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APPELLATE COURTS

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CLERK, APPELLATE COURTS

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ETHEL B. KELLY,

Appellant,

v.

MUNICIPALITY OF ANCHORAGE,

Appellee.

Supreme Court No. BY: _____

S-13858

DEPUTY CLERK

Superior Court Case #3AN-08-4271 CI

APPEAL FROM THE SUPERIOR COURT FOR THE STATE OF ALASKA,
THIRD JUDICIAL DISTRICT
TO THE SUPREME COURT FOR THE STATE OF ALASKA
HONORABLE PETER A. MICHALSKI PRESIDING

APPELLANT'S SUPPLEMENTAL EXCERPT OF RECORD
VOLUME ONE OF ONE

LAW OFFICE OF CHARLES W. COE
810 W 2nd Avenue
Anchorage, Alaska 99501
(907) 276-6173



Charles W. Coe
ABA#7804002
Attorney for Appellant
ETHEL KELLY

Filed in the Supreme Court of
the State of Alaska, this 10th
day of December, 2010
Marilyn May, Clerk

By: _____

Deputy Clerk

APPELLANT'S SUPPLEMENTAL EXCERPT OF RECORD
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RECEIVED MAR 26 2010

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 25th day of March 2010.



PETER A. MICHALSKI
Superior Court Judge

ORDER
3AN-08-04271 CI
Kelly v. Municipality of Anchorage
Page 1 of 1

3-25-10
certify that on 3-25-10 a copy
of the above was mailed to each of the following at
their addresses of record: *Charles Lee*
AMA Pamela Weiss
M. Bonney
Administrative Assistant

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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

* * * *



1 PURSUANT TO NOTICE, the Deposition of JAMES L. GRIFFIN
2 was taken on behalf of the Defendant, before Rachel Edmonston,
3 Notary Public in and for the State of Alaska and Reporter for
4 Metro Court Reporting at the offices of the Municipal Attorney,
5 632 West 6th Avenue, Suite 730, Anchorage, Alaska on the 2nd
6 day of March 2010, commencing at the hour of 10:07 a.m.

7 * * * *

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17 * * * *

P R O C E E D I N G S

(On record)

COURT REPORTER: Good morning, we're on record. My name is Rachel Edmonston and I'm a court reporter with Metro Court Reporting, 121 West Fireweed Lane, Suite 260, Anchorage, Alaska. Today's date is March 2nd, 2010 and the time is approximately 10:07 a.m. We are at the offices of the Municipal Attorney, 632 West 6th Avenue, Suite 730, Anchorage, Alaska, for the deposition of James Griffin. This matter's in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, Ethel B. Kelly, Plaintiff, vs. Municipality of Anchorage, Defendant, Case Number 3AN-08-4271 Civil.

Please raise your right hand so I can swear you in.

MR. GRIFFIN: Okay.

(Oath administered)

MR. GRIFFIN: Yes.

JAMES L. GRIFFIN

having first been duly sworn under Oath, testified as follows on examination:

COURT REPORTER: Thank you. Can you please state your full name for the record, spelling your last?

A James L. Griffin, G-r-i-f-f-i-n.

COURT REPORTER: Thank you, and a daytime or mailing address or daytime or message phone number, sorry.

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1 A Daytime mess -- phone number? You want the address and
2 the phone number?

3 COURT REPORTER: Sure.

4 A Okay.

5 MR. GRIFFIN: They want your work number.

6 A Okay. It's 907-265-7018. And the address is -- home
7 or work?

8 MR. GRIFFIN: Work.

9 MR. COE: Work.

10 A 500 West 3rd Avenue, Hilton Hotel.

11 COURT REPORTER: Is that 99501?

12 A Yes.

13 COURT REPORTER: Can I have counsel identify
14 themselves and who they represent, please?

15 MR. COE: I'm Charles Coe and I represent Ethel
16 Kelly.

17 MS. WEISS: Pamela Weiss, Assistant Municipal
18 Attorney here on behalf of the Municipality of Anchorage.

19 MR. GRIFFIN: And I'm Bob Griffin with Griffin
20 and Smith, I represent the Hilton Hotel and consequently Mr.
21 Griffin at this deposition in the Worker's Compensation claim
22 that arouse out of this case.

23 COURT REPORTER: Thank you. You may proceed,
24 Ms. Weiss.

25 MS. WEISS: Okay.

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DIRECT EXAMINATION

BY MS. WEISS:

Q Hi, Mr. Griffin. Once again, thank you for being and being so cooperative in coming and coming so promptly. We'll try to get you out of here quickly. First question I have for you has -- have you ever been deposed before? Room like this with a court reporter and attorneys asking you questions?

A No.

Q Okay. Let me just give you some very brief guidelines. I don't anticipate this taking very long but should it take longer than you want it to and you need a break that's fine, just let me know. I just ask that you answer the question that's been posed and then let me know if you need to go the restroom or if you need any water or something. Please keep in mind that this is being audio recorded so it doesn't pick up nodding heads. Yes and no, you need to articulate no and yes. And finally both of us need to focus and all the attorneys need to be careful as well that we not speak over one another, that we allow each other to finish the statement or finish the full question so we can have a transcript that makes some sense to us. So other than that I'll be asking questions, it's possible that Mr. Coe and I will have things to say to each

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1 other, in general those don't effect you but you have
2 an attorney here to guide you through if there's
3 questions about whether to answer a question or not,
4 okay?

