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4 COURT COURT OF QUEEN'S BENCH OF ALBERTA

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6 JUDICIAL CENTRE EDMONTON

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8 APPLICANTS(S) E CONSTRUCTION LTD.

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10 RESPONDENT(S) SPRAGUE-ROSSER CONTRACTING CO. LTD.
11 and REGIONAL MUNICIPALITY OF WOOD
12 BUFFALO

13

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DOCUMENT Transcript of Oral Questioning of
16 J. PAUL BOURASSA
17 (on affidavit sworn January 14,
18 2016)

19

20 HELD AT McCarthy Tétrault LLP, Calgary,
Alberta

21

22 DATE January 25, 2016

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1 (Proceedings commenced at 9:07 a.m.)

2 **J. PAUL BOURASSA, sworn, questioned by Mr. MacLeod:**

3 Q. Mr. Bourassa, thank you very much for agreeing to
4 attend today. I understand you have a 5:30 flight
5 home, and I am confident we will get you on it. I am
6 just going to start this examination by defining some
7 terms that I will use in the course of the examination
8 today, and I am going to do that by reference to your
9 affidavit in the hopes that this won't take very long.
10 For Western Surety Company, I will use the term
11 "Western Surety" and you will understand who I am
12 referring to?

13 A. Yes.

14 Q. For Sprague-Rosser Contracting Co. Limited, I will use
15 "Sprague" or "Sprague-Rosser" and you will understand
16 who I am referring to?

17 A. Yes.

18 Q. In paragraph 3 of your affidavit, there is a reference
19 to "Regional Municipality of Wood Buffalo." And I will
20 probably refer to them as "RMWB" throughout the day,
21 and you will understand who I am referring to?

22 A. Yes.

23 Q. And then we have the three projects and three contracts
24 in the next section of your affidavit. And this is the
25 part that I struggle with because there are 42 Salines
26 on this matter, but for the Abasand Heights contract, I
27 will just refer to that as "Abasand Heights" -- or,

1 sorry, the "Abasand contract" or the "Abasands
2 project," and you will understand who I am referring
3 to?

4 A. Yes.

5 Q. The next one is the one that is going to create me
6 difficulty because I'm going to try to refer to what
7 term the "Saline D & B project" as "drive and bridge"
8 to avoid confusion with the other projects. And you
9 understand I may refer to it as the "drive and bridge
10 project" or the "drive and bridge contract," and you
11 will understand what I am referring to?

12 A. Yes.

13 Q. And then if we go down to Saline Creek contract number
14 3, I will refer to this as the "Saline 3 contract" or
15 the "Saline 3 project," and you will understand what I
16 am referring to?

17 A. Yes.

18 Q. If we go over to the paragraph -- oh, sorry, I should
19 have done that. You understand my client is
20 Alvarez & Marsal Canada Inc. --

21 A. Yes.

22 Q. -- in this proceeding? And I will refer to them as
23 "the receiver," and you will understand who I am
24 referring to?

25 A. Yes.

26 Q. And then if we go down, now, to the paragraph 7 of your
27 affidavit, E.O.S Pipeline & Facilities Incorporated, I

1 will refer to them as "E.O.S.," and you will understand
2 who I am referring to?

3 A. Yes.

4 Q. H. Wilson Industries (2010) Ltd., I will refer to them
5 as "H. Wilson," and you will understand who I am
6 referring to?

7 A. Yes.

8 Q. I might struggle with that one in relation to Wilco,
9 but we'll see how I can do. If you go over to the next
10 page of your affidavit, you'll see the reference to
11 "Wilco Contractors Northwest Inc." at paragraph 9?

12 A. Yes.

13 Q. I'll refer to them as "Wilco," and you will understand
14 who I am referring to?

15 A. Yes.

16 Q. And if you go to the next one, E Construction Ltd., I
17 will refer to them as "E" or "E Construction" and you
18 will understand who I am referring to?

19 A. Yes.

20 Q. And then if you go down to Corix Water Products LP,
21 I'll refer to them as "Corix" and you will understand
22 who I am referring to?

23 A. Yes.

24 Q. And if you go down to Michels Canada Co., I'll refer to
25 them as "Michels" and you will understand who I am
26 referring to?

27 A. Yes.

1 Q. And then we have Borden Ladner Gervais LLP referenced
2 here. I understand they also act for you in this
3 matter; is that correct?

4 A. Yes.

5 Q. Okay. And I'll refer to them as "BLG," and you will
6 understand who I am referring to?

7 A. Yes.

8 Q. I think that's a complete listing of the defined terms,
9 Mr. Bourassa. I think we're both well versed in this
10 matter, so to the extent that you have any confusion
11 about a term that I am using, you can just let me know
12 and I can clarify that to you. Is that acceptable?

13 A. Yes.

14 Q. Okay, thank you. I'm wondering if we might just start
15 by you giving a bit of your history of your role with
16 Western. I understand that you are general counsel
17 there; is that correct?

18 A. I'm General Counsel and Chief Compliance Officer.

19 Q. Okay. And how long have you served in that capacity?

20 A. I joined the -- Western is one of the companies in the
21 Hill Group of Companies.

22 Q. Right.

23 A. I and joined the Hill Group of Companies in October of
24 1987.

25 Q. Okay.

26 A. At that point, I believe my title was Legal Counsel.
27 And I'm not exactly sure when I -- when it changed.

1 Q. Sure. And when did you graduate from law school, if
2 you don't mind me asking?

3 A. 1975.

4 Q. Okay. Was that from the University of Saskatchewan?

5 A. Yes.

6 Q. Okay. I'm going to start by referring to an exchange
7 of correspondence between the Ms. Sidnell and I,
8 firstly, with a letter --

9 A. I'm sorry, I missed that.

10 Q. I'm going to start with an exchange of correspondence
11 between Ms. Sidnell and I --

12 A. Oh.

13 Q. -- firstly, with a letter dated January 14th, 2016 that
14 I sent to her. And then, secondly, her reply
15 correspondence to me on January 22nd, 2016. Mr. Scott
16 is going to pass you a copy of that. Okay. Have you
17 seen these letters before, Mr. Bourassa?

18 A. I don't -- I don't have a specific recollection of
19 having seen them.

20 Q. Sure.

21 MR. MACLEOD: Can we put them in as Exhibits 1
22 and 2, Ms. Sidnell?

23 MS. SIDNELL: We can.

24 MR. MACLEOD: Thank you. Can you mark them,
25 please.

26 **EXHIBIT 1 - Letter dated January 14th,**
27 **2016 from Mr. MacLeod to Ms. Sidnell**

1 **EXHIBIT 2 - Letter dated January 22nd,**
2 **2016 from Ms. Sidnell to Mr. MacLeod**

3 Q. MR. MACLEOD: All right. Let's start with the
4 January 22nd letter from Ms. Sidnell. And there is a
5 statement in the second paragraph under interrogatory
6 12 about a \$33,000 allocation to the Abasands project.
7 In there, that's referenced in the receiver's sixth
8 report. Do you see that?

9 A. Oh, yes, I do.

10 Q. I've got a copy of the receiver's sixth report here.
11 I'm wondering if you can direct me to where the
12 reference to the allocation of \$33,000 can be found?

13 MS. SIDNELL: We're objecting to that. He's not
14 here to have Mr. Bourassa explain the -- you can ask me
15 questions about my letter to you. Mr. Bourassa is not
16 here to do that.

17 MR. MACLEOD: Well, I'm sorry, Ms. Sidnell, I'm
18 surprised by the objection. This is a letter you sent
19 to me --

20 MS. SIDNELL: That's right.

21 MR. MACLEOD: -- in respect of the follow-up
22 correspondence from the written interrogatories. I'm
23 surprised that I cannot examine the witness on that
24 letter, Ms. Sidnell.

25 MS. SIDNELL: I objected to your question
26 because your question asked Mr. Bourassa to explain
27 something I said in my letter. He will not do that.

