

EXHIBIT 1

000047

Date: 3/7/04 Expt: J
COMPUTER MATRIX
243-0668

10/27/2004 on 11/20/04
Sund A. V. Computer Matrix
Acc. 01/01/04 (1/20/04) 11/20/04
IP: 10.10.10.10

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

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

Case No. 3AN-08-4271 CI

AFFIDAVIT OF TERRI WAKEFIELD

STATE OF ALASKA)
) ss:
 THIRD JUDICIAL DISTRICT)

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

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

Kelly v MOA
Affidavit of Terry Wakefield
Case No 3AN-08-4271 CI
Page 1 of 3

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

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

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

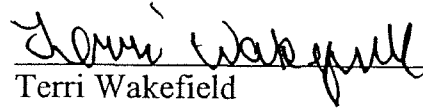
6. The hole had been left uncovered for days before Ms. Kelly stepped into it and I am aware that several Hilton employees had complained to security about it and that this was reported to the Municipality prior to Ms. Kelly being injured.

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

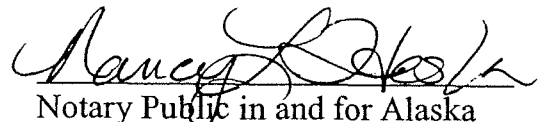
8. Ms. Kelly's injury could have been prevented if the maintenance crew working on the crosswalk had marked/put a cover on this hole or if they had checked this area after they completed their work. Also, the hole was left

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

DATED this 21st day of August, 2009.



Terri Wakefield

SUBSCRIBED AND SWORN to before me this 21st day of August, 2009.


Notary Public in and for Alaska
My Commission Expires: 11-16-2012

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

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



CHARLES W. CUE
ATTORNEY AT LAW
810 W. 2ND AVENUE
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(907) 276-6173

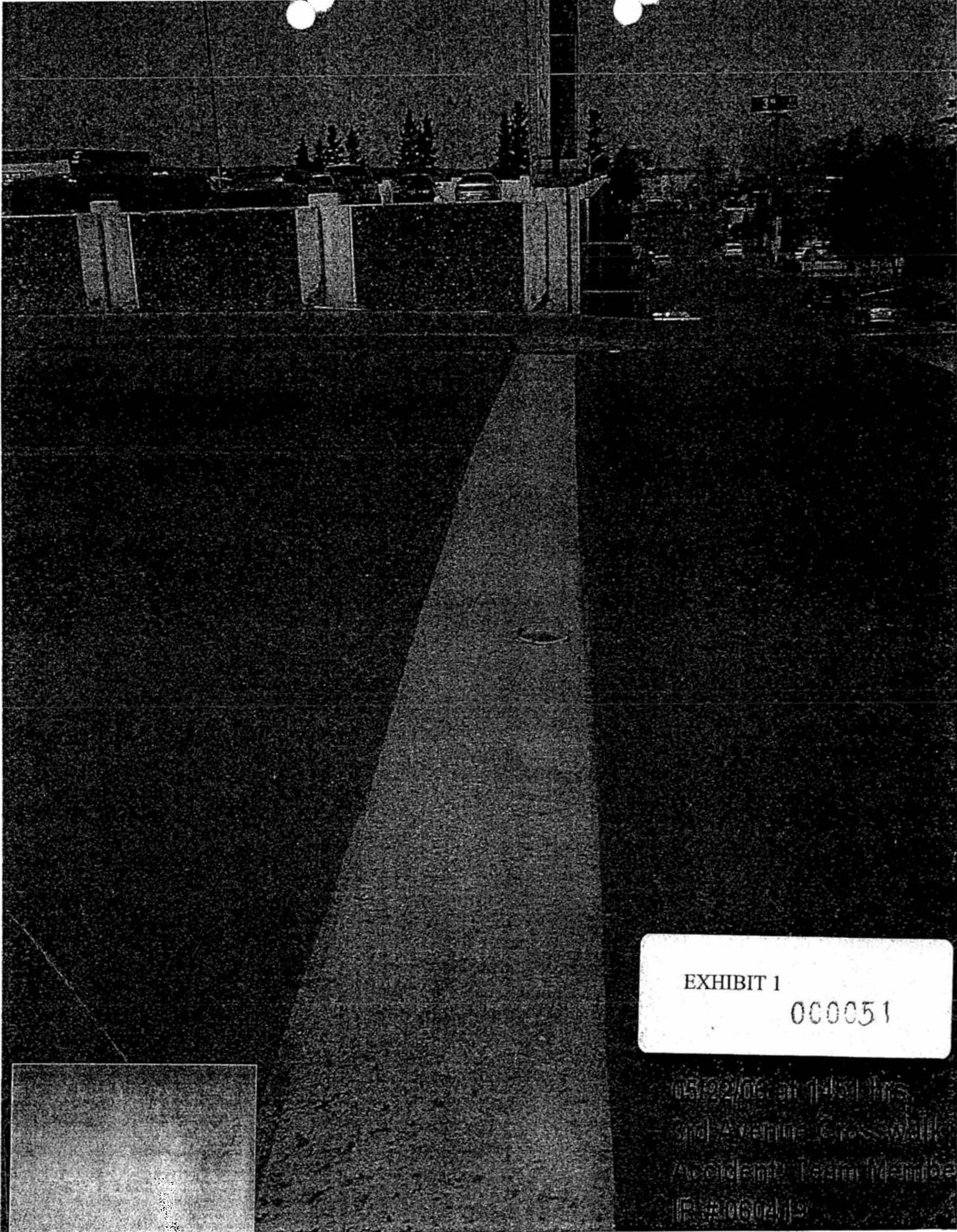


EXHIBIT 1

000051



04/22/06 on 1450 hrs
- 3rd Avenue - Crosswalk
- Avoidant - 1st Ave - 1st Ave
(P. #10604) -

