

File No. CI15-01-98227
Appeal No. _____

IN THE COURT OF QUEEN'S BENCH FOR MANITOBA
JUDICIAL CENTRE OF WINNIPEG

BETWEEN

PATRICK GUILBERT AND GUILBERT ENTERPRISES LTD.

Plaintiffs

and

ECONOMICAL MUTUAL INSURANCE COMPANY,
TRADING AS THE ECONOMICAL INSURANCE GROUP

Defendants

TRIAL
Volume 3
(Excerpt)
(Pages T1 – T57)

October 17, 2018
Winnipeg, Manitoba

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1 Proceedings taken in the Court of Queen's Bench, Winnipeg, Manitoba

2

3

4 October 17, 2018

Morning Session

5

6 The Honourable Mr. Justice

The Court of Queen's Bench

7 D. Kroft

for Manitoba

8

9 M. Davids

For the Plaintiffs

10 S. Fast

For the Plaintiffs

11 M. Finlayson

For the Defendants

12 G. Lisi

For the Defendants

13 D. Delaronde

Court Clerk

14

15

16 **PATRICK KELLY GUILBERT, Previously Sworn, Cross-examined by Mr.**
17 **Finlayson**

18

19 Q MR. FINLAYSON:

Well, Mr. Guilbert, there were signs,
20 from time to time, on the stairs up to the apartments indicating Gill and
21 Schmall condo units for sale?

22

A Correct.

23

24 Q Now, speaking for myself, at least I was never in the receiving area of your
25 store, and so I never saw live and up close the trap door or the hatch to the
26 attic. So I just want to go through the -- the process. We've talked about the
27 trap door to the basement being within that sort of U-shaped area in the
28 receiving area, and the door would open -- if I'm facing towards the stairs, the
29 doors open to my right, leaning against the carport wall?

30

A Correct.

31

32 Q And so if I wanted to get up into the attic, I would grab the edge of the door
33 and drop it into place?

34

A Correct.

35

36 Q And then if I wanted to get on a ladder, I'd take however many steps it is to the
37 ladder and bring it back, and open up the ladder?

38

A Correct.

39

40 Q And then take whatever it is, two or three steps, so that I could reach the hatch,
41 lift it, and move it aside?

1 A Correct.

2

3 Q And then once I was done, you just slide the hatch back into place and it just
4 drops into its little frame, so to speak?

5 A Correct.

6

7 Q And then you just move the ladder or -- and maybe reopen the door?

8 A Correct.

9

10 Q Okay. So in terms of the time that -- that that would take, so if I -- if I just talk
11 through, I'm looking at the -- I'm just going to look at the -- I don't know if
12 was -- is it a two-sided clock, My Lord, the digital clock in front of you, or just
13 one side?

14

15 THE COURT: Yes.

16

17 MR. FINLAYSON: It is? Okay.

18

19 THE COURT: It's two-sided.

20

21 Q MR. FINLAYSON: Okay. So I'm going to start at 9:32, and
22 we're just going to -- 9:32:30 and just go through this process, talk it through,
23 and we'll see what time it is.

24

25 So I reach for the door. I drop it. I take, let's say, three or four steps. I put the
26 ladder on it and I open the ladder. I take a step up, another step up, maybe a
27 third step up. And then I reach the hatch and I slide it over, and I do whatever I
28 want to do, however long that takes, and then I slide that back, walk down,
29 move the ladder back, and I'm done, and it's taken me 30 seconds on this
30 clock, I think.

31

32 You don't dispute that that could be done in 30 seconds?

33 A If the ladder was there --

34

35 Q Yeah.

36 A -- within 4 feet.

37

38 Q Yeah, yeah. If you -- if you have to --

39 A But the receiving was 20-some feet.

40

41 Q Well, yes, if I had to take another three steps, or five steps, that would add a

1 few seconds.

2 A It would add time, correct.

3

4 Q Yes. Now, as you know, we have a holiday in -- in February called Louis Riel
5 Day?

6 A Yes.

7

8 Q And on February 16th of 2015, that was that year's Louis Riel Day?

9 A I believe so, yes.

10

11 Q And your store was closed that day?

12 A We were on stats normally, yes.

13

14 Q And -- but you went to the store that evening?

15 A I did.

16

17 MR. FINLAYSON: Just so the record is complete, that was
18 February the 16th, I said?

19

20 THE COURT: I thought you said, "15th," but was it the
21 16th?

22

23 MR. FINLAYSON: The 16th.

24

25 THE COURT: Okay.

26

27 MR. FINLAYSON: The 16th, yeah. It was -- Sunday was the
28 15th. And this is at Volume 2 of Exhibit 1, at Tab 18.

29

30 THE COURT: Okay. Just let me get it. Thank you.

31

32 Q MR. FINLAYSON: So it's Tab 18 of that volume, at page 8
33 of 14 is February the 16th -- February the 16th which was the statutory holiday.

34

35 And we can see that you got there at about 5 minutes to 9 and left at -- pardon
36 me. Yes, no, 5 -- 5 minutes to 9 and left at about 10:30; is that right?

37 A Yeah. It's 9 -- it would be 9:30, wouldn't it?

38

39 Q Well, 2055, isn't that 5 to 9? But --

40 A But the 2130 --

41

1 THE COURT: Yeah, yeah.
2
3 A -- you're talking about?
4
5 Q MR. FINLAYSON: Yeah, 2130, that's an hour-and-a-half.
6 Oh, no. No, it's 35 minutes later. Sorry. So -- so about 9:30?
7 A Yes.
8
9 Q Okay. And then if we look at -- we talked yesterday about February the 23rd,
10 right? You were there that evening for about an hour and 45 minutes. That's at
11 page 11 of 14 of Document 18 within Volume 2 of Exhibit 1. Do you see that,
12 sir? You -- you (INDISCERNIBLE) --
13 A Correct. As discussed yesterday, yes.
14
15 Q Yes. Yes. So it's 7:45 until about 9:30?
16 A Correct.
17
18 Q And then --
19
20 THE COURT: Sorry, I -- I was just making a note
21 about --
22
23 MR. FINLAYSON: It's all right. Page 11.
24
25 THE COURT: -- the page 8 --
26
27 MR. FINLAYSON: Page --
28
29 THE COURT: Page 11? Okay.
30
31 MR. FINLAYSON: -- page 11 of 14 --
32
33 THE COURT: Right.
34
35 MR. FINLAYSON: -- 1946 to 2130.
36
37 THE COURT: All right.
38
39 Q MR. FINLAYSON: And then the next day was the -- the
40 24th. So the day before the fire?
41 A Correct.

- 1
2 Q And it looks like the store closed at -- or the alarm was set at 6:10 or 6:11; is
3 that correct?
4 A Correct.
5
6 Q And then somebody went back for about 1 minute, 3 minutes or 4 minutes
7 later, correct?
8 A Correct.
9
10 Q And was that you?
11 A Not that I remember, no.
12
13 Q No. But somebody clearly went in at 6 -- about 6:14 and left about a minute
14 later and set the alarm again, correct?
15 A Correct. Being that short of time, I believe it's probably an employee that left
16 something in the store.
17
18 Q Yeah, because you say, obviously, that it wasn't you doing a trial run on how
19 long it would take you to set up -- close the door, set up the ladder, open the
20 hatch, and see how long it would take you to light whatever was up there?
21 A No.
22
23 Q Now -- but you do admit that you stayed until closing that day? The 24th,
24 February 24th?
25 A I believe I was there, yeah.
26
27 Q Okay. Now, you'll also agree with me that your wife, Laurie Guilbert, was
28 unaware of the details of the financial troubles in which the business was,
29 correct?
30 A She was aware of some of them, yes --
31
32 Q Oh, okay. Well, let's go --
33 A -- because --
34
35 Q -- let's go through and ascertain which ones. Was she aware of the difficulties
36 with CRA?
37 A Not the CRA, not the PST, but where we were having into trouble, we had
38 meetings with the banks to see an accountant, to see what we could do to get
39 on the right track.
40
41 Q Was she aware of the certificate of debt that had been registered by the

1 Province in connection with unpaid retail sales tax?

2 A I did tell her about that, yeah.

3

4 Q Are you sure about that?

5 A I did after -- like, it was after the fire, I did, but I told her.

6

7 Q Oh -- oh, I'm sorry. You're right. I need to locate myself. Before the fire --
8 before the fire, was she aware of problems with CRA?

9 A No.

10

11 Q Before the fire, was she aware of -- of the certificate of debt which had been
12 registered by the Province?

13 A No.

14

15 Q Before the fire, was she aware of the problems -- the fact that you were behind
16 with payments to Manitoba Hydro?

17 A No.

18

19 Q And she was unaware that the hydro system was such that the hydro for the
20 store was the -- the same hydro that supplied the apartments?

21 A I believe she was aware that the hydro was for the whole store.

22

23 Q Yeah, but she didn't think -- she was unaware, according to her discovery,
24 that -- that the hydro for the store was the same hydro that supplied the
25 apartments. And that is that if you cut off -- if the hydro cut off the power to
26 the store, the apartments would have no power?

27 A If that's what she testified, then I would believe you.

28

29 Q And she was unaware that the Neepawa Press was no longer accepting
30 advertising orders from your store because it was behind in its payments?

31 A Correct.

32

33 Q And she was unaware of NSF cheques to employees?

34 A Correct.

35

36 Q She was unaware that Home Hardware had, on three occasions, been paid
37 money that it was owed from another line of credit?

38 A Correct.

39

40 Q She was unaware of the restricted sales order imposed on your store by Home
41 Hardware on December 18th, 2014?

1 A Correct.

2

3 Q And you obviously didn't tell her about your conversation with Ryan
4 McLaughlin on February 23rd, 2015? Particularly, I'm referring to him
5 suggesting you go bankrupt; is that fair?

6 A Not the bankrupt part, but I talked to her about everything else.

7

8 Q Now, we've canvassed already this idea that you were speaking of -- of looking
9 at your insurance coverage shortly before the fire, and you said yesterday, I
10 believe, that after renewing your policy every year, you reviewed it?

11 A I would go through it, yeah.

12

13 Q And I need to understand, when you were doing your review in the week or
14 two before the fire on February 25th, 2015, were you looking at the declaration
15 page, or the policy wordings, or both?

16 A It would be everything --

17

18 Q Okay. So --

19 A -- but I was also looking in regards to what (INDISCERNIBLE) was wanting.

20

21 Q So when you say you were looking at the policy wordings, I'm referring to
22 what is within Volume 1 at Tab 15. You say you were looking at -- at this. This
23 is 100 and -- 148 pages.

24

25 UNIDENTIFIED SPEAKER: (INDISCERNIBLE) tab at?

26

27 MR. FINLAYSON: It is Tab 15, sorry, Volume 1.

28

29 A I think all the back stuff up to it, yeah.

30

31 Q MR. FINLAYSON: Yeah.

32 A Correct.

33

34 Q So are you willing -- this is what you were looking at, among -- among another
35 thing I'm going to show you in a second --

36 A Right.

37

38 Q -- so you -- you were going through this, and reading it, and trying to
39 understand it; is that what you're saying?