1 That's the objection. Carry on.

2 MR. MACLEOD: Okay. Maybe we should have you
3 explain it then. Would that be acceptable?

4 MS. SIDNELL: No, because I'm not being examined
5 today. So carry on with your questioning, please.

6 **OBJECTION TAKEN to answering the question: I've got a copy**
7 **of the receiver's sixth report here. I'm wondering if**
8 **you can direct me to where the reference to the**
9 **allocation of \$33,000 can be found?**

10 MR. MACLEOD: Sure. I will, certainly. I'm
11 going to make some reference to the sixth report. Can
12 you show that to the witness, please.

13 Q. I'm going to go to page 13 of the receiver's report and
14 the table there. Do you see that, Mr. Bourassa?

15 A. Yes, I do.

16 Q. And that's a table of the three projects in respect
17 of -- the settlement agreements in respect of it. You
18 understand that?

19 A. Yes.

20 Q. Okay. And do you see the "Abasands" column, and then
21 it says: (As read)

22 Receiver of security for Wilco lien 148.

23 A. Yes, I do.

24 Q. Okay. And I think that's, perhaps, the source of the
25 confusion because I didn't understand where Ms. Sidnell
26 was referencing the \$33,000 number from in her letter.
27 You admit, sir, that the statement in Ms. Sidnell's

1 letter that \$33,000 is being allocated to the Abasands
2 project and the receiver sixth report is incorrect?

3 MS. SIDNELL: No, he's not answering that
4 question. That goes to the letter itself, and he's not
5 going -- he's not here to explain my letter. He is
6 here to be questioned on his affidavit and on things
7 that are relevant and material to your application.

8 MR. MACLEOD: This is all relevant --

9 MS. SIDNELL: We object.

10 MR. MACLEOD: -- and material, Ms. Sidnell,
11 so --

12 MS. SIDNELL: I disagree with you, Mr. MacLeod.
13 Mr. Bourassa is not here to answer those questions.

14 MR. MACLEOD: Sure, okay, that's fine. We'll
15 just carry on then.

16 MS. SIDNELL: Carry on.

17 **OBJECTION TAKEN to answering the question: Okay. And I**
18 **think that's, perhaps, the source of the confusion**
19 **because I didn't understand where Ms. Sidnell was**
20 **referencing the \$33,000 number from in her letter. You**
21 **admit, sir, that the statement in Ms. Sidnell's letter**
22 **that \$33,000 is being allocated to the Abasands project**
23 **and the receiver sixth report is incorrect?**

24 Q. MR. MACLEOD: If we could go to the second
25 written interrogatory response, okay, so this is where
26 the issue arises. I think it's interrogatory 12 on
27 page 4. Perhaps I could direct your attention there.

1 And it states: (As read)

2 The receiver has been unable to verify
3 from the books and records of SR whether
4 Wilco performed work on the Abasands
5 project or the Saline D & B project.
6 The receiver is attempting to clarify
7 this issue with Wilco.

8 Do you see that?

9 A. I do.

10 Q. And in my letter to Ms. Sidnell of January 14th was a
11 follow up on interrogatory 12, as we indicated we would
12 do and I've stated in my letter, the receiver has
13 confirmed a copy of the subcontract between SR and
14 Wilco dated May 9th -- or, sorry, excuse me, the
15 receiver has received a copy of the subcontract between
16 SR and Wilco dated May 9th, 2012 that confirms that
17 Wilco was engaged in the Saline D & B project; do you
18 see that?

19 A. Yes.

20 Q. Do you know where the receiver obtained the information
21 in respect of its updated --

22 MS. SIDNELL: Object. He can't tell you where
23 the receiver obtained information.

24 MR. MACLEOD: Well, I'm asking if he knows,
25 Ms. Sidnell. If he knows the answer to the question,
26 he can surely answer it, can't he?

27 MS. SIDNELL: He's not going to answer questions

1 about where --

2 MR. MACLEOD: Sure.

3 MS. SIDNELL; -- the receiver obtained
4 information.

5 **OBJECTION TAKEN to answering the question: Do you know**
6 **where the receiver obtained the information in respect**
7 **of its updated --**

8 Q. MR. MACLEOD: Okay. We'll do it this way then.
9 I'm going to show you a copy of an e-mail exchange
10 between Mr. Hillson of the Dentons firm and I.

11 MS. SIDNELL: Can you please -- he's not here to
12 look at documents. This isn't an exhibit to his
13 affidavit. It has nothing to do with Mr. Bourassa.
14 You're going to have to establish why you should be
15 showing him any records at all.

16 MR. MACLEOD: I'm going to show it -- I'm going
17 to establish that right now, Ms. Sidnell. Perhaps you
18 will give me the opportunity. There seems to be a
19 broader confusion about the document production that's
20 gone on here and it's sort of reflected in
21 Mr. Bourassa's affidavit. So, you know, perhaps we can
22 expand on that a little bit in what actually happened
23 here with what the receiver has been doing with the
24 documents, Ms. Sidnell?

25 MS. SIDNELL: And what does the document
26 production have to do with your application that was
27 initially returnable on November 19th and is now

1 returnable on February 11, 2016?

2 MR. MACLEOD: The document production -- and the
3 witness has testified, of course, the document
4 production has been sort of incomplete or inaccurate,
5 and that's the issue that I'm trying to explore. There
6 is a suggestion in your letter, Ms. Sidnell, that the
7 receiver has -- and I might even, dare, I say -- do
8 something wrong in respect of how it's produced the
9 documents, and I'm just simply trying to clarify the
10 record for the benefit of Mr. Bourassa.

11 Why don't we do this, these are all e-mail
12 correspondence. I'm entitled to mark the documents,
13 and then if we want to fight about it, we can fight
14 about it --

15 MS. SIDNELL: I don't think you're entitled to
16 mark anything.

17 MR. MACLEOD: Okay.

18 MS. SIDNELL: This has nothing to do with
19 Mr. Bourassa. It has nothing to do with his position.
20 It has nothing to do with a position put out on behalf
21 of Western. This is an e-mail from -- the first page
22 that you've given him is an e-mail that says from
23 Jonathan Hillson at Dentons who I understand acts
24 for --

25 MR. MACLEOD: Wilco.

26 MS. SIDNELL: Wilco, right, and it's addressed
27 to you, Mr. MacLeod.

1 MR. MACLEOD: That's correct.

2 MS. SIDNELL: That has nothing to do with
3 Mr. Bourassa's affidavit. And he's not here to answer
4 questions about, you know, documents you are putting to
5 him --

6 MR. MACLEOD: Sure.

7 MS. SIDNELL: -- that have nothing to do with
8 him.

9 MR. MACLEOD: I disagree, Ms. Sidnell. So we
10 will have to resolve that perhaps on the 11th if not
11 before. I'm going to mark the document as Exhibit 3,
12 please.

13 MS. SIDNELL: Well, I object to that.

14 MR. MACLEOD: Okay. We'll mark it for
15 identification purposes and we'll go from there, I
16 guess.

17 **EXHIBIT A - FOR IDENTIFICATION - E-mail**
18 **exchange between Mr. Hillson of Dentons**
19 **and Mr. MacLeod dated January 7th, 2016**

20 MR. MACLEOD: Do you want to just go off for a
21 second.

22 (DISCUSSION OFF THE RECORD)

23 Q. MR. MACLEOD: Okay. Do you have a copy of that
24 document I've just marked in front of you?

25 A. Can I just see the copy?

26 Q. Sure. And Ms. Sidnell just helpfully clarified on the
27 record that Mr. Hillson acts for Wilco in this matter.

1 And this is an exchange of correspondence between me
2 and him on January the 7th of this year. And you see I
3 say in that correspondence: (As read)

4 Jon, thanks. Can you please send me a
5 copy of the contract between Wilco and
6 Sprague-Rosser and --

7 MS. SIDNELL: Don't answer any questions about
8 this set of documents. We've objected to them. You
9 know what, we're here for a cross-examination on
10 Mr. Bourassa's affidavit.

11 MR. MACLEOD: Sure.

12 MS. SIDNELL: You are welcome to ask him any
13 questions in relation to his affidavit that are
14 relevant and material to your application. All other
15 questions will be objected to.

