

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT

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JOHN AUFIERO, NEIL F.  
COLLINS, ROBYN L. DEFRANZO,  
DANIEL HYDE, PATRICK J.  
IRVING, THOMAS A. LEYNE,  
JOHN MAHONEY, JOSEPH E.  
MCCAIN, WILLIAM MCCARTHY,  
TIMOTHY MITSAKIS, LOUIS M.  
REMIGIO, SUSAN J. DESOUSA,  
Individually and Next Friend  
of CAMERON A. DESOUSA, JOHN  
DOE AND JANE DOE,  
Plaintiffs

CIVIL ACTION  
NO. 2005-2665

VS

CITY OF SOMERVILLE, JOSEPH  
CURTATONE, as Somerville  
Mayor, DONALD CALIGURI, as  
Former Somerville Police  
Chief, GEORGE MCLEAN, as  
former Somerville Police  
Chief, ROBERT TRAHAN,  
Individually and as former  
Head of Department of Public  
Works, ROBERT BRADLEY, as  
Somerville Police Chief,  
COMMONWEALTH OF  
MASSACHUSETTS, MITT ROMNEY,  
JOAN LANGSAM, as Former City  
Solicitor, PAUL ZIRPOLO, as  
DPW Project Manager, DOROTHY  
KELLY GAY, as former  
Somerville Mayor, ROBERT J.  
PREZIOSO, SIMPSON, GUMPERTZ  
& HEGER, INC., ENVIROTECH,  
VITHAL DESHPANDE, as  
Environmental Protection  
Engineer, and ANGELO R.  
BUONOPANE,  
Defendants

DEPOSITION OF ALBERT  
BARGOOT FEBRUARY 7, 2007

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DEPOSITION OF ALBERT D. BARGOOT, taken on behalf of the plaintiff pursuant to the Massachusetts Rules of Civil Procedure before Kathleen M. Benoit, Professional Shorthand Reporter and Notary Public in and for the Commonwealth of Massachusetts at the offices of the City Hall, 93 Highland Avenue, Somerville, Massachusetts, on Wednesday, February 7, 2007, commencing at 11:08 a.m.

APPEARANCES:

STEPHEN D'ANGELO, ESQ., and JAY M. WOLMAN, ESQ., D'Angelo & Hasham, 6 Beacon Street, Suite 505, Boston, MA 02108, For the plaintiff

CARLY B. GOLDSTEIN, ESQ., Donovan | Hatem, LLP, World Trade Center East, Two Seaport Lane, Boston, MA 02210, For the defendant, Simpson, Gumpertz & Heger, Inc.

MATTHEW BUCKLEY, ESQ., City of Somerville Law Department, 93 Highland Avenue, Somerville, MA 02149, For the defendant, City of Somerville

CYNTHIA J. STEPHENS, ESQ., Governo Law Firm, LLC, 260 Franklin Street, Boston, MA 02110, For the defendant, Envirotech



1 P R O C E E D I N G S

2 (Exhibit No. 119 marked.)

3 MR. D'ANGELO: We'll have the same  
4 stipulations as we've been operating under.

5 ALBERT D. BARGOOT, having been satisfactorily  
6 identified by a Massachusetts Driver's License and duly  
7 sworn by me, a Notary Public in the Commonwealth of  
8 Massachusetts, was examined and testified as follows:

9 DIRECT EXAMINATION

10 Q. (By Mr. D'Angelo) For the record, could you please  
11 state your name and address and where, you know, your job  
12 and occupation?

13 A. Sure. My name is Albert Bargoot, I'm the building  
14 inspector with the City of Somerville, the Mayor's Office  
15 of Strategic Planning Community and Development, and my  
16 address is 13 Luna Ave., Wareham, Mass.

17 Q. Wareham?

18 A. Mm-hmm.

19 Q. All right. Have you ever been deposed before?

20 A. Yes, I have.

21 Q. How many times have you been deposed?

22 A. Twice.

23 Q. So you understand when you're giving answers you

1 have to give them verbal. You can't nod your head or shake  
2 your head and so forth?

3 A. Yes.

4 Q. And if you need a minute to take a break or you  
5 need a break from the action, so to speak, you just have to  
6 let us finish the question and let us know that you want to  
7 take a break.

8 A. Okay.

9 Q. I don't expect to be all day here, so we'll move it  
10 along pretty quick as fast as we can.

11 A. Yea, actually, if you run past 11:45, you may have  
12 to pay me overtime. It's into my lunch hour.

13 Q. All right. So you're the building inspector for  
14 the City of Somerville?

15 A. One of the building inspectors, yes.

16 Q. Who is the chief building inspector for the City of  
17 Somerville?

18 A. That would be Mr. Paul Nonni, N O N N I. He is the  
19 senior building inspector.

20 Q. How long have you been the building inspector here  
21 in town?

22 A. Since April 15, 1999.

23 Q. What's your education, where did you go to school?

1           A. I graduated Somerville High School 1977, then I  
2 went on to Boston State College, a pre-engineering program  
3 at Northeastern University. Completed approximately 110  
4 credits. I didn't get a degree.

5           Q. Do you have any special licenses or any other --

6           A. I have a construction supervisor's license from the  
7 State of Massachusetts which covers me to construct and  
8 build buildings up to 35,000 cubic feet.

9           Q. When did you get that license?

10          A. Oh, gee, that was quite a while ago. Probably,  
11 around 1997, a couple of years before I started working  
12 this job.

13          Q. Prior to 1997 what kind of work did you do?

14          A. I was doing a little bit of this and a little bit  
15 of that. I did a lot of construction with my dad  
16 renovating burned-out buildings, that's how I learned about  
17 buildings and stuff, and then I worked at Dow Corning up in  
18 Billerica as a chemical technician. I worked at Vitek  
19 McDonald Douglas in Rockland also as a chemical technician,  
20 and I worked over here at the Schraft's building for some  
21 company there that makes pH meters and stuff like that. I  
22 was a chemical technician there also.

23          Q. So how did you become a building inspector for the

1 City of Somerville?

2 A. Well, basically with my license and my background  
3 and the job opened up, so I put in for it.

4 Q. And you were hired when?

5 A. I was actually hired as a parking control officer  
6 in 1991 by the City. I stayed there for approximately  
7 eight years, then I was on the Highway Department as a  
8 heavy equipment operator for approximately two years, then  
9 I became the building inspector in 1999.