40 A That's what I would do, yes.

41

1 Q And --

2

3 (DISCUSSION OFF RECORD)

4

5 Q MR. FINLAYSON: And then so the other thing that I
6 referred you to was at Volume 2, Tab 16. And I -- I do want you to have that in
7 front of you for a moment because I'll be asking a few questions about it.

8 A Okay.

9

10 Q So this is what, I understand, are called declaration -- the declarations because
11 it sort of declares the coverage. And let me understand that -- make sure I'm on
12 the same page as you. So the apartments were completed by April of 2013?

13 A Correct.

14

15 Q So, certainly, when you got your renewal information, whenever it was, in
16 January, February, or March of 2014, you would have made sure the
17 apartments were on that? I'm not saying you wouldn't have done it sooner, but
18 you would have checked again?

19 A Every year, and every market it went to, I would check with Claude Simard.

20

21 Q Right. So you did that in 2014?

22 A I did, yeah.

23

24 Q And so you would have made sure the apartments were covered?

25 A Correct.

26

27 Q And the information -- any information that's on Document 16 within Volume
28 2 of Exhibit 1 that would have either been from you or he would have used
29 what you told him, how you responded to questions of his, along with other
30 knowledge that he's got to -- to fill this in?

31 A And who are you speaking about?

32

33 Q Claude Simard, sorry.

34 A And you're -- what -- can you repeat that now --

35

36 Q Yeah.

37 A -- with Claude Simard?

38

39 Q Claude Simard was your insurance broker at PIB --

40 A Correct.

41

- 1 Q -- and he was the fellow to whom you would give information in connection
2 with insurance matters, and to him, you would address questions?
- 3 A Right.
- 4
- 5 Q And so all I was saying is when you look at this page, the declaration page, the
6 first page of Tab 16, Document 16 in Volume 2, the information in here would
7 have been partly based on his knowledge and experience, obviously, but also
8 based on information from you?
- 9 A Yes. The information that I would give him, but I was not happy with how it
10 was laid out, but he kept assuring me that the \$15 million covered everything,
11 so don't worry about it.
- 12
- 13 Q Yeah, but I'm -- I'm just more concerned -- like, he -- it was only through you
14 that he could have found out that Beautiful Plains Credit Union was the
15 mortgagee, right? Like, that -- you would have said -- he would have said, Who
16 are your mortgages with? You would have said, Well, Beautiful Plains.
- 17 A If -- yeah.
- 18
- 19 Q Yeah.
- 20 A That would be through me.
- 21
- 22 Q Yeah. And same with Home Hardware. I -- well, I guess he would know 'cause
23 of the connection, but, obviously, that you would have discussed with him that
24 Home Hardware's going to be -- have a mortgage?
- 25 A Correct.
- 26
- 27 Q And same with Cypress Credit Union?
- 28 A Correct.
- 29
- 30 Q Now, my understanding is -- I -- I take what you're saying, that you've got a --
31 sort of a -- what we'll call an umbrella amount of 15 million?
- 32 A Correct.
- 33
- 34 Q Now, my understanding is that for the building, that this number that's on this
35 page, the one point -- \$1,350,906, that this amount was put in by him for what
36 are called "underwriting purposes". Was that your understanding as well?
- 37 A I believe so.
- 38
- 39 Q But you never -- you never purported to say to him, I think the replacement
40 value of the building is \$1,350,906?
- 41 A No, I repeated to him as to that \$15 million question --

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41

Q Yeah.

A -- as I said, I don't believe that's the correct amount of replacement.

Q Right. But -- and would he -- do you know, would he have had Pat Weir's report? He must have, eh?

A Yeah.

Q Okay. So he would have had that, he would have spoken to you, and that's where he would put this amount? That's where he would get that amount from, as far as you know?

A I don't know where they get the -- how they calculate what they put in there.

Q Okay. So if you could turn to Volume 5, Tab 102, please.

A One, oh, two?

Q Yes. It's the e-mail exchange between you in Mr. Simard in February 2015.

A Okay.

Q So your -- your e-mail of February 19th, so that's six days before the fire, and was this -- or this was around the time that you were also reviewing the policy; I take it?

A Well, yeah, 'cause I was dealing with Charlie Taylor and everything, yeah.

Q And so you say, "My lawyer had a couple of questions." Now, I -- I interpret that to me that Charlie Taylor asked you to ask these two things. Do I interpret that correctly?

A That's what I would say is correct, yes.

Q Okay. So Charlie Taylor's -- you say Charlie Taylor said to you, "With the business interruption insurance," I guess that should be, Will the business interruption insurance be covered? Is that --

A I would -- it could be, yeah.

Q Well, tell me -- tell me what -- it's okay that -- we just want to know what you meant. So tell -- tell me -- tell us what you were saying in number 1, there? What were you --

A I think, with the business interruption is it covered if something happens with the condos above?

Q Okay. So if the condos are damaged for some reason, will business interruption

- 1 coverage be available?
- 2 A Right. Like, if there's --
- 3
- 4 Q Yeah.
- 5 A -- a flood, anything, like --
- 6
- 7 Q For -- okay. So and you're saying that Mr. Taylor asked you to ask Mr. Simard
- 8 that?
- 9 A Yes, 'cause we were worried about, like, water damage because there's so
- 10 many water lines running up there.
- 11
- 12 Q So many water lines in the apartments, you're saying?
- 13 A Well, there's water, yeah. All the piping.
- 14
- 15 Q Oh.
- 16 A If it goes, then it comes right into the store.
- 17
- 18 Q And then it says, "With liability coverage, am I covered no matter what
- 19 happens? His concern --" and at his, you -- by "his" you mean Mr. Taylor's?
- 20 A Yes.
- 21
- 22 Q "His concern is if someone from the condos does damage, am I covered or do
- 23 they have to have their own insurance for that?"
- 24 A Right.
- 25
- 26 Q So that's what you were asking Mr. Simard. He -- he explained as is indicated
- 27 above?
- 28 A Right. Exactly.
- 29
- 30 Q Now, yesterday you -- you said to me more than once that at the time that you
- 31 were being interviewed, and the date of the interview I was referring to was
- 32 March 17th of '14 --
- 33 A Okay.
- 34
- 35 Q -- by Mr. LaBrash and -- and Mr. Devlin, but you said more than once that at
- 36 that time you didn't know that arson was an issue, or that you were a potential
- 37 suspect, right? This -- you said words to that effect?
- 38 A I said that I did not know and it was based a lot on Paul Topp saying that over
- 39 \$2 million were getting investigated. It was at the end of that policy when
- 40 Shane Devlin said to me, We're going to ruin your reputation, that's when I
- 41 knew things were going south.

1

2 Q Okay. So if we could turn for a moment, and we'll get back to it for a while,
3 but for the moment, Tab 41 which is in Volume 2. This is something that we
4 did refer to yesterday momentarily. It's the interview of Constable Woytkiw.

5

6 THE COURT:

Okay. I'm sorry, what volume?

7

8 MR. FINLAYSON:

Sorry. Volume 2, Tab 41.

9

10 Q MR. FINLAYSON: So this, as we pointed out yesterday, this
11 was actually taken -- this was an interview the day after the fire, remember?

12 A I believe it was the 26th that we discussed, yes.

13

14 Q Yes. And so if you could turn to page 3, starting near the top it says, "Well,
15 that's why I'm talking to you," he's saying to you. He's says -- Constable
16 Woytkiw says, "That's why I'm talking to you right now. I'm telling you right
17 now we're just investigating this." PG, that's you, you said, "Right." And then
18 the Constable said, "We're -- we're keeping an open mind. You came in here
19 freely. You don't have to provide a statement." And then you said, "No, yeah."
20 And then Woytkiw said, "The choice is yours whether you provide a statement
21 or not. I'm not -- I'm not going to treat you as a suspect." And you said,
22 "Right." And then he said, "But with a fire like this, you're the owner. It's
23 undetermined and I'd be lying to you if I said that you're not a suspect. Okay?"

24

25 So I take that to mean that he's telling you that because of the circumstances
26 that you're naturally a suspect. Did you hear him say that? Is that -- did he say
27 that to you?

28 A Correct.

29

30 Q Well --

31 A And that would be normal procedure because I was the last one to set the
32 alarm.

33

34 Q Yeah. In your description of the events that led up to your departure from the
35 store on the day of the fire, so you -- you know what I mean? It's not disputed
36 that you set the alarm at 6:09 and then you left, correct?

37 A Correct.

38

39 Q And you went into some detail about the events that occurred in, whatever it is,
40 10 minutes or so before the store was locked up?

41 A Correct.

- 1
2 Q And in your description of what you did that day, you -- you may have said,
3 and I apologize if you did, but you didn't mention about you and
4 Mr. Bannerman removing some things from the store that afternoon. You --
5 and you did that with him, right?
- 6 A What we were removing was -- I believe we took stuff over to the storage
7 building, we did a delivery with him in the back of the truck, and we had my
8 ice auger in there that we were fixing the blades on, and we were taking that
9 over to the other building.
- 10
11 Q Right. So, yes, you -- see, all I asked you was whether you and Mr. Bannerman
12 had removed some things that day from the store, and the answer to that's yes?
- 13 A Yes.
- 14
15 Q Yes. And some of it was stock, right, that you moved from one place to
16 another?
- 17 A I -- it was stock that we moved over to the storage, yeah.
- 18
19 Q And some of it was personal stuff of your own?
- 20 A The auger.
- 21
22 Q Yes. And I understand some fishing tackle as well?
- 23 A It could be, yeah, part of that, yeah.
- 24
25 Q And then does your truck have -- did it have then, that day, command start?
- 26 A Yeah, I have command start on the truck.
- 27
28 Q And -- and that --
- 29 A But which one was -- I can't remember which one we used, if it was mine or if
30 it was the other one, but...
- 31
32 Q Oh, I'm sorry. Sorry, no, I'm talking about -- I -- I apologize. At 6:09, I'm
33 thinking it's cold out, if you had command start, you might have started your
34 truck before you left. Did you?
- 35 A I don't think I did. I don't remember starting it. That's --
- 36
37 Q Okay. So you -- your truck wasn't running when you got out at 6:09, then, that
38 you know of?
- 39 A No.
- 40
41 Q But if the employees that -- that stayed for a few minutes after they departed on

1 6:09 in the parking lot saw it running, you wouldn't say they were lying?

2 A No, like --

3

4 Q No, no.

5 A -- it could be.

6

7 Q Yeah.

8 A I don't -- I don't remember at that time --

9

10 Q No.

11 A -- doing it, but it's quite possible I did.

12

13 Q No, I understand that's kind of a thing that would be done on automatic pilot
14 almost, right? It's a cold day and you're about to leave, so you might just push
15 the button?

16 A Yeah.

17

18 Q Yeah. And it would make sense on a cold day to start it up and -- and warm it
19 up?

20 A Correct.

21

22 Q Especially when you're just driving a short distance?

23 A Correct.

24

25 Q Now, what you said was that the other employees who did not -- like you, did
26 not have their stuff upstairs. They went down to their lockers to get their coats,
27 and purses, et cetera?