16 MR. MACLEOD: Okay, that's fine. We can proceed
17 in that fashion, if you so wish, Ms. Sidnell. That's
18 fine.

19 **OBJECTION TAKEN to answering the question: And Ms. Sidnell**
20 **just helpfully clarified on the record that Mr. Hillson**
21 **acts for Wilco in this matter. And this is an exchange**
22 **of correspondence between me and him on January the 7th**
23 **of this year. And you see I say in that**
24 **correspondence: (As read)**

25 Jon, thanks. Can you please send me a
26 copy of the contract between Wilco and
27 Sprague-Rosser and --

1 Q. MR. MACLEOD: I'm going to move on,
2 Mr. Bourassa. I'm actually going to go back to
3 Ms. Sidnell's letter of January 22nd and has been
4 marked as Exhibit 2 in these proceedings. And she
5 makes reference to how the attached document --
6 documents that were attached to the letter that she
7 sent January 22nd were produced by the receiver to BLG
8 LLP in connection with an inquiry related to the
9 subcontractors' claims. Do you see that on page 2 of
10 the affidavit?

11 MS. SIDNELL: I believe you're making reference
12 to a letter dated January 22nd, 2016, not to an
13 affidavit, Mr. MacLeod?

14 MR. MACLEOD: You're correct, Ms. Sidnell.
15 Thank you very much for that clarification.

16 Q. Do you see that?

17 A. I'm sorry, I kind of lost you.

18 Q. Sure. I'm referring to page 2 --

19 A. Right.

20 Q. -- of Ms. Sidnell's letter of January 22nd, 2016.

21 A. Yes.

22 Q. And there is a reference to the attached documents were
23 produced by the receiver to BLG in connection with an
24 inquiry related to the subcontractors' claims. And
25 then she goes on to discuss the document production,
26 and she actually, helpfully, puts it in quotes about
27 the steps the receiver has taken to assist the -- to

1 assist Western with document production. Do you see
2 that?

3 A. Yes.

4 Q. Okay. Are you aware of how the receiver has been
5 managing the document production requests for Western
6 in the course of this project?

7 MS. SIDNELL: I object to that question.

8 **OBJECTION TAKEN to answering the question: Are you aware**
9 **of how the receiver has been managing the document**
10 **production requests for Western in the course of this**
11 **project?**

12 Q. MR. MACLEOD: In the course of your role with
13 the Surety, you have some experience with managing
14 litigation claims; is that correct?

15 A. Well, no, we -- we engage outside counsel to -- to
16 manage litigation claims.

17 Q. Okay. Are you familiar with litigation document
18 production support systems or tracking systems such as
19 Summation or Case Logistics?

20 A. No.

21 Q. You've never heard of those systems before?

22 A. No.

23 Q. Really?

24 A. Yeah, really.

25 Q. Gees, that's quite incredible. I'm going to show you
26 an exchange of correspondence between myself and
27 Mr. Bjornson of the BLG firm. It's dated Tuesday,

1 November 24th, 2015. We'll make that the next exhibit,
2 please, madam reporter.

3 MS. SIDNELL: I object.

4 MR. MACLEOD: Sure.

5 **EXHIBIT B - FOR IDENTIFICATION -**
6 **Correspondence between Mr. MacLeod and**
7 **Mr. Bjornson of Borden Ladner Gervais**
8 **LLP dated Tuesday, November 24th, 2015**

9 (DISCUSSION OFF THE RECORD)

10 Q. MR. MACLEOD: Do you have a copy of that e-mail
11 in front of you, Mr. Bourassa?

12 A. No.

13 MR. MACLEOD: Just go off for a second.

14 (DISCUSSION OFF THE RECORD)

15 MS. SIDNELL: Well, we're on the record, right?
16 So I've already told you I'm objecting --

17 MR. MACLEOD: Sure, Ms. Sidnell.

18 MS. SIDNELL: -- to the documents to
19 Mr. Bourassa that have nothing to do with his
20 affidavit. And, you know, I don't believe you've
21 explained the -- how it's relevant and material to the
22 application, but, you know, you're putting to him
23 correspondence between counsel that has nothing to do
24 with his affidavit. You know, we're here to answer
25 questions about his affidavit. Feel free to do so.

26 Q. MR. MACLEOD: If you go to the second page of
27 that correspondence --

1 MS. SIDNELL: We object to that question.

2 Q. MR. MACLEOD: -- Mr. Bourassa --

3 MS. SIDNELL: Don't go to the second page. We
4 object to the question.

5 **OBJECTION TAKEN to answering the question: If you go to**
6 **the second page of that correspondence, Mr. Bourassa --**

7 Q. MR. MACLEOD: I'm going to show you another
8 exchange of correspondence between myself and
9 Mr. O'Connor.

10 MS. SIDNELL: I object to that.

11 Q. MR. MACLEOD: Have you seen any of these records
12 before, Mr. Bourassa?

13 MS. SIDNELL: Don't answer that question. We
14 object to that.

15 **OBJECTION TAKEN to answering the question: Have you seen**
16 **any of these records before, Mr. Bourassa?**

17 MR. MACLEOD: We'll mark that as next exhibit
18 for identification, please.

19 **EXHIBIT C - FOR IDENTIFICATION -**
20 **Correspondence between Mr. MacLeod and**
21 **Mr. O'Connor of Borden Ladner Gervais**
22 **LLP**

23 Q. MR. MACLEOD: And I'm going to show you another
24 exchange of correspondence between myself and
25 Mr. Kruger, November 16th, 2015.

26 MR. MACLEOD: I take it you're objecting again,
27 Ms. Sidnell?

1 MS. SIDNELL: I am, indeed. Would you like to
2 explain on the record why this is relevant and material
3 and how this relates to Mr. Bourassa?

4 MR. MACLEOD: We'll mark that as next exhibit,
5 please.

6 **EXHIBIT D - FOR IDENTIFICATION -**
7 **Correspondence between Mr. MacLeod and**
8 **Mr. Kruger of Borden Ladner Gervais LLP**
9 **dated November 16th, 2015**

10 MR. MACLEOD: I'm somewhat flabbergasted,
11 Ms. Sidnell, that exchanges of correspondence between
12 counsel cannot go into evidence. I never think I've
13 heard that information before, but --

14 MS. SIDNELL: This is a cross-examination on an
15 affidavit. There are specific rules about
16 cross-examinations on affidavits, and you are welcome
17 to ask him any question that relates to his affidavit
18 or the exhibits to the information in his affidavit,
19 and you're also asked -- you're entitled to ask him
20 anything that is relevant and material to your
21 application which is now returnable on February 11th,
22 2016. We are prepared and more than happy to answer
23 any of those questions.

24 You're trying to put to Mr. Bourassa documents
25 that he's never seen between parties that -- he's not
26 even a party to these documents. If you want to, you
27 know, file an affidavit, you are welcome to do so and

1 put these things all before the court and you chose not
2 to. So you can't do that through Mr. Bourassa because
3 that's not appropriate. So you're surprised, but
4 that's my objection.

5 (DISCUSSION OFF THE RECORD)

6 MR. MACLEOD: I take it you'll object to any
7 questions on this e-mail, as well, Ms. Sidnell?

8 MS. SIDNELL: That is correct.

9 MR. MACLEOD: Okay, sure.

10 **OBJECTION TAKEN to answering questions on Exhibit D**

11 Q. MR. MACLEOD: And I'm going to mark one last
12 exchange of correspondence between myself and
13 Mr. O'Connor that occurred on January 22nd, 2016.

14 MS. SIDNELL: Well, I object to that, as well.

15 MR. MACLEOD: Thank you, Ms. Sidnell. Do you
16 want to just object to all the records that I have put
17 in, would that make it easier?

18 MS. SIDNELL: No. I don't know what records you
19 are trying to put before the witness. I've already
20 identified to you that if it was actually something
21 that Mr. Bourassa knew something about or is a party to
22 or has some sort of relevance to his affidavit which
23 you are cross-examining on, you know, let's see your
24 documents. Why would I give a flat objection? That
25 would be inappropriate.