5 A Okay.

6 Q Who are you currently employed by?

7 A Hilton Hotels.

8 Q How long have you been employed by the Hilton?

9 A Since November 2005.

10 Q And what is your current job position?

11 A I am the safety and security manager.

12 Q And what does that entail, what are your job duties,
13 job description generally?

14 A Gener -- general security duties. I hire, supervise,
15 train security employees. I handle all of the
16 Workmen's Comp paperwork for employee injuries that
17 come across th -- during the -- also I do quarterly
18 safety training for the employees for our corporate
19 office, keep up with our OSHA reporting requirements,
20 OSHA logs, tho -- those things.

21 Q And the incident that's involved in this lawsuit took
22 place in May of 2006?

23 A Yes. I -- yes.

24 Q At that time were you the safety and security manager?

25 A I was the training supervisor there, at that time I was

1 -- there was a sa -- a manager and then a supervisor so
2 I was the second in command.

3 Q When did you become the safety and security manager,
4 when did you.....

5 A 2008, I believe in September 2008.

6 Q And do you know Ms. Ethel Kelly, the plaintiff in this
7 lawsuit?

8 A Yes.

9 Q How long have you known her for?

10 A She was, when I started in -- in 2005 and in -- and --
11 and all the way through 2006, she was the assistant
12 housekeeping manager.

13 Q And have you had any discussions with Ms. Kelly
14 recently?

15 A No.

16 Q Were you present on the day when she had her fall?

17 A Yes.

18 Q Do you remember approximately when that was or do you
19 have a recollection?

20 A I don't remember the time, believe it was around 2:00
21 or 3:00 o'clock in the evening, I had -- I ju -- I'd
22 have to look at the incident report. But I remember
23 the incident she -- she called, I was informed by a
24 radio operator, dispatch that an employee accident (ph)
25 and myself and my security employee at the time, Doug

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1 John, responded to the scene, provided her with first
2 aid, the medics, and tho -- those things.

3 Q You say you received a radio dispatch?

4 A Yeah, from our.....

5 Q Who.....

6 APBX operator.

7 Q And what does PBX stand for?

8 A It's our -- basically it's our hotel operator system.
9 They monitor all the phones and someone called them and
10 then they called me over the radio, let me know there
11 was an employee that was injured out on F Street.

12 Q Do you recall where you were?

13 A In the hotel at the time? No. I -- I -- I was
14 somewhere in the hotel and I heard a call, radio call,
15 and responded to the -- to the scene. I don't remember
16 what I was doing before that.

17 Q What is your typical duty station in the hotel? Do you
18 have a particular place that you stay or do you.....

19 A No. We're -- we're constantly roaming, patrolling the
20 whole hotel so we're ou -- we have a security office
21 and we're -- with video surveillance, we watch the
22 videos but we are pretty much all over the hotel at the
23 time.

24 Q When you say all over the hotel what -- can you give me
25 sort of the outer boundaries, do you -- is that all the

1 interior of the hotel, do you walk around outside?

2 A Yes. Interior, we walk interior/exterior patrol.

3 Pretty much we'll go where ever is needed if

4 something's going on, we have a problem on a floor

5 we'll get dispatch to that floor by radio or if -- and

6 then we do regular inter -- rep -- pa -- patrols. We

7 check the outside, walk the garage, those things so --

8 Q When you talk about the exterior patrol do you have a

9 set kind of a path that you follow?

10 A Well, we check around the outside of the building,

11 check the exterior exits, fire exits, make sure they're

12 all locked and secured.

13 Q And you mentioned the parking, when you're referencing

14 doing a -- do you do a regular patrol of the parking?

15 A Yes. Of the parking garage, we have on -- on the

16 corner, 3rd and F, we have a three story structure

17 garage that we're assigned to patrol.

18 Q And is that structure the structure that was close to

19 the crosswalk where Ms. Kelly fell?

20 A Yes. It's -- it's just -- just a corner, across the

21 street on a corner of 3rd and F, yes.

22 Q When you -- you said that you received a radio dispatch

23 about Ms. Kelly's accident?

24 A Yes.

25 Q Did you actually go out to the scene?

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1 A Yes. I went out, she was actually out on the -- she
2 was actually out on 3rd Avenue and she was having a
3 hard time walking. It was her -- her knee, I believe
4 it was her knee and so we actually went to the --
5 inside the hotel, retrieved the wheelchair, brought the
6 wheelchair around to her, wheeled her around to the
7 lobby area where we assessed her injuries and we -- and
8 then called up, and then -- and that's where we went
9 from there.

10 Q Okay. Did you have any discussions with her at that
11 time? That is when you went out to the scene about
12 what happened?

13 A Yes. She -- she showed me, she pointed to the area
14 where she fell and then said that she'd fell in the
15 manhole while leaving her garage -- leaving -- walking
16 across the street to return to our parking garage. She
17 was leaving work and.....