28 A Correct.

29

30 Q And then, according to my notes and Ms. Lisi's too, but I need to confirm that
31 we've got it right, you said that Judy Masters-Collins came up first, I think you
32 said at 6:05 or 6:06, and that Vicki was next, and then there was a bit of a gap,
33 and then there was Val, and then there was Sharon, and the last was Arlene.

34 A I believe that was the order.

35

36 Q Okay. Now, you -- you're pretty sure about that?

37 A That's my recollection of it.

38

39 Q Yeah.

40 A It's three-and-a-half years ago, but... What you said --

41

- 1 Q Right. I'm asking, how sure are you?
- 2 A That's my best recollection as to who -- who came up at that time.
- 3
- 4 Q You didn't take notes of the sequence of people?
- 5 A I didn't take notes.
- 6
- 7 Q No. And you didn't take a note of the time that they left?
- 8 A No. The 6:05, that came from Judy's testimony, but on average, every day it
- 9 takes in the range of six to eight minutes to leave the store.
- 10
- 11 Q Yeah. What you did in preparation for today was you attempted to reconstruct
- 12 events in a way that you thought was plausible, right?
- 13 A It's not --
- 14
- 15 MR. DAVIDS: That's an unfair question.
- 16
- 17 A Yeah.
- 18
- 19 MR. FINLAYSON: It's a cross-examination. What are you
- 20 talking about?
- 21
- 22 MR. DAVIDS: Well, he -- he --
- 23
- 24 THE COURT: What -- sorry? What's unfair --
- 25
- 26 MR. DAVIDS: -- it -- it's --
- 27
- 28 THE COURT: -- about him asking what he's --
- 29
- 30 MR. DAVIDS: In the way he thought was possible. The
- 31 implication is that Mr. Guilbert is trying to concoct a schedule.
- 32
- 33 MR. FINLAYSON: That's exactly the implication. I'm
- 34 allowed to ask about that.
- 35
- 36 THE COURT: Continue.
- 37
- 38 MR. FINLAYSON: Yes.
- 39
- 40 Q MR. FINLAYSON: What you endeavoured to do was to look
- 41 back. You knew it was 6:09 when you set the alarm. You referred in your mind

- 1 to all sorts of things, like your standard operating procedure for the store, what
2 was done and when, and you attempted to create a plausible sequence of events
3 before you left.
- 4 A It's not create a plausible sequence of events. It takes time to do everything that
5 you have to do when you shut the tills down at 6 or 6:02.
6
- 7 Q Well, I understand that, but I'm getting at --
- 8 A And I know, with having the store for that many years, how many minutes it
9 takes to shut down the store.
10
- 11 Q I understand that. What I'm getting at in particular is this idea that Judy came
12 up first at 6:05 or 6:06, that Vicki was next, and then there was a gap, you said,
13 and then there was Val, and then there was Sharon, and the last was Arlene.
14 That's what I'm getting at.
- 15 A And I testified that Judy's time fell in the range of when we usually are leaving
16 the store.
17
- 18 Q And when you say "Judy's testimony", you mean a statement she gave to
19 somebody, right? That's what you mean?
- 20 A To the RCMP, yes.
21
- 22 Q Yeah. And do you know if she looked at her watch at the time she left? Do you
23 have any reason to think she did?
- 24 A I don't know that answer. *confident*
- 25
- 26 Q Yeah. But as to these people leaving before you did, in roughly this order,
27 you're fairly ~~competent~~ of that?
- 28 A I would -- that's my recollection as to when they left. I could be wrong --
29
- 30 Q Right.
- 31 A -- but that's my recollection.
32
- 33 Q Yeah. And when I tell you this, you'll -- you'll know you're wrong. Val didn't
34 work that day.
- 35 A That's -- it could be possible.
36
- 37 Q No, no. Val didn't work that day.
- 38 A Okay.
39
- 40 Q Okay? She was -- just had surgery, right?
- 41 A The one person that I know for sure at the end was Arlene Vaughan was the

1 last one before me.

2

3 Q (INDISCERNIBLE).

4 A I know that.

5

6 Q Yeah. Now, you were asked about this, actually, by Constable Woytkiw on
7 February 26th. Could we go to Tab 41 of Volume 2 again, please?

8

9 If you could go to page 4 --

10

11 THE COURT: Page?

12

13 MR. FINLAYSON: Page 4, Tab 41 of Volume 2 of Exhibit 1.

14

15 A Oh.

16

17 Q MR. FINLAYSON: And so are you there, Mr. Guilbert?

18 A I went too far. Page 4, yes.

19

20 Q Page 4. Okay. So remember, just to make sure you're in the same -- on the
21 same page as myself.

22 A Right.

23

24 Q This is the fellow who --

25

26 MR. DAVIDS: I'm sorry. What tab, again?

27

28 MR. FINLAYSON: Forty-one.

29

30 MR. DAVIDS: Thank you.

31

32 Q MR. FINLAYSON: This is the same police officer who told
33 you one page earlier, so, you know, maybe five minutes earlier he'd said, "I'd
34 be lying to you if I said that you're not a suspect." All right? Do you remember
35 that?

36 A Correct.

37

38 Q Can you keep that in mind?

39 A (NO AUDIBLE RESPONSE).

40

41 Q Okay. So then at the bottom of page 4 he said, "Now, like you said -- you

- 1 said --" I have it down as 5:05, but it wasn't 5:05, it was 6. He was out by an
2 hour on the time of departure. Do you see that?
- 3 A (UNREPORTABLE SOUND).
- 4
- 5 Q It's about just past the halfway point.
- 6 A The "So at -- at about 6:05," that you're looking at?
- 7
- 8 Q Yeah. So he says --
- 9 A Okay.
- 10
- 11 Q -- he says to you, "So at about 6:05 you said, 'We left.' Who's we? Who was
12 leaving when you left?" "Like, all of us," you said. And then Constable
13 Woytkiw said, "You all left together?" And you said, "Yeah. Like, this -- like,
14 we don't leave anybody in the store. Like, we all just..." Woytkiw said, "So
15 you all left at the same time?" And you said, "Yep." "Who was the last one out
16 of the store, though?" "That was me. I sad," it should be "set", of course, "I set
17 the alarm and then we all left."
18
- 19 Like, so this the day after the fire --
- 20 A Correct.
- 21
- 22 Q -- and what you're telling the officer who's told you a moment ago that -- that
23 you were a suspect, and he's asking, "Did you all leave at the same time?" And
24 he says, "Yes. I set the alarm and we all walked out." That's what you said to
25 him, correct?
- 26 A That was a general comment based on that we left in the same timeframe. Like,
27 in the general vicinity of that.
- 28
- 29 Q I see. So when he said -- when he asked you if you all left at the same time,
30 you thought he meant, you know, generally speaking, in the vicinity, within a
31 few minutes, did you leave, like, roughly at the same time? That's what you
32 thought he meant?
- 33 A Correct. But I didn't feel I was a suspect because after the interview was done
34 with Mr. Woytkiw, and the video was stopped, his comments to me were,
35 You're fine, but the one word of advice I'll give you is don't trust your
36 adjustor.
- 37
- 38 Q Okay. But you -- when you gave this response, or these responses, to these
39 questions, that was before he stopped the interview and gave -- and made the
40 comment you just --
- 41 A But I didn't feel I was a suspect as per what I said, you know, 'cause there was

1 a \$2 million was what Paul Topp said, so...
2

3 Q Well, I'm -- I'm sorry. This is why I -- I went to page 3 first and reminded you
4 that he just told you a couple of minutes earlier that you are a suspect.

5 A Because I was the last one to close it, correct.
6

7 Q Okay. So you understood you were a suspect when you answered his
8 questions?

9 A Correct.
10

11 Q And you know that one of the things he'll be concerned about is the
12 opportunity of somebody to set the fire, right?

13 A Correct.
14

15 Q And when he asks, Did you all leave at the same time, you said, yes, right?

16 A I was -- it was a general comment, yeah.
17

18 Q Yeah. Okay.

19 A Not that we're leaving a half-an-hour apart is what I was meaning.
20

21 Q Right. So but are you able to tell -- tell the Court, like, explain why you
22 wouldn't have said, well, you know, Judy came up first, then Vicki was next,
23 and then there was a gap, and then it wouldn't have been Val, you would have
24 remembered probably that it was Gwen and not Val --

25 A Right.
26

27 Q -- that worked that day, and then it was Sharon, and then it was Arlene. Is there
28 some reason you didn't --

29 A I knew we had -- we generally have six people on staff each day.
30

31 Q Right. So but why didn't you say -- when he said you all left together, why
32 didn't you say, well, no, not really. Like, I left three -- according to what you
33 said two days ago, I left three or four minutes after Judy? Why didn't you say
34 that?

35 A It was just a general comment.
36

37 Q It -- it wouldn't be because you knew that a gap would be significant, in his
38 mind, in allowing you the opportunity to have set the fire before you left, after
39 they did?

40 A It did not cross my mind. It was a general comment.
41

- 1 THE COURT: Is the -- the Constable's a he or a she?
2
- 3 MR. FINLAYSON: It's a he, Brian.
4
- 5 THE COURT: Okay. It's Brian?
6
- 7 MR. FINLAYSON: Brian. Yeah. It was -- Karen Fenwick is
8 the female officer --
9
- 10 THE COURT: Okay.
11
- 12 MR. FINLAYSON: (INDISCERNIBLE).
13
- 14 Q MR. FINLAYSON: Well, I think I'm bound to put this to
15 you, Mr. Guilbert, so I'll do it now. I'll work backwards.
16
- 17 My understanding is that four employees, who had just left the store a few
18 minutes before 6:09 on February 25th, gathered together to talk in the parking
19 lot because they wanted to chat about what they thought was the imminent sale
20 of the business.
21
- 22 Are you with me so far?
23
- 24 A Correct.
25
- 26 Q That they chatted for, you know, depending on who it is, they chatted for three
27 to five minutes, and, obviously, you were still in the store when they left, and
28 they say that when they dispersed after chatting for a few minutes, you were
29 still in the store.
30
- 31 Do you understand what I'm saying, first of all?
32
- 33 A I understand what you're saying.
34
- 35 Q And are you telling this Court that that is not the case. That it couldn't have
36 been three to five minutes that you remained in the store after the last employee
37 had left? Is that what you're saying?
38
- 39 A Correct, 'cause when I left the store, and I put my bag in the back of the truck,
40 and I left the store, I saw nobody around the store.
41
- 42 Q Yes. That's -- okay. And one of the things that you said that I found especially
43 interesting was that you said that after the last employee before you left -- after,
44 in your -- in your version of events, after Ms. Vaughn left out the receiving

- 1 area door, the west door, the rear door, that you put the deadbolt on.
- 2 A To make sure nobody else gets in, yeah.
- 3
- 4 Q Right. And so you put the deadbolt on for the 60 seconds to 90 seconds, on
5 your version of events, while you gathered your briefcase, and turned off the
6 light, et cetera. That --
- 7 A It's the same procedure that we do on the front door. We lock the door so that
8 nobody else can get in as we finish what we're doing.
- 9
- 10 Q Well, just -- just let -- just let me understand, sir. You're saying, though, that
11 you set the deadbolt at the rear door, that you ultimately exited through --
- 12 A Correct.
- 13
- 14 Q -- right? So you set the deadbolt, you did whatever you did, and then 60
15 seconds to 90 seconds later, you went out -- you had to reverse the deadbolt,
16 and then you left, and then from the outside, after you'd set the alarm
17 obviously, you closed the deadbolt again? That was what you --
- 18 A When there's one employee in the store, you never leave the door unlocked.
- 19
- 20 Q And -- and that was because of concerns that somebody would sneak in and rob
21 the place or is that what you're saying?
- 22 A It's just policy that you do.
- 23
- 24 Q But is that the concern? Theft?
- 25 A No, it could be anything. It's like gas station at midnight now, right? You don't
26 have one person just working.
- 27
- 28 Q Well, I -- I --
- 29 A Right? It's that theory.
- 30
- 31 Q It's that theory. Okay. So you -- you've got the deadbolt on because you're in
32 the -- going to be in the store for another minute, but as I understand that the
33 evidence will be, your car's running right out -- your truck's operating right
34 outside the door. You're not worried your truck's about to be stolen?
- 35 A It's still locked.
- 36
- 37 Q Yeah, I know, but you -- you weren't worried about that?
- 38 A No. If you're going to steal a truck in front of a police station, that would be
39 the worst case scenario.
- 40
- 41 Q Or break into a Home Hardware.

