that there's a hole there.</p> <p>17 Q Okay. Eventually, did someone come out and put a</p> <p>18 cap on the hole?</p> <p>19 A I don't recall, but I'm sure something happened.</p> <p>20 Not while I was there or not any time that I recall.</p> <p>21 Q You don't recall one way or the other; is that</p> <p>22 correct?</p> <p>23 A No, I don't.</p> <p>24 Q Okay.</p> <p>25 MR. COE: That's all I have.</p>	<p>28</p> <p>1 sometimes I worked very late and sometimes I left early.</p> <p>2 So....</p> <p>3 Q Well, do you have any sense of how long after</p> <p>4 this -- you left that the hole was still not covered? Half</p> <p>5 an hour? An hour?</p> <p>6 A After I left or after she left?</p> <p>7 Q Right. But I'm trying to get a sense of long --</p> <p>8 Mr. Coe was, basically, trying -- seemingly, from his</p> <p>9 questions, that he's trying to show that it didn't get</p> <p>10 fixed. But I'm trying to get a sense of how long of a time</p> <p>11 span we have here. I mean, do you think you left an hour</p> <p>12 after she was back there or did you leave at --</p> <p>13 A After she fell in?</p> <p>14 Q After she fell in.</p> <p>15 A Okay.</p> <p>16 Q And you saw her brought in in a wheelchair.</p> <p>17 A Okay. It was -- it was -- it wasn't six hours.</p> <p>18 It was a short time after that that I left because it was</p> <p>19 probably towards the end of my day where I was going home.</p> <p>20 Q Okay. So short time?</p> <p>21 A Correct.</p> <p>22 Q So could have been less than an hour?</p> <p>23 A I don't think it was less than an hour 'cause I</p> <p>24 would have been on my way walking out the door.</p> <p>25 Q Okay. So probably not less than an hour, but not</p>

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<p>1 too long?</p> <p>2 A But not six hours.</p> <p>3 Q Okay. And then Mr. Coe also asked you some</p> <p>4 questions about the construction workers that you and I</p> <p>5 talked about. And I just want to clarify, to the best of</p> <p>6 your recollection, they were not working at that</p> <p>7 intersection?</p> <p>8 A To the best of my knowledge, no, I don't think so.</p> <p>9 Q Okay. And you don't recall exactly where they</p> <p>10 were working? Or do you have any recollection?</p> <p>11 A I know they were in my line of sight going to my</p> <p>12 car. So exactly where they were at, I'm not sure.</p> <p>13 Q But they weren't right there in the intersection?</p> <p>14 A No, they were not.</p> <p>15 Q And then we established that they were wearing</p> <p>16 yellow vests?</p> <p>17 A Right.</p> <p>18 Q Are you -- How do you know that they were with the</p> <p>19 Municipality?</p> <p>20 A I don't. I just know they had those -- those</p> <p>21 vests on that they usually wear when they're working out</p> <p>22 there. Now, whether they said Municipality on the vest or</p> <p>23 not, I'm not sure.</p> <p>24 Q Do you know what kind of work they were doing?</p> <p>25 A I know they were worker vests. That's all I can</p>	<p>29</p>	<p>1 trying to finish up some things and sometimes I didn't have</p> <p>2 anything to do and I left early. So....</p> <p>3 Q But your normal work time would be 8 to 5?</p> <p>4 A That's correct.</p> <p>5 Q Okay. Okay. And I take it you know you were on</p> <p>6 work that day because, basically, you remember her being</p> <p>7 brought in in a wheelchair?</p> <p>8 A Correct.</p> <p>9 Q Is that correct?</p> <p>10 A That's correct.</p> <p>11 Q Did you go to the hospital with her or anything</p> <p>12 like that?</p> <p>13 A No, I did not.</p> <p>14 Q After this incident, were you ever contacted by</p> <p>15 someone from the Municipality investigating it?</p> <p>16 A No.</p> <p>17 Q Do you recall someone named Connie Earnst? Did</p> <p>18 she ever contact you?</p> <p>19 A No, she didn't contact me.</p> <p>20 MS. WEISS: I said objection, asked and</p> <p>21 answered. But go ahead, Ms. Lyons.</p> <p>22 Q Okay. After Ms. Kelly fell, do you recall anybody</p> <p>23 from the Municipality calling to ask you about it?</p> <p>24 A No.</p> <p>25 Q Okay.</p>	<p>31</p>
<p>1 tell you. What they were doing, I don't know.</p> <p>2 Q Were they working in the street, on the sidewalk?</p> <p>3 A I'm not sure.</p> <p>4 Q Okay. Okay.</p> <p>5 MS. WEISS: That's it for me.</p> <p>6 RE-EXAMINATION</p> <p>7 BY MR. COE:</p> <p>8 Q Ms. Lyons, what was your normal -- when you say</p> <p>9 your work time varied, how late would you normally work?</p> <p>10 A At that time, because it was in transition,</p> <p>11 sometimes I would get off 4, 5 or sometimes I would stay</p> <p>12 till 8.</p> <p>13 Q What would you normally get off at?</p> <p>14 A My normal workday was 8 to 5.</p> <p>15 Q 8 to 5? So would you -- And so you would normally</p> <p>16 work till 5:00 o'clock and then go home, but sometimes you'd</p> <p>17 work later; is that right?</p> <p>18 A That's correct.</p> <p>19 Q Okay. And would this have been kind of a normal</p> <p>20 workday for you or -- other than Ms. Kelly's fall?</p> <p>21 A Those days -- none of those days were normal</p> <p>22 workdays because of the transition.</p> <p>23 Q Okay.</p> <p>24 A So I couldn't tell you because, I mean, there</p> <p>25 was -- like I said, some days I was in there very late</p>	<p>30</p>	<p>1 MR. COE: I have nothing further.</p> <p>2 FURTHER EXAMINATION</p> <p>3 BY MS. WEISS:</p> <p>4 Q Ms. Lyons, if I need to contact you, what would be</p> <p>5 the best way to do that?</p> <p>6 A My phone. You can call me.</p> <p>7 Q Can I get your phone number, for the record?</p> <p>8 A Sure. It's 210-461-2296.</p> <p>9 Q Okay. Do you have a mailing address?</p> <p>10 A Sure. It's 2108 Mathies, M-a-t-h-i-e-s, Court,</p> <p>11 San Antonio, Texas 78236.</p> <p>12 Q And then can you spell your -- your name? 'Cause</p> <p>13 I've seen it a couple different ways. I want to make sure I</p> <p>14 get it right.</p> <p>15 A Okay. It's C-h-a-r-i-s-s-e. It's my first name.</p> <p>16 My last name is L-y-o-n-s.</p> <p>17 MS. WEISS: I just thought it'd be good</p> <p>18 for to us have that on the record.</p> <p>19 (Deposition concluded at 1:23 p.m.)</p> <p>20 (SIGNATURE WAIVED)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>32</p>

DEPOSITION OF CHARISSE LYONS  
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1	REPORTER'S CERTIFICATION	33
2	DEPOSITION OF	
3	CHARISSE LYONS	
4	WEDNESDAY, OCTOBER 28, 2009	
5	-----	
6	I, PATRICIA M. GREEN, Certified Shorthand Reporter in	
7	and for the State of Texas, hereby certify to the following:	
8	That the witness, CHARISSE LYONS, was duly sworn by the	
9	officer and that the transcript of the oral deposition is a	
10	true record of the testimony given by the witness;	
11	That examination and signature of the witness to the	
12	deposition transcript was waived by the witness and	
13	agreement of the parties at the time of the deposition;	
14	That the original deposition was delivered to Ms. Pamela	
15	D. Weiss, custodial attorney;	
16	That the amount of time used by each party at the	
17	deposition is as follows:	
18		
19	Ms. Pamela D. Weiss: 0 hours, 29 minutes	
20	Mr. Charles W. Coe: 0 hours, 7 minutes	
21	That \$_____ is the deposition officer's charges	
22	to the Defendant for preparing the original deposition	
23	transcript and any copies of exhibits;	
24	That pursuant to information given to the deposition	
25	officer at the time said testimony was taken, the following	
1	includes all parties of record:	34
2	Mr. Charles W. Coe, Attorney for Plaintiff	
3	Ms. Pamela D. Weiss, Attorney for Defendant	
4		
5	That a copy of this certificate was served on all parties	
6	shown herein on _____ and filed with the	
7	Clerk.	
8	I further certify that I am neither counsel for, related	
9	to, nor employed by any of the parties or attorneys in the	
10	action in which this proceeding was taken, and further that	
11	I am not financially or otherwise interested in the outcome	
12	of the action.	
13	Certified to by me this 2nd day of November, 2009.	
14		
15		
16	_____	
17	PATRICIA M. GREEN	
18	Certified Shorthand Reporter	
19	in and for the State of Texas	
20	CSR No. 3614 Expires 12/31/10	
21	KOOLE COURT REPORTERS OF TEXAS	
22	Firm Registration No. 413	
23	711 Navarro, Suite 101	
24	San Antonio, Texas 78205	
25	(210) 558-9484	