10 Q. So you've been with the City for how long now?

11 A. About 16 years.

12 Q. And you say you live in Wareham. Had you lived in  
13 the City before that?

14 A. Yes, yes, I just recently moved there.

15 Q. Are you familiar with 220 Washington Street, the  
16 Public Safety Building?

17 A. Yes, I am.

18 Q. How are you familiar with that building?

19 A. Well, that's the police station and the Fire  
20 Prevention Department is down there.

21 Q. Have you had any occasion to ever inspect that  
22 building?

23 A. I was ordered by my boss to inspect that building

1 in 2004. I'm not sure of the approximate, the specific  
2 date. The summertime 2004.

3 Q. So you conducted an inspection in the summer of  
4 2004. What did the inspection encompass, what did you do?

5 A. We basically were there with other departments, the  
6 Board of Health, and we inspected, I inspected the building  
7 for building code issues.

8 Q. Did you fill out a report?

9 A. I'm not sure. I did do a memo, an interoffice  
10 memo, requesting some housekeeping things and things to be  
11 fixed.

12 Q. Do you know what prompted this 2004 inspection?

13 A. I guess there was a complaint in by the Police  
14 Department about air quality to the State Health Board or  
15 something.

16 Q. Did you have contact with the State regarding your  
17 inspection?

18 A. Well, they were there also setting up air quality  
19 monitors and doing what they needed to do, and we kind of  
20 conducted the inspection together as a group.

21 Q. Prior to that summer of 2004 inspection, had you  
22 ever been in that building to inspect it before that?

23 A. Yes, I was in the academy room to inspect it

1 because they have a certificate of inspection which for  
2 assembly uses requires a yearly inspection.

3 Q. And what do you do for that inspection?

4 A. Well, by the State Building Code I basically  
5 checked to make sure the fire alarm system has power and  
6 that they have two exits and that there's no life safety  
7 issues.

8 Q. Your job basically involves determining if a  
9 particular situation or the structure of the building meets  
10 code requirements?

11 A. Yes.

12 Q. And what do you use as a guide for that?

13 A. The 7th Edition, or the 6th Edition of the State  
14 Building Code 780, Commonwealth of Mass. Regulation.

15 Q. So that code falls under the 6th Edition?

16 A. Some, some parts of the building would. Basically,  
17 when the building was built, it would have been built to  
18 the code when the permits were taken out to build it.

19 Q. And that was in when, do you know?

20 A. I do not know.

21 Q. And when you build something, whatever year that  
22 might be, that's the Building Code Edition, the State  
23 Building Code that you use?

1 A. Correct.

2 Q. And that's the guidelines that you use for future  
3 reference as well?

4 A. Yes.

5 Q. Unless there was a major renovation done on the  
6 building?

7 A. Unless there's a major renovation done on the  
8 building or a change in use.

9 Q. Then you'd go to the current building inspection?

10 A. Then we would go to today's building code or the  
11 date that it was renovated.

12 Q. Right. During any inspections that you were over  
13 there fulfilling, whether it be an annual inspection,  
14 assembly room, what reports did you fill out, who did you  
15 report to with those reports?

16 A. Basically, I would send an interoffice memo to  
17 Frank Santangelo or whoever was in charge at the time of  
18 the buildings and grounds of the City of Somerville.

19 Q. Did you have any discussions with Frank Santangelo  
20 or anybody else at that time regarding the building's  
21 structural integrity?

22 A. No, I did not.

23 Q. This 2004 walk-through inspection that you were

1 conducting with the Department of Occupational Safety, were  
2 you there as an observer to see if code violations were a  
3 problem, or were you there just to observe?

4 A. I was told to do an inspection on the building, so  
5 I was there to check for code violations.

6 Q. Did you find any code violations on that particular  
7 inspection?

8 A. There is a general building code, Section 103,  
9 Maintenance, and basically there were some housekeeping and  
10 maintenance issues; they needed to clean up a few things  
11 and put some locks on some doors.

12 Q. Do you recall specifically what your inspection  
13 report or memorandum stated they had to do?

14 A. Not exactly. There were several, several things.  
15 Like I said, there was a bathroom, the light was out in the  
16 bathroom in the basement. There was some flooring missing  
17 from the elevator. Nothing major; basic maintenance  
18 issues.

19 Q. Did you ever have an opportunity to discuss with  
20 anybody the D.O.S. inspection that had taken place in 1998?

21 MR. BUCKLEY: Did you say 1998?

22 MR. D'ANGELO: 1998.

23 A. No, not that I recall.

1 Q. Did anybody make you aware an inspection was done  
2 in 1998?

3 A. The, my office did receive some engineering report.  
4 I'm not sure what year that was made.

5 Q. The Board of Health, is that a separate division  
6 from the building inspector's office?

7 A. I believe it was in 2004 but now we're in the same  
8 department.

9 Q. So it's one and the same. Do you know when that  
10 became one and the same?

11 A. Actually, it unofficially became the same and it's  
12 still being voted on. It still hasn't been officially  
13 voted on by the aldermen.

14 Q. So as of right now it's still separate departments?

15 A. Right now it's kind of in a gray area. We are in  
16 the same department on paper, but it has not been approved  
17 by the Board of Aldermen I don't believe.

18 Q. Do you have any oversight or authority to do health  
19 inspection --

20 A. No, I do not.

21 Q. -- investigations? Who does that?

22 A. There's actually two. There's the Health  
23 Department and the Board of Health. There's two separate

1 departments. I'm not very familiar with how they're  
2 arranged.

3 Q. So when you're doing your inspection and you see an  
4 issue which is really not a building inspection problem,  
5 it's more of a Health Department or health inspection  
6 problem, would you notify them of that issue?

7 A. Yes, I would.

8 Q. When you were going through the building on that  
9 particular time in 2004, was somebody accompanying you for  
10 the inspection, Health Department people?

11 A. Yes, there was.

12 Q. Do you know who that person was?

13 A. I believe Guy Suffreg was there --

14 Q. What's his job?

15 A. -- or Michelle Bowler. I'm not sure if they were  
16 both there. They're both health inspectors.

17 Q. There was another inspection done by the Department  
18 of Occupational Safety in 2001. Were you involved with  
19 that inspection?