26 MR. MACLEOD: This will be E, I take it.

27 **EXHIBIT E - FOR IDENTIFICATION -**

1 **Correspondence between Mr. MacLeod and**
2 **Mr. O'Connor of Borden Ladner Gervais**
3 **LLP dated January 22nd, 2016**

4 Q. MR. MACLEOD: This actually, of course, relates
5 to the payment that you sent to us last Friday which
6 was much appreciated, Mr. Bourassa. Perhaps it might
7 be useful, just in the context of this, if we did a bit
8 of roll call of who is acting for Western in this
9 proceeding. You've got BLG Calgary retained for you;
10 is that correct?

11 A. Yes.

12 Q. Okay. And you've got BLG Vancouver retained for you;
13 is that correct?

14 A. Yes.

15 Q. And that's Mr. O'Connor, Mr. Bjornson. Is there anyone
16 else involved out there with BLG Vancouver that you're
17 aware of?

18 A. I don't believe so.

19 Q. And if we come back to BLG Calgary, we have Mr. Kruger,
20 QC, we have Mr. Chosiack (phonetic), we have
21 Ms. Gurofsky, and we have Mr. Braust (phonetic),
22 though, I understand he may have departed?

23 A. The last name doesn't ring a bell.

24 Q. Sure. And then you have Ms. Sidnell acting for you in
25 the course of this application?

26 A. Yes.

27 Q. And I think the issue that has presented itself is

1 that -- and I understand Ms. Sidnell is not going to
2 allow me to ask any questions, so that's perfectly
3 fine. The receiver has produced a number of documents
4 to you in the course of this litigation, Mr. Bourassa,
5 and we've been very clear in the course of that, the
6 manner in which we have produced those records to you.
7 We have not indexed records in Summation or Case
8 Logistics in any manner. And if you look at the
9 records -- Ms. Sidnell will not allow me to ask those
10 questions, but the records will, obviously, speak for
11 themselves. We've made that abundantly clear,
12 certainly to BLG. It's perhaps unfortunate that was
13 not apparently communicated to Rose LLP, but that's the
14 circumstance we find ourselves in.

15 Perhaps you could just for the benefit of the
16 receivership estate ensure that your various firms are
17 coordinating amongst each other in respect --

18 MS. SIDNELL: No, do not answer that question.

19 **OBJECTION TAKEN to answering the question: Perhaps you**
20 **could just for the benefit of the receivership estate**
21 **ensure that your various firms are coordinating amongst**
22 **each other in respect --**

23 Q. MR. MACLEOD: That would be much obliged by the
24 receiver, Mr. Bourassa.

25 MS. SIDNELL: Maybe it wasn't even a question.

26 Q. MR. MACLEOD: Okay, we'll move on. Perhaps we
27 can get to some questions today. You're aware that

1 this application is in respect of a settlement
2 agreement that was entered into by the receiver and the
3 RMWB?

4 A. Yes, that's correct.

5 Q. Have you seen a copy of that settlement agreement
6 before?

7 A. No, I don't believe so.

8 MR. MACLEOD: Okay. I've got a fully executed
9 copy here. I'm wondering, Ms. Sidnell, if we could
10 perhaps mark that document.

11 MS. SIDNELL: No. Why would we do that? You're
12 not going to ask him questions about it, I hope?

13 MR. MACLEOD: I am actually going to ask him
14 some questions about the form of whatever is in the
15 document, Ms. Sidnell.

16 MS. SIDNELL: Well, I suggest you ask your
17 questions first because I might just object to them
18 all. So why don't we do that --

19 MR. MACLEOD: No, I will mark it for
20 identification now, Ms. Sidnell. You can't stop me
21 from marking a document for identification. It's my
22 examination.

23 So we'll mark that as the next exhibit, please,
24 madam reporter.

25 **EXHIBIT F - FOR IDENTIFICATION -**

26 **Settlement agreement**

27 (DISCUSSION OFF THE RECORD)

1 Q. MR. MACLEOD: Now, it's Western's position on
2 this application that the settlement agreement is, in
3 fact, a problem is that correct, Mr. Bourassa?

4 A. Yes.

5 Q. And I suspect we're going to go through the same joy,
6 again, of your objections, but the receiver maintains a
7 website in this proceeding. You're aware of that,
8 Mr. Bourassa?

9 A. No.

10 Q. Okay. There is a reference to you reviewing reports in
11 your affidavit. You've reviewed various reports in
12 connection with these proceedings; is that correct?

13 MS. SIDNELL: Show him where the reference is in
14 his affidavit.

15 MR. MACLEOD: Sure, Ms. Sidnell, I would be glad
16 to.

17 (DISCUSSION OFF THE RECORD)

18 MR. MACLEOD: It appears to be at paragraph 5,
19 Ms. Sidnell. Does that satisfy your objection?

20 MS. SIDNELL: I didn't have an objection. I
21 asked you to point --

22 MR. MACLEOD: Ms. Sidnell, perhaps you could
23 just --

24 MS. SIDNELL: -- to the witness -- you know --

25 MR. MACLEOD: Sure.

26 MS. SIDNELL: -- you're making reference to his
27 affidavit. I'm asking you to point out to the witness

1 where you're making reference so he can look at it.

2 MR. MACLEOD: I appreciate interjections,
3 Ms. Sidnell. I think it's important to put on the
4 record here that this is the way this is going to go.
5 That we are operating under a constrained time frame
6 here with respect to the approval of the settlement
7 agreement. And this is certainly not helpful to the
8 process or the receivership estate. For example, I was
9 just curious if the witness is aware of the sort of
10 costs and fees incurred in respect of the receivership.
11 That's what the questions in respect of the documents
12 went to, but the reality is we'll have all those
13 documents on the record and we can make submissions to
14 Justice Ross as we see fit. Would that be acceptable,
15 Ms. Sidnell?

16 MS. SIDNELL: I'm not going to take a position
17 here today. We're here today to answer questions on
18 his affidavit. Go ahead.

19 MR. MACLEOD: Okay, sure.

20 Q. The receiver prepares a document called a 244 statement
21 in respect of the receivership, a statement, it's
22 first -- I'm showing you a copy of that document now.
23 Have you ever seen that before, Mr. Bourassa?

24 A. I don't have any specific recollection of having seen
25 it.

26 MR. MACLEOD: Sure. We'll mark that as the next
27 exhibit for identification, please.

1 **EXHIBIT G - FOR IDENTIFICATION - 244**
2 **statement in respect of the**
3 **receivership**

4 (DISCUSSION OFF THE RECORD)

5 Q. MR. MACLEOD: And then if we keep moving along
6 here, I do now have a copy of the fifth receiver's
7 report, and I will direct your attention to paragraph 5
8 of your affidavit. And it states: (As read)

9 I understand from reviewing the reports
10 by the Receiver of Sprague-Rosser,
11 Alvarez & Marsal Canada Inc., filed in
12 this action, that Sprague-Rosser was
13 terminated for convenience by the RMWB
14 and made numerous claims against RMWB in
15 relation to the RMWB Projects.

16 MR. MACLEOD: We'll mark this as the next
17 exhibit, please. For identification, again, I take it,
18 Ms. Sidnell?

19 MS. SIDNELL: You told me that you didn't care
20 about my objections for marking them for
21 identification, so go right ahead.

22 MR. MACLEOD: Sure, okay, H.

23 **EXHIBIT H - FOR IDENTIFICATION - Fifth**
24 **receiver's report**

25 (DISCUSSION OFF THE RECORD)

26 Q. MR. MACLEOD: Mr. Bourassa, on July 24th, 2014,
27 the Surety caused a PPR registration to be made against

1 Sprague-Rosser Contracting Co. Ltd., are you aware of
2 that registration?

3 MS. SIDNELL: And how is that relevant and
4 material to the application? It's not part of his
5 affidavit. It's not referred to in his affidavit, so
6 please explain how it's relevant and material to your
7 application because we're here for cross-examination on
8 his affidavit.