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<p style="text-align: center;"><b>A</b></p> <p>able 8:2 above-styled 1:15 accept 19:16 accident 16:24 27:7,9 accurate 20:24 accurately 14:4 action 34:10,12 address 32:9 affidavit 12:13,14,18 13:1,11,20 14:7,10 18:8 20:23 afternoon 23:5 27:13 agree 13:24 14:2 agreement 33:13 ahead 26:9 31:21 Alaska 1:1 2:9,18 27:19 alert 10:23 26:15 alerted 8:21 amount 33:16 Anchorage 1:6 2:9 2:15,18 4:6,7 Andrea 21:12 Angela 11:13,19 21:13,14 answer 4:25 9:11 26:9 answered 31:21 Antonio 1:20 32:11 34:24 anybody 12:8 14:22 15:3 16:1,25 31:22 appear 25:19 Appearances 3:3 APPEARING 2:5,13 approximately 7:11 11:2 17:23 19:6 27:8 area 18:15,24 23:4 25:20,21,23 asked 4:25 8:9 12:17 13:24 20:17 27:3 29:3 31:20 asking 4:15 12:13,15 asphalt 17:14,20 assistant 2:14 4:5 12:13,16 attend 4:23 attention 17:11 23:22 attorney 2:6,14,16 4:5 12:10 33:15 34:2,3 attorneys 4:15 34:9 audibly 5:13 audio 5:9 Avenue 2:7,17 14:15 14:18 25:16</p>	<p>aware 5:22 8:22 22:1 24:23</p> <p style="text-align: center;"><b>B</b></p> <p>B 1:3 4:9 back 8:7 22:13,18 23:3,4,7 28:12 badly 24:1 based 16:10 basically 28:8 31:6 basis 5:25 basketball 18:5,7 beginning 9:15 behalf 4:6 believe 6:10 7:6 8:1 8:14 9:23 12:12 15:7 21:25 27:20 best 5:13 6:11 11:14 13:7 17:25 19:25 26:9 29:5,8 32:5 big 18:1,3,5 24:14 bigger 18:7 bit 15:15 black 17:20 body 5:11 boss 21:12,22 bought 10:3,3,4 break 4:22 5:1 26:2 brief 6:4 bring 9:6,22 22:25 24:11 brought 8:6,25 12:4 22:5 27:10 28:16 31:7 building 9:4</p> <p style="text-align: center;"><b>C</b></p> <p>C 2:1 4:1 call 12:8 16:1,3 32:6 called 25:2 calling 31:23 can't 5:10 cap 26:18 car 23:4,8 29:12 care 10:5 24:3 25:4,5 25:9 careful 5:4 case 1:6 27:20 cause 1:15 9:5,18 10:21,24 16:13 18:18 20:14 22:17 28:23 32:12 certificate 3:10 34:5 CERTIFICATION 33:1 Certified 33:6 34:13 34:18 certify 33:7 34:8 charge 25:12</p>	<p>charges 33:21 CHARISSE 1:10,13 3:4 4:2 33:3,8 Charles 2:5 4:8 33:20 34:2 Charlie 12:22 20:19 26:11 children 4:23 CI 1:6 City 25:12 Civil 1:20 clarify 27:2 29:5 clear 20:24 Clerk 34:7 Coe 2:5 3:6,8 4:8,8 9:9 12:10,16,24 20:22 26:12,25 27:3 28:8 29:3 30:7 32:1 33:20 34:2 Coe's 13:20 colored 17:14 come 26:17 comfortable 21:1 coming 26:6 completely 15:14 concluded 32:19 condition 16:7 conference 1:19 connection 7:20 Connie 31:17 consistent 6:12 16:6 construction 18:16 25:18 29:4 contact 8:2 31:18,19 32:4 contacted 7:25 31:14 contacting 25:12 conversation 12:6 copies 33:23 copy 12:18 34:5 corner 14:15,18 18:23 correct 7:9 9:18 15:4 16:20 19:13 21:25 22:2,7,8,23,24 23:2 23:6,14,15,23 24:6 24:7,19 25:10,14 26:22 28:21 30:18 31:4,8,9,10 couldn't 20:3 25:24 27:25 30:24 counsel 34:8 couple 13:11 14:9 23:13 32:13 court 1:1 4:15 5:8 12:20 21:2,4,7 32:10 34:21 cover 15:13,14 covered 18:10,14</p>	<p>22:14 23:9 27:7 28:4 crosswalk 14:17 15:12 17:6,7,7,17 CSR 1:17 34:20 custodial 33:15 C-h-a-r-i-s-s-e 32:15</p> <p style="text-align: center;"><b>D</b></p> <p>D 4:1 33:15,19 34:3 dangerous 10:24 dark 27:18,24 date 9:1 day 1:15 8:13 9:2,16 15:17 27:6,9,15,19 28:19 31:6 34:13 days 15:19 23:13 27:17 30:21,21,25 decipher 5:7 decision 20:1,6,7 Defendant 1:7,14 2:12 4:6 33:22 34:3 delivered 33:14 depends 21:5 depose 20:14 deposed 4:14 deposition 1:9,13 13:7 21:6 32:19 33:2,9,12,13,14,17 33:21,22,24 describe 17:6 determined 14:2 diagonally 14:16 didn't 12:6 13:22 15:22 17:3 23:25 24:4 28:9 31:1,19 different 32:13 difficult 17:4,16,18 director 10:1,2 11:12 11:12,16 19:20 21:17 DISTRICT 1:2 document 10:11 13:2 documents 19:16 doesn't 5:17 6:12 doing 17:1 25:20 29:24 30:1 don't 4:20 5:6 8:1,14 10:16 11:4,16 12:21 13:6,9 15:17 15:22,22 17:15,20 17:24 18:12,19,19 18:20 19:5,11 20:19 22:18 23:12 24:10 25:21 26:10 26:14,19,21,23 27:11,12,14,17 28:23 29:8,9,20 30:1</p>	<p>door 28:24 drafted 13:19 due 17:17 duly 1:14 4:3 33:8</p> <p style="text-align: center;"><b>E</b></p> <p>E 2:1,1 4:1,1 early 27:18 28:1 31:2 Earnst 31:17 easier 5:7 9:12 13:17 easily 23:19 easy 23:17,18 electronic 1:18 employed 7:1,2 19:24 34:9 employee 10:9 employees 7:22 14:20 16:14,17,19 employment 19:17 equipment 26:5 established 22:18 27:21 29:15 Ethel 1:3 4:9 evening 22:14,19 Eventually 26:17 exact 15:17 exactly 6:10 8:1 14:25 18:19 23:12 29:9,12 examination 3:5,6,9 4:10 20:21 32:2 33:11 exclusive 15:8 exhibit 12:22 13:8,9 13:10 exhibits 3:13 33:23 expect 4:21 17:24 Expires 34:20 explain 5:19 explained 12:17</p> <p style="text-align: center;"><b>F</b></p> <p>F 14:16,18 18:21 19:9 facts 17:1 fair 8:16,18 10:17,17 fall 9:16 15:20 17:11 23:12 30:20 fallen 20:18 falling 15:20 familiar 6:3 far 20:17 25:23 feel 5:20 21:1 fell 6:7 9:19 10:20 15:12,23 21:24 22:9,10,22 23:8 25:16,23 27:8 28:13,14 31:22 filed 5:22 34:6</p>
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Defendant. )  
 )  
Case No. 3AN-08-04271 CI

COPY

VIDEOTAPED DEPOSITION OF JAMEY GILMORE

March 3, 2009

APPEARANCES:

FOR THE PLAINTIFF:

MR. CHARLES W. COE  
Attorney at Law  
810 West Second Avenue  
Anchorage, Alaska 99501  
(907) 276-6173

FOR THE DEFENDANT:

MS. PAMELA WEISS  
Municipality of Anchorage  
Department of Law  
Civil Division  
632 West Sixth Avenue,  
Suite 730  
Anchorage, Alaska 99501  
(907) 343-4545

ALSO PRESENT:

MS. KELLY

COPY

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1 Q Who is that?

2 A He is a field service supervisor. He's -- works under  
3 Wayne Bennett. Wayne Bennett is his supervisor.

4 Q Okay. In other words, he's not someone within your --  
5 your particular group; is that right?

6 A That's correct.

7 Q During -- do you have any record of how many times  
8 during the year you re -- you replace valve box lid  
9 covers or valve box lids?

10 A No, I wouldn't have -- well, we don't track that. So  
11 there -- there would be no way.

12 Q In 2006, did you -- did you have anything in your  
13 system as to how many valve box lids that you re -- and  
14 when I say replaced, I mean you'd put a new one out on  
15 them; do you know?

16 A No, I could -- you know, the -- the warehouse, would it  
17 have a issued -- issues from the inventory showing how  
18 many lids went out into the system. Whether they're  
19 installed or not, I couldn't tell you.

20 Q Okay. Do you know -- do you have any way of telling us  
21 how many -- how many lids were -- that were off that  
22 were put back on -- on by your -- on by your  
23 department?

24 A No.

25 Q Do you know what your turnaround is when you receive a

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1 call as to how soon you put the lid back on?

2 A I would say it's within that day. It could be as -- as  
3 quick as 15 to 20 minutes if we have personnel out in  
4 the field or it could be done, you know, by -- before  
5 the end of business.

6 Q Okay. Once you get a call -- well, first of all,  
7 doesn't sound you get -- sound like you get that many  
8 calls.

9 A No, we don't.

10 Q Would there be any reason to leave it off for more than  
11 24 hours?

12 A It probably depends on its location.

13 Q Downtown, like this lid here, would there be any -- any  
14 reason to leave it off that it would -- that it would --  
15 you would leave it off for more than 24 hours?

16 A No.

17 Q You're saying sometimes street maintenance will call  
18 you about these lids?

19 A Yes.

20 Q And does sometimes Mr. Bennett's section call you about  
21 the lids also?

22 A Most of the time, if they get a call, they'll take --  
23 they'll take of it.

24 Q Okay. That's kind of....

25 A Yeah.

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1 Q That's kind of what I was -- do you know of the calls  
2 you got in 2006, how many -- where they came from?

3 A I couldn't tell you if we had any calls in 2006.

4 Q Okay. That's not on your maintenance records?  
5 MS. WEISS: Objection.

6 A It's -- it's something we do not track. We just take  
7 care of it and move on. We don't get very many calls  
8 at all.

9 Q If you get a -- if you get a call -- let me ask maybe a  
10 more important question. If someone were -- if someone  
11 had called about this particular lid being off, is that  
12 something that would have been in your system?

13 A I don't understand the question.

14 Q Okay. I was -- the assumption I have is your checked  
15 your -- your maintenance system to see anything about  
16 this particular being off; is that right?

17 A No, I checked our system for that -- the valve box  
18 assembly itself, that valve. We -- we have a -- a  
19 record and that -- that particular valve has an ID. I  
20 can put that ID into our system and has any work been  
21 done on that. And I'll look for corrective maintenance  
22 work. And there wasn't any.

23 Q Okay. In other words, you're looking if someone went  
24 out and anybody in your system went out and did work on  
25 the valve box; is that right?

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1 A Which would -- valve box assembly and/or the valve. It  
2 -- it's one complete.....

3 Q I understand.

4 A Oh, okay.

5 Q Okay. I think I got....

6 A Yeah.

7 Q I think -- I guess what I'm trying to find out, in your  
8 system, if someone call -- if someone called and says  
9 the valve box lid was off, you wouldn't annotate what --  
10 what -- that sent -- sent this -- sent someone out to  
11 put it back on; would you?

12 A No.

13 Q Okay. So that wouldn't be in your system.

14 A Correct.

15 Q Okay.

16 A It could be in an e-mail. If an e-mail -- we -- we  
17 just don't track it. And it's -- and it's like a two  
18 minute job, you know, to go throw a lid back on if it's  
19 there. Sometimes when they -- people call, the lids  
20 won't be off or somebody came by and put the lid back  
21 on. So we'll find that the lid is on there. So it's --  
22 in -- in our maintenance section, we just don't have  
23 that many calls and we just don't -- we don't create a  
24 work order for that.

25 Q Oh, okay. In other words, they're -- if you create

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<p>1 work order, it would be -- should be in the system; is 2 that right? 3 A Yeah, that's correct. 4 Q Okay. And this is something you don't put -- if -- if 5 someone had called earlier that day or the day before 6 and said your -- your lid's missing off the -- off the 7 sys -- off that system, you wouldn't have any record of 8 whether they called or not? 9 MS. WEISS: Objection. It's not what.... 10 Q So does that make sense? I'll rephrase it if you want. 11 A Yeah, I'm not aware of anybody calling. That's -- 12 that's all I can.... 13 Q Well, I know you're not aware of.... 14 A Okay. 15 Q ....but you're not the only one who answers the phone 16 over there.... 17 A Right. 18 Q ....is that right? And when people call when they 19 have problems, not all problems come through to you; is 20 that right? 21 A Yeah, well, we don't track this activity. So.... 22 Q Okay. 23 A ....the answer would be no. 24 Q Okay. That's -- that's fair to say. 25 A Okay.</p>	<p>1 Q Okay. And the -- one of the reasons is that you don't 2 do a work order to send someone over and say just put 3 the lid back on; is that right? 4 A That's correct. 5 Q The work orders you tend to do, what you were looking 6 at on your work order section is only work orders where 7 someone go -- went out and worked on the valve box 8 itself; is that right? 9 A It could be a -- a variety of things. We would -- 10 there may be work orders with valve box lids. I'm just 11 saying typically that because a call comes in during 12 the day, our personnel is out in the field, we'll say 13 can you go by here and throw the lid on. That's how 14 our, you know, our section operates. So generally, 15 we're not creating a work order for them, but there may 16 be a work order -- work orders for putting valve box 17 lids on. 18 Q Okay. 19 A I'm not aware of them. 20 Q Okay. In other words, the two way it work -- in other 21 words, normally, you don't put -- you don't normally 22 have a work -- a work order for putting a valve -- a 23 valve lid -- a valve box lid cover back on? 24 A Correct. 25 Q Okay. It may be done sometimes, but you're not a --</p>
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<p>1 Q In other words, when you reviewed the -- as you sit 2 here today, you really can't say if someone called and 3 reported this before this to your -- to you. 4 MS. WEISS: Objection. 5 Q To -- not to you personally, but to your department? 6 A Yeah, all I can -- I'm not aware of any call that came 7 in for this. 8 Q Okay. Now, wait a second. 9 A Okay. 10 Q Let me rephrase it. I'm not -- and I'm not trying to 11 give you a rough time. You're personally are not aware 12 of any calls; is that right? 13 A Correct. 14 Q Okay. You don't know if someone called in to the 15 department and said, hey, there's -- we're missing a 16 valve lid cov -- lid cover over on -- on Third Avenue. 17 You -- you have no way of tracking if that happened or 18 not? 19 A That's correct. 20 Q Okay. In other words, that call could have come in and 21 that's just not something that would have been tracked 22 in your system? 23 MS. WEISS: Objection. 24 A It would not be tracked in our maintenance management 25 system. You're right.</p>	<p>1 that's not the normal way it's done? 2 A Right. In -- in operations and maintenance -- in our 3 -- in our maintenance section. That's correct. 4 MR. COE: I have nothing further. 5 MS. WEISS: Okay. I just have a few questions. But if 6 we're not done in 10 minutes, then we need to let Mr. Gilmore 7 go out and plug the meter. 8 MR. COE: I don't think -- well, that's okay. 9 JAMEY GILMORE 10 testified as follows on: 11 CROSS EXAMINATION 12 BY MS. WEISS: 13 Q Mr. Coe asked you questions about inspecting for lids 14 on the valve boxes. And I just wanted to -- you to 15 explain what, if any -- what -- why don't you inspect 16 for lids or the absence of lids on any sort of regular 17 maintenance program? 18 A I -- it -- it prob -- it's not a good use of manpower 19 resources based on the fact that we get very few calls. 20 We don't have that many lids that come off. There's 21 personnel that do travel around. If they see one come 22 off, they put the lid back on. We carry lids in -- in 23 our vehicles. So it's -- it's not a big ticket item. 24 We just don't have that many calls that would warrant 25 us to have an inspection program just for the lids.</p>



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1 what you know. I will ask some questions and then if  
2 Mr. Coe has questions too, he'll ask and I suppose we  
3 could have additional questions after that.  
4 (Background whispering)  
5 Q This is not a marathon. I don't anticipate this will  
6 be very long but if you do need a break to go to the  
7 restroom or anything like that, just let me know, we  
8 can take one at any time. The only thing I usually ask  
9 is that you, if there's a question open to answer the  
10 question and then just let me know you want to take a  
11 break. Also to understand that this is being recorded  
12 but there's no video.....  
13 A Uh-huh (affirmative).  
14 Q .....so any body language or nodding heads, that's not  
15 going to be picked up so you want to, to the best of  
16 your ability, always say yes or no. And then we'll  
17 both have to do our best to not talk over each other or  
18 simultaneously so that we can get a good record. So,  
19 those are the most important things I can think of. To  
20 begin with, can you tell me, how do you know the  
21 plaintiff, Ethel Kelly?  
22 A She was my supervisor at the Hilton.  
23 Q She was your supervisor?  
24 A Yes ma'am.  
25 Q And how long have you known her?