20 A. No.

21 Q. Did anybody show you the inspection when it was  
22 done in 2001 before you went into your 2004 inspection?

23 A. Not that I can recall.

1 Q. Well, at that time what kind of buildings were you  
2 inspecting, what assignments were you getting in 2001?

3 A. In 2001 I was actually on complaints and field  
4 inspections inspecting various two and three-family homes  
5 in the city that would renovate bathrooms and kitchens and  
6 things like that.

7 Q. So your typical day as a building inspector back in  
8 2001 would have been, well, describe what you would have  
9 done in a typical day.

10 A. I would go out and check framing and things of new  
11 construction or renovations in the building, and then if  
12 there was a complaint that someone's handrail was loose or  
13 missing, I would go out and inspect that and cite the  
14 people for whatever violations there were.

15 Q. In 2001, do you know who would have been the person  
16 that would have been in contact with the Department of  
17 Occupational Safety that worked in your department?

18 A. I don't believe we have any direct contact or  
19 indirect contact with them. If it were, I would assume it  
20 would be Paul Nonni, the senior building inspector.

21 Q. Do you know if anybody from your office inspected  
22 220 Washington Street prior to 2004?

23 MR. BUCKLEY: If you know.

1 A. No, no, I don't know actually.

2 Q. Do you know who would know?

3 A. I imagine, again, Paul Nonni, the senior building  
4 inspector.

5 Q. Do you know how long he's been there?

6 A. He's been there, I believe, 20 years or so.

7 Q. Do you know if he accompanied you on that 2004  
8 inspection?

9 A. No, he did not.

10 Q. Do you know why he didn't go?

11 A. Because basically his job is a foreman; he's a  
12 senior building inspector and he basically directs us on  
13 what to do.

14 Q. Do you know what happened to the report that you  
15 filled out in 2004?

16 A. I didn't fill out a report. I basically did some  
17 interoffice memos to the head of the buildings and grounds.

18 Q. Do you know what happened to those memos?

19 A. I don't. I sent it upstairs to him and that's  
20 usually the way the city buildings are handled.

21 Q. Do you keep a copy of those for your files?

22 A. Usually not, no.

23 Q. Would it be in a computer hard drive someplace that

1 you would have saved a copy?

2 A. It could be on my computer hard drive.

3 Q. Do you keep a file of what goes on at 220

4 Washington Street as far as complaints go?

5 A. I personally do not keep a file. The department  
6 does have a file on every building in the City, and if  
7 there was a complaint, it would probably be in that file.

8 Q. Who receives that file?

9 A. I imagine it would be the superintendent, George  
10 Landers, who oversees the whole department, so.

11 Q. Do you know how long George Landers has been there?

12 A. He's only been there since 2003 I believe.

13 Q. Do you know who his predecessor was?

14 A. His predecessor was Mike Foley who was there for a  
15 couple of years and then left to different jobs.

16 Q. Where is Mike Foley these days?

17 A. He is actually working up in Framingham. He's the  
18 acting commissioner, building commissioner in Framingham.

19 MR. D'ANGELO: Before we go any further, I  
20 want to make note of Exhibit 119, which is the Notice of  
21 Taking Deposition of Al Bargoot, the building inspector.

22 Q. Now, there were a number of complaints made by the  
23 police and the fire people about that building. Did you

1 ever log any of those complaints in, receive any of those  
2 complaints?

3 A. I never received any of those complaints.

4 Q. I'm going to show you Exhibit No. 81. Have you  
5 ever seen any of those complaints?

6 (Document Perusal.)

7 A. No, I have never seen this complaint.

8 MR. BUCKLEY: Let me see it for a second.

9 (Document Perusal.)

10 A. Dead mouse, that would be a Board of Health issue.

11 Q. Let me show you Exhibit No. 84. Have you seen that  
12 one?

13 (Document Perusal.)

14 A. No, again, this complaint was not sent to me. This  
15 is a heat complaint that would have been sent to probably  
16 the building superintendent.

17 Q. I'm going to show you Exhibit No. 83. See if  
18 you've seen any of those. There's 52 pages if you want to  
19 go through them real quick.

20 (Document Perusal.)

21 A. A lot of these are repeats about ceiling tiles  
22 leaking and bugs and odors, and none of them actually have  
23 to do with the building code, so I have never seen those.

1 I don't believe we have those in our file.

2 Q. If you had received some of these complaints, would  
3 this have fallen under the auspices of the building  
4 inspectors?

5 MR. BUCKLEY: Objection. Go ahead, you can  
6 answer.

7 A. Perhaps the tiles, leaking tiles, ceiling tiles  
8 would have to be changed, a maintenance issue.

9 Q. So it's your testimony today that you've never seen  
10 any of this before?

11 A. I have never seen any of that before.

12 Q. Did anybody file any other types of complaints over  
13 at the building inspector's office regarding things that  
14 you'd be responsible for, such as ceiling tiles and no heat  
15 in the building and things like that?

16 MR. BUCKLEY: Objection. If you know. I  
17 mean there could be -- you're asking him to answer about  
18 what the whole department -- no, no, no, I'm just trying to  
19 clarify. You're asking him what the whole department got.  
20 He's not in charge of the whole department. Go ahead.

21 MR. D'ANGELO: I'm not asking him for the  
22 whole department. I'm asking if he came across anything.

23 MR. BUCKLEY: All right, that's fine.

1 A. Personally I have not come across anything.

2 Q. In conversations with people in your department,  
3 have you had discussions about this building and these  
4 problems over there with anybody that works in that  
5 department?

6 A. While we were conducting the inspection, there was  
7 a person in the 911 room who had, and a lot of people in  
8 the building were saying basically what those complaints  
9 were, about fumes in the building and things like that, but  
10 none of them come under the building code, so.

11 Q. So fumes in a building would not be under the  
12 building code; ventilation system wouldn't be under the  
13 building code?

14 A. That would be in the mechanical code.

15 Q. So who oversees that for the City?

16 A. I imagine it would be the building superintendent.

17 Q. So do you have anybody that works for the building  
18 superintendent that has, that does inspections for  
19 ventilation systems, mechanicals?

20 A. Not that I'm aware of. Unless it was a brand new  
21 system, it would be inspected when it was installed by us,  
22 by the electrical inspectors or things like that.