18 Q And did you see this hole?

19 A Yes. And then after -- after they -- the -- the
20 situation was over with, me and Doug John, my security
21 officer went out and took photos of the area, attached
22 them to a report.

23 Q And just so we have this, this is not the best copy but
24 -- here I'll have you just mark this just --

25 (Deposition Exhibit A marked)

1 (Off records comments)

2 Q Actually here, I'm going to give you the pretty marked
3 copy.

4 A Yes. This is one of the photos we took, yes.

5 Q And can you tell me to the best of your recollection
6 the date that you took this photo? Did you take this
7 immediately after the accident or did you take this at
8 some later time?

9 A Yes. This was taken (ph) ri -- immediately after the
10 accident.

11 Q Okay. And is this the crosswalk that she had fallen
12 in?

13 A Yes, that is correct. That is the crosswalk and here
14 is the corner of our garage on 3rd and F Street and the
15 hole, the -- the actually the -- the access cover is
16 here. You see where it had just recently been painted
17 white and there's the -- the area where she fell.

18 Q Okay. So you're indicating that -- the circular.....

19 A Yes.

20 Qin the middle of the line in the middle of the
21 page?

22 A Yes.

23 Q Okay. I'm assuming, and tell me if I'm wrong, that
24 you've spoken with plaintiff's counsel, Charlie Coe,
25 recently or did you speak with somebody else from his

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1 office?

2 A I spo -- spoke with him recent -- yes.

3 Q Okay. Do you recall when you spoke with him?

4 A The -- the -- the last time I spoke with him was
5 yesterday, I called to get a copy of the affidavit and
6 I had him fax a copy of the affidavit I'd wrotten (ph)
7 and before that I don't -- it was a couple of months
8 ago. He had called and asked about a -- come -- coming
9 to my work and ask for copies of the report 'cause I
10 had a -- the incident report that was written up by --
11 by Doug John concerning this incident. I looked it up
12 on the computer for -- on the computer files, found the
13 report and then he asked me if I would give a statement
14 regarding the incident at the time. I had my general
15 manager refer it to our corporate office and they spoke
16 with I believe Mr. Griffin. And then it was decided
17 the -- the no writ -- no issues giving a statement. So
18 then I had a -- during -- when I gave my orig --
19 original statement I believe it was at my work, it was
20 Mr. Coe and I'm -- Mr. Griffin was on the phone at the
21 time. And I don't remember the date of that but I do
22 remember the -- seems to be when this took place.

23 Q And after your discussion with him did you prepare or
24 did he prepare an affidavit for you to sign?

25 A Well, we -- he asked me questions and then he went

1 ahead and he -- and he prepared -- he ty -- they typed
2 it up and then I read over and signed it.

3 Q Did you make any changes to the de -- to the affidavit?

4 A I made -- I made -- there was a couple of things that I
5 had to go back and change. The -- the -- there was a
6 couple of minor things that went back and changed but I
7 -- I looked over it.

8 Q Okay. Well, why don't we put the affidavit in.

9 (Deposition Exhibit B marked)

10 (Off record comments)

11 MR. COE: Not to be picky but the affidavit did
12 have a picture in it.

13 MS. WEISS: Yeah, the affidavit did have the
14 item that was -- has been marked Exhibit A was attached to it.
15 I just separated them out since I did it in reverse order.

16 A Okay.

17 Q (By Ms. Weiss) Can you take a look at that, take the
18 time you need to confirm that that is the affidavit
19 that you signed?

20 A Yes. This is the affidavit I signed.

21 Q Okay. And do you feel confident that the statements in
22 the affidavit reflect what you know rather than
23 something that somebody else told to you?

24 A This is pre -- this is pretty much what I know to --
25 yes.

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1 Q Okay. I want -- it might help me and I think all the
2 parties if we can just sort of go through this.

3 A Okay.

4 Q And I have a question about some of the paragraphs, not
5 all of them. You mention in paragraph 3 you sa -- it
6 states: I am familiar with this crosswalk and the
7 uncovered valve box since I took pictures of it after
8 Ms. Kelly was injured. Is that your only -- I guess I
9 want to know what you mean by familiar with this
10 crosswalk. Are there other reasons that you would know
11 about this crosswalk?

12 A Yes. Yes. Like I said, this crosswalk had been
13 brought to my attention at -- at this time -- over a
14 period of time before because I do rem -- recall
15 sometime before Ms. Kelly's accident, I don't remember
16 exactly how long, Charisse Lyons our HR manager had
17 come to me and -- and Doug John was in the room with us
18 and she had mentioned that that morning she had fell or
19 -- or in the crosswalk or stepped in the crosswalk and
20 almost fell. At the time she said she wasn't injured
21 so she didn't want to do an injury report but she just
22 does -- but she did suggest to me that -- that -- that
23 we call the city and -- and have them come take a look
24 at it. And that's the normal procedures after that
25 would be I call the city. I -- I don't remember

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

2 Q Okay.

3 Abut -- 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

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

3 A Oh.

4 Qafter 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.

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1 Q You guys don't keep any sort of log or anything like
2 that?