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1 A About eight years.  
2 Q And when did you work with the Hilton or at the Hilton?  
3 A What year did I work there?  
4 Q What years?  
5 A I worked there for 17 years. I'm trying to thi -- I  
6 started in I think 1990 and ended almost two and a half  
7 years ago I do believe.  
8 Q Okay.  
9 A Uh-huh (affirmative).  
10 Q And what was your position?  
11 A Housekeeping. Lobby porter, housekeeping -- just put  
12 -- housekeeping's fine.  
13 Q And are you currently employed?  
14 A Yes ma'am.  
15 Q And who are you employed by?  
16 A Alaska Regional Hospital.  
17 Q And what kind of work do you do there?  
18 A Housekeeping.  
19 Q And how long have you resided in Alaska?  
20 A Over 28 years.  
21 Q The question is, I think this trial is scheduled to go  
22 forward in February of 2010, do you think that you are  
23 -- do you have any plans to move or any.....  
24 A No.  
25 Q Are you -- so I'm assuming that you're probably

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1 familiar with the fact that there's been a lawsuit  
2 that's been filed by Ms. Kelly, through her attorney,  
3 against the Municipality?  
4 A Yes.  
5 Q Have you talked to her at all about the lawsuit?  
6 A No. You know like talking, talking, you know, but not  
7 about the lawsuit.  
8 Q And have you talked to her at all about the accident  
9 that is what underlines (ph) this?  
10 A No.  
11 Q Are you familiar with the fact that this lawsuit is  
12 relating to an incident in May of 2006 when she fell?  
13 A Yes.  
14 Q And were you present that date?  
15 A Yes.  
16 Q Can you tell me what you remember happening that day?  
17 A What I remember happening -- the accident?  
18 Q Yeah.  
19 A Okay. What I remember happening at the accident, me  
20 and her both was walking across the street, getting off  
21 work, traffic kind of busy, whatever, and as we was  
22 walking across the street I was -- next thing I knew I  
23 heard her holl -- her hollering. I looked back and  
24 she was in the street, laying down in the street.  
25 Q And do you know how she fell?

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1 A She -- her foot went into a hole out in the street.  
2 Q Can you describe the hole?  
3 A Like a small manhole that you like -- you pick up out  
4 of the street. And you can't turn it with your hand or  
5 anything, I think the City has to lift it up. Maybe  
6 like a water drain or something. A manhole.  
7 Q About how big? You're indicating with your hands.  
8 A I'd say about -- I don't even know by inches or  
9 anything. Let's say --  
10 Q I mean is it about -- I'm trying to get a sense, is it  
11 a foot across or is it five or six inches or is it one  
12 inch, you know how -- you know.  
13 MR. COE: Or you may be able to describe.....  
14 Q Or if there's --  
15 MR. COE: .....it with some object that you're  
16 famil.....  
17 MS. WEISS: Yeah.  
18 A I'll say her coffee cup but a little bit larger.  
19 MS. WEISS: Okay. And she's indicating Connie  
20 Ernst's coffee cup which.....  
21 A Yes.  
22 MS. WEISS: .....is kind of a larger coffee  
23 cup?  
24 MS. ERNST: Yes.  
25 MS. WEISS: Okay.

3 (Pages 6 to 9)

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1 A I think anybody know what a -- if anybody walk across  
2 -- in the street, you know what a manhole look like.  
3 Q Does it look like about the.....  
4 MS. ERNST: Right.  
5 A Yes ma'am.  
6 Q .....size maybe of a softball?  
7 A Maybe -- maybe about -- around that size.  
8 Q So it's not as big as like a basketball?  
9 A No ma'am.  
10 Q And did Ms. Kelly say anything to you either at the  
11 time or afterwards about how she fell or why?  
12 A It was obvious why she fell. She -- her foot went into  
13 the hole.  
14 Q Okay. All right. I was just wondering if.....  
15 A You know?  
16 Q .....after that she said.....  
17 A She was --  
18 Q .....anything else. Did she -- so, nothing else? You  
19 felt that you understood?  
20 A Yes ma'am.  
21 (Background whispering)  
22 Q And have you ever talked to Ms. Kelly's attorney, Mr.  
23 Coe?  
24 A Yes.  
25 Q Can you -- do you recall when you spoke to him?

Page 11

1 A About two, three -- about two weeks ago, maybe.  
2 Q Okay. And you can only -- I mean I understand that  
3 you're --  
4 A I'm not exactly, exactly sure.  
5 Q That's fine.  
6 A Unless I check my phone.  
7 Q And do you remember what you guys spoke about?  
8 A We spoke about the incident, what had happened.  
9 MS. WEISS: And I want to distribute a copy of  
10 an affidavit that was filed with a motion. We'll mark this as  
11 Exhibit 1.  
12 (Off record comments)  
13 (Deposition Exhibit 1 marked)  
14 A Where's my paper?  
15 MS. WEISS: Oh, there it is.  
16 A Everybody get one except me.  
17 MS. WEISS: I'm sorry. We didn't explain. It  
18 goes to the court reporter first....  
19 A Uh-hum.  
20 MS. WEISS: ....so she can indicate -- and so  
21 it's got a sticker.  
22 Q (By Ms. Weiss) Do you recognize this document?  
23 (Pause)  
24 Q I was gonna say, you can take a few moments and look.  
25 There's three pages.

Page 12

1 A Yes ma'am. Yes.  
2 Q And did you sign this document?  
3 A Yes I did.  
4 Q Do you know who -- can you tell me who drafted this  
5 affidavit? Who wrote it?  
6 A What's her name? I'm trying to think of her name.  
7 What's her -- I don't know her name right offhand.  
8 It's his assistant. Might as well say Mr. Coe's  
9 assistant.  
10 Q Mr. Coe's assistant?  
11 A Yes ma'am.  
12 Q Okay.  
13 A You all act like I've been to court. This is my first  
14 time.....  
15 Q No, that's okay.  
16 A .....doing this, you know.  
17 Q I expect you just to, you know -- if you don't  
18 understand my question.....  
19 A Okay.  
20 Q .....just tell me to fix the question.....  
21 A All right.  
22 Q .....or you know, answer to the best you can. And did  
23 you read through this before you signed it?  
24 A I skimmed through it, yes ma'am.  
25 Q And do you believe it accurately reflects what you told

Page 13

1 Mr. Coe?  
2 A Yes.  
3 Q And you spoke directly with Mr. Coe or did you speak  
4 with his assistant?  
5 MR. COE: Or both.  
6 A We -- I spoke with both, ma'am.  
7 Q Okay. So do you believe it accurately reflects what  
8 you told Mr. Coe and his assistant?  
9 A Yes.  
10 Q Okay. I wanted to just go through some of the  
11 paragraphs in this affidavit and make sure that I  
12 understand.....  
13 A Okay.  
14 Q .....what you know. If you look at paragraph 3,.....  
15 A Uh-huh (affirmative).  
16 Q .....it talks about a photograph and I'll --  
17 MS. WEISS: Why don't we go ahead and mark this  
18 photograph which is labeled as Exhibit 1 to plaintiff's motion.  
19 We'll mark this as Exhibit 2 in ours, even though it says  
20 Exhibit 1 on it.  
21 (Deposition Exhibit 2 marked)  
22 Q My question is, do you recognize this photograph?  
23 A Yes I do.  
24 Q Did you take this photograph?  
25 A No ma'am. Probably security took it. We're not no

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1 photographs- -- we're no- -- I think security took it  
2 ma'am, if I'm not mistaken.  
3 Q Do you know for sure that security took it?  
4 A I know for sure they took it because I went downstairs  
5 and we told them what had happened and they went up  
6 there and took the pictures.  
7 Q And when you say you went downstairs you mean on the  
8 day of the.....  
9 A Yes ma'am. Right a- -- when it happened. Yes ma'am.  
10 Q And when you say downstairs you mean downstairs in the  
11 Hilton?  
12 A At the Hilton, uh-huh (affirmative).  
13 Q Do you know who -- what individual at security took the  
14 picture?  
15 A I'm not exactly sure what officer it was because there  
16 was like two of 'em down there at -- at the same time  
17 and this has been what, since 2006, when this happened?  
18 But a lot of people have -- you know no longer working  
19 there 'cause it happened such a long time ago. But not  
20 a long time ago but -- I don't know -- exactly recall  
21 what his name was. I think it was a guy named -- a  
22 gentleman name- -- by the name of Griffin (ph), I know  
23 he was down there. And I think it was another guy  
24 named John, both of those guys work in security. And  
25 it was a lady down there, Barbara Swanson (ph). She

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1 was down there, too, when we reported the incident.  
2 Q And did you actually see them take the photograph?  
3 A No ma'am.  
4 Q So I guess the question I just want to make sure is how  
5 do you know for sure that security took this picture?  
6 A Because I know they -- they said they went up there. I  
7 seen 'em with a camera going back up to the building  
8 -- I mean back up outside to take the picture.  
9 Q Okay.  
10 A 'Cause we were down there in housekeeping and she was  
11 in a wh- -- went and got a wheelchair and everything.  
12 She was severely -- her foot was kind of throbbing at  
13 the time. We wasn't reall- -- it was kind of, you  
14 know, kind of crazy bu- -- I know for a fact security  
15 did take the camera and go back upstairs and went  
16 outside, took the picture.  
17 Q And did you see who -- did you see them taking the  
18 picture or.....  
19 A No.....  
20 Q .....you just saw them.....  
21 A .....I was downstairs.  
22 Q .....with a camera?  
23 A I seen 'em with the camera.  
24 Q And do you know exactly when they took it? Did they  
25 take it on the day of the incident.....