1 A Correct.

2

3 Q Yeah. So just to finish what I think I'm bound to put to you, and, of course, I
4 know what your answer will be, but I have to, I think, put it to you.

5

6 So what happened was you set the deadbolt so that no other employee would
7 come in right away without you hearing them, and then you took the three, or
8 five, or whatever steps it was, you closed the door to the basement, you got the
9 ladder, you set up the ladder, you climbed -- took the whatever, two or three
10 steps up, moved the hatch aside, ignited whatever it was you'd set up earlier,
11 put the hatch back, moved the ladder aside, and now you sort of panicked
12 because you forgot to reopen the door to the basement. And then you left after
13 setting the alarm at 6:09?

14 A No.

15

16 Q Now, I'm going to talk about some stuff that's after the fire. At Volume 5, Tab
17 92 we're back, I'm sorry to say, into the Home Hardware documents. So
18 Volume 5, Tab 92. Page 197.

19

20 Tell me when you're there.

21 A Okay.

22

23 THE COURT: Let me get there. One ninety-seven?

24

25 MR. FINLAYSON: Yes.

26

27 THE COURT: Okay.

28

29 Q MR. FINLAYSON: So this is a meeting -- you'll see at the
30 top of the page that Ms. Brincheski's, in effect, recording for her corporate
31 superiors and communicating to them about a meeting that she had with you in
32 Brandon on April 8th. You had such a meeting?

33 A I did meet her in Brandon. I would assume the date's correct.

34

35 Q It was on or about April 8th? You don't dispute that it was --

36 A I would believe it's correct.

37

38 Q And so she's going in point form about things that were discussed. For
39 example, in Point 3, did you say to her that the apartments above the store were
40 90 percent completed as condos so they would be appraised as such? Did you
41 tell her that?

- 1 A That was my belief, yeah.
2
- 3 Q And then did you tell her that you thought you had the three options. I think
4 you've actually alluded to them with Mr. Davids. You said you had three
5 options: rebuild and continue as a Home Hardware dealer on the site; accept a
6 payout and move elsewhere as a Home Hardware dealer; accept a payout and
7 move on to something other than a Home Hardware dealer?
- 8 A I believe that was the three options, yeah.
9
- 10 Q And then she says that she strongly advised you that Option C would be the
11 best one; is that true?
- 12 A She did, yeah.
13
- 14 Q And she advised you that you would need to apply to Home Hardware, or
15 reapply, to be a dealer. She told you that?
- 16 A Correct.
17
- 18 Q Right. And she says that you were not aware of that; is that true?
- 19 A I could have, at that time, yeah. I'm not sure.
20
- 21 Q Okay. And what she says is, she indicated to you that based on your history
22 with them, she thought it unlikely that your reapplication would be approved.
23 She told you that. So you should take a cash deal?
- 24 A She had mentioned something to that effect, I believe, yes.
25
- 26 Q Okay. Because she would have conveyed to you that there were two concerns
27 they had. One was that the business had done fairly badly. I mean, you were in
28 a lot of trouble financially before the fire, right?
- 29 A Correct.
30
- 31 Q And I -- maybe she didn't communicate to you, and -- and -- but I would like to
32 know, did she not express concern about the repeated comments that you'd
33 made that the comments had been sold when they hadn't? Did she express
34 concern about that?
- 35 A I remember a -- a discussion on it and -- and talking about it, but it very well
36 could have come up, yes. The other portion that we did talk about at that was
37 that I didn't have to rebuild as a Home Hardware. I could rebuild as what I --
38 something else, is what Paul Topp told me.
39
- 40 Q Okay. Well, we'll -- Mr. Topp, fortunately, will be testifying. So -- so but at
41 this point, you knew, and maybe it took a while to take in, but it was conveyed

- 1 to you that you were not going to be, likely, a Home Hardware dealer, no
2 matter what happened, correct?
- 3 A She never said directly that you wouldn't. She said --
4
- 5 Q No, no.
- 6 A -- it would be a tough go.
7
- 8 Q Yeah. Because you'd have to --
9 A Was my understanding.
10
- 11 Q Yeah. Well, that's what she says, right? She strongly recommends you take the
12 money because you have to reapply and you're not likely to be approved. Fair?
13 A Fair.
14
- 15 Q Now, let's talk about inventory for a second. I don't think you dispute that for a
16 period of time before the fire, you had been selling inventory on a cash basis to
17 certain people (INDISCERNIBLE) and other subtrades --
18 A Correct.
19
- 20 Q -- without receipts for cash?
21 A Correct. I sold cash items to them from 2008 to the day of the fire.
22
- 23 Q Right.
24 A All the time. Every dealer does that across Canada.
25
- 26 Q All right. And -- and I understand sometimes you would meet them at the --
27 at -- at your home and deliver -- and give them the stuff at your home and
28 you'd be paid in \$100 bills.
29 A There was occasion that that happened, yes.
30
- 31 Q There were occasions where you would take cash from the till within the
32 business for what you call "coffee money"?
33 A Yes.
34
- 35 Q That could be -- it could be -- sometimes it would be \$100 or it could
36 sometimes be \$200?
37 A That would be the rarest, but it was morely (sic), like, fives or tens --
38
- 39 Q Okay.
40 A -- and twenties, type of thing.
41

1 Q But sometimes it would be \$100 or \$200?

2 A Correct. And I'd put a note in the till as to what it -- it was me, and then Arlene
3 would have -- she would get the bag downstairs, and then she would put it into
4 the accounting.

5
6 Q Well, didn't the staff have to talk to you, Mr. Guilbert, because they were
7 concerned about what you were doing and they said you should put a chit in?
8 Didn't they say that to you? That despite the fact that you're -- you're the
9 owner, that you should put a chit in, and then you --

10 A I believe I always put a sheet in.

11

12 Q Well -- so let me talk for a moment about --

13

14 THE COURT: Just -- just one moment, Mr. Finlayson.

15

16 MR. FINLAYSON: Oh, he's -- he's not a witness or
17 anything.

18

19 THE COURT: Okay. Sorry.

20

21 MR. FINLAYSON: He's just -- he's just an --

22

23 THE COURT: I probably -- I should have indicated that
24 there should be no witnesses in --

25

26 MR. FINLAYSON: Yeah. Yeah. No, he's not a witness.

27

28 THE COURT: All right.

29

30 MR. FINLAYSON: Yeah.

31

32 (DISCUSSION OFF RECORD)

33

34 Q MR. FINLAYSON: Well, I guess I -- I have to ask you. So
35 my understanding is that you -- you gave some evidence in an obvious effort to
36 sort of suggest improper motives by Arlene Vaughn. You gave evidence about
37 Shirley Vaughn stealing money from the store, or stealing stuff from the store,
38 and -- and Arlene being upset about that when she got fired.

39 A It was correct, yeah.

40

41 Q Yeah. And you said you didn't want to pursue it further with the police and you

- 1 didn't?
- 2 A Correct.
- 3
- 4 Q My understanding is that you did complain to Sgt. Morehouse of the Neepawa
5 Detachment about that; is that not correct?
- 6 A About what specific fact?
- 7
- 8 Q Shirley Vaughn taking stuff from your store?
- 9 A Which statement are you talking about?
- 10
- 11 Q I don't know what you mean, what statement? You've said that you thought
12 that Shirley Vaughn committed a crime, being theft from your business.
13 You've said that you did not report it to the police. Sgt. Morehouse has told me
14 that you did. Is it true or false that --
- 15 A No. I did report it to the police --
- 16
- 17 Q Okay.
- 18 A -- that Shirley Vaughn -- I said, But I don't want to press any charges. And
19 they -- they said, I know who -- they said -- they said to me, I know who it is.
- 20
- 21 Q Okay.
- 22 A And I said, I know who it is.
- 23
- 24 Q All right.
- 25 A And we said we're not proceeding.
- 26
- 27 Q All right. And my understanding is that after you made that report to Sgt.
28 Morehouse, he came to the Home Hardware store, and that while he was there,
29 he saw you reach into the till of your store and take some money out, and start
30 to leave with that money. And he said to you, Are you not going to put a chit or
31 something in the cash register? And -- and you said, No. And then he said,
32 Well, I'm not going to investigate Shirley Vaughn -- this allegation against
33 Shirley Vaughn any further.
- 34
- 35 Did that occur?
- 36 A I don't remember that happening, but the only thing I --
- 37
- 38 Q Well --
- 39 A -- I have with Sgt. Morehouse is the complaint I had against the RCMP
40 because he was badmouthing me around -- around town.
- 41

1 Q Now, if you could go to Volume 8 in Tab 168.

2

3 (DISCUSSION OFF RECORD)

4

5 A One sixty-eight?

6

7 Q MR. FINLAYSON: One sixty-eight, yes. Go to page 167,
8 sorry. It's that Kevin Leis inventory sheet.

9

10 So let's make sure that everybody's on the same page. So at Volume 8 of
11 Exhibit 1, page 1 -- it's Tab 168, page 167. So at the very top it says, "00167,"
12 in the top right-hand corner. Are you there, Mr. Guilbert?

13 A Yes.

14

15 Q So you discussed in your exam-in-chief that this related to Mr. Leis' visit to the
16 store on or about January 18th of 2015 where an inventory was done?

17 A Correct.

18

19 Q And I just need to understand something that was not referred to when you last
20 had this document before you. It says -- there's a heading past the halfway
21 point on the page called "Performance Measures". Do you see that?

22 A Correct.

23

24 Q And then it says, "Discontinued inventory, \$23,562.97." What -- what does that
25 mean? What's discontinued inventory?