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

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

Case No. 3AN-08-04271 CI

VIDEOTAPED DEPOSITION OF JAMEY GILMORE

March 3, 2009

APPEARANCES:

FOR THE PLAINTIFF:	MR. CHARLES W. COE Attorney at Law 810 West Second Avenue Anchorage, Alaska 99501 (907) 276-6173
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FOR THE DEFENDANT:	MS. PAMELA WEISS Municipality of Anchorage Department of Law Civil Division 632 West Sixth Avenue, Suite 730 Anchorage, Alaska 99501 (907) 343-4545
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ALSO PRESENT:	MS. KELLY
---------------	-----------

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1 your department, your maintenance department?
 2 A I don't understand the question.
 3 Q Well, let me ask you this.
 4 A Okay.
 5 Q Okay. Do you have any written rules as far as
 6 inspection of valve boxes, any policies, things in
 7 writing governing valve boxes?
 8 A We don't have any -- we -- we do not have a valve box
 9 maintenance program if that's what you're asking.
 10 Q Okay.
 11 A I -- I....
 12 Q Do you have a -- do you have a program involving
 13 inspections to make sure valve box covers or lids are
 14 on?
 15 A No.
 16 Q Okay. Is there any rules that govern, that you look
 17 towards as to how often they should be checked to see
 18 if they're working, on or not?
 19 MS. WEISS: I'm going to say objection.
 20 Q You know, in other words, is there any -- anything in
 21 writing of -- of how to go about, you know, inspecting
 22 to make sure you got your valve box covers on, lids?
 23 A Nothing specifically that would be focused on the valve
 24 box lid, no.
 25 Q How about is there anything that talks about, you know,

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1 going out and inspecting to make sure there's no open
 2 holes like this?
 3 A Our crews are always on the lookout for, you know, lids
 4 that may be off, but we -- we're not specifically going
 5 out on a task to check for valve box lids system by
 6 system if that's what you're asking me.
 7 Q Okay. In other -- and how do you go about finding out
 8 if the valve box lid is on or off?
 9 A Most of our reports of a lid being -- being off will
 10 come from the public. It could come from any other
 11 entity within the MOA. It could come from -- you know,
 12 a person in the public that notices it.
 13 Q Okay. So in -- but you have no program of going out
 14 and looking for this; is that correct?
 15 MS. WEISS: Objection. Asked and answered.
 16 Q Go ahead if you can.
 17 A It's -- we don't have a program specifically for
 18 inspecting valve boxes for -- for the lid, no.
 19 Q Okay. Is -- as part of when -- as of your -- when
 20 you're -- do you have a program in place for when you
 21 work on a valve box and make sure the lid is cov -- the
 22 lid is placed on it after you leave?
 23 A Yeah, it's part of the last step that you would do when
 24 you access a valve box and replace the lid.
 25 Q Okay. Is that in writing?

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1 A I believe there would be documentation of that. I
 2 would have to check. It's just a common -- I -- I
 3 can't answer your question yes....
 4 Q Okay.
 5 Aor no because....
 6 Q Okay. Well, let me ask you. You're the -- you're the
 7 maintenance supervisor.
 8 A Okay.
 9 Q That's, you know, I'm kind of trying to find out what
 10 types of things -- what kind of -- do you have books or
 11 -- maintenance books or what do you have that you look
 12 to as far as valve boxes?
 13 A Valve boxes -- you -- you basically have a diagram.
 14 They're a very simple assembly. You take a lid off;
 15 you put the lid back on.
 16 Q Okay. Well, let me ask you this. You drew -- you drew
 17 a valve box.
 18 A Yes.
 19 Q And could you go ahead and show it to the video so we
 20 know what we're talking about here? Okay. Would you
 21 point to that where the lid is?
 22 A The lid would be this little part up on the top there.
 23 And this be at the road surface.
 24 Q At the road surface?
 25 A Yes.

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1 Q And what's the purpose of the lid at the road surface?
 2 A It....
 3 Q Why do you -- why do you have it there?
 4 A Probably two reasons. One to protect it so somebody
 5 wouldn't, you know, fall in, but also to protect debris
 6 from going down the valve box.
 7 Q Okay. So if you get like snow or debris going down
 8 there, it could be -- it could interfere with the
 9 function of the valve box?
 10 A It....
 11 Q With the function of the valve system?
 12 A Correct. You would have to clean this assembly out to
 13 get on the control and that -- on top of the valve down
 14 on the bottom.
 15 Q So the valve is all the down at the bottom; is that
 16 right?
 17 A Correct.
 18 Q Okay. And as far as -- and how far from the road
 19 surface to the pipe is -- to the valve is?
 20 A It varies on the depth of the main.
 21 Q How big is a valve box normally -- the valve box lid
 22 cover?
 23 A I would have to measure it. I don't know -- I don't
 24 know the -- by the top of my head. This is a five inch
 25 valve box assembly. The pipe material is five inches.