3 A Well yeah, that's what I'm talking about. Our security
4 re -- incident reports is all on one log, yeah.

5 Q I -- maybe I'm -- you probably know them better than I
6 do so I'm just going to --

7 A Okay.

8 Q Does security keep an ongoing log of events that occur
9 while they're on duty?

10 A Yes. We keep our daily activity report and it's -- and
11 that's would -- and then also we keep the incident
12 reports and -- and this -- and this particular incident
13 was wrote I believe we -- we have a -- I have a copy at
14 my office but I do believe I already gave Mr. Coe one
15 of the incident report.

16 Q And I believe that -- I think that we have incident
17 reports in the record.....

18 MR. COE: Well, why don't you check to see if
19 you do.....

20 MS. WEISS: Yeah, but I'll.....

21 MR. COE:if not I'll call him back and
22 get you a copy.

23 MS. WEISS: I was -- okay.

24 Q (By Ms. Weiss) I was trying to confirm when you say
25 according to our records this incident happened at

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1 14:58 hours on May 22nd, 2006 which record do you
2 believe that that came from?

3 A The security incident report.

4 Q Okay. So that -- am I correct that that would be a
5 document that was completed by you after Ms. Kelly
6 reported her fall to you?

7 A Yeah. It wa -- the document was actually completed by
8 Doug John.

9 Q Okay.

10 A But he -- but then it was returned over for me and I
11 was signed off on it.

12 Q Okay.

13 A Before it went to our Worker's Comp claim.

14 Q Okay. So am I correct that that's a document that
15 would be created if there is an injury or a possible
16 injury or something?

17 A Correct. You're correct, there are any -- any -- any
18 number of things whe -- that would go on in a hotel
19 that --

20 Q Now it states: The uncovered hole was reported to the
21 Municipality of Anchorage after Ms. Kelly fell.

22 Wha.....

23 A Yes.

24 Q I mean, I'm not disputing that that happened because
25 our records, Municipality records, do actually show

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1 that but I'm just curious where -- if your records
2 would reflect that you called the Municipality?

3 A Well, I do not -- after Cher -- after Neda Kelly
4 injured herself Charisse Lyons, she called the city
5 herself and then she said document that we called the
6 city and then she had -- Doug John was staying over
7 that night to work the overnight shift and she
8 instructed him to document when the workers came to
9 repair the -- when he saw them out repairing the -- the
10 manhole cover. And so he noticed the workers out
11 there, I believe it was around 3:00 o'clock in the
12 morning according to the incident report that he
13 noticed them out actually repairing the manhole cover.

14 Q Would it surprise you if I told you that the hours of
15 operation for the department that would do this work
16 are only from 7:30 to 5:30?

17 A I don't know. I just.....

18 Q Okay.

19 A Well, the -- I just -- I just know that's what Doug
20 John had put in his report, that he -- they saw city
21 worker's out there at 3:00 o'clock in the morning and
22 that -- that's what was in Doug John's report.

23 Q When you say report, where -- what is this report? Is
24 this the daily activity reports?

25 A No, the security incident report that would --

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000252

1 documented the incident.

2 Q So this 2:58 in the morning statement came from the
3 security incident report?

4 A Yes. From Doug John, yes.

5 Q And do we -- and when you complete these incident
6 reports do you list the time that you write down the
7 observation or do you list the time of the event?

8 A He listed -- he -- he -- in -- in his incident report
9 he listed the time of the event that the city work --
10 he saw the city workers out at that time so --

11 Q But you weren't there, this is just an ob.....

12 A No. Yes, yeah, the -- this is just what he documented
13 on his report.. Now yeah, so --

14 Q Okay. So let's go back to paragraph 5 since we worked
15 on that one a little bit earlier. You said: I am
16 aware of this valve box cover being left uncovered
17 prior to Ms. Kelly's fall on other occasions.

18 A Yes.

19 Q Can you tell me again what brought -- what made you
20 aware of this?

21 A Okay. Well, the first incidents I -- I had re -- like
22 I said, was sometime previous when Charisse Lyons had
23 mentioned to me that she had almost fell in the hole
24 and also there were a couple of other times during --
25 during a period of a couple of a week period when I'm

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 times and then sometimes they would leave and it would
2 be uncovered and they -- and then other times, depends
3 on who -- who was working I guess but other times
4 they'd leave they'd put a cone over it to -- to block
5 people away from the area and other times it was left
6 like it is there so --

7 Q I want to make sure I'm com -- now there -- this is an
8 intersection, correct? F Street crosses the.....

9 A Yes.

10 Q So there's this crosswalk, are there also other painted
11 crosswalks on other sides of the street?

12 A Yeah. The -- the crosswalks go on both sides, it goes
13 -- so going across F Street and then going across 3rd
14 Avenue there -- there's crosswalks on both sides.

15 Q So on the four there's -- let's say, there's four
16 different sides of the street, are there crosswalks on
17 all four?

18 A Yes.

19 Q Okay.

20 A That is correct.

21 Q And what -- which -- how would you describe this? Is
22 this the west -- on the west side of the street or on
23 the north or on the east or on the south?