Page 16

1 A Yes. That I -- yes ma'am.  
2 Q And so I am looking at Exhibit 2, which is the  
3 photograph, and is this the intersection that you were  
4 crossing?  
5 A Yes ma'am.  
6 Q And is this exactly what it looked like on that day?  
7 A Yes ma'am.  
8 Q Were there any vehicles parked anywhere at the time  
9 that are not shown in this --  
10 A Well --  
11 Q For instance, you and Ms. Kelly were crossing, were  
12 there any vehicles parked along the side?  
13 A There was a tour bus down farther, but not in this  
14 area. Just down farther on this side of the street.  
15 Q Which side are you indicating?  
16 A Like on this side.  
17 Q Okay. So you're indicating the side that would be  
18 where the picture taker would be standing?  
19 A Down farther.  
20 Q So the tour bus was not in the intersection?  
21 A No.  
22 Q Would it -- if -- would the tour bus be visible in this  
23 picture if it was still where it had been? In other  
24 words would it be shown in this picture if the -- let's  
25 say the tour bus had moved, if it had been there would

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1 you be able to see it in this photograph or is it --  
2 would it be outside of the frame of where this  
3 photograph is?  
4 A It's outside of the frame.  
5 Q Okay.  
6 A Down farther.  
7 Q And when you say down you mean to the -- I guess the  
8 picture taker's right or to their left?  
9 A To the left. If you standing to the -- taking the  
10 picture you're to -- it's to your left.  
11 Q Okay. In paragraph 6 you talked about the hole and I  
12 guess I'm just wondering, did you notice that this hole  
13 was uncovered prior to Ms. Kelly's fall?  
14 A I'm not too sure but I know some oth- -- after we  
15 talked about things some other people had said that the  
16 hole was uncovered too.  
17 Q And who did you talk -- did they tell you directly that  
18 they had seen it was uncovered?  
19 A Well, a couple people had mentioned it, that the hole  
20 was uncovered 'cause I think somebody else fell in that  
21 hole. I'm not saying for su- -- you know but when  
22 -- when -- after the incident happened people started  
23 talking about it and somebody else said that they  
24 recognized that the hole had been like that and they  
25 reported it to the City. I'm just going by what people

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1 are saying.  
2 Q But do you remember who that wa....  
3 A They didn't say -- I don't -- I don't even remember.  
4 It's been su- -- you know it's been a while, three  
5 years now.  
6 Q So you don't recall.....  
7 A No ma'am.  
8 Q ....who it was who said.....  
9 A No ma'am.  
10 Q .....they had seen it? Okay. And do you recall who  
11 said they reported it to the City?  
12 A I'm trying to think. It's been such a while. I think  
13 another lady by the name of -- I can't -- Cherise (ph).  
14 I think Cherise said that she reported it and some  
15 other people said they had reported it to security and  
16 security said they was gonna call the City and let them  
17 know about it.  
18 Q But you didn't have this conversation directly yourself  
19 with security?  
20 A No.  
21 Q Okay. And did you, yourself, call the Municipality?  
22 A N- -- no.  
23 Q Okay. I just have to make sure, you know.  
24 A No.  
25 Q So it sounds like it was just statements that you had

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1 heard other people mentioning.....  
2 A Yes ma'am.  
3 Q Okay.  
4 A Yes ma'am.  
5 Q So do you know for sure that somebody called the  
6 Municipality? Or you don't know for sure? It's simply  
7 somebody else had said that they reported it to  
8 security?  
9 A We reported it to security. Security I'm quite sure  
10 -- you know, they being security and the incident  
11 happened, I'm quite sure they would recall (ph) the  
12 City and let them know you know because it's such a  
13 -- you know?  
14 Q So you're talking about after the incident? After.....  
15 A Before -- you know what, before her incident even  
16 happened it was reported to the City supposedly 'cause  
17 other people were complaining about it.  
18 Q Okay. And I guess they.....  
19 A 'Cause it's a lot of people that work at -- you know in  
20 that vicin- -- in that -- in the hos- -- hotel.  
21 Q So when you said that you thought that Charise  
22 Lyons.....  
23 A Uh-huh (affirmative).  
24 Q .....had mentioned that she.....  
25 A Uh-huh (affirmative).

Page 20

1 Q .....reported to security,.....  
2 A Uh-huh (affirmative).  
3 Q .....was she saying that she reported it to security  
4 after Ms. Kelly fell or before?  
5 A Before I -- before. Before.  
6 Q But you, yourself, don't know who would have called  
7 se- -- called the Municipality and you, yourself, did  
8 not call the Municipality?  
9 A No.  
10 Q You mentioned that the hole had been left uncovered for  
11 days. Paragraph 6 says: The hole had been left  
12 uncovered for days before Ms. Kelly. And I guess I'm  
13 wondering whether -- and I probably already asked this  
14 and forgot the answer was whether you had indeed  
15 noticed the hole was uncovered before this day?  
16 A Just like I said, several other employees had reported  
17 the plate being missing. Is that what you just asked  
18 me?  
19 Q Well my question is whether you, yourself,.....  
20 A No.  
21 Q .....had noticed that it was uncovered before.....  
22 A No.  
23 Q .....that day?  
24 A No ma'am.  
25 Q And in paragraph 7,.....

Page 21

1 A Uh-hum.  
2 Q .....you said that: The lid for this pipe hole was  
3 removed when the City painted this crosswalk. I don't  
4 know -- I guess I'm trying to figure out -- you said  
5 based on your observations, as I walked -- this is  
6 paragraph seven of your.....  
7 A Uh-huh (affirmative).  
8 Q .....affidavit,.....  
9 A Uh-huh (affirmative).  
10 Q .....prior to Ms. Kelly's fall based on my observations  
11 as I walked in this area when I went to and from  
12 work.....  
13 A Uh-huh (affirmative).  
14 Q .....the lid for this pipe hole was removed when the  
15 City painted this crosswalk or performed maintenance in  
16 this area.  
17 A Uh-huh (affirmative).  
18 Q Is this.....  
19 A But they -- they had cones out there at the time when  
20 they painted this crosswalk.  
21 Q Do you recall when they painted this crosswalk?  
22 A I'm not too sure to -- you know, exact, exact -- I  
23 can't -- there's no way that I can tell you exactly  
24 exact, I'm just going by what I remember.  
25 Q But you worked for the Hilton for 17 years, so it's



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1 a.....  
2 A Yes ma'am but -- just sometimes I don't even go this  
3 way.  
4 Q Okay.  
5 A You know.  
6 Q Here's my question is,.....  
7 A Uh-huh (affirmative).  
8 Q .....in -- do you -- are you referring to an incident  
9 that occurred sometime shortly before Ms. Kelly's fall  
10 or are you referring to, you know, something that may  
11 have happened two or three years before?  
12 A No, I'm talking about prior.  
13 Q Right.  
14 A This was painted and then the cone was on there. Only  
15 thing I know is, when they had pain- -- I -- you know  
16 you -- what I'm saying is, only thing I know I remember  
17 is they did do some maintenance out there and they had  
18 cones out in the street.  
19 Q And can you give me an idea of how long before.....  
20 A No I can't. I really can't 'cause it's been -- you  
21 know -- you know, my memory ain't that sharp.  
22 Q Right.  
23 A I wish it was, you know.  
24 Q Well I'm just trying to get a sense of whether you know  
25 are you talking about a couple weeks or a couple months

Page 23

1 before or a couple years before?  
2 A No, it's not no couple years.  
3 Q Okay.  
4 A Maybe -- I'll say maybe a month or so. I'm not exactly  
5 sure.  
6 Q Okay. And you're saying that a month before -- and did  
7 you observe them actually -- you said the lid for the  
8 pipe hole was removed when the City painted this  
9 crosswalk or performed maintenance in this area. Are  
10 there multiple instances in which you've seen them do  
11 that?  
12 A Unh-unh (negative).  
13 Q No?  
14 A Unh-unh (negative).  
15 Q Just for the record, are you saying no?  
16 A No.  
17 Q Okay. So there was -- so are you only recalling one  
18 instance? I mean you just got to keep in mind, I don't  
19 know what's in your head that you're talking about.  
20 I'm not doing this to make.....  
21 A Unh-unh (negative). That's fine --  
22 Q .....things difficult.....  
23 A Unh-unh (negative).  
24 Q .....I'm just trying to understand what you know or  
25 what you don't. And you said that the lid for the pipe

Page 24

1 hole was removed when the City painted this crosswalk  
2 or performed maintenance in this area. That statement,  
3 is that referring to one time that you recall or many  
4 times?  
5 A No, no, no, no, no, no. No, no, no, no, no.  
6 Q Can you explain to me what you mean by no?  
7 A Let me say -- okay. Answer -- answer the question  
8 again, 'cause you.....  
9 Q Okay.  
10 A Pipe hole or not a pipe hole. Only thing I'm trying to  
11 say is the -- when they painted the crosswalk the cones  
12 was out in the street, okay? Then I guess later on  
13 when they moved the cones the hole was there. That's  
14 what I'm saying.  
15 Q And I'm trying to figure out when you're referring to  
16 that they painted it. Are you saying every time they  
17 painted it or one particular time that they pain.....  
18 A One particular time when they painted, what I was aware  
19 of.  
20 Q Okay.  
21 A Okay.  
22 Q And the one particular time that you're thinking of,  
23 did we establish that that was a few weeks or months  
24 before.....  
25 A Uh-huh (affirmative).

Page 25

1 Q .....or is it you know the year before?  
2 A No. The same -- in the same time frame.  
3 Q Okay.  
4 A About a month or so.  
5 Q And do you know who it -- I mean how do you know it was  
6 City folks that were painting is my question. Or how  
7 did.....  
8 A I don't think.....  
9 Q What led you.....  
10 A .....anybody else is.....  
11 Q .....to the conclusion?  
12 A I don't think nobody else is gonna go out there and do  
13 -- paint a crosswalk unless they work for the City, you  
14 know. I don't know.  
15 Q So you were.....  
16 A I'm not a City person.  
17 Q You're assuming that they were City beca.....  
18 A Yes ma'am.  
19 Q Okay.  
20 A Yes ma'am.  
21 Q And it states: The City maintenance crew put cones  
22 over the hole or near the hole for a period of time.  
23 And can you -- do you recall where, maybe you can  
24 indicate even on the picture with a pen if you  
25 recall.....

7 (Pages 22 to 25)

Page 26

1 A I don't --  
2 Q .....where they put the cones?  
3 A I don't recall.  
4 Q Okay.  
5 A That's been a while.  
6 Q And after the cones were removed they left the hole in  
7 the crosswalk.....  
8 A Uh-huh (affirmative).  
9 Q .....without putting a lid. Here's the question I have  
10 though, you said that you didn't notice that the hole  
11 was uncovered until the day of the incident.  
12 A Everybody -- people were talking about people -- you  
13 know, just like I said, they was complaining about the  
14 holes out there. I don't know when -- when they was  
15 talking about, I'm just going by what I heard. But I'm  
16 saying when -- after they painted, evidently the hole  
17 was there and they covered it with the cones. Then  
18 they moved the cones, that's what I'm saying.  
19 Q Did you actually -- do you recall seeing the cones?  
20 A Yes ma'am. I did see the cones out there.  
21 Q But you're telling me that you did not recall seeing  
22 that there was a hole left open after the cones were  
23 removed? That is just what you heard from other  
24 people?  
25 A Right. Right.

Page 27

1 Q And do you recall who talked about that?  
2 A Just a couple people, you know and -- just like I just  
3 said before, it was a couple people and then Charise  
4 had said something about that -- somebody else said  
5 that she had fell out there. That's all I know. I  
6 -- you know you keep saying the same old thing over and  
7 over. I'm just going by what I seen and what I was at  
8 when I seen the incident happen.  
9 Q Well that's what I'm trying to distinguish between, the  
10 things that you know or.....  
11 A Uh-hum.  
12 Q .....the things that you heard.  
13 A Uh-hum.  
14 Q And that's where I'm trying to get -- it sounds like  
15 you're saying that you saw people put cones around but  
16 you didn't see or notice that there was a hole after  
17 they left?  
18 A Right. Right.  
19 Q That you heard from other people?  
20 A Yes ma'am.  
21 Q Okay. You know, paragraph 8, I'm thinking about, you  
22 said something -- at the last sentence it says: The  
23 hole was left uncovered for days prior to Ms. Kelly's  
24 injury. And we already established.....  
25 A Uh-huh (affirmative).

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1 Q .....that you didn't know that yourself but you heard  
2 other people?  
3 A Yes ma'am.  
4 Q And should have been covered by the Municipality  
5 workers working or driving over this area. Did you see  
6 any workers working in that area in those days prior  
7 -- in just the few days prior to Ms. Kelly's.....  
8 A Unh-unh (negative).  
9 Q Okay. And then you mentioned or driving over this  
10 area. Did you see any Municipal workers drive across  
11 -- down the road?  
12 A No.  
13 Q Okay. And you mentioned that the hole -- we talked  
14 about the hole and the size and I think we came up with  
15 that maybe it was a softball size, that it was -- is  
16 that something that you think somebody would be able to  
17 see when they were driving down the road?  
18 A Well if it was reported, somebody should have came out  
19 there and checked it.  
20 Q Okay.  
21 A You know, 'cause it was reported.  
22 Q But you didn't report it yourself?  
23 A Not at -- when the incident happened we went in there,  
24 we made a report.  
25 Q Sure.