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1 MS. WEISS: So I'm going to object just to form.
 2 MR. COE: Well.....
 3 MS. WEISS: But go ahead and answer if you can.
 4 Q Go ahead and answer that.
 5 A The only way I can answer that is common knowledge and
 6 I would have to see, you know, you know, if you -- if
 7 you remove a lid, you replace a lid.
 8 Q But.....
 9 A Well, that's the last step you would do before you
 10 leave.
 11 Q Okay. And that's -- that's -- that's the rules within
 12 your -- your department; is that correct?
 13 A Yes.
 14 Q What about -- do you know if street maintenance, if a
 15 lid -- if they remove a lid, should they replace the
 16 lid?
 17 MS. WEISS: An objection, but go ahead.
 18 A Yeah, I can't answer it. It -- whoever removes a lid
 19 should replace the lid if the lid's removed.
 20 Q Okay. And is that just basic commonsense or is that
 21 something that within maintenance that either --
 22 maintenance that you tell people to do?
 23 A It's -- they're -- our crews are told and trained to do
 24 that.
 25 Q Okay. How about with street maintenance? Do you know

Page 23

1 if -- what they're -- if they're told to do the same
 2 thing?
 3 A I would have no idea.
 4 Q Do you -- I'll go back to a simple -- some simple
 5 questions. Do you know paints the crosswalks?
 6 MS. WEISS: Objection. Asked and answered.
 7 Q If you know.
 8 A Yeah. Yeah, I do not know for sure, no.
 9 Q And since you don't know for sure, I know you might be
 10 guessing, but could you tell me which division paints
 11 those? Your guess.
 12 A My guess would be DPW, maybe street maintenance.
 13 Q What's DPW? I'm sorry.
 14 A The Department of Public Works. Sorry.
 15 Q Oh, okay. And is that Mr. Bennett or is that someone
 16 else?
 17 A That would be some -- someone else.
 18 Q Okay.
 19 A That's not -- it's not AWWU.
 20 Q It's not AWWU?
 21 A Correct.
 22 Q Okay. And you think it's the Department of Public
 23 Works that may do that?
 24 MS. WEISS: Objection. I don't think that's what his
 25 answer was.

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1 Q And once again, I think that's a guess, you know.
 2 A If I had to guess, that would be my guess. But I'd --
 3 I do not know.
 4 Q Since the valve box -- the valve boxes are -- are part
 5 of your department, I mean, that's, you know, a valve
 6 box and a valve box cover is part of the AWWU; is that
 7 right?
 8 A The ones that are out in the right-of-way, yes.
 9 There's -- there's -- there's valve boxes on private
 10 property that we do not maintain.....
 11 Q Okay.
 12 Aand we do not own.
 13 Q Well, the one -- this one involves a valve box cover
 14 across from the -- from the -- across from the Hilton
 15 Hotel.
 16 A Uh-huh. (Affirmative)
 17 Q Are you aware of that?
 18 A Yes.
 19 Q Is that within your.....
 20 A Yes.
 21 Q Okay. And that would be within your control or under
 22 your supervision; is that right?
 23 A Yes.
 24 Q Okay. Are you made aware when they're going to -- are
 25 you -- are you made aware when they're going to paint

Page 25

1 -- paint over a valve box? Are you told about that?
 2 A No.
 3 Q Someone just does it; is that right?
 4 MS. WEISS: Objection.
 5 Q If you know.
 6 A I just know we're not told.
 7 Q When a valve box cover is missing, completely missing,
 8 are you notified?
 9 A I -- we may be notified.
 10 Q Well, I'm talking about -- let's say -- let me go ahead
 11 and correct that. When a valve box cover lid is --
 12 cover is off, you're one of the groups that -- that may
 13 be notified; is that right?
 14 A Right. Our work section may -- may be notified of it,
 15 yes.
 16 Q Okay. And as far as if the -- if the cover is missing
 17 altogether, in other words, you can't find the cover
 18 somewhere, is your -- who -- who replaces those?
 19 A It could be many different work sections with -- within
 20 -- within Anchorage Water and Wastewater. All -- most
 21 vehicles, repair vehicles or field service vehicles
 22 carry spare lids on them.
 23 Q Oh, okay. And so this -- in other words, that's --
 24 that goes to what I was asking. Your particular
 25 division doesn't necessarily go out and replace all