23 Q. When you'd go out to a building, a three-family and

1 they're renovating the building, would that be something  
2 that you'd inspect to see if the heating plant was being  
3 put in properly?

4 A. No, I wouldn't.

5 Q. Who would do that?

6 A. It would depend on what type of heat it was. If it  
7 was electric heat, it would be the electrical inspector.  
8 If it was gas heat, it would be the gas inspector.

9 Q. So the gas inspector is responsible for the HVAC  
10 system?

11 A. For the installation of it.

12 Q. So if you got a complaint from somebody about the  
13 HVAC system in a commercial building here in the City of  
14 Somerville, what person in your office would go out and  
15 investigate that?

16 A. Again, if it was a new system, it would be us. If  
17 it was a building like this (indicating), it would be the  
18 building superintendent on a maintenance issue.

19 Q. And how often does the building superintendent go  
20 out on these inspections or maintenance issue?

21 MR. BUCKLEY: Objection. Go ahead.

22 Q. If you know.

23 A. I have no idea.

1 Q. Well, when D.O.S. was out there in December of  
2 2004, was that a maintenance issue?

3 MR. BUCKLEY: Objection. Go ahead.

4 A. I believe it was an air quality issue. They were  
5 complaining about the air quality.

6 Q. So who besides you were there to do that  
7 inspection?

8 A. The superintendent of buildings was there.

9 Q. And that would be?

10 A. Frank Santangelo.

11 Q. And he is the person that takes care of the air  
12 ventilation systems?

13 A. On the existing systems, yes.

14 Q. And does he have any authority to write up a code  
15 violation?

16 A. No, he would do a work order to have something  
17 checked or fixed or replaced.

18 Q. So who oversees the ventilation system in  
19 commercial buildings here in the City of Somerville?

20 A. On a new installation --

21 Q. I'm not talking about new installations; I'm  
22 talking about --

23 A. On an old installation if there was an issue, it

1 would be on the owner of the building to obtain an engineer  
2 or mechanical engineer to certify that whatever was there  
3 was sufficient as per the mechanical.

4 Q. So you don't have any authority to write up a, for  
5 a violation for anybody who violates part of the code on a  
6 commercial building?

7 MR. BUCKLEY: Objection as to what part of  
8 the code are you talking about?

9 MR. D'ANGELO: Let me finish my question.

10 MR. BUCKLEY: I just want to know what code  
11 it was we're speaking of.

12 Q. The building code has a segment in it which defines  
13 air handling systems, correct?

14 A. Yes.

15 Q. Okay. And you, as a building inspector, are  
16 supposed to be familiar with the code for air handling  
17 systems, correct?

18 MR. BUCKLEY: Objection.

19 A. Correct.

20 Q. So if one was malfunctioning or didn't function the  
21 way it should be, you'd have authority to cite that owner  
22 of that building for a violation of that part of the code,  
23 correct?

1 MR. BUCKLEY: Objection.

2 A. I wouldn't have any way of knowing if it was  
3 working properly or not because that's not under my  
4 jurisdiction.

5 Q. So if you ran into that scenario in your several  
6 years of being an inspector, have you run into that  
7 scenario where you had a problem with the air conditioner  
8 handling system?

9 A. No, I have not.

10 Q. Do you know anybody within your department that's  
11 run into that problem?

12 A. Not that I'm aware of, no.

13 Q. So when you're out at the City of Somerville Public  
14 Safety Building and there's an issue with the air handling  
15 system, you would still have the authority, if you saw that  
16 there was a problem there, to authorize further  
17 investigations into it by telling them to hire an engineer?

18 MR. BUCKLEY: Objection. Go ahead.

19 A. On an existing building, again, it would be more of  
20 a maintenance issue where we would tell the superintendent  
21 to get things checked or get things fixed or replaced.

22 Q. So fumes coming into a building, which are the  
23 complaints that are in here, several complaints that you

1 just read, that wouldn't be something that you would think  
2 would be necessary to further investigate?

3 A. Well, it would depend where the fumes were coming  
4 from.

5 MR. BUCKLEY: Objection to that last  
6 question.

7 Q. Well, how would you know where they were coming  
8 from unless you did an investigation?

9 A. Well, if they have the windows open, they could be  
10 coming in from the windows. Some offices don't have  
11 windows so that it would possibly be coming in through the  
12 HVAC, but I would have no way of knowing that.

13 Q. So how would you do your investigation to find out?

14 A. I would have the building superintendent call the  
15 maintenance people to come and check it.

16 Q. If the superintendent didn't act on it, what then?

17 A. I have no jurisdiction over the superintendent.

18 Q. So do you have any jurisdiction over any buildings  
19 to, on your own, independently write up a building for  
20 having code violations?

21 A. Yes.

22 Q. And you do that on a frequent basis?

23 A. How often is frequent?

1 Q. I don't know what your job entails. You know, do  
2 you write people up on a weekly, monthly basis, if you  
3 know?

4 A. Maybe two or three times a year. Right now I don't  
5 do complaints.

6 Q. When you were doing complaints and the owner of a  
7 building didn't fix a complaint in the time that you  
8 specified, what would be your next step?

9 MR. BUCKLEY: Objection.

10 A. Basically to send them a letter and give them, you  
11 know, notice, due process of what the violation is, what's  
12 broken and what needs to be fixed and how long for the time  
13 we give them to fix it.

14 Q. Did you do any of that on the Somerville Public  
15 Safety Building at any time?

16 A. No, I did not.

17 Q. In your memo that you sent to Santangelo, did you  
18 give him any specific time frame as to when these repairs  
19 should be finished?

20 A. No, I did not.

21 Q. Did you go back at any time and look and see if  
22 they completed any of these repairs?

23 A. Yes, I did.

1 Q. When did you go back?

2 A. I went back approximately 30 days later.

3 Q. And what did you observe then?

4 A. I believe I gave them six things to correct, and  
5 out of the six things four things were corrected.

6 Q. Do you recall what the other things were that  
7 weren't corrected?

8 A. Yes, there were some small cracks in the handicap  
9 ramp coming up to the Washington Street side of the  
10 building, and there was also a hole where the gas line went  
11 in at the front of that building where a mouse or something  
12 could go in or heat loss from the building, things like  
13 that, and those two things I don't believe were corrected.