24 A This would be on the west side of the street.

25 Q All right. I just -- we'll refer to this as the west

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

3 A Yes.

4 Qare 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.

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1 Q So before Ms. Kelly fell in the hole you saw them one
2 time?

3 A At lea -- at least -- at least once. And then I saw
4 them after too, also.

5 Q After Ms. Kelly's injury?

6 A Yes.

7 Q Okay. And you state that you -- that the valve box
8 cover would be removed and left off at various times?

9 A Yes. When -- yeah, when -- like for instance the --
10 the -- I remember seeing at one time it was left like
11 it is in the photo here and then I re -- and I
12 definitely remember seeing another time someone -- they
13 -- it was the valve cover was off but they had put cone
14 -- orange traffic cones around it. And then.....

15 Q Who put those traffic -- who put those cones around
16 them?

17 A That I don't know. I -- I just assume whoever was
18 working there put it there so people wouldn't fall in
19 the hole and I -- and I -- and I thought to myself
20 well, why didn't -- or why wasn't this done previously
21 so I don't know. That -- that was my -- that -- that
22 -- but I remember seeing the co -- the traffic cones
23 there and I thought well, that's probably what we
24 should -- should have been done before. But I don't
25 remember.....

1 Q When was this that you saw the cones, was this before
2 or after Ms. Kelly fell?

3 A I saw the cones af -- actually the -- the one where the
4 cones was actually after Ms. Kelly fell.

5 Q Okay. When you say that you saw the valve box cover
6 left off, did you go and see that the valve -- I guess,
7 I want to understand what you mean by left off?

8 A Well -- well -- well, when it -- when the -- when the
9 valve box when the cover is off there's a hole there,
10 you can see down into the city. When it's not there
11 then -- and then that's why that's the hole, whenever
12 it's -- it's not when it's off then -- then when --
13 there's the hole there and the -- without -- and if
14 it's not there then you can't -- then you coul -- it's
15 not a hole, you -- that's -- that's what I mean is to
16 say there was a hole there in the middle of the road.

17 Q Okay. Was it the case that you saw prior to it that
18 there was a cover on it and then after they worked it
19 came -- it was no longer there or just that you noticed
20 after they left that there was a hole?

21 A Well, I noticed that after -- after I -- after Charisse
22 notified me that she'd fell in a -- in -- in what she
23 said was a manhole then I noticed when I went up and
24 looked at it then I noticed it was actually just a
25 cover and it's a hole about probably four inches this

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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

1 working. There was a, like I said, the time be --
2 after Charisse it was mentioned by Charisse and then I
3 noticed it after Charisse Lyons notified me then I
4 noticed them out there prior -- or after Neda Kelly's
5 injury.

6 Q You noticed workers -- I just want to -- I'm having
7 trouble because when you say noticed it, do you say the
8 hole or you noticed workers?

9 A I noticed the hole a couple times, I noticed the
10 workers at least -- at one time.

11 Q One time between the time.....

12 A Yes.

13 Qthat Charisse Lyons.....

14 A Yes.

15 Qand.....

16 MR. COE: Wait until she answers.

17 MS. WEISS: Yeah.

18 Q One time between the time that Charisse Lyons mentioned
19 to you about the hole and Ms. Kelly's fall you're
20 saying that one time you recall seeing workers out
21 there?

22 A Between Charisse and -- and Neda Kelly, yes, one time.

23 Q Okay.

24 MR. COE: Wait until she ans -- asks the
25 question and then take a second and answer it and that way

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1 you're not talking over each other.

2 A Okay, I'm sorry.

3 MS. WEISS: It's.....

4 MR. COE: It's a common problem.

5 MS. WEISS: It's hard to do, that's how we do
6 normal conversations.

7 MR. COE: Right. It's kind of hard to do. We
8 all do it so just makes it a little bit easier.....

9 A Okay.

10 MR. COE:for you and the court reporter.

11 A Okay.

12 MR. COE: Thank you.

13 A Yep.

14 Q (By Ms. Weiss) And when you say that you saw -- I know
15 I'm getting nitpicky but this matters a lot to our
16 case, the issue in this case is if the city knew about
17 this hole.

18 A Okay.

19 Q And so it may seem crazy that I'm trying to pin you
20 down on this but this is why, this is really important.
21 Ms. Kel -- you told me that Charisse Lyons mentioned to
22 you about the hole and that you recalled seeing the
23 hole un -- between that time and when Ms. Kelly fell?

24 A Correct.

25 Q You also said that at one point you saw workers out

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1 there and then you stated that the valve cover box
2 would be removed and left off at various times, so my
3 question is when in relationship to your first time
4 seeing that hole was the -- did the workers out there
5 -- would -- did you see that hole open before you saw
6 the workers? Or did you see.....