Page 29

1 A Yes, with security.  
2 Q Okay. But prior to that?  
3 A No.  
4 Q No, that you.....  
5 A No, I didn't see the hole.  
6 Q You didn't -- but we're talking about reporting, if it  
7 had been reported. You said if it had been reported  
8 they should have come and fixed the hole?  
9 A I think anybody that walk across there, if -- you know  
10 you can't see it right away but, if you fall, you know  
11 -- but you can't -- I -- you know because most of the  
12 time when you're crossing the street you don't look  
13 down, you look side by side for the traffic 'cause it's  
14 a very busy intersection right there.  
15 Q And there's no traffic light, correct,.....  
16 A No ma'am.  
17 Q .....at that intersection?  
18 A No ma'am.  
19 Q Okay. And I'm just trying to figure out if this last  
20 paragraph in your affidavit is saying that somebody  
21 from the Municipality had an opportunity to see it and  
22 should have seen it, and that's what I'm trying to  
23 understand. And so you said you didn't necessarily see  
24 any specific workers there and you didn't see anybody  
25 drive over the street. And then at the end you said,

8 (Pages 26 to 29)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,

Plaintiff,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

RECEIVED NOV 06 2009

Case No. 3AN-08-4271 CI

**MUNICIPALITY'S RESPONSE TO PLAINTIFF'S  
FIRST SET OF INTERROGATORIES**

Defendant, Municipality of Anchorage hereby responds to the Plaintiff's first set of interrogatories as follows:

**INTERROGATORY NO. 1:** List all witnesses before, during, or after plaintiff's fall, with their addresses and a description of their testimony concerning how plaintiff's fall occurred, including any officer, pedestrian, or other persons that may have assisted Ms. Kelly in any way before or after her fall on May 22<sup>nd</sup>, 2006.

**RESPONSE:** Objection. This interrogatory calls for information not within the control or knowledge of the Municipality but of plaintiff herself. The Municipality has no way of knowing who outside the Municipality assisted Ms. Kelly prior to or during her fall or what type of assistance they may have provided.

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

Anchorage, Alaska

99519-6650

Telephone: 343-4545

Facsimile: 242-4550

000176

Notwithstanding the foregoing objection, the Paint Shop crew from the Municipality painted the crosswalk on the north side of the intersection on May 3, 2006 but not the crosswalk where Ms. Kelly fell. See Third Supplemental Disclosures. The Paint Crew also painted the crosswalks on all sides of the intersection on May 3, 2007. That painting was done by at least some members of a 9-person crew headed by Jeff Donlan and/or Ralph Blanchard. The other individuals on that crew were Charmalee Howard, Kraig Riese, Steve Fried, Dash Erickson, Doug How, Kevin Hickey and Robert Ward. The intersection crosswalks were not painted in either 2004 or 2005.

**INTERROGATORY NO. 7:** List the names and addresses of all safety/risk management personnel who have evaluated or observed the defendant Municipality of Anchorage's valve box and crosswalk maintenance procedures and rendered reports/evaluations since January 1, 2004, to December 31, 2007.

**RESPONSE:** Objection. The interrogatory is vague and ambiguous with respect to the terms "safety/risk management personnel," "reports/evaluations" and "maintenance." Further, at least some of the subject matter of this interrogatory is not reasonably calculated to lead to the discovery of admissible information. Plaintiff must establish that the Municipality either had notice of the missing valve cover or caused the cover to be missing prior to Ms. Kelly's accident. Her fall took place on May 22, 2006. Therefore, any events at or related to the intersection following her accident, and particularly as late as 2007, are not relevant to liability (or damages) in this case.

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Notwithstanding the foregoing objection, there are no personnel from the Risk Management Department who have prepared reports or evaluations relating to valve boxes or crosswalk maintenance.

**INTERROGATORY NO. 8:** State if there was a videotape of the parking lot, crosswalk, or exterior sidewalk at the intersection of 3<sup>rd</sup> Avenue and F Street where plaintiff fell, taken on March 22<sup>nd</sup>, 2006. Please state where these video tapes are at this time. If they have been destroyed or discarded, list the name/address of the person who destroyed/discarded them and state why they were destroyed/discarded.

**RESPONSE:** Objection. The interrogatory is vague and ambiguous with respect to the terms "parking lot" or "exterior sidewalk." For example, it is not clear what parking lot is being referenced and whether there is more than one.

Notwithstanding the foregoing objection, the Municipality is not aware of any videotapes taken by any individual of any areas near the Hilton or the crosswalk at issue.

**INTERROGATORY NO. 9:** List all evidence or witnesses that the defendants maintain provide proof that they were not responsible for the plaintiff's fall as alleged in his complaint.

**RESPONSE:** Objection. With the exception of the arguments and information set forth in the Motion for Summary Judgment, the Municipality's arguments concerning liability are legal in nature and any information regarding counsel's arguments and thought process are protected as work product.

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

Anchorage, Alaska

99519-6650

Telephone: 343-4545

Facsimile: 343-4550

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

ETHEL B. KELLY, )  
 )  
Plaintiff, )  
 )  
vs )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Defendant. )  
\_\_\_\_\_ )

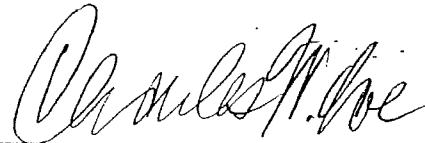
Case No. 3AN-08-4271 CI

REQUEST FOR ORAL ARGUMENT

COMES NOW, the plaintiff, ETHEL B. KELLY, by and through her attorney, CHARLES W. COE, who hereby requests oral argument on the issues presented in the Cross Motion for Summary Judgment.

DATED this 24<sup>th</sup> day of November, 2009.

CHARLES W. COE  
Attorney for Plaintiff



Charles W. Coe  
ABA#7804002

CHARLES W. COE  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-6173

CHARLES W. COE

ATTORNEY AT LAW

810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501

(907) 276-6173

I certify that on November 24, 2009,  
I served a copy of the foregoing by  
U.S. Mail upon:

Pamela D. Weiss  
Assistant Municipal Attorney  
Municipality of Anchorage  
Office of the Municipal Attorney  
PO Box 196650  
Anchorage, AK 99519-6650



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT

ETHEL B. KELLY, )  
 )  
Plaintiff, )  
 )  
vs )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Defendant. )  
\_\_\_\_\_ )

Case No. 3AN-08-4271 CI

ORDER

IT IS HEREBY ORDERED that;

Oral argument on the issues presented in the Cross Motion for Summary

Judgment is scheduled for the \_\_\_\_\_ day of \_\_\_\_\_, 2009, at

\_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Superior Court Judge

CHARLES W. COE  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-6173



CHARLES W. COE

ATTORNEY AT LAW

810 W. 2ND AVENUE

ANCHORAGE, ALASKA 99501

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PO Box 196650  
Anchorage, AK 99519-6650

  
\_\_\_\_\_

*Kelly v MOA*

Order

Case No 3AN-08-4271 CI

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## THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,

Plaintiff,

V.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-08-4271 CI

**MUNICIPALITY'S UNOPPOSED MOTION TO FILE SUR-REPLY**

The Municipality of Anchorage (“the Municipality”) moves for leave to file a Sur-Reply to plaintiff Ethel Kelly’s Reply to Defendant’s Opposition to Cross-Motion for Summary Judgment. The undersigned has spoken with plaintiff’s attorney Charles Coe, who has indicated he does not oppose the filing of a Sur-Reply and would not oppose this motion.

The Municipality requests the opportunity to file a Sur-Reply because the Affidavit of James Griffin, submitted with the Reply, raised new information to which the Municipality never had an opportunity to respond.<sup>1</sup> Following plaintiff's submission of her Reply, the Municipality deposed Mr. Griffin. The information learned in the deposition necessitates this sur-reply and the Municipality believes that the information contained in the sur-reply will aid the court in its consideration of the cross- motions.

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

Anchorage, Alaska  
99519-6650

elephone: 343-4545

facsimile: 343-4550

<sup>1</sup> The Municipality, in its Motion to Strike the Affidavit of James Griffin, asked as alternative relief that it be allowed to take Mr. Griffin's deposition and subsequently file a sur-reply. While the court's order denying the motion to strike specifically allowed for the deposition to be taken, it did not address the request to file a sur-reply.

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A copy of the proposed Sur-Reply is attached hereto.

Respectfully submitted this 16<sup>th</sup> day of March, 2010.

DENNIS A. WHEELER  
Municipal Attorney

By: Pamela D. Weiss  
Pamela D. Weiss  
Assistant Municipal Attorney  
Alaska Bar No. 0305022

Certificate of Service

I hereby certify that on 3/18/10 I mailed  
a true and correct copy of the foregoing to:

- Charles Coe [Signature]  
Jennifer A. Richardson, Legal Secretary

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Unopposed Motion for Leave to File Sur-Reply  
Kelly v. MOA  
Case No. 3AN-07-9375 CI  
Page 2 of 2

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ETHEL B. KELLY, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MUNICIPALITY OF ANCHORAGE, )  
 )  
 Defendant. )  
 ) Case No. 3AN-08-4271 CI

Plaintiff's Reply correctly identifies the sole issue as whether or not the Municipality had notice of the missing valve box lid but failed to take action, or whether the Municipality itself caused the lid to be missing. However, on both these points, plaintiff fails to present evidence sufficient to meet her burden of establishing the Municipality had a duty. Accordingly, her cross-motion for summary judgment should be denied and the Municipality's motion for summary judgment should be granted.

Even with Mr. Griffin's affidavit, there is no specific evidence showing the Municipality caused the valve box lid in the crosswalk where Ms. Kelly fell to become missing. Despite the reference to the presence of "city workers" in his affidavit,<sup>1</sup> Mr. Griffin's deposition testimony actually shows he does not know whether municipal workers were present at the crosswalk at all. First off, he did not know for sure what the

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workers he recalls seeing were even doing.<sup>2</sup> More important, he just “assumed they were city workers.”<sup>3</sup> However, this testimony is insufficient to merit summary judgment in her favor or even to create a genuine issue of fact to avoid summary judgment in the Municipality’s favor since it is merely an assumption.<sup>4</sup>

Nevertheless, because of Mr. Griffin’s apparent recollection that someone was working in the crosswalk prior to Ms. Kelly’s accident, the Municipality reviewed the records of numerous departments to determine if, in fact, any municipal employee, entity or agent had been working in that crosswalk. Consistently, the search turned up empty. Right of Way could not locate any records of a permit being issued to anyone.<sup>5</sup> And the other departments that might have been there – for example, Project Management & Engineering or its contractors, Municipal Light & Power, and Street Maintenance –

---

<sup>2</sup> See Ex. J, Tr. of Deposition of James Griffin at 21, 23.

<sup>3</sup> Ex. J, Tr. at 21. He ultimately conceded he did not know for sure if they were municipal workers. Ex. J, Tr. at 23 (stating also “I don’t particularly know”).

Further confusing matters is the fact that his description of the work was in conflict with both Ms. Lyons’ and Ms. Wakefield’s (vague and non-specific) testimony. Ms. Lyons recalled construction but did not recall where it was, except specifically that it was not in the intersection. She also recalled they were wearing yellow vests. Ex. G, Tr. at 18. Ms. Wakefield, for her part, recalled there was painting but did not really know when it was and she too simply assumed it was municipal workers. Ex. H, Tr. at 22-23, 25. All references to Exhibits G, H, I are to those exhibits attached to the Municipality’s Opposition to Plaintiff’s Cross-Motion for Summary Judgment filed on November 5, 2009.

Meanwhile, Mr. Griffin stated the workers were wearing orange vests, were in the west intersection and were using a jackhammer. Ex. J, Tr. at 32. In addition, Mr. Griffin’s recollection is completely at odds with the records of the municipality, which found absolutely no permits issued to anyone – Municipal or otherwise – to excavate in the street during that time period. See Exhibit K, Affidavit of Jack Frost at ¶ 6.

<sup>4</sup> See *Mahan v. Arctic Catering, Inc.*, 133 P.2d 655, 661 (Alaska 2006).

<sup>5</sup> See Ex. K, Aff. Frost.

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

Anchorage, Alaska

99519-6650

Telephone: 343-4545

Facsimile: 343-4550

found absolutely no record of being at that crosswalk in the one or two months preceding Ms. Kelly's accident.<sup>6</sup>

Plaintiff's entire theory of liability is based on an assumption that the Municipality was present. But her own witnesses admit their conclusions are just that - assumptions - and case law shows assumptions are insufficient.<sup>7</sup> In fact, nothing connects the Municipality to the crosswalk where Ms. Kelly fell other than the presence of its valve box assembly and the fact that the lid was missing. However, *Johnson v. State* makes clear the mere existence of a hazard is an insufficient basis for finding liability against a public entity.<sup>8</sup>

## **II. Plaintiff Fails to Provide Any Evidence that the Municipality Was Notified - But Failed to Correct - the Hazard.**

Plaintiff's Reply and Mr. Griffin's affidavit similarly fail to show the Municipality was notified of the hazard. Although Mr. Griffin's affidavit purports to represent that he contacted the Municipality,<sup>9</sup> his testimony at the deposition makes clear that was not accurate. He actually went on to repeatedly state that he had no recollection of calling the Municipality to report the missing lid.<sup>10</sup> Nor did he have any personal knowledge that someone else called.<sup>11</sup> Rather, he simply "assumed" he asked the other security guard to

---

<sup>6</sup> Exhibit L, Affidavit of David Gardner (PM&E or contractors); Exhibit M, Affidavit of Gary Faraday (ML&P); Exhibit N, Affidavit of Daniel Southard (Street Maintenance).