26 A It just means something that Home Hardware's just not stocking or they
27 replaced it with a different product --

28

29 Q And then "Slow mover" --

30 A -- which happens monthly.

31

32 Q Yeah. And then it's -- the next line is "Slow movers. No sales for one year,
33 \$56,830.24." That means that within the inventory valued as a -- as a whole,
34 there is roughly \$57,000 that you've had on your shelves for a year; is that
35 right?

36 A Yes.

37

38 Q And then the next line, "Slow movers. No sales two years," means that roughly
39 \$40,500 was in your store on the shelves and unsold for at least two years?

40 A Correct.

41

1 Q And, likewise, that next line, "No sales three years," that means almost
2 \$32,000 had been in your store and not sold for at least three years. Do I have
3 that right?

4 A Correct.

5

6 Q Okay.

7

8 (DISCUSSION OFF RECORD)

9

10 Q MR. FINLAYSON: So if we could go to Volume 2 of Exhibit
11 1, please. It -- and in particular -- 28?

12

13 (DISCUSSION OFF RECORD)

14

15 Q MR. FINLAYSON: I think it's probably most convenient to
16 go to Tab 29.

17

18 MR. DAVIDS: It's in Volume 2?

19

20 MR. FINLAYSON: Yes. It's the proof of loss.

21

22 MR. DAVIDS: Yeah.

23

24 Q MR. FINLAYSON: So I just want to look at the one line.
25 And I'm going to just be spending a bit of time, Mr. Guilbert, just so you
26 know, I'm headed on -- on proof of loss just to -- to sort things because His
27 Lordship, in due course, has to decide the value of the claim, so...

28 A Okay.

29

30 Q Okay. So with respect to the stock. That's the inventory, right? One
31 seventy-five -- 175,000?

32 A Correct.

33

34 Q So I'm just puzzled. As I understand it, when Kevin Leis does his inventory of,
35 whatever it was, \$202,000, that was at -- was it your cost? Is that what he's
36 valuing it at?

37 A I believe it was.

38

39 Q Yeah?

40 A Yeah.

41

1 Q Okay. So that figure doesn't take account of depreciation, fair? Like, if the
2 things has been in your store for three years, unsold, it might not be worth what
3 you paid for it anymore. Today, it would have been --

4 A There was no depreciation because I had an IRA, which was an Inventory
5 Repurchase Agreement, which Home Hardware would bring back at cost.

6

7 THE COURT: I didn't hear any of that.

8

9 UNIDENTIFIED SPEAKER: I didn't understand it
10 (INDISCERNIBLE).

11

12 A The answer to the question was, we had an IRA agreement which an Inventory
13 Repurchase --

14

15 THE COURT: Repurchase.

16

17 A Agreement.

18

19 THE COURT: M-hm.

20

21 A And that guaranteed me that Home Hardware would take back my stock at cost
22 of what I paid for it.

23

24 THE COURT: Okay.

25

26 Q MR. FINLAYSON: Okay. But do you -- my -- my point is,
27 you're -- you're not saying that the fair market value of something that's been
28 in your store for three years that you paid \$10 for is still worth \$10 on the
29 market. You're saying that you had a deal with Home Hardware where you
30 could send it back and get the \$10 credit?

31 A I had IR -- IRA agreement, correct.

32

33 Q Well, the -- you -- okay. You're repeating what you said a moment ago, but I
34 need to know if what I suggested to you is correct. That is, you're not saying
35 that, I -- I don't even know. Let's talk about a saw. So you had a saw that's
36 worth \$15 --

37 A M-hm.

38

39 Q -- when you bought it, but it's been in your store for over three years, and for
40 whatever reason, nobody likes that type of saw. You're not saying that that the
41 value three years later, necessarily, to a consumer would be the \$15, you're

1 saying that if you couldn't sell it, you could say to Home Hardware, Take this
2 back and give me a credit for the \$15?

3 A As part of the IRA agreement, yes.

4
5 Q Yes. Now, with respect to the -- the rent that you claimed -- are you -- are you
6 claiming rent in your proof of loss?

7 A Correct.

8
9 Q And I think you claimed the maximum amount of \$51,840; is that right?

10 A Correct.

11
12 Q And -- but if we look at the MDD report, which is at Volume 6. We don't have
13 to go there. I think, My Lord, it's Volume 6 for your notes at -- at Tab 140. It
14 shows -- we look at it -- or Mr. Davids took you through it.

15
16 THE COURT: M-hm.

17
18 Q MR. FINLAYSON: That in the year of 2014, you'd received
19 actually \$21,000 in rent because of Cindy not paying much, and Chase getting
20 a break, et cetera.

21 A Right.

22
23 Q Okay. So --

24
25 THE COURT: 21,000?

26
27 MR. FINLAYSON: 21,000.

28
29 THE COURT: Yeah.

30
31 Q MR. FINLAYSON: So you -- you don't dispute that?

32 A Correct.

33
34 Q Okay. Now, with respect to the building -- and -- and if you need to go there,
35 you tell me. I'm just trying to save some time because I don't think it's in
36 dispute.

37
38 Mr. Weir, in anticipation of your building the apartments in 2012, said the
39 anticipated market value of the new apartments and the store was \$630,000?

40 A Market value, yes.

41

1 Q Yes. And if we go to Tab 168, we were just in 168 a moment ago, that's in
2 Volume 8, that's the Altus report. Tell -- at page -- at page 3 of Tab 168 in
3 Volume 8.

4 A Page 3?

5

6 Q Yes.

7 A Like, what -- what's the number on the top?

8

9 Q Oh, sorry. Zero, zero, zero, six, one.

10 A Okay.

11

12 Q So they had valued the building at about \$600,000.

13 A Market value, yeah.

14

15 Q Yeah.

16

17 THE COURT: Sorry, Mr. Finlayson.

18

19 MR. FINLAYSON: Yes.

20

21 THE COURT: You -- 665.

22

23 MR. FINLAYSON: Less the land.

24

25 THE COURT: Less the land, right.

26

27 MR. FINLAYSON: Yes. So that's why I said "about"
28 600,000.

29

30 THE COURT: Yeah.

31

32 Sorry. Can you -- I just want to ask you while it's in my mind. So in -- Roland -- in
33 the Weir report, the 630 K was the market value of the completed building with
34 condos?

35

36 MR. FINLAYSON: With apartments, yes.

37

38 THE COURT: With apartments?

39

40 MR. FINLAYSON: Yes.

41

1 THE COURT: They weren't condos yet. Document 168
2 is -- the 600 value is just the land?
3
4 MR. FINLAYSON: Yes. No, no, no.
5
6 THE COURT: So what are you --
7
8 MR. FINLAYSON: No. No.
9
10 THE COURT: -- I just want to make sure --
11
12 MR. FINLAYSON: No, 600 --
13
14 THE COURT: -- what you're setting up here.
15
16 MR. FINLAYSON: -- 600 is the building. The land was 68 --
17 if you look at the --
18
19 THE COURT: Six hundred is the completed --
20
21 MR. FINLAYSON: Yes.
22
23 THE COURT: -- is -- is the completed building --
24
25 MR. FINLAYSON: Yes. So I've taken out the land --
26
27 THE COURT: -- minus the actual of the land. Okay. I'm
28 with you.
29
30 MR. FINLAYSON: Okay.
31
32 THE COURT: I'm with you, yeah.
33
34 (DISCUSSION OFF RECORD)
35
36 MR. FINLAYSON: Not -- not a witness, My Lord. We're --
37 we're all right.
38
39 MR. DAVIDS: Yes, excuse me, My Lord.
40
41 MR. FINLAYSON: Yeah.

- 1
2 MR. DAVIDS: This is Mrs. Levandoski's (sic) wife.
3
4 (DISCUSSION OFF RECORD)
5
6 MR. DAVIDS: Yes, Mrs. Levandoski's wife will not be
7 a witness. I guess she can sit in the gallery. I wasn't aware of who she is. I have
8 never met her.
9
10 MR. FINLAYSON: Of course she can sit in the gallery.
11
12 Q MR. FINLAYSON: So if we could turn to Tab 14, Volume 1.
13 A Sorry, which document?
14
15 THE COURT: Yeah.
16
17 Q MR. FINLAYSON: Tab 14, Volume 1, at page 8.
18
19 THE COURT: Yes.
20
21 Q MR. FINLAYSON: This is your accountant's -- this is the
22 last completed financial statement prepared by your accountant before the --
23 before the fire, correct?
24 A Correct.
25
26 Q And if you look at page 8, the building -- the buildings are valued at \$576,635.
27 Do you see that?
28 A That's what's on there, yes.
29
30 Q And then if we go to Volume 6 of the MDD report, which is at Tab 140.
31 A Okay.
32
33 Q Appendix "A".
34 A That's right at the back?
35
36 Q Yes, it's -- it'd be 20 pages in or so and it says "Summary" --
37 A There's a couple pages of Appendix "A", but...
38
39 Q Well, "Summary of Balance Sheets."
40 A Yeah, which -- page 1 or 2?
41

1 Q One of two.

2 A Okay.

3

4 THE COURT: So, again, you said --

5

6 MR. FINLAYSON: Appendix "A", page 1.

7

8 THE COURT: "A"?

9

10 MR. FINLAYSON: Yeah.

11

12 Q MR. FINLAYSON: The building is there valued, you'll see,
13 on the line for building as at December 31st of '14 at \$326,578, yes?

14 A Where's the line down here?

15

16 Q Under "Property, Plant, and Equipment".

17 A Okay. Yeah.

18

19 Q It says, "326,578", correct?

20 A Correct.

21

22 (DISCUSSION OFF RECORD)

23

24 Q MR. FINLAYSON: So when you gave evidence-in-chief --
25 I'm (INDISCERNIBLE) if you could go to Tab 28 again which is at Volume 2.
26 When you gave evidence-in-chief, Mr. Guilbert, you testified about how you
27 came up with the actual cash value of the building.

28 A Correct.

29

30 Q And you said you considered accounting information, you considered the
31 appraisals, and that's how you came up with it, correct?

32 A Through the -- through my accountant, we came up with the depreciation.

33

34 Q Right. And you were aware when you completed your proof of loss that to
35 deliberately exaggerate the amount of your claim was inappropriate, right?

36 A Correct.

37

38 Q Did you appreciate that if you dishonestly claimed for an amount that was a
39 gross exaggeration of what you were entitled to that it might mean that your
40 claim was invalid and would be denied? Did you appreciate --

41 A I honestly put every information on here as to what it should be.

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Q Yeah, and was that partly because you knew that if you were dishonest that -- that your claim could be denied by your insurance company?

A Correct.

Q And when we look at the building cash value, we see the amount of just under \$1.6 million, correct?

A Right.

Q Now, we've looked at two appraisals and two financial statements, all of which put it about a million dollars less than what you've claimed. You understand that?

A Correct.

Q And is there a report that I have not seen that says the market value of the building before the fire was \$1.6 million?

A That was based on the accounting and the depreciation off of replacement cost is what we used.

Q "We" being you and your accountant?

A The -- yes, I believe that's what he was using.

THE COURT: Sorry, but what was the answer to the question? Didn't you -- you asked him was there some other document --

MR. FINLAYSON: The answer is no.

THE COURT: Okay.