7 A I see the hole.....

8 Q Or did you see the workers before you saw the hole
9 open?

10 A It's a good question.

11 MR. COE: I'm going to -- let me object. Why
12 don't you put it into sequence of what you remember.

13 A Okay. Okay.

14 MR. COE: And then I'll let you.....

15 MS. WEISS: Okay. That's fine. Sequence will
16 work.

17 A Okay. Okay.

18 MS. WEISS: It just seemed like he didn't
19 know.....

20 A Okay.

21 MS. WEISS:exactly.

22 A Okay. The wha -- to the best of -- here's how I -- I'm
23 remembering this is I got a call -- or -- or Charisse
24 Lyons reported it to me, a couple of days later -- or I
25 noticed that the workers were out working in this area

1 here when I came in to work and then when I left work
2 in the evening I noticed that this cover was uncovered.
3 Then a couple days later after that Charisse or -- or
4 Neda Kelly was injured and then we reported it to the
5 city then and then the next time that I remember seeing
6 the workers out -- out here so sometime later, I do
7 remember they left and the hole was uncovered but they
8 had orange cones over it after that time.

9 Q Okay. And the reason I'm asking this is because in
10 paragraph 6 you say: The valve cover box would be
11 removed.

12 A Well, by removed -- by -- meaning the hole was left
13 open. That's -- that's what.....

14 Q Okay.

15 A When -- when that -- when this thing is gone or removed
16 the hole is left open and then when they put the cover
17 back on then basically the cover is missing is what was
18 leaving the hole open.

19 Q So you're not saying that you saw the cover on, the
20 workers came and then the cover was off. In other
21 words, that the work -- it's not -- you didn't see the
22 co -- the workers take the cover off to do their work
23 and then not put it back on?

24 A No. I never saw them take the cover off.

25 Q Okay.

1 A But I did notice that the cover would be missing.

2 MR. COE: After they worked?

3 A Yes.

4 Q But also after Ms. Lyons had already told you that it
5 was missing, correct?

6 A Correct.

7 Q And both of these times we talked a little bit about
8 how you -- did you talk to any of these workers either
9 of the times -- either before Ms. Kelly's fall or in
10 the time afterwards?

11 A No. I -- I -- I never -- no. I never talked to them.

12 Q And you said that you assumed that they were city
13 workers?

14 A Yes. I -- I did assume that at the time, that they
15 were city workers. But how do I know that? Like I
16 said, it was as -- an assumption, they were out there
17 working on the city streets, I assume they were city
18 workers but, I mean, yeah, that was my assumption at
19 the time.

20 Q And I'll tell you why I'm trying to figure that out is
21 because the city has scoured it's records and can't
22 find any evidence that any city department worked on
23 that particular crosswalk.....

24 A Well, I.....

25 Qleading up to it. So that's why I'm trying to

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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 Q And again, you -- all you can do is tell me the best of
2 your recollection.

3 A Yeah. Well, I -- I'm trying -- I'm trying. That's --
4 that's why I'm here, I just -- I don't -- I don't have
5 -- I don't have a dog in this fight either way, I'm
6 just trying to help people get to the --

7 Q And in paragraph 8.....

8 A Okay.

9 Q Well, actually, let me get -- let me look at paragraph
10 7. And I just want to verify, paragraph 7 says: Prior
11 to Ms. Kelly's injury I also observed the city
12 maintenance workers leave a cone on top of the
13 uncovered valve box at the crosswalk where she fell.

14 A It was prior.

15 Q In your testimony we were talking about it and it
16 sounded like what you were telling me is the incident
17 with the cones you thought that was after.

18 A I -- yeah. I don't know why this says prior. I don't
19 know how I mi -- I don't -- I mean, to the best of my
20 knowledge I'm sitting here trying to remember the cones
21 seem to re -- to what I can remember the cones were
22 after Neda Kelly's fall.

23 Q Okay.

24 A I don't know.

25 Q Well, I'm -- correct, you already said that you didn't

1 write this, you reviewed it to make sure that it -- you
2 thought it was accurate, correct?

3 A Right. Right, and I -- that's right. But I -- I
4 should have caught that, that's.....

5 Q Okay.

6 A But -- but this was -- but the co -- the cone was there
7 after Ms. Kelly's fall.

8 Q Okay. And then paragraph 8 you say: Even after Ms.
9 Kelly fell, I observed where city workers on more than
10 one occasion continued to leave the valve box
11 uncovered?

12 A Yeah. After the -- after Ms. Kelly fell I did observe
13 that with the city workers there. Yes, that's --

14 Q Was it on more than one occasion or just that one time
15 with the cones?

16 A After Ms. Kelly fell it was the one time with the cones
17 and then after -- and then before -- but so there were
18 no -- the -- the -- the times I did see them was before
19 and be -- after Charisse notified me then I -- then I
20 saw the workers and then Neda fell then I saw them
21 again. So actually the -- the one time I saw them on
22 the crosswalk was after -- with the cones, was after
23 Ms. Kelly fell.

24 Q Okay. And then with 8 where it says on more than one
25 occasion you're not saying it was more than one

1 occasion after she fell?

2 A No.

3 Q It was just more than one occasion?

4 A No. No, it was just more than one occasion. That --
5 that's -- as far as after she fell I believe it was
6 just the one time.

7 Q Okay.

8 A Sometime, it seems like a week later or a little after.

9 Q Okay. And again, when you refer to the city workers in
10 paragraph 8 are you -- you're saying that it was
11 because you assume they were city workers?