<sup>7</sup> See *Mahan*, 133 P.3d 655.

<sup>8</sup> 636 P.2d 47 (Alaska 1981).

<sup>9</sup> See Aff. Griffin at ¶ 5.

<sup>10</sup> Ex. J, Tr. at 15 ("I don't remember personally making the call"), 16, 39, 42 ("I can't remember actually making that phone call").

<sup>11</sup> Ex. J, Tr. at 38 ("if [the other guard] made the call I wasn't in the room").

notify the city and that guard did it.<sup>12</sup> Without anything more, his assumption is insufficient to establish this critical element of Ms. Kelly's case.<sup>13</sup>

In what appears to be plaintiff's last effort to establish the Municipality had notice of the hazard, she suggests the presence of the paint crew at the north crosswalk was sufficient to give the Municipality notice of the missing valve in the west crosswalk (where Ms. Kelly fell).<sup>14</sup> The Municipality does not dispute that it painted the north crosswalk approximately two weeks before Ms. Kelly's accident.<sup>15</sup> But the undisputed evidence shows that paint crew would have no reason to be present in the west crosswalk.<sup>16</sup> More important, there is absolutely no evidence that the 5-6" valve cover hole in the west crosswalk could be seen from the north crosswalk distance. In fact, all the evidence (which comes from plaintiff's own witnesses) shows the hole was difficult to see.<sup>17</sup> Indeed, Mr. Griffin stated that he could only see the hole when he was "up on it" and might not have noticed it had Ms. Lyons not reported it.<sup>18</sup>

---

<sup>12</sup> Ex. J, Tr. at 15 ("I'm assuming it got done"), 16 ("I'm assuming that it was done but I don't remembers actually making ... the call").

<sup>13</sup> See *Mahan*, 133 P.3d at 661; MOA Opposition at p. 7 & n. 26.

<sup>14</sup> See Plaintiff's Reply at p. 6.

<sup>15</sup> See Ex. O, Affidavit of Ralph Blanchard at ¶ 3; Ex. I.

<sup>16</sup> Ex. O, Aff. Blanchard at ¶ 4. Further, even if plaintiff were to pursue this theory, there is no evidence that the valve box cover was missing on the date that painting took place since none of plaintiff's witnesses even noticed it was missing until approximately a week before Ms. Kelly's accident. Ex.G, Tr. at 15; Ex. J Tr. at 26.

<sup>17</sup> See Ex. G, Tr. at 17, 23; Aff. Lyons ¶ 7.

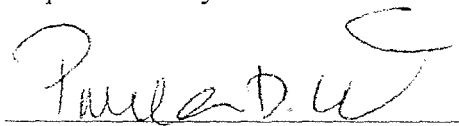
<sup>18</sup> Ex. J, Tr. at 36, 40; *see also* Aff. Griffin at ¶ 9; *see also* Ex. G, Tr. at 17; Aff. Lyons at ¶ 7.

In view of the absence of any facts supporting notice to the Municipality of the hazard, Ms. Kelly is not entitled to summary judgment in her favor. Indeed, for these very same reasons, the Municipality is entitled to summary judgment in its favor.

Respectfully submitted this 18<sup>th</sup> day of March, 2010.

DENNIS A. WHEELER  
Municipal Attorney

By: \_\_\_\_\_



Pamela D. Weiss  
Assistant Municipal Attorney  
Alaska Bar No. 0305022

Certificate of Service

I hereby certify that on 3/18/10 I mailed  
a true and correct copy of the foregoing to:

- Charles Cog



Jennifer A. Richardson, Legal Secretary

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Sur-Reply of Municipality  
Case No. 3AN-07-9375 CI  
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Defendant. )  
 ) Case No. 3AN-08-4271 CI

DEPOSITION OF JAMES L. GRIFFIN  
March 2, 2010

APPEARANCES:

FOR THE PLAINTIFF: MR. CHARLES W. COE  
Attorney at Law  
810 West 2nd Avenue  
Anchorage, Alaska 99501  
(907) 276-6173

FOR THE DEFENDANT: MS. PAMELA D. WEISS  
Assistant Municipal Attorney  
Office of the Municipal  
Attorney  
632 West 6th Avenue  
Suite 730  
Anchorage, Alaska, 99501  
(907) 343-4545

FOR THE ANCHORAGE  
HILTON HOTEL: MR. ROBERT L. GRIFFIN  
Griffin and Smith  
Attorneys at Law  
1600 A Street  
Suite 101  
Anchorage, Alaska 99501  
(907) 274-5546

\* \* \* \*

**METRO COURT REPORTING**  
121 West Fireweed Lane, Suite 260  
Anchorage, Alaska 99503  
(907) 276-3876

Exhibit J  
Page 1 of 12

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1 actually calling the city at that point.....

2 Q Okay.

3 A .....but -- but Doug John was in the room with me and  
4 the normal procedure -- our normal procedure would have  
5 been -- it would have been done. I don't remember  
6 personally making the call but I'm assuming that it got  
7 done by -- by Doug John since I don't remember the call  
8 but --

9 Q Who would normally be responsible for making that type  
10 of call?

11 A Well, it was reported to me and I was the -- I was the  
12 supervisor but I -- but like I said I don't remember  
13 actually making the call that day which -- but it -- it  
14 would -- it would have been out of character for me not  
15 to make the call but I was -- but I -- but I don't want  
16 to testify and say that I made the call when I can't  
17 remember doing it. It's possible I made the call and I  
18 forgot -- forgot it but it is possible that I asked  
19 Doug John to do it for me 'cause som -- sometimes I  
20 would delegate things but I don't remember at that  
21 point.

22 Q Well, if you can take -- I just want to make sure that  
23 I get this right. If you look at paragraph 5, if you  
24 look at it I guess it would be the second sentence. It  
25 says: This uncovered valve box hole was then reported

1 to the city street maintenance by me and Doug John, a  
2 security employee.....

3 A Oh.

4 Q .....after Ms. Lyons notified us of it. Is that the  
5 incident that you're mentioning where Charisse Lyons  
6 came in?

7 A Yes. Charisse did mention it to us, I don't re -- I --  
8 I'm assuming that it was done but I don't remember  
9 actually making the -- being the one to make the call.

10 Q So you would not be willing to sit up on a witness  
11 stand and state that you called the city, is that  
12 correct?

13 A Correct. 'Cause I don't have a recollection of  
14 actually doing it.

15 Q If you can take a look at paragraph 4 -- I guess I'll  
16 go back, it states: According to our records, Ms.  
17 Kelly's incident happened -- and I'm curious what type  
18 of records does security keep?

19 A We had a security incident report espe -- especially  
20 any employee accidents we do a form, it's generated,  
21 stays on the computer I beli.....

22 Q What other types of records do you keep?

23 A There would have been the Workmen's Comp claim, the  
24 Workmen's Comp forms, all of -- and then that's the  
25 only records that we would have ke -- kept.

1 coming to work or going to work I would walk by and see  
2 the hole out open. Especially it was brought to my  
3 attention before Charisse or after Charisse said she al  
4 -- fell or stepped in the hole and then I noticed it a  
5 little while -- sometime after that about a week later  
6 I noticed it too. I did notice that some -- at some  
7 points there were a couple of times I noticed it when  
8 the city workers when they come out they had left the  
9 cone in front of the -- the hole covering it up or  
10 blocking it. And then other times there would be no  
11 cone or there would just be left open. I noticed it --  
12 I would say I probably saw this left like it is here in  
13 the picture three or four times over the course of a  
14 two week period.

15 Q And so, paragraph 6 talks about these city workers that  
16 you mentioned, you just mentioned: After Charisse  
17 Lyons reported stepping in the hole, prior to Ms.  
18 Kelly's fall, I also observed city workers working on  
19 the crosswalk at 3rd and F.

20 A Yes. I'm not sure what they were doing but they would  
21 be out there and at some points they would have the --  
22 the part of the road blocked off and they were doing  
23 something in -- in this hole here. I think it's an  
24 access cover or something and what -- I'm not sure what  
25 they were doing but I did notice them there a couple

1 side. So when you mention that you observed city  
2 workers working on the crosswalk at 3rd and F.....

3 A Yes.

4 Q .....are you talking about the west crosswalk?

5 A Yes. In the same area as this -- where this access  
6 panel is here, this area.

7 Q And can you tell me what alerted you to the fact that  
8 these were city workers?

9 A Well, I just assumed they were city workers or main --  
10 road maintenance workers, I -- I don't particularly  
11 know -- I guess they could have been contractors I  
12 guess. I assume that they were city street ma --  
13 maintenance workers but that -- I guess that -- but,  
14 yeah, they were out doing some type of work on this  
15 area in the street here.

16 Q And you said you don't know what kind of work they were  
17 doing?

18 A Right.

19 Q And do you recall again the time frame when you saw  
20 this?

21 A It was -- I sa -- I noticed a couple times after  
22 Charisse Lyons note -- made me aware of the incident  
23 and at least once about a week or so later they had  
24 returned and were doing more work after Neda Kelly's  
25 injury and I -- I'd noticed them there.

1 wide. And then after that I noticed -- and then when  
2 the cover's not there -- or and then when they take the  
3 cover off then -- then the hole's there, that's  
4 basically just a cover for the hole there. I don't  
5 know, I guess it's a valve box cover is what it's.....

6 Q And that's fine. So the first time that you noticed  
7 that there was no cover on it was sometime after Ms.  
8 Lyons reported to you that she had stepped or almost  
9 fe.....

10 A Correct.

11 Q Okay. And in relationship to that you said that  
12 occurred within a week prior to Ms. Kelly's injury?

13 A Correct.

14 Q Okay. So we've got a one week window?

15 A Yes.

16 Q When between then did -- did you observe what you  
17 assumed to be city workers during that one week period?

18 A Yes.

19 Q Okay.

20 A I don't know the exact date, I do know that they were  
21 out there -- they were out there -- it was over that --  
22 the, like, the week or so period between Charisse Lyons  
23 all the way up 'til Neda Kelly's injury then within a  
24 week after. During that two to three week window is  
25 when I saw all the -- the different workers out there

**METRO COURT REPORTING**

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(907) 276-3876

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Exhibit J  
Page 6 of 12

1 figure out if you knew something.

2 MR. GRIFFIN: She didn't ask a question yet,  
3 Mr. Griffin.

4 Q So that's why I'm asking you if there was anything  
5 else, did they have vests that indicated they worked  
6 for the city?

7 A I don't remember the vests indicating they worked for  
8 the city, they -- they were wearing orange -- orange  
9 like traffic safety vests and hard hats.

10 Q Okay. Anything else about them that was memorable?

11 A Yeah, they had a jackhammer that they were using inside  
12 this hole here for something. I remember they had it -  
13 - at one point seeing the jackhammer.

14 Q Okay. So it sounds like you're not saying that your  
15 recollection is that they were painting?

16 A That is correct.

17 Q You recall a jackhammer, they were wearing orange vests  
18 and, just to clarify, are we talking about the time  
19 prior to Ms. Kelly's fall or the time after or both?

20 A The time that I saw -- the time that I saw it -- it was  
21 -- the time that I saw the workers with the vests and  
22 the -- was after Charisse Lyons reported it and before  
23 Neda Kelly.

24 Q Okay.

25 A Yeah.

1 A Well, this area had been painted over and so this whole  
2 -- all this area was all new paint and you -- so you  
3 couldn't -- you couldn't really see this hole 'til you  
4 walk up on it. So I did notice that, that's one of the  
5 things that Neda Kelly had -- when she said I -- I  
6 almost fall -- I fell in this hole and I -- and I  
7 almost hurt myself 'cause she said I couldn't see. And  
8 that was because with -- when you're walking down the  
9 street you really can't see that that's a hole at the  
10 point.