9 MR. MACLEOD: Sure, Ms. Sidnell, I will be happy
10 to. Your client ranks in the third lien position in
11 this action, and that will be the relevance of the
12 approval application. So we're going to mark this as
13 another exhibit for identification, and then we'll deal
14 with this on February 11th or sooner if we have to.
15 This is I.

16 **EXHIBIT I - FOR IDENTIFICATION - PPR**
17 **registration**

18 (DISCUSSION OFF THE RECORD)

19 Q. MR. MACLEOD: The claims of the Surety against
20 Sprague-Rosser, they arise by way of subrogation; is
21 that correct, Mr. Bourassa?

22 MS. SIDNELL: Sorry, can you explain what claims
23 you're referring to?

24 MR. MACLEOD: The claims referenced in his
25 affidavit.

26 A. I'm sorry, what was the question again?

27 MR. MACLEOD: Do you want to repeat the question

1 again to the witness?

2 COURT REPORTER: (By reading)

3 Q. The claims of the Surety against
4 Sprague-Rosser, they arise by way of
5 subrogation; is that correct,
6 Mr. Bourassa?

7 A. But I don't see -- maybe I'm missing something, but I
8 don't see reference to claims by Western against
9 Sprague-Rosser in the affidavit.

10 Q. MR. MACLEOD: Well, sorry, perhaps I'm missing
11 something, Mr. Bourassa, but my understanding is that
12 you have subrogated the position of various
13 subcontractors and have a claim against Sprague-Rosser
14 on that basis; is that not correct?

15 A. Okay, now I understand. You're referring specifically
16 to the claims which appear at paragraph 7; is that
17 correct?

18 Q. Yes. Those are certainly some of them. We'll move
19 over to the next ones as well. I understand from
20 paragraph 7 that those are the claims that have
21 actually been paid out; is that correct?

22 A. Yes.

23 Q. Okay. And there were both performance bonds and L & M
24 bonds on this project; is that correct?

25 A. Yes.

26 Q. Okay. And are all of the payments that you have listed
27 there, are those payments on the L & M bonds?

1 A. Yes.

2 Q. Were there any payments on the performance bonds --

3 A. There was never any claim on it.

4 Q. There was never a claim on it. You're aware that the
5 completion contractor for each of the three projects
6 had to step in and complete the projects in March 2014
7 after termination of the contracts? You're aware of
8 that, right?

9 A. We had no involvement.

10 Q. You had no involvement in that? Okay, that's fine,
11 sure. Do you know who the completion contractors were?

12 A. No.

13 MR. MACLEOD: Okay. Thankfully I've got some
14 records about the completion contractors, so we'll,
15 again, put them into evidence as identification and
16 deal with them as matters arise, Ms. Sidnell. The
17 first one here is going to be a July 11, 2014 letter
18 and bid by Wilson in relation to the Abasands contract.
19 We'll mark that as the next exhibit, please.

20 MS. SIDNELL: And I'll just reiterate my
21 objection. That you're putting to the witness
22 documents about information he doesn't know anything
23 about.

24 MR. MACLEOD: Sure.

25 MS. SIDNELL: It's not his affidavit.

26 MR. MACLEOD: That's excellent. Thankfully
27 these are standard corporate records, Ms. Sidnell. So

1 there shouldn't be much dispute about them when we
2 return to the court, but we, of course, as I say, can
3 deal with it as matters arise.

4 **EXHIBIT J - FOR IDENTIFICATION - July**
5 **11, 2014 letter and bid by Wilson in**
6 **relation to the Abasands contract**

7 MR. MACLEOD: The next record I'm going to put
8 to the witness is a document about a supply chain
9 management which confirms the retention of H. Wilson on
10 the completion contract for Abasands. We'll mark that
11 as the next exhibit, please.

12 MS. SIDNELL: We object to that as well.

13 MR. MACLEOD: Sure.

14 **EXHIBIT K - FOR IDENTIFICATION -**
15 **Document about supply chain management**
16 **which confirms the retention of**
17 **H. Wilson on the completion contract**
18 **for Abasands**

19 (DISCUSSION OFF THE RECORD)

20 Q. MR. MACLEOD: And then I've got a document here
21 dated December 18th, 2015, and this appears to be the
22 final payment certificate on the Wilson contract that
23 is the replacement contract on the Abasands contract.
24 We'll mark that as the next exhibit, please.

25 MS. SIDNELL: Over my objection, of course.

26 MR. MACLEOD: Sure. L.

27 **EXHIBIT L - FOR IDENTIFICATION - Final**

1 **payment certificate on the Wilson**
2 **contract that is the replacement**
3 **contract on the Abasands contract dated**
4 **December 18th, 2015**

5 MR. MACLEOD: And then we're going to shift over
6 to the drive and bridge replacement contract, and this
7 is E Construction. And I've got a collection of
8 records including payment information and bid price and
9 stuff. We'll mark that as the next exhibit for
10 identification, please.

11 MS. SIDNELL: Well, you know, Mr. Bourassa has
12 not identified it, and I object.

13 MR. MACLEOD: Sure.

14 **EXHIBIT M - FOR IDENTIFICATION -**
15 **Documentation relating to the drive and**
16 **bridge replacement contract pertaining**
17 **to E Construction, including payment**
18 **information and bid price**

19 (DISCUSSION OFF THE RECORD)

20 MR. MACLEOD: And then lo and behold, we
21 actually have certificates of substantial performance
22 on the drive and bridge project. And there is two of
23 them. One of them is -- appears to indicate that that
24 project was completed by the replacement contractor on
25 July 8th, 2015, that appears to be part B; and the
26 other one appears to indicate that it was completed on
27 October 8th, 2014, that's for part A. We'll mark those

1 as the next exhibit. We'll mark those as a package,
2 madam reporter.

3 MS. SIDNELL: Again, Mr. Bourassa hasn't
4 identified these documents, so we object.

5 MR. MACLEOD: That's fine. It's interesting.
6 These ones are actually signed by the completion
7 contractor and by the project engineer.

8 **EXHIBIT N - FOR IDENTIFICATION -**
9 **Certificates of substantial performance**
10 **on the drive and bridge project**

11 (DISCUSSION OFF THE RECORD)

12 Q. MR. MACLEOD: I'm going to go back to the
13 settlement agreement now, Mr. Bourassa, if I might.
14 Perhaps I should have done this earlier, and my
15 apologies, I'm just going to ask you some questions
16 about the form of order.

17 MR. SCOTT: It's Exhibit F.

18 Q. MR. MACLEOD: It's F. Okay. You understand
19 that there is some funds held in trust by Mr. McConnell
20 at the Burstall Winger firm in respect of
21 Sprague-Rosser?

22 A. Yes.

23 Q. And do you know the approximate amount?

24 A. No, I don't.

25 Q. Okay. You understand that Mr. McConnell is under trust
26 conditions, and he cannot release those funds?

27 A. I have never been told exactly what the trust

1 conditions were --

2 Q. Okay. Sure.

3 A. -- or are.

4 Q. Gees, you have not informed yourself very well today, I
5 guess. And I'm just going to go to the form of order
6 of the settlement agreement. I'm going to take you to
7 paragraph 8 to start. It's on page 3 of the form of
8 order.

9 Okay. You see paragraph 8? You understand that
10 the settlement agreement, if it's approved, will result
11 in the release of approximately \$115,000 from the BWZ
12 trust funds to Corix?

13 A. Yes.

14 Q. Okay. And if you go down a paragraph, you understand
15 that, if the settlement agreement is approved, the
16 order will provide for a release of approximately
17 \$1.474 million to Michels. Do you understand that?

18 A. Yes.

19 Q. Okay. And if you go over to paragraph 7 now, you
20 understand that the RMWB will be paying an additional
21 1.589 million as part of the Saline 3 need fund? Do
22 you understand that, Mr. Bourassa?

23 A. Yes.

24 Q. I'm sorry, that was actually incorrect. My apologies.
25 It's actually paragraph 11 of the form of order. It's
26 over on the next page, Mr. Bourassa. It's actually
27 1.395 million. Do you see that reference there,

1 Mr. Bourassa?

2 A. Yes, I do.

3 Q. Okay. And you understand that amount will be paid out
4 by the RMWB in the event that the settlement agreement
5 is approved?