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1 spare lids; is that -- you know, in other words, let's
 2 say the lid is completely missing. Is it -- you don't
 3 go out and -- you're not the only one that goes out and
 4 puts spare li -- a spare lid on it; is that correct?
 5 A Correct.
 6 Q Okay. You're just one of -- one -- the spare lids are
 7 in -- basically, who has spare lids? I mean, your --
 8 your -- your section does. Who else would have spare
 9 lids?
 10 A Field service section.
 11 Q Field service section?
 12 A Yes.
 13 Q Anybody else?
 14 A Not to my knowledge.
 15 Q Who's in charge of field service section?
 16 A That would be Wayne Bennett.
 17 Q In Ms. Kelly's case, was a lid -- was a lid missing
 18 completely?
 19 MS. WEISS: Objection.
 20 A I -- I do not know. I -- I wasn't there.
 21 Q Okay. I mean, you've been designated as a witness in
 22 this case. I'm trying to figure out what, you know,
 23 what.....
 24 A Yeah, my personnel did not replace the lid so.....
 25 Q Okay. You didn't replace the lid. It sounds like your

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1 personnel didn't go out and check it out after the call
 2 -- initial call?
 3 MS. WEISS: Objection.
 4 Q Or did you?
 5 A I don't understand the question.
 6 Q Okay. There was -- there was a call by the Hilton
 7 security and I don't know who they initially called,
 8 but -- and then someone went out and checked -- checked
 9 the lid situation. Was that your -- your department or
 10 Mr. Bennett's department?
 11 A That will be Mr. Bennett's.
 12 Q And you became involved because Connie Ernst asked you
 13 to go out and look at this particular lid?
 14 A Yes.
 15 Q And you think you went out and looked at it sometime
 16 this year?
 17 A Yeah, I'm guessing it was -- it was '08 or '07. I -- I
 18 don't know for sure.
 19 Q '08 or '07. Okay. And when you went out and looked at
 20 it, what do you recall about it?
 21 A A typical valve box top section with a lid on it.....
 22 Q Where would.....
 23 A It.....
 24 Q Where.....
 25 A It was -- it was sitting in the -- on the edge or

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1 within that -- the crosswalk, the painted area at the
 2 crosswalk, but other than that it -- I didn't notice
 3 anything special about it.
 4 Q Well, was it painted or not painted?
 5 A The lid I don't think is painted, no.
 6 Q Okay. Do you know if -- did you pick the -- take the
 7 lid off?
 8 A Yes.
 9 Q Was that area painted?
 10 A Not that I can recall.
 11 Q Do you know if it was actually in the painted area of
 12 the crosswalk sec -- crosswalk or would -- or in the
 13 crosswalk itself?
 14 A Yeah, it was -- it was in the white painted area.
 15 Q Do you know -- would -- would these lids normally be
 16 painted on the crosswalk?
 17 A If the crosswalk is painted and the lid is there, I
 18 would say it would be painted.
 19 Q Do you know -- do you know that or not?
 20 A I don't know -- you -- I do not know one way or the
 21 other if they're painted or not painted.
 22 Q As you sit here today, when you checked this lid out,
 23 do you know if it's painted or not? And I think you --
 24 you.....
 25 A Yeah, I don't believe this -- this lid was painted.

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1 Q Is there any rules on -- rules that govern painting the
 2 lids?
 3 MS. WEISS: Objection. Asked and answered. But go
 4 ahead.
 5 A No, in fact, you know, we -- we sometimes paint them
 6 just for location, you know, during a maintenance event
 7 or if we have a mainline water break.
 8 Q What do you mean you paint them so -- for location
 9 purposes?
 10 A Paint them blue, just to -- to -- to find them easier.
 11 Q Okay. And you don't -- the lid that you looked at, you
 12 don't recall -- it wasn't painted blue; is that
 13 correct? The -- the one across from the Hilton.
 14 A I just recall it wasn't painted white, I believe.
 15 Q It wasn't white; is that correct?
 16 A Yeah. Photos were taken, you know. I would have to
 17 refer to, you know.....
 18 Q Did you take the photos?
 19 A No.
 20 Q Or did someone take the photos with you there?
 21 A Yes.
 22 Q So really the photos received from the municipality
 23 shows someone measuring -- there was someone measuring
 24 it with a -- a tape measure. Was that you doing that
 25 or were you there when that was done?

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1 A Yes.

2 Q Would you agree with me the rule is that if someone
3 takes -- takes a lid off either for painting purposes
4 or getting into the valve box, they need to put it back
5 on before they leave?

6 MS. WEISS: Objection. Form.

7 Q I can -- I can break that down if you want.

8 A Yeah. Well, our -- yes.

9 Q Okay. And as far as with your rules, failure to --
10 failure to put that lid back on after you leave, that
11 would be kind of a -- it will be breaking one of the
12 rules of your department; is that right?

13 MS. WEISS: And also objection. Form. If you
14 understand the question, go ahead and answer.

15 A Yeah, I -- I don't -- I don't understand the rule
16 portion of it. It's just a....

17 Q Well....

18 A It's a job step, I guess I should say.

19 Q Okay.

20 A I mean, when you're....

21 Q Okay. Well, and that -- that's a fair way to put it.
22 In other words, as part -- as part of the final job
23 step with your department, if someone was in the -- if
24 someone had taken the lid off the valve box, then you
25 would require that they -- before they leave to put the

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1 lid back on; is that correct?

2 A Correct.

3 Q And if they don -- if they -- if they're missing a lid,
4 you'd have -- they go to the truck and a -- a spare rib
5 [sic]; is that right? I'm saying spare rib. I mean,
6 spare -- spare lid. I'm sorry.