11 Q Okay. You said new -- it had new paint? Do you know  
12 when it was painted?

13 A It was fairly new. I don't remember the exact date  
14 that -- but it was a pretty much all -- all this area  
15 had been freshly painted either just before or during  
16 this time frame. But this whole area, all the sidewa  
17 -- side stripes had been freshly painted.

18 Q Is it possible that some of the other crosswalks had  
19 been painted but not that crosswalk?

20 MR. GRIFFIN: I'll stipulate that anything's  
21 possible.

22 A Yeah.

23 Q Okay.

24 A Yeah. It -- it -- well, they were -- they were  
25 actually painting all of the crosswalks in this area at



1 we wrote it up, let's go over that. It says -- and I  
2 think -- I don't want to mis-state things for the court  
3 so they understand. About the thir -- fourth sentence  
4 down: This uncovered valve box hole was then reported  
5 to city maintenance by me and Doug John, should that be  
6 me or Doug John?

7 A Yes. That should be me or -- or Doug John. But it --  
8 but I don't remember reporting it but me and Doug John  
9 were in the room with Charisse Lyons and if it wasn't  
10 me then it would have been him that reported it.

11 Q And actually I think at one time you may have told me,  
12 and I don't know if this is correct or not, that you  
13 may have been there when -- if you didn't do it you may  
14 have been there when Doug did it himself?

15 A I -- I -- I wasn't in the room if Doug -- if Doug made  
16 the call I wasn't in the room.

17 Q Okay.

18 A I don't remember.

19 Q But it was either you or him, is that right?

20 A Yes, that is correct.

21 Q And it would have been your protocol to -- Ms. Lyons  
22 told you about it, it would have been your protocol to  
23 follow up with that?

24 A Yeah. It would have been our protocol, it would have  
25 been -- I would have -- there would have been no -- I

1 can't think of a reason why it didn't do -- that's why  
2 I've been -- I've been stressing myself trying to  
3 figure out why I can't remember making this phone call  
4 because I remember clearly her stating it but I don't  
5 remember doing it so I keep wracking my brain why --  
6 why don't I remember this and the only thing I can come  
7 up with because it -- it was out of cha -- it would  
8 have been totally out of character for me to not do  
9 something this simple that was -- I was asked to do, is  
10 that Doug John made the call because it -- because the  
11 normal protocol was that it would have been done.

12 Q Okay. And so either you or him would have done it, is  
13 that correct?

14 A That is correct.

15 Q Okay. Let me ask you this, okay. So we -- so the city  
16 understands here, and is -- Charisse Lyons tells you  
17 about this hole and either you or Doug called, after  
18 that were you -- did you -- as you would make your  
19 rounds would you check it out sometimes?

20 A Yeah. Well, that's why I would say that sometimes we  
21 would notice it. I -- I noticed it after the -- the  
22 call that -- yes.

23 Q Okay. In other words, in part of your rounds would  
24 that be going across the street to the parking lot?

25 A Yeah. Going across the street, ever -- yeah, well, you

1 have to cross that street to go to the parking lot so  
2 and then after this particular hole was brought to our  
3 attention we -- we -- we noticed it more or less  
4 because it -- and like I said, if it hadn't of been  
5 brought to my attention I might -- I might not have  
6 noticed it all but then when Charisse brought it to my  
7 attention I -- I do have -- and then especially I  
8 started noticing this now after Neda Kelly's injury and  
9 now even -- even to this day when I walk out I still --  
10 I look, check out and see if that hole is open when I  
11 walk by there just because I'm more aware of what could  
12 happen.

13 Q More aware of it? Okay. And after -- but after Ms.  
14 Lyons fell when you said you observed the ci -- you  
15 thought they were city workers or some workers out  
16 there?

17 A Yes. There were workers out there, I assume they were  
18 city workers.

19 Q And after you observed that did you observe that they  
20 left the valve box, that cover open?

21 A Yeah. When -- when -- when the workers left the cover  
22 was still open.

23 Q Okay. About -- and then -- but as you sit here today  
24 that's one incident you specifically remember before  
25 Neda fell, is that right?

1 -- and that's why it would have been completely out of  
2 character for me, like I said, I've been working there  
3 at the time about almost a year but since I've been  
4 there I've been promoted three times and -- and I  
5 didn't become the manager of the security department by  
6 not doing what people asked me to do.

7 Q Okay.

8 A So it would have been like -- like I said, it -- it  
9 bugs me at night because I can't remember actually  
10 making that phone call 'cause then I'm like well, what  
11 if I didn't make it, well, the only other option is  
12 Doug -- I had to have assigned it or had Doug John do  
13 it 'cause it would have been done 'cause it would have  
14 been out of my character to not do that.

15 Q Okay. And let me ask you this, the way the, kind of  
16 the management order is you have, well, there's a  
17 general manager that runs the hotel?

18 A Correct.

19 Q Okay. And who's kind of the next in line in the  
20 system?

21 A The -- the assistant would be the director of rooms  
22 division then you have each department head that  
23 reports directly actually to the general manager. So I  
24 run the security department, I report to the general  
25 manager and then we have the, of course, the FMB

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Case No. 3AN-08-4271 CI

## )

Exhibit K  
Page 1 of 2

000202

in connection with such activity; placement of vehicles; maintenance of sidewalks or crosswalks; or excavation, fill or disturbance pavement or plants.

5. The only exception to the permit requirement is for street and storm sewer maintenance work. AMC 24.30.02A. In addition, some Municipal departments have blanket permits which allow them to do general maintenance and repair work that does not require staging, removal, or excavation. Such activity might include cleaning, painting or repairing surface cracks.

6. The Department has carefully reviewed its records in an effort to determine if any permits were issued for use areas in or around the intersection of 3<sup>rd</sup> and "F" Street during the months of April or May, 2006. Our search revealed that no permits were issued to any municipal departments, contractors or individual to use that location during that time period.

DATED: March 15, 2010

Jack D. Frost  
Jack Frost

SUBSCRIBED and SWORN to before me this 15 day of Mar, 2010.

Retha Hubs

Notary Public in and for Alaska

My Commission Expires: 1-1-14

Certificate of Service

I hereby certify that on this 18<sup>th</sup> day of March, 2010  
I caused to be mailed a true and correct copy of the  
foregoing to:

-Charles Coe

Amell for

Jennifer Richardson, Legal Secretary  
Municipal Attorney's Office

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

Anchorage, Alaska

99519-6650

Telephone: 343-4545

Facsimile: 343-4550

Affidavit of Jack Frost

Case No. 3AN-08-4271 CI

Page 2 of 2

000203

Exhibit K  
Page 2 of 2

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MUNICIPALITY OF ANCHORAGE,	)	
	)	
Defendant.	)	
		) Case No. 3AN-08-4271 CI

AFFIDAVIT OF DAVID GARDNER

STATE OF ALASKA	)	
	)ss.	
THIRD JUDICIAL DISTRICT	)	

David Gardner, being first duly sworn, deposes and states as follows:

1. I am employed by the Municipality of Anchorage as a Project Administrator in the Project Management & Engineering Department ("Department"). I make the following statements of my personal knowledge.

2. In May of 2006, I was the project administrator for the Department's Miscellaneous Services Term Contract ("Contract"), which includes immediate need general construction tasks with each task being under \$50,000. As the project administrator, I was responsible for administering projects assigned to the contractor under the Contract.

3. I have reviewed the Department's records for the 2006 and confirmed that no work at all was done under that Contract at the intersection of 3<sup>rd</sup> Avenue and "F" Street during April or May of 2006.

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

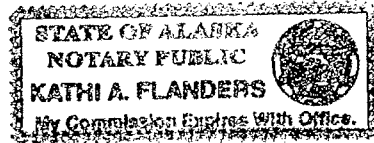
000204  
Exhibit   L    
Page   1   of   2

DATED: 2-11-10

David Gardner

David Gardner

SUBSCRIBED and SWORN to before me this 11 day of March, 2010.



Kathi A. Flanders

Notary Public in and for Alaska

My Commission Expires: 4-3-13

Certificate of Service

I hereby certify that on this 18<sup>th</sup> day of March, 2010  
I caused to be mailed a true and correct copy of the  
foregoing to:

-Charles Coe

C. Richardson for

Jennifer Richardson, Legal Secretary  
Municipal Attorney's Office

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Affidavit of David Gardner  
Case No. 3AN-08-4271 CI  
Page 2 of 2

000205

Exhibit L  
Page 2 of 2



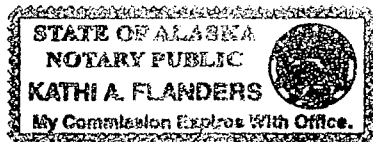
Exhibit M  
Page 1 of 2

4. I was unable to locate any records that show ML&P personnel under my control accessed that facility during the month of May 2006 even from that remote location.

DATED: 3/15/10

*Gary Faraday*  
Gary Faraday

SUBSCRIBED and SWORN to before me this 15 day of March, 2010.



*Kathi A. Flanders*  
Notary Public in and for Alaska  
My Commission Expires: 4-3-13

Certificate of Service

I hereby certify that on this 15<sup>th</sup> day of March, 2010  
I caused to be mailed a true and correct copy of the  
foregoing to:

-Charles Coe

*Jennifer Richardson*  
Jennifer Richardson, Legal Secretary  
Municipal Attorney's Office

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

Anchorage, Alaska  
99519-6650

Telephone: 343-4545

Facsimile: 343-4550

Affidavit of Gary Faraday  
Case No. 3AN-08-4271 CI  
Page 2 of 2

000207

Exhibit N  
Page 2 of 2

## THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,

Plaintiff,

V.

MUNICIPALITY OF ANCHORAGE,

Defendant.

) Case No. 3AN-08-4271 CI

## AFFIDAVIT OF DANIEL SOUTHARD

STATE OF ALASKA

)ss.

THIRD JUDICIAL DISTRICT

Daniel Southard, being first duly sworn, deposes and states as follows:

1. I am employed by the Municipality of Anchorage (“Municipality”) as the Superintendent of the Street Maintenance Division (“Division”), which is located within the Maintenance and Operations Department of the Municipality. I make the following statements of my personal knowledge.

2. The Division is responsible for the preservation of municipal streets. In the spring and summer this includes pothole repair and storm drain maintenance and cleaning.

3. The Division has carefully reviewed its records to determine what, if any, maintenance activity may have been conducted at the intersection of 3<sup>rd</sup> Avenue and “F” Street during the month of May 2006 that would have resulted in a crew being present for any period of time. Our review revealed that the Division did not conduct any pothole

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

Anchorage, Alaska

99519-6650

Telephone: 343-4545

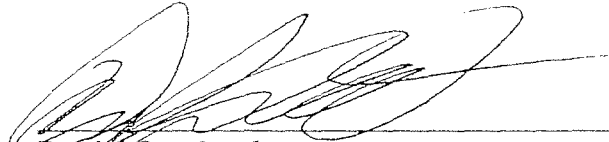
Facsimile: 343-4550

Exhibit N

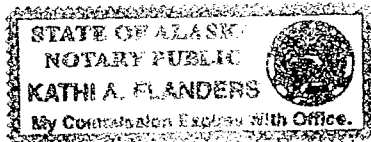
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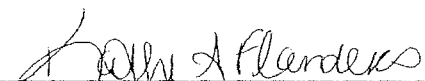
filling or storm drain cleaning at or near the intersection of 3<sup>rd</sup> Avenue and "F" Street during the entire month of May 2006.

DATED: March 16, 2010

  
Daniel Southard

SUBSCRIBED and SWORN to before me this 16 day of March, 2010.




  
Notary Public in and for Alaska  
My Commission Expires: 4-3-13

Certificate of Service

I hereby certify that on this 18<sup>th</sup> day of March, 2010  
I caused to be mailed a true and correct copy of the  
foregoing to:

-Charles Coe

  
Jennifer Richardson, Legal Secretary  
Municipal Attorney's Office

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Affidavit of Daniel Southard  
Case No. 3AN-08-4271 CI  
Page 2 of 2

Exhibit N  
Page 1 of 2

000209

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA**  
**THIRD JUDICIAL DISTRICT AT ANCHORAGE**

ETHEL B. KELLY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
MUNICIPALITY OF ANCHORAGE,	)	
	)	
Defendant.	)	
		) Case No. 3AN-08-4271 CI

**AFFIDAVIT OF RALPH BLANCHARD**

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

Ralph Blanchard, being first duly sworn, deposes and states as follows:

1. I am employed by the Municipality of Anchorage in the Traffic Department as the Foreman of the Paint & Sign Shop. In May 2006, I was a Paint & Sign Technician III. I make the following statements of my personal knowledge.