Q MR. FINLAYSON: Yeah. Right?

A It's --

Q There's no other document?

A -- the answer is I was -- it's through my accountant --

Q Okay.

THE COURT: Okay.

A -- and was based off of --

1 Q MR. FINLAYSON: Yeah.

2 A -- replacement cost --

3

4 Q Yeah.

5 A -- less depreciation.

6

7 THE COURT: Okay.

8

9 Q MR. FINLAYSON: All right.

10

11 And -- and I can take you there, but you'll remember on the declaration page
12 for the policy, that for underwriting purposes, your own insurer, or your own
13 broker, PIB, had said the replacement cost was about 1 point -- less than 1.3
14 million, right?

15 A Yes. And I also have an e-mail from Paul Topp stating that if we were wrong,
16 that it -- you wouldn't be punished.

17

18 Q I'm sorry. If who was wrong about what first of all? If who was wrong?

19 A Because I said to Paul Topp when he met me with discussions and --

20

21 Q This was after the loss, right?

22 A After the loss.

23

24 Q Yeah. So at --

25 A And he said -- I said, I don't believe the replacement cost is correct that's on
26 there. And I told him --

27

28 Q On the declaration page?

29 A -- and I told him what Claude Simard had told me. And he says, If the
30 replacement cost is larger than that, you will not be punished for that.

31

32 Q Yeah. Well, you're -- you're talking about two different things, though.
33 What -- what you're saying is that after the loss, you had a conversation with
34 Topp about the 1.25 million referred to in the declaration page, right?

35 A Which 1.25 are you talking about?

36

37 (DISCUSSION OFF RECORD)

38

39 Q MR. FINLAYSON: So Tab 16 in Volume 2. The first tab in
40 Volume 2. Sorry, you're right. I -- I said, "1.2." I should have said, "1.3." I'm
41 sorry, Mr. Guilbert, I hope you know that that was inadvertent -- inadvertent.

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So you -- are you with me?

A Yes.

Q Okay.

MR. DAVIDS: Sorry, which document, counsel?

MR. FINLAYSON: Tab 16, Volume 2.

Q MR. FINLAYSON: So what you're saying is that you had a conversation after the loss with Mr. Topp where you expressed concern about the 1.3 million in your declaration page?

A My answer was I had conversations with Claude Simard about it before; and I had a conversation with Paul Topp afterwards saying I don't believe the replacement cost is correct.

Q No, no. I -- I understand that. I understand what you're saying, but the discussion you had with Mr. Topp was obviously after the loss?

A Yes.

Q And -- and when you say, "Not be punished," what I think they were talking about was, if after the loss the replacement cost wasn't 1.3, but it was 1.7 or 2.2, the fact that they put 1.3 in there wouldn't mean you couldn't replace; is that right?

A Correct.

Q Okay. So after the loss occurred, so far as I can see, there have been no invoiced provided in connection with -- which -- which might show what you paid for when you acquired equipment, or furniture, or fixtures; is that fair?

A Correct, because everything was with Home Hardware.

Q Right. But did you seek those from Home Hardware to give --

A I did ask for them. They said, Well, if anything's in question, we can justify what the costs are.

Q Okay, but as part of providing a proof of loss to your insurance company, you didn't think --

A That's where the SKUs come in, and that's exactly from Home Hardware.

Q Okay. Now, with respect, for example, to apartment equipment, did you get

1 your apartment equipment that you're claiming through Home Hardware?

2 A Correct.

3

4 Q All right. And did you ask them for the -- copies of those invoices?

5 A I did ask for copies, but we were more involved with Randy LaBrash that I
6 never received them. I received the water replacement, there was a, I think, a
7 fixtures one that Home Hardware sent me. There was a few things.

8

9 Q All right. So -- but just so that I'm entirely clear, you never did provide
10 invoices or correspondence that showed the date of acquisition or the values of
11 equipment, furniture, or fixtures, correct?

12 A I let Randy LaBrash know, with my claim and the SKUs, and I said, If you
13 have any questions about cost or anything else, Home Hardware can provide it.

14

15 Q Yes. I understand, but Mr. Guilbert, I -- I think you're confused about the way
16 it works. It's for you to prove -- it's what's called a "Proof of Loss." It's for
17 you to prove to the insurance company what your loss was.

18

19 And my question's a simple one: Did you provide invoices or correspondence
20 that identified the dates of acquisition or the cost of acquisition for a -- of your
21 furniture, your fixtures, or your equipment?

22 A To answer your question properly, I had no help from Randy LaBrash, who
23 had cut me off with no instructions to how to fill this out, and I asked multiple
24 times, and I did it to the best I could.

25

26 Q So you really haven't answered my question. Am I right in thinking you never
27 supplied such invoices or correspondence?

28 A I did answer that at the start of that question.

29

30 Q Did you?

31 A I did.

32

33 Q What -- and you -- and your answer was that you didn't?

34 A I said I did it to the best of my abilities.

35

36 Q Okay. So did you provide anything?

37 A The SKUs from Home Hardware.

38

39 Q Apart from that?

40 A That's -- everything was from Home Hardware.

41

1 Q Now, if we could go to Volume 2, Tab 54.
2
3 THE COURT: Could I just ask, if it's clarification, not
4 evidence. What -- what document sets out the SKUs? Can you remind me?
5
6 THE WITNESS: That's all the backup to my claim.
7
8 THE COURT: Oh.
9
10 THE WITNESS: Where I had, like, the -- the paint
11 department and all those types of things.
12
13 THE COURT: Right. And then the little -- and then the
14 amount?
15
16 THE WITNESS: Right.
17
18 THE COURT: Okay.
19
20 MR. FINLAYSON: So -- so it would be Tab 21, My Lord,
21 just --
22
23 THE COURT: Thanks.
24
25 MR. FINLAYSON: -- for your future reference.
26
27 (DISCUSSION OFF RECORD)
28
29 MR. FINLAYSON: And in that context, My Lord --
30
31 THE WITNESS: Sorry, Tab 22.
32
33 THE COURT: Twenty-two?
34
35 MR. FINLAYSON: Twenty-two? Oh.
36
37 THE WITNESS: Yes.
38
39 THE COURT: Okay. Sorry to interrupt.
40
41 (DISCUSSION OFF RECORD)

- 1
2 THE WITNESS: Which tab do you want me on?
3
4 Q MR. FINLAYSON: Thirty-two.
5 A Thirty-two?
6
7 Q Yeah.
8 A Okay.
9
10 Q So let me -- just to make sure the chronology's clear in everybody's mind, so
11 what happened is you submitted a proof of loss and it was rejected, right?
12 A Yes.
13
14 Q And then you submitted a second one on or about June 15th?
15 A Through Mike Davids, yes.
16
17 Q Yes. And then if you look Exhibit -- Tab 32 of Exhibit 1, Volume 2, this is a
18 response of Randy LaBrash to Mr. Davids in connection with the proof that
19 we're referring to. Okay? The one that has the SKUs attached?
20 A Correct.
21
22 Q Okay. And in the second paragraph, Mr. LaBrash tells you through your lawyer
23 that Economical is still unable to determine how you arrived at an actual cash
24 value for the building claim, the apartments, the equipment, the fixtures, and
25 furniture. Do you see that?
26 A Yeah.
27
28 Q And after that date, was anything further supplied to Economical through
29 Mr. LaBrash or otherwise?
30 A I don't believe there was anything, but that was our final --
31
32 Q That was your --
33 A -- send in.
34
35 Q -- that was your best effort; is that what you're saying?
36 A That was the correct effort.
37
38 Q Okay. So now, if you could turn to Tab 54. And I'm going to be referring to the
39 pages at the bottom right-hand corner. Hopefully, you have those there as well.
40
41 So this is a -- and we've been here before. This is an interview of you by

1 Mr. LaBrash, on February 27th, 2015. So two days after the loss, correct?

2 A If it's -- yeah, it's the 27th, yeah.

3

4 Q And at page 12, Mr. LaBrash asks, "Okay. How is business doing?" And your
5 answer was, "It's all right. Like, it's not like -- it's February, right? So there's
6 not much really going on." That's at page 12, at the top -- near the top.

7

8 So I think we've discussed this before in another setting, Mr. Guilbert, you
9 were aware, at this time, that Economical is trying to assess the claim and
10 figure out about the claim, right?

11 A Yeah.

12

13 Q And one of the things they were concerned about is whether you had a motive
14 to set the fire, and so that's why they're asking about your financial situation?

15 A Correct.

16

17 Q And you understand you had a duty to be honest and candid with them in
18 response to their questions?

19 A Correct.

20

21 Q And so when Mr. LaBrash says to you, "How's the business doing?" And you
22 said, "It's doing all right." You'll agree with me that that was a dishonest
23 answer?

24 A It wasn't dishonest. It was just a general comment that I made.

25

26 Q Well, the business wasn't doing all right, was it?

27 A That is why I signed off on Randy LaBrash seeing all of my accountant
28 records. There's not one thing I didn't sign off that you guys couldn't see.
29 That's, to me, being honest.

30

31 Q All right. Well, there are two issues that you raised. Let's not confuse them.
32 One is that you're saying, in essence, that, yes, you said your business was
33 doing okay when, in fact, it wasn't but you provided the means by which
34 Economical could otherwise determine that what you had said was false, and
35 so it was okay for you to say that. Is that what you're saying?

36 A I didn't say it was okay for me to say that. I just said in general terms, February
37 sucks in a hardware store, to put it bluntly.

38

39 Q Okay.

40 A And that's what I was referring to.

41

- 1 Q But that -- but that's -- okay. But when he says, "How's the business doing?"
2 And you say, "It's doing okay." You'd been told by Home Hardware -- like, do
3 you want me to go through the whole MDD report again? You knew your
4 business was in trouble.
- 5 A I did not say fantastic. I didn't say it was thriving. I just said it's all right to me.
6 That just means it's ho-hum. Like, it's not very good.
- 7
- 8 Q All right. All right.
- 9 A That's my understanding.
- 10
- 11 Q All right, in your mind, meant not very good?
- 12 A Like, yeah, just it's --
- 13
- 14 Q All right. Well, that explains a lot. And then if we carry on with that document,
15 he's asking -- he asks about the profit margin. And then on the next page, he
16 asks, about a third of the way down --
- 17 A On page 13?
- 18
- 19 Q Yes. He says, "Is there a mortgage on the property?" "Yep. At the Beautiful
20 Plains Credit Union." And that -- by "the property" you understood that that
21 meant the store or condo building --
- 22 A Right.
- 23
- 24 Q -- store apartment building, right?
- 25 A Correct.
- 26
- 27 Q And then he asks about where they are and what the payments are about. And
28 then on the next page, at the top of page 14, almost at the top, he says, "Okay.
29 Any other mortgage?" And you said, "There would be Cypress River Credit
30 Union."
- 31 A Right.
- 32
- 33 Q And you said -- he clarifies the name of the place, and he says, "Okay. Is it a
34 mortgage?" And you said, "Yes." And then he asks about the amount?
- 35 A Right.
- 36
- 37 Q And then he asks later about any other mortgage, and you said, "No." And --
38 and I'm not suggesting that not mentioning Home Hardware is problematic,
39 but --
- 40 A Right.
- 41