14 Q. Do you recall other things that were corrected?

15 A. Yes. They had put a lock on the bathroom door in  
16 the basement, they retiled the floor in the elevator, I  
17 believe all the ceiling tiles were changed in the academy  
18 room, and the fourth thing I don't recall.

19 Q. I'm going to show you the 1998 D.O.S. report. I  
20 want to see if you've ever seen any of those documents  
21 before. Those are Exhibits No. 53 and No. 96.

22 (Document Perusal.)

23 A. No, I have never seen either of these reports. One

1 is addressed to Harry Vaughn, he is in the Health  
2 Department, and the other one is to the, it says chief  
3 engineer, but Kevin Kelleher is the fire chief. So these  
4 were not sent to me or my department.

5 MR. BUCKLEY: I think that's actually his  
6 formal title, chief engineer of the Fire Department.

7 Q. I'm going to show you Exhibit No. 87 and 88 and 86.  
8 Have you seen those documents before?

9 (Document Perusal.)

10 A. No, I have not seen any of these reports before.  
11 They were all sent to Vithal Deshpande, the environmental  
12 officer?

13 MR. BUCKLEY: That's V I T H A L, D E S H P A  
14 N D E, I believe.

15 Q. I'm going to show you Exhibit No. 66-A.

16 (Document Perusal.)

17 A. No, I have never seen this report.

18 Q. Can you note the date on that report?

19 A. October 21, 2004.

20 Q. And it's from the Department of Occupational  
21 Safety?

22 A. Yes.

23 Q. And could you also read down here in this

1 paragraph, the first one (indicating), do you recognize  
2 your name in there?

3 A. Yes. September 14th and the 21st of 2004, I would  
4 imagine it has my name on here that I did an inspection on  
5 the building.

6 Q. Okay. So back in, this is the 2004 inspection that  
7 you accompanied these folks on?

8 A. Yes.

9 Q. And you never received a copy of this report after  
10 the inspection?

11 A. Personally, I've never seen that report. There may  
12 be a copy in the file; I don't know.

13 Q. I believe you were cc.'d on this report.

14 (Document Perusal.)

15 Q. Yes, you'll note here on the bottom of page 21 of  
16 30 that you were given a copy of this?

17 MR. BUCKLEY: Objection.

18 A. That's -- to my recollection I have never read it.  
19 There may be a copy in the file.

20 Q. When you get reports like this, you wouldn't have  
21 read it?

22 A. A lot of times it's reference to a building address  
23 and it just goes in to be filed.

1 Q. Do you have any meetings with anybody regarding  
2 this report?

3 A. No, I never had any meetings regarding that report.

4 Q. Nobody told you about any of the recommendations  
5 and corrective actions needed that were in this report?

6 A. No.

7 Q. Had you seen this beta engineering report that's  
8 discussed in here that was from 1999? This is Exhibit  
9 No. 100.

10 (Document Perusal.)

11 A. Yes, I have seen this. There is a copy of this in  
12 our file I believe.

13 Q. Have you read that thoroughly at any time?

14 A. Before I did the inspection I had read it, yes.

15 Q. And it indicated a number of structural  
16 deficiencies in that building?

17 A. Yes, it did.

18 Q. Would that fall under your jurisdiction?

19 A. Yes, it would.

20 Q. Did you write up the City for any of those  
21 structural deficiencies?

22 A. No, I did not.

23 Q. Why not?

1           A. Basically, because they're all maintenance issues  
2 and it would have been handled verbally or interoffice  
3 memo, and it's already been stated by these people; it  
4 wouldn't fall under my jurisdiction.

5           Q. So you wouldn't set up --

6           A. I wouldn't cite the City for things that they  
7 basically already had been cited for.

8           Q. They weren't cited in this report. They were told  
9 they needed to fix these things. So who manages or  
10 monitors that process?

11                   MR. BUCKLEY: Objection. Go ahead.

12           A. I'm not sure. I would guess that it would be  
13 either the building commissioner or the building  
14 superintendent.

15           Q. Here in the City of Somerville do you oversee any  
16 commercial buildings the size of 220 Washington Street?

17           A. What do you mean oversee?

18           Q. Have you gone in and inspected any buildings, you  
19 know, like that are 10, 15, 20 years old?

20           A. Yes.

21           Q. And found code violations on those buildings that  
22 needed to be fixed?

23                   MR. BUCKLEY: Objection.

1           A. No, because basically the inspections that I've  
2 done in the larger buildings I have checked to see the fire  
3 alarm's working and I checked to see if the exits, the  
4 doors are able to allow people to get out. It's a cursory  
5 inspection.

6           Q. If you had a report like this given to you on a  
7 commercial building in town that had these structural  
8 deficiencies in it, would you follow up on it?

9                       MR. BUCKLEY: Objection.

10          A. I don't know.

11          Q. Well, you're the code enforcement officer here in  
12 the City of Somerville. If you don't do it, who would do  
13 it?

14                       MR. BUCKLEY: Objection.

15          A. I guess the owner of the building would do it if  
16 they had the report generated.

17          Q. And would he be under any deadlines to fix those  
18 problems?

19          A. If it was something of a, something which was an  
20 imminent catastrophe, yes.

21          Q. Would you consider a structural steel beam that has  
22 cracks in it potentially significant?

23                       MR. BUCKLEY: Objection.

1           A. No, I wouldn't. I don't have the ability to  
2 evaluate that.

3           Q. But if you had a report from an engineering company  
4 that said there was imminent danger of failing at some  
5 point, what would you do?

6                       MR. BUCKLEY: Objection.

7           A. It would depend on what the building was used for  
8 and...

9           Q. Well, let's move on here. The second item they're  
10 talking about is preventing water from entering the  
11 building through the brick walls. When you were out doing  
12 your inspections, did you see water enter that building at  
13 any time?

14          A. No, I did not.

15          Q. Did you see any water stains on the building  
16 anywhere?

17          A. Yes, I did.

18          Q. So that gives you an indication there were some  
19 water problems in the building?

20          A. Well, a lot of, even the Statehouse, the roof is  
21 leaking, they did a brand new roof, it's a maintenance  
22 issue. If there's water leaking, they have to get it fixed  
23 basically. It's not something you consider imminent

1 danger.