6 A. Yes.

7 Q. And then there is some additional liens that we've been
8 dealing with. One is the Wilco lien. It's over on the
9 next page of the order. And you understand that
10 security for the Wilco lien will be posted of
11 approximately \$148,000 if the settlement agreement is
12 approved?

13 A. I'm sorry, I don't see the reference to the 148,000.

14 Q. Sure.

15 MS. SIDNELL: You know, I have to say, for the
16 record, he's already told you this is a document he's
17 not familiar with --

18 MR. MACLEOD: Sure.

19 MS. SIDNELL: -- and he has never seen before,
20 so I don't know how he knows all this information --

21 MR. MACLEOD: Sure.

22 MS. SIDNELL: Perhaps he already knows it.
23 You're taking him to a document that he doesn't know
24 anything about.

25 MR. MACLEOD: Thank you so much for your
26 interjection, Ms. Sidnell. Perhaps you should have
27 your client review the receiver's applications because

1 that's what I'm referring to.

2 Q. It's at paragraph 4(a), Mr. Bourassa.

3 A. 4?

4 Q. And that's the defined term of the Wilco lien fund. Do
5 you see that now?

6 A. Yes.

7 Q. So you understand that approximately \$148,000 will be
8 disbursed from -- excuse me, that's actually -- that's
9 what the revised order, I expect, for approximately
10 \$148,000 will be disbursed from the BWZ trust funds as
11 security for the Wilco lien. You understand that?

12 A. What revised order are you talking about?

13 Q. The revised order that we'll prepare in advance of the
14 application, that's what I'm speaking about. I will
15 circulate --

16 A. I can't comment on a document that hasn't even been
17 prepared yet.

18 Q. Well, that's fine, Mr. Bourassa. We'll move on to the
19 E Construction lien funds, paragraph 24. You see that?

20 A. Yes.

21 Q. You understand that approximately \$4.432 million will
22 be disbursed as security for the E Construction lien if
23 the settlement agreement is approved?

24 A. Yes.

25 Q. Now, I understand that Mr. Bourassa, from a review of
26 your affidavit, and, in particular, paragraph 9 of your
27 affidavit -- could I direct your attention there?

1 A. Yes.

2 Q. There is a number of claims that have been made against
3 the Surety and that are disputed --

4 A. Yes.

5 Q. -- by Western Surety; is that correct?

6 A. Yes.

7 Q. And one of those claims is made by Michels; is that
8 correct?

9 A. Yes.

10 MR. MACLEOD: I've got the Michels statement of
11 claim, and I'm going to mark that as the next exhibit,
12 please.

13 **EXHIBIT O - FOR IDENTIFICATION -**

14 **Michels Canada Co. statement of claim**

15 MR. MACLEOD: Let's just go off for a second.

16 (DISCUSSION OFF THE RECORD)

17 MR. MACLEOD: And then I've also got the
18 statement of defence filed by the Surety in the Michels
19 action. We'll mark that as the next exhibit, please.

20 **EXHIBIT P - FOR IDENTIFICATION -**

21 **Statement of defence filed by Western**
22 **Surety in the Michels action**

23 (DISCUSSION OFF THE RECORD)

24 Q. MR. MACLEOD: And then you've also been sued by
25 Corix; is that correct?

26 A. Yes.

27 Q. Okay. Mr. Scott has passed you a copy of this

1 statement of claim filed by Corix.

2 MR. MACLEOD: We'll mark that as next exhibit,
3 please.

4 **EXHIBIT Q - FOR IDENTIFICATION - Corix**
5 **Water Products LP statement of claim**

6 MR. MACLEOD: And you've defended the action by
7 Corix, and we'll mark that as the next exhibit, please.

8 **EXHIBIT R - FOR IDENTIFICATION -**
9 **Statement of defence filed by Western**
10 **Surety in the Corix action**

11 Q. MR. MACLEOD: And you've also been sued by
12 E Construction in relation to the RMWB claims; is that
13 correct?

14 A. Yes.

15 MR. MACLEOD: Okay. We'll mark that as the next
16 exhibit, please.

17 **EXHIBIT S - FOR IDENTIFICATION -**
18 **E Construction Ltd. statement of claim**

19 Q. MR. MACLEOD: And, finally, you've also been
20 sued by Wilco in relation to the RMWB projects; is that
21 correct?

22 A. Yes.

23 MR. MACLEOD: Okay. We'll mark that as the next
24 exhibit, please.

25 **EXHIBIT T - FOR IDENTIFICATION - Wilco**
26 **Contractors Northwest Inc. statement of**
27 **claim**

1 Q. MR. MACLEOD: Now, on the three projects that
2 are at issue in this litigation, Sprague was in direct
3 contact -- contract, sorry, with RMWB who was the owner
4 of the projects; is that correct?

5 A. Yes.

6 Q. And then various statements of defence that I have
7 shown to you are statements of -- statements of claim
8 that have been initiated by the subcontractors, and
9 they named the Surety as a result of its issuing the
10 L & M bond; is that correct?

11 A. Yes.

12 Q. Okay. So the circumstance is such that Sprague is a
13 prime contractor and the various subtrades are the
14 subcontractors; is that correct?

15 A. Well, Sprague-Rosser is the principal named in the
16 labour and material payment bond.

17 Q. Sure, I understand that.

18 A. And the various claimants are claimants under the L & M
19 bond.

20 Q. And the subcontractors, in this instance, would have
21 engaged in work on the projects and done various work
22 to advance the completion of the prime contracts that
23 Sprague was party to with the owner; is that correct?

24 MS. SIDNELL: Well, he doesn't know what the
25 subcontractors did --

26 Q. MR. MACLEOD: Sure. Is that correct,
27 Mr. Bourassa?

1 MS. SIDNELL: No. He doesn't know what the
2 subcontractors did or did not do. So why would he
3 answer that question?

4 MR. MACLEOD: Sure.

5 **OBJECTION TAKEN to answering the question: And the**
6 **subcontractors, in this instance, would have engaged in**
7 **work on the projects and done various work to advance**
8 **the completion of the prime contracts that Sprague was**
9 **party to with the owner; is that correct?**

10 Q. MR. MACLEOD: Would you agree with me,
11 Mr. Bourassa, that if a subcontractor defaulted or
12 failed to perform on a subcontract that it had with the
13 contractor, that default or failure to perform would
14 adversely influence the ability of a contractor to
15 recover against a claim against the owner?

16 MS. SIDNELL: Object. It's a hypothetical
17 question.

18 MR. MACLEOD: Sure. That's fine, Ms. Sidnell.

19 **OBJECTION TAKEN to answering the question: Would you agree**
20 **with me, Mr. Bourassa, that if a subcontractor**
21 **defaulted or failed to perform on a subcontract that it**
22 **had with the contractor, that default or failure to**
23 **perform would adversely influence the ability of a**
24 **contractor to recover against a claim against the**
25 **owner?**

26 MR. MACLEOD: Can we just go off for a second.

27 (DISCUSSION OFF THE RECORD)

1 (ADJOURNMENT)

2 Q. MR. MACLEOD: Mr. Bourassa, I would just like to
3 go to paragraph 17 of your affidavit. And this is the
4 discussion about the certificates of substantial
5 completion that have been appended to your affidavit.
6 Have you ever gone into the data room that is
7 referenced in paragraph 17 of the affidavit or are you
8 solely relying on what Mr. O'Connor is advising you
9 about that --

10 A. I'm --

11 Q. -- production?

12 A. I'm relying on what Mr. O'Connor has advised me.

13 Q. Okay. Do you know if there is with respect to certain
14 of the substantial -- certificates of substantial
15 performance that you've produced in evidence that there
16 was e-mails associated with those certificates of
17 substantial performance?