12 A Yes.

13 Q Okay.

14 A Yes. It was -- I -- I did assume they were city
15 workers.

16 Q But you didn't talk to them?

17 A No.

18 Q Let me double check.

19 (Pause - reviewing documents)

20 Q Just so I understand your perspective, in the last
21 paragraph, paragraph 9.

22 A Okay.

23 Q When you say: The uncovered valve box in this
24 crosswalk was a hazard since it was placed on the white
25 stripe and was difficult to see?

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 -- during this time frame, they -- they remember -- but
2 -- yes.

3 Q Do.....

4 A I do -- but this had been recently painted at some
5 point within -- fairly close to this time event. The
6 paint was still brand new, you can tell. Now -- now
7 you go out and look at it it's rusted over, it's -- you
8 can't tell -- you can barely see the paint. This was a
9 fresh paint job that was on there.

10 Q So you saw them painting these crosswalks?

11 A No. I never saw them actually painting it but you
12 could tell it was a fresh paint job that had just been
13 recently been done.

14 Q So you don't know the dates on which.....

15 A No.

16 Q Would you expect if someone was driving a car down the
17 street that they would be able to see this hole?

18 A No.

19 Q Okay.

20 MS. WEISS: That's all.

21 A Okay.

22 CROSS EXAMINATION

23 BY MR. COE:

24 Q Mr. Griffin, I'm Charlie Coe and I represent Neda
25 Kelly. I'm going to -- on paragraph 5 of your -- and

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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 A Yes.

2 Q And then could there have been more than that, more
3 than one time like that or does just one stick out in
4 your mind?

5 A This one sticks out in my mind but the -- I'm sure
6 there -- there probably were other instances too that
7 day but I -- I remember the one incident there in
8 between Ethel Kelly or between Charisse Lyons reporting
9 it to me and then when Neda Kelly fell. I remember the
10 one instance specifically then I remember the one
11 incident after Neda Kelly fell.

12 Q Okay.

13 A I remember those specifically but I -- but it's
14 possible that I saw them other times.

15 Q Okay. And Charisse Lyons she had kind of a supervisory
16 role over the.....

17 A Charisse Lyons was the human resources manager of the
18 hotel.

19 Q Okay. So that's someone that would have brought it to
20 your attention you'd say.....

21 A Yes. Yes.

22 Q I better listen to her?

23 A That's -- yeah, when the -- when the -- when the
24 director of human resources speaks to the hotel you do
25 -- you do what -- what -- what you're told. That's why

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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

1 manager, front desk manager, house keeping manager, and
2 then those -- that's the -- pretty much the pecking
3 order of it.

4 Q Okay. Who's the H -- do you still have an HR manager?

5 A We actually don't have an HR manager now, actually the
6 general manager kinda does both.

7 Q But at that time you had a HR.....

8 A Yes, we had an HR manager that was at that time, they
9 were -- they were the people that you did what they
10 said right away.

11 Q And at that time your other -- the other worker that
12 would have been walking around doing kind of checks and
13 stuff like that was Douglas John?

14 A Yes.

15 Q Okay.

16 MR. COE: I have nothing further.

17 MS. WEISS: I just have two follow up
18 questions.

19 A Okay.

20 MS. WEISS: Unless you want to ask some
21 questions first?

22 MR. GRIFFIN: I did, just two things.

23 CROSS EXAMINATION

24 BY MR. GRIFFIN:

25 Q Mr. Griffin, you've referred to Neda Kelly and Ethel

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1 Kelly, they're the same person, correct?

2 A That is correct. Neda -- okay, Ethel Kelly is her
3 original na -- we call her -- her nickname was Neda so,
4 yeah, so --

5 Q And finally, I'm sure that both are parties aware by my
6 presence that we have a Worker's Compensation lien that
7 we expect to be satisfied.

8 MR. GRIFFIN: Thank you.

9 (Off record comment)

10 REDIRECT EXAMINATION

11 BY MS. WEISS:

12 Q My question is does Doug John's still work at Hilton?

13 A No.

14 Q Have you had any discussions with him about this
15 incident?

16 A No. No, he left the hotel back in 2007, joined the
17 Marines, I believe and I haven't seen him since so I
18 have no idea where he's at now.

19 Q So you haven't been able to talk to him to find out if
20 he did make that call?

21 A Right. Right. Tha -- so that's -- yeah, and I -- and
22 I -- and I tried -- I -- I was thinking about trying to
23 get a hold of him but I don't even know where to start,
24 he left in 2007 and --

25 Q You mentioned that you guys keep a daily activity

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1 report?

2 A That is correct.

3 Q If you made a phone call to somebody would you include
4 that in the daily activity report?

5 A I.....

6 Q Or if somebody made a phone call?

7 A Well, I -- I would. I don't know if Doug John would
8 have put that down in his report or not but -- and I
9 don't even know, as far as the daily activity reports
10 that they wrote, I don't know -- I believe we go back
11 like three years, I may have a copy of his daily
12 activity report for that day, I'd have to check the
13 records. But I do have his incident report, we keep
14 all our incidents reports so --

15 Q Did -- so, it sounds like you may not have made an
16 effort to see if you had it to confirm whether or not
17 -- or did you make an effort?