2 Q. Not imminent danger but it can cause structural  
3 problems within the building if it leaks?

4 A. Possibly.

5 Q. And severe water damage can cause mold growth in a  
6 building?

7 MR. BUCKLEY: Objection.

8 A. Possibly.

9 Q. Have you ever observed any mold growth in this  
10 building at 220 Washington Street?

11 A. That doesn't fall under my jurisdiction, and from  
12 looking at things, you can't tell what they are without  
13 having them tested.

14 Q. Well, did you observe anything in that building  
15 that would have said we should do further testing to find  
16 out what this stuff is?

17 A. That's not under my jurisdiction but I believe they  
18 did do that.

19 Q. Whose jurisdiction would it be under?

20 A. That would be probably the environmental  
21 coordinator or the Board of Health.

22 Q. So the environmental coordinator is responsible for  
23 that?

1 A. Hazardous environmental conditions, yes.

2 Q. Items No. 3 on this report dated 2004 says "Replace  
3 and/or temporary repair the roofing material until the roof  
4 can be replaced, or prevent water from entering the  
5 facility through the roof." Do you know if that was ever  
6 done?

7 A. I believe a couple of times that roof was repaired.  
8 They did not pull a building permit but there was work done  
9 on it.

10 Q. Why wouldn't they pull a building permit?

11 A. Well, it wouldn't be required with a repair less  
12 than 25 percent of the roof.

13 Q. Did you ever make any observations on that roof?

14 A. Yes, I did.

15 Q. And what did you observe on it?

16 A. I observed a lot of patches on the roof.

17 Q. Was it more than 25 percent of the roof that had  
18 patches on it?

19 MR. BUCKLEY: Objection. Go ahead.

20 A. I don't believe it was but it's a very old  
21 building.

22 Q. And it says here, "prevent water from entering the  
23 building through windows and doorways/sliders." Did you

1 ever observe that as a problem?

2 A. Specifically with the water entering, no. Were  
3 there stains on the carpet and ceiling, yes.

4 Q. In your report that you sent to Frank Santangelo,  
5 which we don't have a copy of, but in your memorandum back  
6 in 2004 outlining these six things that needed to be fixed,  
7 did you mention anything about repairing the roof or  
8 preventing water from getting into the building in that  
9 report?

10 A. No, I didn't.

11 Q. Why not?

12 A. Probably because they were aware of it.

13 Q. Who was aware of it?

14 A. The superintendent of the building was aware of it.  
15 I mean there's a bucket with, you know, a water leak from  
16 the ceiling.

17 Q. So the owner of, you know, the person responsible  
18 for maintenance of the building knew about it, so they were  
19 just going to fix it?

20 A. Yes.

21 Q. Do you know if it's been fixed to date, any of  
22 these things?

23 A. No, I do not.

1 Q. And if you were in another similar type building  
2 that was commercial for some business here in the City of  
3 Somerville and you observed these things, would you write  
4 that up as a building code violation?

5 A. No, I would call the Board of Health.

6 Q. The Board of Health would write that up as a  
7 violation?

8 A. I believe they would.

9 Q. Did you call up the Board of Health to come in and  
10 ask them to inspect this water leaking problem in the  
11 building?

12 A. No, because they were with me on the inspection.

13 Q. It says "Once repairs are made and water  
14 infiltration to the building is eliminated, replace any  
15 water damaged materials. That would include ceiling tiles,  
16 wall materials, underlying insulation, window casings,  
17 carpeting and any other water damaged materials once the  
18 source of water infiltration for each is eliminated." Did  
19 you write that up as something that you recommended  
20 somebody to do in your report?

21 A. No, I did not. I spoke with the highway  
22 superintendent and requested him to cut some of the trees  
23 on the Merriam Street side which were touching the building

1 and they went out to cut them, and someone from the Police  
2 Department told him to leave them alone and not cut them.

3 Q. Do you know who that person was?

4 A. I believe it was the chief of police or the acting  
5 chief at that time.

6 Q. Do you know who that was?

7 A. I believe it was George McLean.

8 Q. So in terms of replacing these water damaged  
9 ceiling tiles, wall materials, and so forth, do you know if  
10 that was ever done?

11 A. I don't.

12 Q. It says here "Insure that ventilation from the  
13 basement area does not circulate to other areas of the  
14 building." That's the ventilation system. Is that under  
15 your responsibility?

16 MR. BUCKLEY: Objection. Go ahead.

17 A. I would have no way of knowing even with a plan how  
18 that air was circulating.

19 Q. "Remove all filtration media from supplies and  
20 exhaust throughout the building." Do you know what they  
21 meant by that?

22 A. Yes, on some of the vents coming into the room,  
23 they had a type of foam filter over it.

1 Q. Is that something that you'd normally do in a  
2 situation?

3 A. Not at all.

4 Q. Why not?

5 A. I believe at the time someone told them to remove  
6 all those because it was making the system work harder or  
7 work improperly or something like that.

8 Q. Did you ever go back to make sure that was taken  
9 care of?

10 A. No, I did not.

11 Q. "Replace carpeting where there has been water  
12 damage and where it presents a trip hazard." Do you know  
13 if the carpeting was replaced?

14 A. No, I do not.

15 Q. It says "Clean detail off and seal up wall  
16 openings; insure that exhaust from basement garage does not  
17 enter the office." Did you write that up in your report?

18 A. No, I didn't.

19 Q. Do you know if that was fixed?

20 A. I do not know.

21 Q. It says "Restore all exhaust ventilation systems to  
22 working order in the building. Increase ventilation in  
23 areas where insufficient or not working." Did you write

1 that up in your report?

2 A. No, I did not.

3 Q. And do you know if that was taken care of?

4 A. I do not.

5 Q. It says here "Increase ventilation to provide the  
6 recommended minimum of 6 air changes per hour." Do you  
7 know anything about that, did you report that to anybody?

8 A. No.

9 Q. Do you know if that was taken care of?

10 A. No.

11 Q. No, you do not know, or no --

12 A. I do not know.

13 Q. "Temperature control of the building: Provide  
14 occupants with a way to control temperatures within the  
15 work space; train methods to maintain consistent  
16 temperatures throughout the facility by installation of  
17 thermostats in all occupied areas of the building," do you  
18 know if that was accomplished?