7 MS. WEISS: You must be hungry.

8 A Correct.

9 Q Okay. So -- and that's just either common -- would
10 just say that's commonsense?

11 A Yes.

12 Q Okay. Do you guys -- when you're -- when you're -- do
13 you have like meetings with your repair people
14 sometimes, your staff?

15 A From time to time, yes.

16 Q And do you talk to them about if -- if you see a lid
17 off, put it back on?

18 A Yes, that's -- we have a lot of on the job training
19 there. So a lot of that is done from journeymen during
20 down to the, you know, the other utility people out in
21 the field. So yes.

22 Q When you say -- when you say journeymen on down, what
23 union is that?

24 A Local 367, Plumbers, Pipefitters.

25 Q Okay. And they're the people that go out and check the

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1 valves, the valve boxes. Are they plumber -- plumber,
2 pipefitters.....

3 MS. WEISS: Objection.

4 Qnormally?

5 MS. WEISS: Form.

6 A Some of them are.

7 Q Okay. And when you say some of them, who are the
8 people that -- you know, what are the traits that do
9 that within your department?

10 A My department would be Local 367.

11 Q 3 -- 367?

12 A Yes.

13 Q Okay. According -- I think you -- according to this --
14 according to your records, let me ask you, in Ms.
15 Kelly's case, assuming this happened on May 22nd, 2006,
16 according to your records, when was that valve box last
17 worked on by your department?

18 MS. WEISS: Objection. Asked and.....

19 Q Accord.....

20 MS. WEISS:answered.

21 A I would not know.

22 Q You don't have a record of that?

23 A I don't have -- the only record I could check would be
24 our -- our maintenance management system which I
25 believe I did. And I believe that we do not have any

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1 maintenance work order for that valve, but I would have
2 to check and verify.

3 Q So do you know if any -- any other department removed
4 that valve box lid?

5 A I -- I couldn't tell you. I -- I do not have that
6 knowledge.

7 Q Would be -- there would be other departments that would
8 have -- that could have removed the valve box though;
9 is that right?

10 A An.....

11 Q Other than.....

12 A Any person.....

13 Qwithin this -- public works?

14 Acould -- could remove the valve box. But, so -- I
15 mean, I -- I -- I would not be aware of that. So it's
16 -- it's -- I can't answer your question.

17 Q Okay. And that -- that's fair.

18 A Okay.

19 Q Okay. In other words -- in other words, you can -- you
20 -- all you can say is according to your records, you
21 can only tell me when your department was last -- last
22 worked with that valve box; is that right?

23 A Correct.

24 Q You can't tell me if street -- street maintenance took
25 the valve box lid off to do -- to paint it, can you?

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1 A No.

2 Q So if someone from -- if someone from the Hilton were
3 able say that street -- street main -- that someone was
4 painting the crosswalk and took the valve -- the valve
5 box lid off and didn't replace it, you would have no
6 way to dispute that, would you?

7 MS. WEISS: Objection. Form.

8 A I won't have any knowledge of it.

9 Q All right. And since you don't -- you don't perform
10 any check of that area; is that right? You know, just
11 routine checks of valve box lid -- lids, you -- you
12 wouldn't -- you would have no way of knowing it either;
13 is that right?

14 MS. WEISS: Objection. Form.

15 A I guess I don't understand the question.

16 Q Kind of simple, is this, is that you don't have a --
17 you don't have a system in place to check to see if the
18 valve box lids are -- are covering the valve box; is
19 that right? There's no system that you have?

20 A There is no specific program for only inspecting valve
21 box lids. That s correct.

22 Q Okay. How many -- how many valve boxes are there on
23 Third Avenue downtown?

24 A I couldn't tell you.

25 Q I mean, you -- you are the maintenance guy.

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1 A Well, yeah. I -- I would have to look at a -- a 300
2 scale, you know, and go out there and take a look. I
3 mean, we have probably over 30,000 valve boxes
4 throughout Anchorage. So.....

5 Q Okay.

6 A I mean.....

7 Q Now, let me ask you this. And you have -- and how big
8 of a crew do you have?

9 A I personally supervise two, the excavations crews with
10 six personnel each and I have a manhole valve key box
11 crew that fully staffed would have nine individuals.

12 Q How many people is in a valve -- valve box crew?

13 A It's a manhole valve key box repair crew. There's --
14 there's one foreman and eight workers.

15 Q One foreman, eight workers?

16 A Correct.

17 Q How often are they in the downtown area meaning like
18 Second, Third, Fourth, Fifth Avenue?

19 A Well, they're a -- a corrective maintenance working
20 unit. So they would only be there if there was a
21 corrective maintenance activity. I couldn't tell you
22 how often. It would depend on what activity.

23 Q On May 22nd, 2006, do you know if there was a
24 maintenance crew working downtown?

25 A No, I do not know.

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1 Q Is there a way you can check?

2 A Yes.

3 Q If a maintenance crew, on May 22nd of -- and how would
4 you go about checking that?

5 A I would have to check our computerized maintenance
6 management system probably based on that date that
7 you're giving me.

8 Q And if anyone was on that computer -- if they were
9 maintaining this -- maintaining the -- either the valve
10 boxes or manholes in the downtown area and they would --
11 would they be required to report any lids that were
12 off?