- 1 Q -- you clearly indicated to Mr. LaBrash that there was this other mortgage with
2 Cypress River Credit Union at the time, fair?
- 3 A Correct. That's what my statement says.
- 4
- 5 Q So you'll agree with me, Mr. Guilbert, that at no time in your interview with
6 Mr. LaBrash did you convey to him or attempt to convey to him that your
7 business was in some financial jeopardy, fair?
- 8 A I left that up to him to decide. What he thought was -- where it was at.
- 9
- 10 Q You knew he was interested in that, he was asking about that, and you didn't
11 tell him?
- 12 A I said, This is the information. You can assess everything, and you can go from
13 there. 'Cause my thoughts were they weren't going to base it off what I said,
14 it's going to be based off what they see.
- 15
- 16 Q And -- and that's why you thought it was okay to be less than candid?
- 17 A I wouldn't say I was being less than candid. I was just being honest with them.
- 18
- 19 Q Well, it's two days before this interview that your business and building burned
20 down, correct?
- 21 A Correct.
- 22
- 23 Q And so you know that one of the things that Economical wants to know is how
24 it happened?
- 25 A Correct.
- 26
- 27 Q And it's early days, so, obviously, all options would be open?
- 28 A Correct.
- 29
- 30 Q And so, certainly, arson is a possibility. Not necessarily by you, ^{but} by arson, by
31 somebody but they want to know did Mr. Guilbert have a reason to commit
32 arson, right? You knew that.
- 33 A Correct.
- 34
- 35 Q And so that's why they asked how the business was doing.
- 36 A And that's why I released everything to them, so that they could decide.
- 37
- 38 Q No. I -- I understand that but what I'm getting at is, in the spirit of candor, why
39 wouldn't you have said, Randy, you know, I got to be honest with you, but
40 business was in bad shape. I was trying to sell it, and I needed to sell it. Why
41 didn't you say that?

1 A I believe that my word wouldn't be taken for it and that they'd be going off
2 what the record showed, so that's why I said, Just go straight to the records.

3

4 Q So you're -- so you're saying that if you had said to them, honestly, that the
5 business was in financial trouble that they wouldn't have believed you?

6 A I don't believe that was the -- I was not being dishonest. I just said, Look. I
7 said, All right.

8

9 Q Did you understand -- did you understand what I said?

10 A I did.

11

12 Q Okay.

13 A I said, All right. And that, to me, meant that it wasn't very good, it was just all
14 right. Here's the numbers, you decide.

15

16 Q You said that you thought they wouldn't believe you. Are you telling the Court
17 that what you mean to say is that if you had told Randy LaBrash on February
18 27th, 2015, that the business was performing badly, that he wouldn't have
19 believed you?

20 A They would have taken it as believing me at the time, but the ultimate, I guess,
21 say in it would be, what do the numbers say?

22

23 Q All right. So what --

24 A That's what would override anything I would say.

25

26 Q So why wouldn't you have said, You know, I don't want to comment on that.
27 I'll give you carte blanche to look at everything there is. Why would you say
28 that it's doing okay when it isn't?

29 A I didn't. I said -- I explained to you what "all right" meant, and I gave him
30 access to everything he wanted.

31

32 Q Right. All right -- all right meant not very well?

33 A Correct.

34

35 Q Now, at page 21 of the same Document 54, Volume 2 of Exhibit 1 --

36 A Okay.

37

38 Q -- Mr. LaBrash says --

39

40 THE COURT: Sorry, let me get there.

41

- 1 MR. FINLAYSON: Sorry.
- 2
- 3 THE COURT: What tab? Six --
- 4
- 5 MR. FINLAYSON: Same tab.
- 6
- 7 THE COURT: The same tab? I'm sorry.
- 8
- 9 MR. FINLAYSON: Yeah, page 21.
- 10
- 11 THE COURT: Okay.
- 12
- 13 MR. FINLAYSON: Fifty-four, sorry.
- 14
- 15 THE COURT: Yeah, I'm sorry. I closed my book. And
- 16 page what?
- 17
- 18 MR. FINLAYSON: Twenty-one.
- 19
- 20 THE COURT: Twenty-one. Okay.
- 21
- 22 Q MR. FINLAYSON: So just past -- it might be the middle of
- 23 the page, Mr. Guilbert, or maybe just past the middle of the page at page 21 --
- 24 A Okay.
- 25
- 26 Q -- it says, "Has the business ever been appraised?" "Yes. It's with Pat Weir."
- 27 "Do you know what it was appraised at?" "It was just under a million, I think."
- 28
- 29 Now, the appraisal that we -- first of all, you -- you said that to Mr. LaBrash?
- 30 A Yeah, it's in my statement.
- 31
- 32 Q So I'm trying to figure out what appraisal that is because the only appraisal that
- 33 I've seen of Mr. Weir is one that says it was worth about \$630,000. Was there
- 34 another one?
- 35 A It was part of that claim where I think it was the replacement cost or some type
- 36 of diversion on there that was, like, 900,000-and-something. That's what I was
- 37 referring to.
- 38
- 39 Q That was an appraisal by Pat Weir?
- 40 A I believe that is a part of -- it was one of the numbers in his appraisal, yeah.
- 41

1 Q Okay. So you're saying somewhere in that appraisal, the -- something under --
2 a number somewhere just under a million appears?

3 A Right.

4
5 Q Okay. But what you were asked was, what was the property appraised at, and
6 you said, "Just under a million," and that wasn't true, was it?

7 A That was my understanding as to what I was answering.

8

9 Q Okay. So you -- even though it says that it was valued at that time, in March of
10 2012, I think it was, at \$630,000, you thought that it was just under a million?

11 A Replacement value, appraisal value, market value, replacement value are all
12 different.

13

14 Q They -- they can be, yes, absolutely, but -- but did -- is that what you were
15 saying? You were saying that somewhere in your mind you were thinking I'm
16 just going to pick the higher number and assume that that's the one he's --

17 A It was the number that I had and that I remember seeing in the report, and I was
18 going to the best of my knowledge.

19

20 Q Now, if we could go to page 23 of the same document.

21

22 So at the bottom of page 23, Mr. LaBrash is asking about pursuit or interest in
23 a sale of the property. Answer, "There was somebody that was interested,
24 yeah." "Can you expand on that, please?" And just read the next page, that's
25 page 24, and to three-quarters of the way down page 25, please.

26 A Okay.

27

28 Q So, again, one of the things that the insurance company, obviously, is interested
29 in at this point, sir, is whether you'd been trying to sell the property, and if so,
30 what was the state of the desired sale or potential sale. Do you get that?

31 A Correct.

32

33 Q Okay. And so on page 24, you indicate that it was Mr. ^{La}Laughlin, and you -- and
34 you're asked, I guess it would be negotiations as to interest in buying, and
35 that's about as far as it was. And then you said, "I --" he says, "What prompted
36 it? How did that get started?" And you answered: (As read)

37

38 More of a family thing between Laurie and I where, you
39 know, we weren't sure with the kids and then spending
40 time with them, you know, was the business, you know,
41 going to be where we wanted to be the next 20 years,

- 1 right?
2
- 3 So what I interpret this as meaning you to say is, that the reason you were
4 selling was that it had something to do with time with your family. Is that what
5 you're intending to communicate?
6 A It would be part of it, yeah.
7
- 8 Q All right. So you're saying that your -- the demands on your time by the Home
9 Hardware business in Neepawa have been so great that you hadn't had time to
10 spend with your family? Is that what you were saying?
11 A That would be part of it, yeah.
12
- 13 Q Well, you saw your kids off every morning, didn't you?
14 A That would be part of it.
15
- 16 Q Yeah. And they -- they came to the store after -- after school, right?
17 A Right.
18
- 19 Q And you would take them to Chicken Delight, or whatever it's called, or Dairy
20 Queen for -- for food, right?
21 A Correct.
22
- 23 Q And then you would drop them off at the school and go to their events in the
24 evenings?
25 A Correct.
26
- 27 Q And you had a -- a couple of managers in the store, Ms. Vaughn and
28 Ms. Howe, who could run it for a few hours when you weren't there?
29 A Correct.
30
- 31 Q So I -- I'm just trying to figure out -- and -- and the store was open the hours
32 we discussed earlier, right? Nine to six, generally --
33 A Yeah.
34
- 35 Q -- except on Sundays, it was noon to five?
36 A Correct.
37
- 38 Q So when you said the reason you were selling the store was because of your
39 family, that wasn't true, was it?
40 A No. It was true.
41

- 1 Q It was true? Okay.
- 2 A 'Cause you can't value how much time I'm supposed to spend with my family.
- 3
- 4 Q Well, that -- that's a -- totally unrelated to the question I asked. So --
- 5 A I'm answering the question.
- 6
- 7 Q Yeah, but the reason you were selling, sir, you -- you -- it's -- when we go
- 8 through the Home Hardware documentation, which we've done, the reason you
- 9 were selling was because you knew it was going to go under, right?
- 10 A We've already agreed that it was having troubles.
- 11
- 12 Q But that was the main reason for you selling, correct?
- 13 A It was a huge part of it, correct.
- 14
- 15 Q And did you anywhere in your communications with Mr. LaBrash on February
- 16 27th, 2015, when he's inquiring about the motivation for you selling, did you
- 17 ever say, Well, actually, I was desperate to sell it 'cause I knew I was going to
- 18 be bankrupt within a short time if I didn't?
- 19 A That's why I signed off on everything. I explained why I did that.
- 20
- 21 Q Well --
- 22 A Because that's going to be the ultimate sayer (sic).
- 23
- 24 Q Okay. What document was there that you signed off on -- by "signed off" you
- 25 mean you provided a consent to Mr. LaBrash to see your company financial
- 26 records?
- 27 A On March 17th, I believe there was three or four documents that they had me
- 28 sign. Randy LaBrash asked for all of the accounting records. I gave them full
- 29 disclosure on them. Anything that -- the non-waiver form. Anything that they
- 30 asked me to do, I signed off.
- 31
- 32 Q You gave consent to them to access documents relating to the financial
- 33 condition of your company?
- 34 A Anything they wanted.
- 35
- 36 Q Well, was there anything in writing, apart from the text that you may already
- 37 have deleted by this time, Mr. -- let me finish my question, please. Was there
- 38 anything in writing, apart from the text that you -- you soon deleted, about your
- 39 negotiations with Ryan McLaughlin that you had that the consent you gave
- 40 them would allow them to see?
- 41 A I said -- you're assuming that I deleted them. I said they could have been

1 deleted, but my phone at that time did cop out at (INDISCERNIBLE) and I had
2 to buy a new one. So I don't know which way it happened.

3

4 Q Did you --

5 A But I do clear out the memory on my phone --

6

7 Q M-hm.

8 A -- because it just takes --

9

10 Q M-hm.

11 A -- up too much.

12

13 Q This is two days after the fire, right?

14 A Yes.

15

16 Q Okay. Did you take out your phone and say, Here are my texts with Ryan
17 McLaughlin?

18 A I clear them out regularly.

19

20 Q Are you saying that between February 25th and February 27th, you -- you
21 cleared out your texts?

22 A I don't know when I cleared them out.

23

24 Q Are you saying you might have done that?

25 A It's -- I said there was a possibility, yeah.

26

27 Q All right. If you hadn't, would you have shown Randy LaBrash your -- your
28 phone texts to show the -- the state of the negotiations?