18 A. I don't think I've ever seen any e-mails.

19 Q. Okay. By e-mails, were they in the data room, were
20 they attached to e-mails with them or were there
21 otherwise e-mails associated with them in the data
22 room? Did Mr. O'Connor ever advise you --

23 A. No.

24 Q. -- about anything like that?

25 A. No.

26 MR. MACLEOD: Okay. And, I don't know, I've
27 never been in the data room myself, just to be clear,

1 Ms. Sidnell, but I understand that there are actually
2 some e-mails associated with two of the certificates of
3 substantial performance and that those were, in fact,
4 produced to BLG.

5 Q. Are you aware of that, Mr. Bourassa?

6 A. I have no knowledge of that.

7 MR. MACLEOD: Okay, sure. We'll mark those two
8 e-mails as the next two exhibits, please. And these
9 are the certificates of substantial performance
10 associated with the records contained at Exhibit H to
11 Mr. Bourassa's affidavit.

12 MS. SIDNELL: I think you just said these are
13 the certificates of substantial performance associated
14 with the documents at H which are also certificates of
15 substantial performance.

16 MR. MACLEOD: That's right. What I'm getting at
17 here, Ms. Sidnell, is I understand that there was also
18 some e-mail correspondence produced to BLG that was not
19 actually put into the affiant's affidavit, and I'm
20 simply introducing that into the record. Like I said,
21 I haven't been in the document. I'm just curious as to
22 why that wasn't produced. I'm not going to ask the
23 witness anything about it because he has no knowledge
24 of it. So we'll just mark those exhibits and perhaps
25 we'll ask Mr. Moskal about them this afternoon.

26 MS. SIDNELL: Can you just tell me which one is
27 U and which one is V? I just made an assumption here

1 and perhaps that's incorrect.

2 MR. MACLEOD: Oh, I was going to mark them
3 collectively so we can perhaps avoid that.

4 MS. SIDNELL: Okay.

5 (DISCUSSION OFF THE RECORD)

6 MR. MACLEOD: So that's U.

7 **EXHIBIT U - FOR IDENTIFICATION - Two**
8 **e-mail chains between Mr. Schening and**
9 **Mr. Moska1 dated October 17, 2013**

10 (DISCUSSION OFF THE RECORD)

11 Q. MR. MACLEOD: On November 19th of this year,
12 Mr. Bourassa, Western brought an application to
13 cross-examine the receiver. Are you aware of that
14 application?

15 A. It would have been November 19th of last year I would
16 think.

17 Q. Yes. What did I say, sorry?

18 A. You said this year.

19 Q. Oh, sorry, November 19th, 2015. Thank you for that
20 clarification. You're aware of that application?

21 A. An application to cross-examine? Yes.

22 Q. Correct, an application to cross-examine the receiver
23 brought by Ms. Sidnell on November 19th, 2015. You're
24 aware of that application?

25 A. Yes.

26 Q. Okay. I've got a transcript from the proceedings, and
27 I'm just going to read something to you that

1 Ms. Sidnell stated on the record. She stated: (As
2 read)

3 Western's concern is this settlement is
4 truly improvident. Its concern is that
5 the settlement should be well over 10
6 million at least, not 4 million.

7 Was that statement consistent with Western's position
8 on this application?

9 A. Yes.

10 Q. Okay. And that was consistent as of November 19th. Is
11 it still consistent as we sit here today?

12 A. Yes.

13 Q. Okay. And the receivership order was issued on July
14 31, 2014 in these proceedings. Are you aware of that?

15 A. I don't have a specific recollection of the date.

16 Q. In the period July 3, 2014 and following, has Western
17 ever made an offer to the receiver to acquire the
18 claims associated with the RMWB projects?

19 A. I don't believe so.

20 MR. MACLEOD: Okay, thank you. Thank you for
21 attending today, Mr. Bourassa. Those are all my
22 questions.

23 MS. SIDNELL: Can we go off the record, please.

24 (DISCUSSION OFF THE RECORD)

25 **Mr. Gorman questions the witness:**

26 Q. Mr. Bourassa, my name is Howard Gorman. I'm counsel
27 for the Royal Bank in these proceedings. So I will

1 refer to the "Royal Bank," and you will understand
2 that?

3 A. Yes.

4 Q. And, sir, you appreciate that you are still under oath
5 with respect to this questioning?

6 A. Yes.

7 Q. Sir, in paragraph 4(a) of your affidavit, you reference
8 various labour and material bonds that were issued by
9 Western to Sprague-Rosser?

10 A. Yes.

11 Q. And when were those issued, sir?

12 A. I'm just looking at Exhibit A which are copies of the
13 bonds.

14 Q. Right.

15 A. So bond 371583 was issued on May 30th, 2011. Bond
16 390225 was issued on May 17th of 2012, and bond 390274
17 was issued on January 14th of 2013.

18 Q. Now, sir, at the time of the issuance of these bonds
19 between 2011 and 2013, was Western Surety aware of
20 Royal Bank's secured lending interest with
21 Sprague-Rosser?

22 A. Well, during that period of time, I would not have been
23 involved. I only get involved when claims arise. So
24 the question you're asking me would be a question that
25 would be best answered by one of our underwriters.

26 Q. Okay.

27 A. So I guess I don't know the answer.

1 Q. Prior to issuing the bonds, do your underwriters
2 investigate the construction company applicant?

3 A. Typically, yes.

4 Q. And would that include reviewing their PPR
5 registrations over the secured creditors in place?

6 A. I -- I don't have personal knowledge of that.

7 Q. Do you know if they review the balance sheets, see the
8 economic stability of the applicant?

9 A. Oh, they certainly do that, yes.

10 Q. Review financial statements?

11 A. Yes.

12 Q. And with respect to these bonds, Western Surety would
13 have charged a premium?

14 A. Yes.

15 Q. And that would have been paid by Sprague-Rosser as the
16 applicant?

17 A. Yes.

18 Q. And you now have an understanding that Western did not
19 register any security with respect to those bonds until
20 2014?

21 A. Yes, that's correct.

22 Q. Okay. And at the time they made those registrations,
23 did Western become aware of the prior registrations of
24 the Royal Bank?

25 A. Yes.

26 Q. If they weren't aware previously through the
27 investigation process?

1 A. Yes.

2 Q. Did Western reach out to the Royal Bank seeking a
3 subordination or an intercreditor agreement?

4 A. Not that I'm aware of.

5 Q. Now, when did Western become aware that Sprague-Rosser
6 was removed from the project, and I think the
7 expression used is, "for convenience"?

8 A. Again, I wasn't -- I wasn't involved, at that point, so
9 I don't have personal knowledge.

10 Q. Did Western send anyone to site to see the level of
11 completion on the project?

12 A. I don't know.

13 Q. You're not aware of any reports or investigations as to
14 how far along the project was?

15 A. No. Again, that's -- that's an underwriting matter
16 that I don't get involved in.

17 Q. I'm talking after there was an issue with respect to
18 default. Are you aware of anyone going on site to view
19 the status of the construction?

20 A. I don't have any personal knowledge of that.

21 Q. Do you have any information in your understanding
22 contrary to Mr. Moskal's report as to how much was left
23 to be done on the projects when they were terminated?

24 A. I don't have any personal knowledge of that.

25 Q. Do you know if Western did any investigation as to
26 whether there was millions of dollars worth of work to
27 be done on the three various subject projects?

1 A. I don't know.

2 Q. Now, sir, in paragraph 19 of your affidavit, you come
3 to the conclusion that you're making the affidavit in
4 opposition to the receiver's settlement agreement. And
5 your affidavit is from January of 2016?

6 A. Yes.

7 Q. Is my understanding correct that when you swore the
8 affidavit you hadn't seen the settlement agreement?

9 A. I hadn't seen the settlement agreement itself, but I
10 was aware of the terms of that agreement.

11 Q. Okay. And that was through one of the receiver's
12 reports or the court filing materials?

13 A. Yes.

14 Q. And I believe you told Mr. MacLeod that Western Surety
15 did not make an offer to acquire or take over the
16 litigation by matching the settlement amount?