13 A They would fix them while they were there.

14 Q And that would be one of their work duties; is that
15 right?

16 A Correct.

17 Q In other words, if they drive by and see it, then they
18 -- they're required to stop and fix it; is that right?

19 A Correct.

20 Q Are you aware that two people fell in that -- in that
21 particular valve box on the day that Ms. Kelly fell?

22 MS. WEISS: Objection.

23 Q There was at least two reports of people falling in
24 that....

25 A I'm not aware.

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1 Q Let me ask you -- and as far as going after Ms. --
2 after Ms. Kelly fell, the person that would have done
3 that, you think is Wayne Bennett or his crew?

4 MS. WEISS: Objection. Form.

5 Q Yeah. After Ms. Kelly reported -- was re -- there was
6 a report of Ms. Kelly's fall, you think it was Wayne
7 Bennett's crew that would have went out and done that?

8 A Well, and.....

9 Q No, did you -- did your crew do it or -- or Mr. Bennett
10 or who did it?

11 A Do what?

12 Q Go out and put the lid back on the valve box.

13 A That would be Wayne Bennett's crew I believe.

14 Q Where -- was that reported to you that they had gone
15 out and done that?

16 A Not that time. I can't remember when I first was aware
17 of.....

18 Q Was it placed into your computerized maintenance system
19 that that had been done?

20 A No, because our personnel did not go out there.

21 Q Does your computerized maintenance system contain data
22 as to how many times a valve -- valve box lid covers
23 were replaced?

24 A No, it does not.

25 Q So in other words, that's something -- that's something

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1 you don't -- it's not tracked one way or the other?

2 A Correct. Very infrequent that we get calls of lids

3 coming off.

4 Q I'm sorry?

5 A It's very infrequent that we would receive any calls of

6 lids. That's not a.....

7 Q You say it's infrequent. Let me -- let me go ahead and

8 expand on that a little bit. How would -- as a member

9 of the public or let's say I'm a security person for,

10 you know, for a hotel or something. How would I know

11 to call you about it? About the valve -- about the --

12 this valve box lid cover being missing?

13 A Our phone numbers are in the phonebook.

14 Q Well, you know, I could look -- I could pull a

15 phonebook out now. Would it say if there's a valve box

16 lid missing, call you? Is that in the phonebook?

17 A Well, most valve box lids say water on it. So I would

18 assume that whoever would see the lid off would assume

19 that it's probably the water utility.

20 Q Okay. So the lid itself says water on it; is that

21 right?

22 A Most of them say water on it, yes.

23 Q Do you know if this particular lid said water on it?

24 A I couldn't tell you yes -- yes or no. I -- I don't

25 know.

Page 39

1 Q Does it have a number of who to call if it's -- if it's

2 missing?

3 A No, it does not.

4 Q Okay. Let me ask you this. If the lid is missing

5 altogether, who would -- how would I know who to call?

6 MS. WEISS: Objection.

7 A I can't answer that. I mean, you'd start somewhere,

8 with either street maintenance or -- I mean, we -- we

9 receive calls from street maintenance, from where --

10 whoever the person that eventually calls, I mean,

11 they're going to keep passing them around till they do

12 get -- get to us.

13 Q So in other words, you don't get all the calls on this

14 by any means.....

15 A No.

16 Qis that right?

17 A We get very few calls out there.

18 Q Very few calls?

19 A Yes.

20 Q Are you getting calls from other departments about it

21 as -- as opposed to the public? In other words, do --

22 does the calls largely come from other -- other

23 departments of the municipality rather than say just

24 everyday citizens?

25 A For calls to come into operations and maintenance, it's

Page 40

1 usually from another department.

2 Q Do the police report it?

3 A They may.

4 Q Do you get calls from the police department?

5 A I -- I -- I can't recall one, but I.....

6 Q In other words, I know they can do it if they want, but

7 do you get those calls?

8 A We receive calls from APD on various things, so a valve

9 box lid would not be out of question.

10 Q Do you know on the valve box calls that you get, do you

11 know how many come from APD?

12 MS. WEISS: Objection.

13 A No.

14 Q Do you know if -- if -- do you know how many -- on the

15 day Ms. Kelly fell, do you know how many APD vehicles

16 were up and down that street?

17 MS. WEISS: Objection.

18 Q Third Avenue?

19 A I would have no idea.

20 Q It would be safe to say that 2:30 in the afternoon, an

21 APD, more likely than not, an APD vehicle would have

22 went -- went down Third Avenue?

23 MS. WEISS: Objection.

24 A I -- I -- I have no knowledge of what APD or where

25 their whereabouts were on that day.

Page 41

1 Q As far as your department goes, do you tell other

2 departments that if they see this, they should notify

3 you, valve box -- lids missing from valve boxes?

4 A I'm not a -- I'm not aware of any correspondence that

5 would actually say that, no.

6 Q Do you know why you don't -- that information is not

7 spread out to other departments?

8 MS. WEISS: Objection.

9 A I don't know.

10 Q Okay. I think I've asked this. I want to ask this

11 another way. How would I know to contact you about

12 this?