29 A I would have signed off and said -- even if they were deleted, you can still
30 retrieve them. I said, if you would have signed off and said, I need those. Here,
31 here's my records.

32

33 Q Was Mr. LaBrash not in the same place or location as you? Was he somewhere
34 else?

35 A LaBrash wanted nothing to do with me.

36

37 Q On this day, February 27th, 2015, when he interviewed you, was he not right
38 beside you?

39 A Correct.

40

41 Q All right. And was there something that impeded you from taking out your

1 phone when he's asking about the negotiations and -- and saying, Here, have a
2 look. Was there something that stopped you from doing that?

3 A I was letting him take the course on which way he wanted to go.

4

5 Q Yeah. You were --

6 A He's the adjustor.

7

8 Q -- telling him as little as you had to, right?

9 A I was giving him --

10

11 Q Right?

12 A -- what he was looking for.

13

14 Q Yeah.

15

16 THE COURT: Do you want to take a short break?

17

18 MR. FINLAYSON: Sure. Yeah, 10 minutes?

19

20 THE COURT: Yeah.

21

22 MR. FINLAYSON: I hate to prove the court reporter correct

23 again, so --

24

25 THE COURT: What -- what bet is --

26

27 MR. FINLAYSON: -- I'm trying to go as fast as I can.

28

29 THE COURT: -- what bet -- what's the bet? That you

30 may not --

31

32 MR. FINLAYSON: That I wouldn't finish 'til noon, and I

33 want to --

34

35 THE COURT: I don't believe those bets, in any event.

36 So while the court reporter might be offended, I -- I have no expectation. I've been

37 where you are many times. I'm just surprised you made -- you made the promise.

38

39 All right. We'll see you at 20 after.

40

41 (ADJOURNMENT)

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Q MR. FINLAYSON: I just want to -- and I apologize, Mr. Guilbert, because, obviously, you're way more familiar with the hardware business than myself, but if you could turn to Volume 2, Tab 22.

This is one version of a proof of loss you submitted?

A Correct.

Q If you could go to -- if you could look at the top right-hand corner or go to page 01879.

A Correct.

Q It's -- from the fax pages, it's page 9 of 27.

So you referred to the -- the SKU numbers, and are those the numbers that are down the middle -- the middle column on this page?

A Like, for the six-foot table, it's 4468515.

Q Right. Right. So these are the SKU numbers? Is that what these are called?

A Yes.

Q So these, presumably, must relate to something somewhere within Home Hardware like a catalogue or...

A That's how you order them, yeah.

Q So if I'm Economical and I receive this document, how -- how am I supposed to figure out -- how -- how do I -- why do you think this is sufficient to explain the values of these things that you've given these numbers? They mean nothing to Economical.

A Because they could have confided with Home Hardware and they could have verified them.

Q Well, as you've seen, Mr. LaBrash wrote to Mr. Davids and said, This -- this means nothing to us, give us more. And he -- and he -- you agreed that nothing more was given?

A We had to give it through Home Hardware, and that's where we order our stuff, so...

Q Now, if we could go to Volume 3, tab --

THE COURT: Just one second. I'm making a note --

1
2 MR. FINLAYSON: Yeah.
3
4 THE COURT: -- that I -- of -- of a question that I'll ask
5 later.
6
7 MR. FINLAYSON: Okay.
8
9 MR. DAVIDS: Which document, counsel?
10
11 MR. FINLAYSON: Six --
12
13 THE COURT: Okay. Sorry. I'm ready now.
14
15 MR. FINLAYSON: Tab 69. Tab 69, within Volume 3, at
16 page 56.
17
18 THE COURT: There's three options. Top, bottom, or
19 top right.
20
21 MR. FINLAYSON: Oh, I'm sorry.
22
23 THE COURT: It's okay.
24
25 MR. FINLAYSON: The top middle.
26
27 THE COURT: The top? Okay.
28
29 MR. FINLAYSON: That number at the bottom doesn't
30 change.
31
32 THE COURT: Oh, I didn't notice that. You're right.
33
34 Q MR. FINLAYSON: Let me know when you're there,
35 Mr. Guilbert.
36 A I'm there.
37
38 Q So at line 25, so near the bottom of the page, Mr. Devlin or Mr. LaBrash is
39 asking about payroll. Do you see that?
40 A Correct.
41

- 1 Q And what they're asking about over the next page-and-a-half is, have there
2 been any -- has there been any trouble paying the staff? So if you look at the
3 next page --
- 4 A Correct.
- 5
- 6 Q -- it says -- it says, you know, she would print off what has to be done with
7 respect to payroll, and then you would go through it; that was correct?
- 8 A Correct.
- 9
- 10 Q And they were cheque-issued, not by direct deposit. That's the next point,
11 right?
- 12 A Correct.
- 13
- 14 Q And the next line is, as -- as you know, you -- you're the only one with signing
15 authority.
- 16 A Correct.
- 17
- 18 Q And then it says the people were paid bi-weekly?
- 19 A Correct.
- 20
- 21 Q And then the question at -- it sort of starts at Line 17 at page 57, it says, and
22 they were paid -- "Now, any trouble paying those folks in the last six months.
23 Did you --" answer, "There was a -- a couple of issues there." "Okay. NSF
24 cheques, like, returned?" "Yeah." "By the bank. Okay. Can you give me an
25 idea, a sense of how long ago this happened? Was it a one-time knock-off or
26 did it happen a couple of times?" And you said, "There was probably two or
27 three individual cheques, I think, that I can remember."
- 28 A Right.
- 29
- 30 Q And you said, in January, you thought, and maybe one in December, right?
- 31 A At that time, yeah.
- 32
- 33 Q Yeah. And, in fact, we know from the MDD report which is, again, at Volume
34 6, Tab 140, page 15, in this case, that there were 14 NSF cheques to
35 employees?
- 36 A Those -- the ones that I put in this report were the ones I remembered at that
37 time.
- 38
- 39 Q Okay. So you were unaware there were so many NSF cheques to employees?
40 You thought there were two or three?
- 41 A I knew there was -- there could have been more, but those are the ones that I

1 remembered that I could testify at that time that I remembered.

2

3 Q So you remembered, on March the 17th, 2015, two or three particular cheques
4 and that's what you were answering?

5 A I answered it as to that there was NSF cheques because I didn't think it was --
6 how many there were. There was just -- it happened.

7

8 Q Well, the question was, at the bottom of page 57, "Was it just a one-time
9 knock-off or did it happen a couple of times?" And you said, "Two or three
10 individual cheques." So they were specifically asking how often it happened,
11 correct?

12 A And I said two to three times based on what I remembered at that time.

13

14 Q Right. Right. And -- and you don't dispute that it was 14 times now?

15 A I'm not disputing it, no.

16

17 Q Now, my understanding is that when -- a couple of times when employees got
18 NSF cheques, you -- you said to them that it was a numbering issue, something
19 to do with the computer system; is that true?

20 A I quite possibly could have said that, yeah.

21

22 Q Now, if you could turn to Volume 7, Tab 157. This relates to the Economical
23 counter-claim. So, Mr. Guilbert, are you there?

24 A One fifty-seven, yeah.

25

26 Q Yeah. So this is a one-page document. I think it's called a "Crawford Payout
27 Summary" in the contents or index, and it just shows a, as -- as you can see,
28 from the bottom right-hand corner, Mr. Guilbert, it was the subject of questions
29 during the course of Mr. Devlin's examination, and my understanding is that
30 these are the amounts paid out on this claim to the people itemized in the
31 amounts indicated. You have no reason to dispute that, correct?

32 A The one thing it doesn't show is the dates and how long it took to pay the
33 mortgagees.

34

35 Q Well, I -- I understand that. I just need to know -- you agree these amounts
36 were paid and -- to these people?

37 A Yes. They were late, yeah.

38

39 THE COURT: They were what?

40

41 THE WITNESS: The mortgagees weren't paid until

1 September.
2
3 THE COURT: But that's not what he asked you.
4
5 THE WITNESS: I know, but he's asked me if there was
6 something missing and that's what I said was missing. That these --
7
8 THE COURT: No. No. He asked you if that -- if this --
9 he asked you, are these the amounts paid and to whom they were paid. Is your
10 answer yes or no?
11
12 THE WITNESS: The -- the amounts are correct, yes.
13
14 MR. FINLAYSON: And would you --
15
16 THE WITNESS: But he did ask me previously --
17
18 THE COURT: Is your answer yes or no.
19
20 THE WITNESS: It's yes.
21
22 THE COURT: Okay.
23
24 THE WITNESS: Yeah.
25
26 THE COURT: And I'd ask you to --
27
28 THE WITNESS: Yeah.
29
30 THE COURT: -- please answer the question.
31
32 Q MR. FINLAYSON: So as of February 23rd, and 4th, and 5th,
33 2015, Mr. Guilbert, you had -- you -- you knew on February 25th of 2015, that
34 there was a cheque you had sent to CRA for February 28th, right?
35 A As previously discussed, yeah.
36
37 Q Yeah. In the amount of \$75,000?
38 A Correct.
39
40 Q Which was going to bounce if presented?
41 A Correct.

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Q You had the weekend before, so on February 21st or 22nd, spoken to Joey Levandoski on the phone and told him that you were going to need a job soon because your business was sold, right?

A Yes. We discussed that earlier, yeah.

Q And you'd been telling employees that you thought you had a deal. And, in fact, you'd -- you'd indicated to them that you thought it was imminent, fair?

A I thought we could get it completed, yeah.

Q Yeah. But you thought you could get it completed soon, right?

A That would be my intent, yeah.

Q Okay. And you'd had a conversation with Ryan McLaughlin on the 23rd where, at least at that point in time, he wasn't in the area you needed him to be in and he had told you that you should go bankrupt, right?

A He did say that, yes.

Q And you'd been telling Home Hardware that you thought you were going to make a sale of the business as well?

A That was what I told them, yes.

Q And then on February 25th, 2015, we know that you were the last one in the store that night, right?

A Correct.

Q And that you set the alarm at 6:09?

A Correct.

Q And that a fire was reported four minutes later?

A I believe it's -- yeah, it was around 6:13. I'm not sure what the exact number is, but...

MR. FINLAYSON:

Those are my questions. Thank you.

EXCERPT CONCLUDED

IN THE MATTER OF PATRICK GUILBERT AND GUILBERT ENTERPRISES
LTD. V. ECONOMICAL MUTUAL INSURANCE COMPANY, TRADING AS
THE ECONOMICAL INSURANCE GROUP

I, KARI SHORT, Court Transcriber, HEREBY MAKE OATH AND SAY that the foregoing typewritten pages being numbered T One (T1) to T Fifty-Six (T56), inclusive, contain a true and correct transcription of the recorded proceedings taken herein to the best of my knowledge, skill and ability.



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