19 A. No, I do not know.

20 Q. So even though some of the items that are in here  
21 are specifically building code requirements, there was  
22 never any follow-up on your part to see that they were  
23 taken --

1 A. Which --

2 MR. BUCKLEY: Wait. Objection.

3 A. Which specific item?

4 Q. Which specific items, okay, let's go back and look.

5 Well, let's go to the HVAC system, okay? That follows  
6 under the building inspector's responsibilities, correct,  
7 it's in the building code?

8 A. Yes.

9 Q. So that wasn't taken care of or followed up on?

10 A. I do not know.

11 Q. And the water leaking from the roof, that would  
12 also be under the auspices of the building inspector's  
13 office, correct?

14 A. Yes.

15 Q. And you don't know if that was ever taken care of?

16 A. I know they patched the roof. I don't know if that  
17 fixed it.

18 Q. And, again, today your testimony is that you  
19 received a copy of this report, according to them, but you  
20 don't remember reading through it?

21 MR. BUCKLEY: Objection.

22 A. If it was received, I didn't read it and it was put  
23 into the file.

1 Q. Did you attend any meetings with anyone regarding  
2 the Public Safety Building and estimates for fixing various  
3 things in the building?

4 A. No.

5 Q. Did anybody consult your department that you know  
6 of that would have asked about reviewing capital  
7 improvements on the building?

8 A. No.

9 Q. Do you know Gerry Boyle, capital projects  
10 management department?

11 A. Yes.

12 Q. Did you ever have any conversations with him  
13 regarding this building?

14 A. No.

15 Q. Did you ever in your department review any  
16 architectural plans that were brought to the building  
17 inspector's office to review for obtaining any permit to do  
18 work or to review plans for potential work that needed to  
19 be done in the building?

20 MR. BUCKLEY: Objection. Hold on. Are you  
21 asking him if he read any or whether his department got  
22 any?

23 MR. D'ANGELO: Whether he read any.

1 A. No.

2 Q. Do you know if anybody within your department ever  
3 saw anything like that?

4 A. I do not know.

5 Q. Do you know who would might know?

6 A. Paul Nonni, the senior building inspector might  
7 know.

8 Q. Do you know if he ever accompanied you on any of  
9 these inspection visits over at the --

10 A. No, he did not.

11 Q. He did not. Do you know if he ever went on his  
12 own, Hey, Al, I'm heading over to the Public Safety  
13 Building to take a look at some problems that they're  
14 having over there?

15 A. No.

16 Q. Did you ever have any meetings within your  
17 department regarding the Public Safety Building, issues  
18 that were involved with the health, safety and welfare of  
19 the people that were over there?

20 A. No.

21 Q. I'm going to show you Exhibit No. 69. This is a  
22 Foley-Buhl structural engineer's report that was dated  
23 August of 2005. Have you seen that?

1 MR. BUCKLEY: 69 you said?

2 MR. D'ANGELO: 2005. Oh, the exhibit number?

3 MR. BUCKLEY: Yes.

4 MR. D'ANGELO: What did I say it was?

5 MR. BUCKLEY: 69.

6 MR. D'ANGELO: 69.

7 (Document Perusal.)

8 A. No, I have never seen this.

9 Q. Did you attend any meetings where this was  
10 discussed?

11 A. No, that's not my job.

12 Q. And we've already established that you have seen  
13 Exhibit No. 100 which is the Beta Engineering report?

14 A. Yes, I have.

15 Q. Let me show you Exhibit No. 61, which is DiMarinisi  
16 & Wolfe, Architect and Urban Designers, dated January 23,  
17 2001. Have you ever seen that?

18 MR. BUCKLEY: I'm sorry, what number is this  
19 now?

20 MS. STEPHENS: 61.

21 A. No, I have never seen this.

22 Q. And Exhibit No. 70 is from Gerald Boyle regarding a  
23 structural engineer's, and JCH Consulting, Inc., discussing

1 various costs in the building, have you seen that report?

2 (Document Perusal.)

3 A. No, I have not.

4 Q. Exhibit No. 60, a complaint to the Somerville  
5 Health Department, anybody bring any of those issues to  
6 your attention, have you seen that complaint before?

7 (Document Perusal.)

8 A. No, I have not.

9 Q. Here is a letter, Exhibit No. 68. Have you ever  
10 seen any portion of that, those two pages?

11 (Document Perusal.)

12 A. No, I have not.

13 Q. So, but this letter is dated April 19, 2005, and  
14 they're talking about some of the same things that were  
15 discussed back in 2004. For instance, remove all  
16 filtration materials that were stuffed in the air vents  
17 restricting the flow. Address prominent roof leaks. It  
18 talks about the HVAC system. Did you have any contact with  
19 anybody that was following up on any work that was supposed  
20 to be done on the building as of 2004, that work completed  
21 by 2005?

22 A. No, only the maintenance issues that I had told to  
23 fix.

1 Q. So you didn't go back to Frank Santangelo and say  
2 I'm just doing a quick follow-up on my memo I sent out to  
3 you to see if you've done all these things that need to be  
4 done on the D.O.S. report or any other reports that we've  
5 gotten in that says this building needs to be fixed?

6 A. No, I only followed up on the things that I told  
7 him to fix.

8 Q. This is a JCH Consulting report that was done in  
9 2005. It's Exhibit No. 78. Have you seen that report?

10 (Document Perusal.)

11 A. No, I did not see this.

12 Q. I'm going to show you a report from 1999; it's  
13 Exhibit 31. Have you ever seen that report?

14 (Document Perusal.)

15 A. No, I have not. That wasn't sent to me.

16 Q. I'm going to show you Exhibit No. 29. This is the  
17 wall leakage investigation that was conducted by Simpson,  
18 Gumpertz & Heger in 1999 which that last exhibit was part  
19 of.

20 (Document Perusal.)

21 A. No, I have never seen this.

22 Q. So you weren't familiar with this report when you  
23 went in and did your inspection?

1 A. No.

2 Q. Had you heard about any other reports being  
3 completed on that building prior to your inspection in  
4 2004?

5 A. No, I didn't, and there seems to be quite a few of  
6 them.

7 Q. There are quite a few of them. I'm going to show  
8 you some photographs. These are pictures taken in 2005.  
9 When you were in doing your inspection in 2004, did you  
10 observe any of those pictures in there? This is Exhibit  
11 No. 15.

12 (Document Perusal.)