13 MS. WEISS: You know I'm going to object, but.....

14 Q Go ahead. I mean, go ahead. You can -- she can --

15 I'll assume she objects. How would I know? I mean --

16 I mean, I didn't know who you were coming in today. I

17 mean, no offense. I mean.....

18 A Well, the call would come into AWWU. I mean, just

19 getting it to AWWU, the phone call, it's going to make

20 it to the right place, the right people that would

21 respond and put the lid on. So how that happens, I

22 can't tell you.

23 Q Okay.

24 A But I do know there's many, many people that are able

25 to report fire hydrants that have been hit. The water

Page 42

1 main breaks, water leak around the roads. So I don't
 2 think it's that far of a stretch for somebody to make a
 3 phone call and figure out that, well, I'll try AWWU. I
 4 mean, street maintenance. If -- if they're describing
 5 a valve box lid, whoever gets it at dispatch is going
 6 to say, well, that's Anchorage Water and Wastewater.
 7 Let me forward you or let me forward that information
 8 to them. So it's not like street maintenance is
 9 unaware of our activity or we're not unaware of their
 10 activity that's out there. We both work in the roadway
 11 so.....
 12 Q And so let's -- going back to that, if it -- if -- if
 13 that -- if that crosswalk was painted that day by
 14 street maintenance, then they would be required to put
 15 the lid back on? They wouldn't call you and say, hey,
 16 we got the lid off, your turn to put it back on.
 17 A Correct. Whoever -- who -- I'm not -- I don't know
 18 what they did, but if -- if they remove the lid, I
 19 would say yes, they would put the lid back on.....
 20 Q Okay.
 21 Ajust like we would.
 22 Q Okay. And let me ask you this. Would street
 23 maintenance also have the spare lids?
 24 A I do not know.
 25 Q Who do you work with, with street maintenance? Do --

Page 43

1 is there anybody you coordinate with?
 2 A Not generally. Just it all depends on what activity is
 3 going on. We don't have a lot of interaction, but
 4 there is some interaction there.
 5 Q Did you see the crosswalk where Ms. Kelly fell? You
 6 saw -- you saw that.....
 7 A Yes.
 8 Qis that right? Did you see the -- did you see
 9 pictures of the -- of the missing lid from that
 10 crosswalk? Have you ever seen those? I got it here.
 11 I'm going to show you.
 12 A I've seen photos of the -- of -- that Connie was out
 13 there. I don't know that I seen photos. I was out
 14 there when photos were being taken care of.
 15 Q I'd like to show you a -- and I think this was taken by
 16 -- actually, I think it was taken by a -- someone from
 17 the Hilton. Okay. I'm going to -- well, I'm going to
 18 mark it, but I'm going to -- I'm going to need it for
 19 tomorrow also. And this is provided -- hopefully
 20 your.....
 21 MS. WEISS: Can.....
 22 Qcounsel has this.
 23 MS. WEISS: Can I ask you how long -- much longer do
 24 you think it's going to go? I usually like to try take a break
 25 about every hour just for.....

Page 44

1 MR. COE: Yeah.
 2 MS. WEISS:everyone's sanity.
 3 MR. COE: I -- I just want to show him this real quick
 4 and then we can take a break.
 5 MS. WEISS: Okay.
 6 MR. COE: Okay.
 7 Q See that?
 8 A Uh-huh. (Affirmative)
 9 Q Have you seen that photo before?
 10 A I don't know that -- no, I have not seen this photo
 11 before.
 12 Q And it looks like it's timed at the bottom there.
 13 First of all, are you looking at Exhibit 2; is that
 14 correct? Exhibit 1 would be your diagram.
 15 A Yes.
 16 Q And you don't -- as you sit here today, you don't
 17 recall if you've seen that before?
 18 A I don't recall if I've seen this photo before.
 19 Q Okay. And is this the same valve box that you went out
 20 and checked?
 21 MS. WEISS: Objection.
 22 A I can't tell by looking at the photo.
 23 Q Okay. Is that the one you went out to, to look at, was
 24 it -- was it painted over like this?
 25 A I don't recall. Paint -- painted over meaning.....

Page 45

1 Q Yeah. It was painted -- it appear -- is it correct --
 2 and doesn't it appear that that -- take a good look at
 3 it. Does it appear that -- that someone removed a lid
 4 and painted it.....
 5 MS. WEISS: Objection.
 6 Qfrom that photo?
 7 A It appears it was possibly painted without the lid.
 8 Q Okay. And if it was painted without the lid, someone
 9 would have had to put the lid back on it; is that
 10 right?
 11 MS. WEISS: Objection. Form.
 12 A I do not know. I -- I don't know when the lid would
 13 have come off and how long it was off. And I -- I
 14 answered it.
 15 Q Well, let me ask you this. If the person painting --
 16 painting that area removed the lid, you -- you would --
 17 whoever is doing the painting, you'd expect that they
 18 would -- they would be required to put the lid back on
 19 after they left?
 20 A Correct.
 21 Q Does this appear to be a hole without a lid?
 22 A Yes. It appears to be a -- a top section without a
 23 lid.
 24 Q I's a top section.
 25 A A valve box top sect.....