17 MS. SIDNELL: So are you asking the same
18 questions again?

19 MR. GORMAN: I'm just wanting to confirm that
20 that's correct.

21 MS. SIDNELL: I think he already answered the
22 question.

23 **OBJECTION TAKEN to answering the question: And I believe**
24 **you told Mr. MacLeod that Western Surety did not make**
25 **an offer to acquire or take over the litigation by**
26 **matching the settlement amount?**

27 Q. MR. GORMAN: How much did Western Surety ever

1 offer the receiver to take control of the litigation?

2 A. I am not aware of any offer having been made.

3 Q. Okay. What investigations did Western Surety undertake
4 with respect to the likelihood of the success of the
5 litigation?

6 MS. SIDNELL: What litigation?

7 MR. GORMAN: The litigation against the
8 Municipality that is proposed to be settled.

9 A. Well, we -- we reviewed information that had been
10 prepared by Sprague-Rosser with respect to the various
11 claims.

12 Q. What information was that, sir?

13 A. Oh, there was a letter that was prepared. I don't
14 recall the date.

15 Q. Prepared by whom?

16 A. By Sprague-Rosser.

17 Q. Do you remember who at Sprague-Rosser?

18 A. I don't.

19 Q. Is it by chance an exhibit? I don't recall having seen
20 it --

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

22 Q. Has Western Surety interviewed any of the possible
23 witnesses?

24 A. I don't know who you're referring to.

25 Q. Anyone from Sprague-Rosser? Have you had discussions
26 with Mr. Jessamine with respect to the Wood Buffalo
27 litigation?

1 A. I think there was some general discussion, yes.

2 Q. With whom and Mr. Jessamine?

3 A. With Mr. MacKay, I believe.

4 Q. Okay. And Mr. MacKay was formerly of Sprague-Rosser or
5 Western Surety?

6 A. Sprague-Rosser.

7 Q. Who from Western Surety spoke to Mr. MacKay,
8 Mr. Jessamine or any other officers with respect to
9 this litigation from Sprague-Rosser?

10 A. I believe the president of Western Surety did. His
11 name is Scott Donald.

12 Q. Okay. And what did Mr. Donald report to you with
13 respect to his discussions as it effects the likelihood
14 of success of the litigation?

15 A. I don't know that we ever had that discussion.

16 Q. Has Western Surety done analysis of the potential costs
17 of the litigation?

18 A. No.

19 Q. Have they done an analysis of what witnesses would be
20 produced in a Wood Buffalo litigation?

21 A. No.

22 Q. Done an analysis of the timeline or delays with respect
23 to pursuing that litigation?

24 A. No.

25 Q. You're aware that the Royal Bank supports the proposed
26 settlement?

27 A. Yes.

1 Q. Okay. Do you have any understanding or explanation as
2 to why the Royal Bank, who's got an outstanding secured
3 loan, would support an improvident settlement?

4 A. I have no idea.

5 MS. SIDNELL: And, as you know, he wouldn't tell
6 you what the Royal Bank thinks. That's not what he's
7 for. He's here to tell you what Western knows.

8 **OBJECTION TAKEN to answering the question: Okay. Do you**
9 **have any understanding or explanation as to why the**
10 **Royal Bank, who's got an outstanding secured loan,**
11 **would support an improvident settlement?**

12 MR. GORMAN: What I'm asking, and I believe
13 Mr. Bourassa was good enough to answer pre-objection,
14 is he aware of any evidence or information available to
15 Western that's not available to the Royal Bank.

16 MS. SIDNELL: He doesn't know what's available
17 to the Royal Bank, so that becomes very difficult,
18 don't you think?

19 Q. MR. GORMAN: What information does Western
20 Surety have with respect to the settlement other than
21 what has been put on the court record in the
22 receivership proceeding or is contained in the
23 pleadings in the claim as against Wood Buffalo?

24 A. I don't believe there is anything else.

25 MR. GORMAN: Thank you, Mr. Bourassa, those are
26 all my questions.

27 MS. SIDNELL: I just have one question for

1 Mr. Bourassa on re-examination, please.

2 **Ms. Sidnell questions the witness:**

3 Q. Mr. Bourassa, Mr. Macleod asked you about the claims
4 made by certain subcontractors against the L & M bond.
5 In relation to the claim by E.O.S., was there a lien
6 filed by E.O.S.?

7 A. Yes, there was.

8 Q. Do you know what happened to that lien?

9 A. It was vacated by court order and a lien -- a lien bond
10 was posted in its place.

11 Q. And the lien bond was posted by whom?

12 A. By Western Surety.

13 MS. SIDNELL: Thank you. Those are all my
14 questions.

15 _____
16 (Proceedings ended at 10:31 a.m.)
17 _____

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Certificate of Transcript

I, the undersigned, hereby certify that the foregoing pages 1 to 53 are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Calgary, Province of Alberta, this 27th day of January, 2016.

"Michele Gibson"

Michele Gibson, CSR(A)

Official Court Reporter

- I N D E X -

J. PAUL BOURASSA

January 25, 2016

The following is a listing of exhibits, undertakings and objections as interpreted by the Court Reporter.

The transcript is the official record, and the index is provided as a courtesy only. It is recommended that the reader refer to the appropriate transcript pages to ensure completeness and accuracy.

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7	Ladner Gervais LLP dated November 16th, 2015	
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11	Ladner Gervais LLP dated January 22nd, 2016	
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4	for Abasands	
5		
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14	payment information and bid price	
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16	17, 2013	

OBJECTIONS

OBJECTION TAKEN to answering the question: I've
got a copy of the receiver's sixth report here.
I'm wondering if you can direct me to where the
reference to the allocation of \$33,000 can be
found?

1 OBJECTION TAKEN to answering the question: Okay. 10

2 And I think that's, perhaps, the source of the
3 confusion because I didn't understand where
4 Ms. Sidnell was referencing the \$33,000 number
5 from in her letter. You admit, sir, that the
6 statement in Ms. Sidnell's letter that \$33,000 is
7 being allocated to the Abasands project and the
8 receiver sixth report is incorrect?

9

10 OBJECTION TAKEN to answering the question: Do you 12
11 know where the receiver obtained the information
12 in respect of its updated --

13

14 OBJECTION TAKEN to answering the question: And 15
15 Ms. Sidnell just helpfully clarified on the record
16 that Mr. Hillson acts for Wilco in this matter.
17 And this is an exchange of correspondence between
18 me and him on January the 7th of this year. And
19 you see I say in that correspondence: (As read)
20 Jon, thanks. Can you please send me a copy of the
21 contract between Wilco and Sprague-Rosser and --

22

23 OBJECTION TAKEN to answering the question: Are 17
24 you aware of how the receiver has been managing
25 the document production requests for Western in
26 the course of this project?

27

1 OBJECTION TAKEN to answering the question: If you 19
2 go to the second page of that correspondence,
3 Mr. Bourassa --

4

5 OBJECTION TAKEN to answering the question: Have 19
6 you seen any of these records before,
7 Mr. Bourassa?

8

9 OBJECTION TAKEN to answering questions on Exhibit 21
10 D

11

12 OBJECTION TAKEN to answering the question: 23
13 Perhaps you could just for the benefit of the
14 receivership estate ensure that your various firms
15 are coordinating amongst each other in respect --

16

17 OBJECTION TAKEN to answering the question: And 40
18 the subcontractors, in this instance, would have
19 engaged in work on the projects and done various
20 work to advance the completion of the prime
21 contracts that Sprague was party to with the
22 owner; is that correct?

23

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26

27

1 OBJECTION TAKEN to answering the question: Would 40
2 you agree with me, Mr. Bourassa, that if a
3 subcontractor defaulted or failed to perform on a
4 subcontract that it had with the contractor, that
5 default or failure to perform would adversely
6 influence the ability of a contractor to recover
7 against a claim against the owner?

8

9 OBJECTION TAKEN to answering the question: And I 48
10 believe you told Mr. MacLeod that Western Surety
11 did not make an offer to acquire or take over the
12 litigation by matching the settlement amount?

13

14 OBJECTION TAKEN to answering the question: Okay. 51
15 Do you have any understanding or explanation as to
16 why the Royal Bank, who's got an outstanding
17 secured loan, would support an improvident
18 settlement?

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