13 A. I have seen this --

14 Q. You're pointing to --

15 A. -- filter median over the ventilation, intake or  
16 exhaust, I'm not sure.

17 (Document Perusal.)

18 A. These, when we were there, they made them remove  
19 the filter things. I don't know why they're back on there.  
20 I have seen stained ceiling tiles before. It's hard to  
21 tell which room they're in and saying where they are. What  
22 was your question again?

23 Q. In your walk-through back in 2004, did you observe

1 any of these items?

2 A. The only one I can recall would be the filter  
3 median over the exhaust vents.

4 MR. BUCKLEY: Which exhibit is this, I'm  
5 sorry?

6 MS. STEPHENS: 15.

7 THE WITNESS: 15.

8 Q. Have you been in that building in the last 6 months  
9 to do any inspections?

10 A. Yes -- not to do inspections, no.

11 Q. What were you in the building for?

12 A. There was a seminar in the public safety room on  
13 emergency responding.

14 Q. Have you done any inspections at all in that  
15 building since your last inspection in 2004?

16 A. Just the follow-up inspection to check the items  
17 that I told them to fix.

18 Q. And if you observed something else that needed to  
19 be fixed at that time, did you note it in your reports?

20 A. I did not observe anything else that needed to be  
21 fixed.

22 MR. D'ANGELO: I don't have any further  
23 questions.

1 (Recess taken.)

2 CROSS-EXAMINATION

3 Q. (By Ms. Stephens) Hi, my name is Cindy Stephens. I  
4 represent Envirotech in this case. Does that name sound  
5 familiar to you, the company called Envirotech?

6 A. No.

7 Q. Do you know a person named Dan Greenblatt?

8 A. Dan?

9 Q. Dan Greenblatt.

10 A. No.

11 Q. How about a person named Ron Fallon?

12 A. No.

13 Q. Do you know what involvement the company Envirotech  
14 had in the 220 Washington Street building?

15 A. No.

16 Q. Now, I think you talked a little bit about the  
17 filter median that was on some of the vents in the  
18 building?

19 A. Yes.

20 Q. And I think you testified that they were, someone  
21 had told someone to remove them because they were  
22 interfering with the air flow?

23 A. The State air quality people told them that that

1 would hinder the proper working of the system.

2 Q. And do you know who the State Department told to  
3 remove them?

4 A. They went each -- we went into each room in the  
5 building. They told whoever was in there to take them  
6 down.

7 Q. When you say they told whoever was in there, do you  
8 mean an employee in the building?

9 A. Yes.

10 Q. So whoever was present in that room at that time  
11 they -- who told them to take them down?

12 A. The State, the State people that were doing the  
13 investigation told them that they should be removed.

14 Q. Okay. Do you know the name of the person from the  
15 State that said they should be removed?

16 A. No, I don't recall.

17 Q. Do you know if it was a man or a woman?

18 A. It was a woman.

19 Q. It was a woman?

20 A. Yea.

21 Q. And she spoke directly to an occupant of that  
22 particular room to tell them to take it down?

23 A. Yes.

1 Q. What did those people or that person say to her  
2 when she told them to take it down?

3 A. Most of the rooms where the people were in they  
4 took them down.

5 Q. Were you present at the time when they were taking  
6 them down?

7 A. Yes.

8 Q. Did they have to get on a ladder?

9 A. They were climbing on desks and chairs.

10 Q. Do you remember how many were removed total?

11 A. No, I do not.

12 Q. Do you remember if there were -- how many rooms did  
13 you go in when you did your inspection?

14 A. About 12.

15 Q. Was there one in every room?

16 A. Yes.

17 Q. More than one in every room?

18 A. Most had one, possibly two; I really don't  
19 remember.

20 Q. And were they in the ceiling or the floor or the  
21 walls?

22 A. They were in the ceiling.

23 Q. In the ceiling. So in all of the rooms that you

1 were in employees, occupants of that room would climb on a  
2 desk or chair and take it down, is that what you recall?

3 A. Yes.

4 Q. Do you know what they did with the filter after  
5 they took them down?

6 A. I believe they threw them away.

7 Q. Did you see that?

8 A. No.

9 Q. Have you been in the building since you saw people  
10 take those filters down?

11 A. No.

12 Q. So you never were able to go back in those rooms  
13 and observe whether the filters, whether there were any  
14 more filters there?

15 A. Well, I did go into the common hallways and they  
16 were removed and they were not there when I went back about  
17 a month later.

18 Q. Okay. Do you recall any conversations that the  
19 woman that asked them to remove the filters had with the  
20 people that were removing them?

21 A. She just told them that that's going to cut down  
22 the flow and they shouldn't be there.

23 MS. STEPHENS: I have no further questions.

1 CROSS-EXAMINATION

2 Q. (By Ms. Goldstein) I just have a couple. Good  
3 morning, Mr. Bargoot. My name is Carly Goldstein. I  
4 represent Simpson, Gumpertz & Heger, who is another  
5 defendant in this matter. Are you familiar with Simpson,  
6 Gumpertz & Heger?

7 A. Simpson?

8 Q. Simpson, Gumpertz & Heger?

9 A. No.

10 Q. Have you ever had any communications with anyone at  
11 Simpson, Gumpertz & Heger?

12 A. No.

13 Q. Are you aware of any involvement that they had in  
14 the Public Safety Building?

15 A. No.

16 MS. GOLDSTEIN: Okay, I have no further  
17 questions. Thank you.

18 MR. D'ANGELO: Okay, thank you for coming in.  
19 That's it.

20 (Whereupon the deposition adjourned at 12:24  
21 p.m.)

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WITNESS CERTIFICATE

I, ALBERT D. BARGOOT, do hereby certify that I have read the foregoing transcript of my testimony, and further certify that said transcript is a true and accurate record of said testimony

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2007.

\_\_\_\_\_  
ALBERT D. BARGOOT

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COMMONWEALTH OF MASSACHUSETTS

I, Kathleen Benoit, a Notary Public in and for the Commonwealth of Massachusetts, do hereby certify there came before me on February 7, 2007, the person hereinbefore named was duly sworn to testify to his knowledge concerning the matters in controversy in this cause; that he was thereupon examined upon oath, and that the deposition is a true record of the testimony given by the witness.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal March 3, 2007.

Kathleen M. Benoit  
Notary Public

My commission expires  
May 25, 2012

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