2. In both my current position and the position I held in May, 2006 I am familiar with crosswalk painting procedures and the Shop's records. The paint crew usually begins painting crosswalks downtown around the beginning of May, as the weather conditions permit. When we paint, we do not use a jackhammer or anything that looks like a jackhammer.

3. I reviewed the Shop's records for May 2006 to determine which intersections were painted as part of the annual maintenance. Based on my review of the records, I determined that a paint crew did paint some of the crosswalks at the

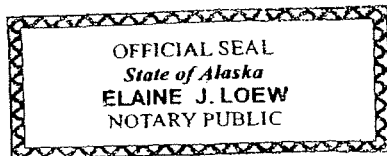
intersection of 3<sup>rd</sup> Avenue and "F" Street. However, they did not paint the west crosswalk, which appears to be the one where Ms. Kelly fell.

4. Unless a paint crew was painting the crosswalk or preparing to do so, they would have no reason to be in the crosswalk.

DATED: 3-16-10

Ralph E Blanchard  
Ralph Blanchard

SUBSCRIBED and SWORN to before me this 16<sup>th</sup> day of March, 2010.



Elaine J. Loew  
Notary Public in and for Alaska  
My Commission Expires: 11-1-2012

Certificate of Service

I hereby certify that on this 18<sup>th</sup> day of March, 2010  
I caused to be mailed a true and correct copy of the  
foregoing to:

-Charles Coe

Jennifer Richardson for  
Jennifer Richardson, Legal Secretary  
Municipal Attorney's Office

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Affidavit of Ralph Blanchard  
Case No. 3AN-08-4271 CI  
Page 2 of 2

Exhibit 0  
Page 1 of 2

000211

000312

RECEIVED MAR 23 2010

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,

Plaintiff,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-08-4271 CI

ORDER ACCEPTING MUNICIPALITY'S SUR-REPLY

The Municipality of Anchorage ("the Municipality"), having moved unopposed for leave to file a Sur-Reply in response to plaintiff's Reply to Defendant's Opposition to Cross-Motion for Summary Judgment,

IT IS HEREBY ORDERED THAT the Municipality's motion is GRANTED. The Sur-Reply, which was attached to the Municipality's motion, is hereby accepted.

DATED: March 22, 2010

By: Peter A. Michalski

The Hon. Peter Michalski  
Superior Court Judge

Certificate of Service

I hereby certify that on 3/18/10 I mailed a true and correct copy of the foregoing to:

- Charles Coe

Charles Coe for  
Jennifer A. Richardson, Legal Secretary

I certify that on 3-22-10 a copy of the above was mailed to each of the following at their addresses of record: Charles Coe,

AMA Pamela Weiss

MUNICIPALITY  
OF  
ANCHORAGE

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

000213



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL KELLY,

Plaintiff,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

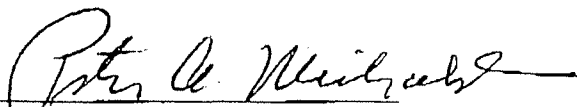
Case No. 3AN-08-04271 CI

ORDER

In its March 22, 2010 sur-reply, defendant Municipality of Anchorage ("Municipality") included excerpts of a deposition of James L. Griffin and marked as exhibit J. The Municipality is ordered to produce the entire transcript of Griffin's deposition to the court by March 26, 2010.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 25<sup>th</sup> day of March 2010.



PETER A. MICHALSKI  
Superior Court Judge

cc  
4/1/10

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,

Plaintiff,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-08-4271 CI

ORDER GRANTING SUMMARY JUDGMENT

(mod pag #12)

Defendant the Municipality of Anchorage ("Municipality"), through the Municipal Attorney's Office, has moved for summary judgment pursuant to Alaska Rule of Civil Procedure 56 on all claims asserted against it. Having reviewed the Municipality's motion and memorandum and all exhibits and affidavits filed in support of that motion, and any opposition filed thereto:

IT IS HEREBY ORDERED that the Municipality's motion for summary judgment is GRANTED. Plaintiff's claims are hereby DISMISSED with prejudice.

DATED at Anchorage, Alaska this 30<sup>th</sup> day of March, 2010, 2009.

By:

Peter A. Michalski

The Honorable Peter Michalski  
Superior Court Judge

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Certificate of Service

I hereby certify that on this 28<sup>th</sup> day of July, 2009  
I caused to be mailed a true and correct copy of the  
foregoing to:

Charles Coe

Jennifer Richardson, Legal Secretary  
Municipal Attorney's Office

I certify that on 3-31-10 a copy  
of the above was mailed to each of the following at  
their addresses of record:

AMA Pamela Weiss Charles Coe

M. B. Brown

000215

JUL 21 2009

RECEIVED APR 20 2010

cal B/C  
cc client

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,

Plaintiff,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-08-4271 CI

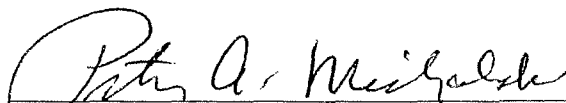
ORDER (mot. seq. # 19)

This Court, having reviewed the Municipality of Anchorage's Motion for Attorney Fees, and any opposition thereto, now hereby orders as follows:

IT IS HEREBY ORDERED that, the Municipality of Anchorage is the prevailing party in the above-captioned case and is hereby awarded \$6686<sup>75</sup> in attorney's fees pursuant to Civil Rule 82, with interest to accrue as permitted by law.

Dated:

4/27/10



The Honorable Peter A. Michalski  
Superior Court Judge

Certificate of Service

I hereby certify that on 4/7/10 mailed a true and correct copy of the foregoing to:

Charles Coe

Jennifer A. Richardson, Legal Secretary

MUNICIPALITY  
OF  
ANCHORAGE

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

4-29-10 a cop.  
If the above was mailed to each of the following at  
their addresses of record: Charles Coe  
AMAP Pamela Weiser  
M. Bonney

000216

APR 07 2010

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cal B/K

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

ETHEL B. KELLY,

Plaintiff,

v.

MUNICIPALITY OF ANCHORAGE,

Defendant.

Case No. 3AN-08-4271 CI

FINAL JUDGMENT

(mot. seq. #17)

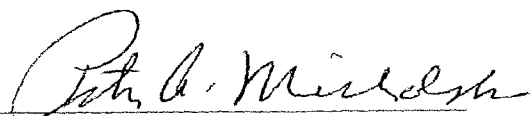
THIS COURT, having granted the Municipality's Motion for Summary Judgment in the above-captioned matter in an Order dated March 30, 2010, and finding there is no just reason to delay entering final judgment in favor of the Municipality; therefore,

IT IS ORDERED that judgment is entered as follows:

1. Plaintiff's Complaint is DISMISSED with prejudice as of the Court's order dated March 30, 2010.

2. Ethel Kelly shall pay to the Municipality of Anchorage attorney's fees in the amount of \$6686.75 and costs in the amount of \$2815.73, for a total judgment of \$9502.48. Post-judgment interest shall accrue on the unpaid portion of this judgment from the date entered until paid in full at the rate of 3.5 percent per annum.

DATED: 4-27-10

  
Honorable Peter A. Michalski  
Superior Court Judge

000217

APR 20 2010

MUNICIPALITY  
OF  
ANCHORAGE

OFFICE OF THE  
MUNICIPAL ATTORNEY

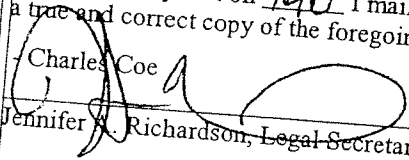
P.O. Box 196650  
Anchorage, Alaska  
99519-6650

Telephone: 343-4545  
Facsimile: 343-4550

Certificate of Service

I hereby certify that on 4/6/10 I mailed  
a true and correct copy of the foregoing to:

Charles Coe

  
Jennifer A. Richardson, Legal Secretary

4-29-10  
If the above was mailed to each of the following at  
their addresses of record:

Charles Coe  
Pamela Weiss  
M. Bonney

**MUNICIPALITY  
OF  
ANCHORAGE**

OFFICE OF THE  
MUNICIPAL ATTORNEY

P.O. Box 196650

ANCHORAGE, ALASKA

99519-6650

PHONE: 343-4545

FAX: 343-4550

Final Judgment

Case No. 3AN-07-9375 CI

Page 2 of 2

000218

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ETHEL B. KELLY, )  
 ) Supreme Court No.  
Appellant, ) S-\_\_\_\_\_  
 )  
v. )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Appellee. )

Superior Court Case #3AN-08-4271 CI

NOTICE OF APPEAL

COMES NOW, ETHEL B. KELLY, by and through her attorney, CHARLES W. COE, who hereby gives notice of appeal of the Final Judgment dated April 27, 2010, from the Superior Court for the State of Alaska Third Judicial District at Anchorage, Alaska, to the Supreme Court for the State of Alaska.

DATED this 7<sup>th</sup> day of May, 2010.

CHARLES W. COE  
Attorney for Appellant



Charles W. Coe  
ABA#7804002

CHARLES W. COE  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-6173

000219

CHARLES W. COE

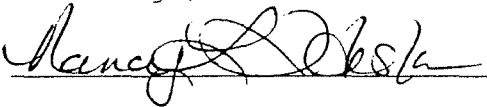
ATTORNEY AT LAW

810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501

(907) 276-6173

I certify that on May ~~7~~, 2010,  
I served a copy of the foregoing  
By U.S. Mail upon:

Pamela Weiss  
Assistant Municipal Attorney  
P.O. Box 196650  
Anchorage, Alaska 99519



Kelly v. MOA

S- \_\_\_\_\_

Notice of Appeal

Page 2 of 2

000230

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ETHEL B. KELLY, )  
 ) Supreme Court No.  
Appellant, ) S-\_\_\_\_\_  
 )  
v. )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Appellee. )

Superior Court Case #3AN-08-4271 CI

DESIGNATION OF TRANSCRIPT

COMES NOW, ETHEL B. KELLY, by and through her attorney, CHARLES W. COE, who hereby designates the following proceedings to be transcribed for use in this appeal:

The transcript of the proceedings of the oral argument, dated February 18, 2010.

DATED this 7<sup>th</sup> day of May, 2010.

CHARLES W. COE  
Attorney for Appellant



Charles W. Coe  
ABA#7804002

CHARLES W. COE  
ATTORNEY AT LAW  
810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501  
(907) 276-6173



CHARLES W. COE

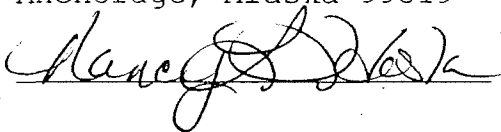
ATTORNEY AT LAW

810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501

(907) 276-6173

I certify that on May ~~7~~<sup>7</sup>, 2010,  
I served a copy of the foregoing  
By U.S. Mail upon:

Pamela Weiss  
Assistant Municipal Attorney  
P.O. Box 196650  
Anchorage, Alaska 99519



Kelly v. MOA

S-

Designation of Transcript

Page 2 of 2

000232

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ETHEL B. KELLY, )  
 ) Supreme Court No.  
Appellant, ) S-\_\_\_\_\_  
 )  
v. )  
 )  
MUNICIPALITY OF ANCHORAGE, )  
 )  
Appellee. )

Superior Court Case #3AN-08-4271 CI

POINTS ON APPEAL

COMES NOW, ETHEL B. KELLY, by and through her attorney, CHARLES W. COE, who hereby lists the following as her points on appeal:

1. Did the trial court err in granting the Municipality's motion for summary judgment, dismissing the plaintiff's claims?

2. Did the trial court err in affirming that the plaintiff manipulated and distorted the applicable standards?

3. Did the trial court err in affirming that the plaintiff failed to demonstrate there are genuine issues of material fact?

4. Did the trial court err in denying the plaintiff's cross-motion for summary judgment?

CHARLES W. COE

ATTORNEY AT LAW

810 W. 2ND AVENUE  
ANCHORAGE, ALASKA 99501

(907) 276-6173

DATED this 7<sup>th</sup> day of May, 2010.

CHARLES W. COE  
Attorney for Appellant



Charles W. Coe  
ABA#7804002

I certify that on May 7, 2010,  
I served a copy of the foregoing  
By U.S. Mail upon:

Pamela Weiss  
Assistant Municipal Attorney  
P.O. Box 196650  
Anchorage, Alaska 99519