18 A Right. Well, I didn't -- I didn't find it but
19 there's -- we have a lot of records in storage that --
20 that -- the issue that I have is that at one point when
21 Columbia Sussex took over the Hilton Hotel to
22 owner/manage a lot of our records got shipped to
23 corporate office. Some did and some stayed behind,
24 some -- so I -- I'll have to double check and see if I
25 can find -- I looked for it briefly but I didn't find

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1 it but I will look again and see and if I do find it
2 I'll let Mr. Coe and them know. But I.....

3 Q Or you can let Mr. Griffin know and.....

4 A Oh yeah.

5 Q Okay. So.....

6 A Yeah.

7 Qyou're saying that you did look for.....

8 A Yes.

9 Qsome sort of document to confirm whether or not
10 the -- if it said anything about the call being made?

11 A Right. And I did -- and I didn't find anything
12 regarding that.

13 Q Okay.

14 MS. WEISS: That's all I have.

15 RECROSS EXAMINATION

16 BY MR. COE:

17 Q But what you're saying is there's records that are
18 missing that, you know.....

19 A Yeah.

20 Qcould be in those other records?

21 A It could be, yes.

22 Q Okay. But it's not like you have -- this back in '06
23 you have this kind of daily log that you can just go
24 back and find all your '06 stuff, right?

25 A Right. Correct. Well, we have some -- we have some

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000279

1 stuff from '06 but some of it's not missing -- it's
2 missing so -- and I looked in the file for May to see
3 and I never di -- never found it for -- so, but I'll
4 double check. And then the other que -- the other
5 question is I know is the exact date this call would
6 have been made I don't remember the exact date so
7 that's the other issue I was having 'cause -- 'cause I
8 don't remember the exact date that Charisse Lyons told
9 me so --

10 Q Okay. But it was before Neda Kelly fell?

11 A Yes. It was -- it was -- it was sometime before Neda
12 Kelly fell. It was -- it was within a week, week and a
13 half be -- so that -- but -- but that's part of the
14 difficulty in tracking down that specific record is not
15 knowing the exact date.

16 Q So she reports it, then after she reports it you
17 observe these people work -- someone working out there
18 and leaving the valve box cover open?

19 A That's correct.

20 Q Okay.

21 MR. COE: I have nothing further.

22 MS. WEISS: I have nothing further.

23 MR. COE: Thank you, Mr. Griffin, that's all I
24 have.

25 * * * END OF PROCEEDINGS * * *

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CC0280

S I G N A T U R E

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

I, JAMES L. GRIFFIN, have read the foregoing deposition and have made corrections thereto. Any and all changes, explanations, deletions and/or additions to my testimony may be found on the correction sheet(s) enclosed with this transcript.

JAMES L. GRIFFIN

STATE OF ALASKA)
) ss.
 THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this _____ day of _____, 2010, before me appeared JAMES L. GRIFFIN, to me known and known to be the person named in and who executed the foregoing instrument, and acknowledge voluntarily signing and sealing the same.

Notary Public in and for the
 State of Alaska, at Anchorage
 My Commission Expires: _____

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000231

C E R T I F I C A T E

1 UNITED STATES OF AMERICA)
2) ss.
3 STATE OF ALASKA)

4 I, Jerri Young, Notary Public in and for the State of
5 Alaska and Reporter with Metro Court Reporting, do hereby
6 certify:

7 THAT the annexed and foregoing Deposition of JAMES L.
8 GRIFFIN was taken before Rachel Edmonston on the 2nd day of
9 March 2010, commencing at the hour of 10:00 a.m., at the
10 offices of the Municipal Attorney, 632 West 6th Avenue, Suite
11 730, Anchorage, Alaska, pursuant to Notice to take said
12 Deposition of said Witness on behalf of the Defendant, the
13 Municipality of Anchorage;

14 THAT the above-named Witness before examination, was
15 duly sworn to testify to the truth, the whole truth, and
16 nothing but the truth;

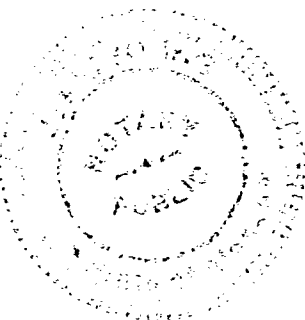
17 THAT this Deposition, as heretofore annexed, is a true
18 and correct transcription of the testimony of said Witness
19 taken by Rachel Edmonston and hereafter transcribed by Rachel
20 Edmonston;

21 THAT the original of the Deposition transcript will be
22 lodged in a sealed envelope with the attorney requesting
23 transcription of same, as required by Civil Rule 30(f)(1)
24 amended, that attorney being:

25 MS. PAMELA D. WEISS, Assistant Municipal Attorney,
Office of the Municipal Attorney, 632 West 6th Avenue,
Suite 730, Anchorage, Alaska 99501;

26 THAT I am not a relative, employee or attorney of any
27 of the parties, nor am I financially interested in this action.

28 IN WITNESS WHEREOF, I have hereunto set my hand and
29 affixed my seal this 16th day of March, 2010.



30 *Jerri Young*
31 Jerri Young
32 Notary Public in and for Alaska
33 My Commission Expires: 11/3/2011

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