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1 A I'd have to look at the picture. I believe that the
2 parking garage is there. So if there's not two in the
3 white crosswalk, I would have to say yes.
4 Q Do you think -- is the other one in the white
5 crosswalk, if you know, the other valve box lid.....
6 A I do not.
7 Qcover? Okay.
8 A I don't know. I went down to assist Connie and.....
9 Q And just once again.....
10 A Yeah.
11 QI'm not arguing with you, just trying.....
12 A Yeah.
13 Qto -- trying to figure out what -- what you saw
14 and did. Okay. As far as the painting procedure and --
15 when they're painting the lines there, do you have any
16 knowledge of what they do?
17 A No.
18 Q Okay. So you don't know if they're -- are -- you don't
19 know if they're required to put cones -- cones over the
20 holes when they're painting?
21 A I -- I do not know what their requirements are.
22 Q And as far as -- when this happened -- this picture I
23 think was taken at -- it looks like 4 -- 4 -- it looks
24 like 14:51 hours which -- almost 3:00, 2:51.
25 MS. WEISS: Objection. He has no knowledge of this.

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1 Q According to the picture, that's when it was taken. In
2 relationship to that, Mr. Bennett would have to tell us
3 when they came out to -- to put that lid back on; is
4 that right?
5 A Yes.
6 Q Did -- did that show up in -- in your maintenance
7 records? You know, when you -- you have this
8 computerized maintenance record. Did it show Mr.
9 Bennett going out -- his crew going out and doing it?
10 A They use a different system than -- than we would at
11 operations and maintenance.
12 Q Okay. So in other words, the -- the amount of lids
13 they put on, you know, the -- are you familiar with
14 their system? Are there.....
15 A Just -- just a little bit.
16 Q Okay.
17 A I can research or whatever if I needed to take a look
18 at it.
19 Q You have the ability to research.....
20 A Yes.
21 Qthose; right? Did you research it in this
22 particular case?
23 A No.
24 Q Okay. So do you know when they go out and replace the
25 lid, do you know if they annotate that or not in their

Page 60

1 system?
2 A I don't believe in -- in the -- I don't believe they
3 would in their service order. Wayne should -- should
4 talk to you about that. I'm not too -- I'm not up to
5 speed on everything that they would do.
6 Q Okay. And that -- that's a fair way to answer.....
7 A Okay.
8 Qif that's something that Wayne -- we'd have to
9 direct to Wayne, that's fine. I'm just asking you if
10 you know. As far as with the -- how do -- where do you
11 get the lids from? I mean, I'm not saying which
12 manufacturer. Do you have a storage area with them in?
13 A We have a warehouse.
14 Q A warehouse? And you guys -- your department has
15 access to the lids in the warehouse; is that right?
16 A Correct.
17 Q Is this -- when you say warehouse, would other
18 departments have access to the lids too?
19 A What do you mean by departments?
20 Q Well, you know, like -- first of all, Wayne -- Wayne
21 Bennett's.....
22 A Yes.
23 Q So in other words, they don't have to go through --
24 people do not have to go through your department to get
25 more lids, spare lids; is that right?

Page 61

1 A That's -- that's correct.
2 Q But street maintenance, would they have the -- the same
3 ability to get lids out of the warehouse?
4 A Sometimes they -- they do come over and pick up lids.
5 Q Okay. Is there a prob -- is -- do you want -- how
6 accessible do you -- on the -- these valve boxes, how
7 accessible do they have to be? In other words, do you
8 need to be able to get in there and work with the
9 valves in a -- how important is that?
10 A That would -- if you had emergency, like let's say a
11 mainline water break, then that's -- you would have to
12 ask -- you -- you would have to access that valve box
13 to be able to key the valve on the main and turn --
14 shut the main down. So it's fairly important.
15 Q Okay. In other words, let's say there's a water break
16 somewhere nearby. Your department would go turn --
17 turn the valve off to stop the water?
18 A Correct.
19 Q Is that -- is that a function of your department?
20 A Yes.
21 Q Is it a function of Mr. Bennett's department or more so
22 your department?
23 A Either -- either or both could respond at the same
24 time.
25 Q Okay. In other words, it's -- if there's an emergency,

Page 62

1 that -- that you have to access to the valve box?
 2 A Correct.
 3 Q Okay. And as far as the access to the valve box, is it
 4 impor -- it's important to be able to take that cover
 5 off; is that right?
 6 A Correct.
 7 Q When -- is it -- does it make sense that you wouldn't
 8 want to paint the cover while it's -- while it's on the
 9 valve box? Does that make sense?
 10 A It -- it -- it doesn't matter.
 11 Q Well, if you've painted it while it's on there, isn't
 12 there -- is there -- isn't there a potential that you
 13 won't be able to take it off that easily?
 14 A No. I mean, in the wintertime when we have ice and --
 15 and water conditions. So a lot of times we'll be
 16 beating them off with a mallet basically.
 17 Q Okay.
 18 A A small hammer.
 19 Q Okay. And I understand that. And that's -- that is a
 20 problem is that, you know, when you need to get -- get
 21 to it not being -- not having that quick access to it?
 22 A It doesn't take that long, but yeah, you.....
 23 Q Have you had to -- have you had to beat the -- beat --
 24 beat a valve box cover lid off after it's been painted?
 25 When -- when I say painted, when it's stuck -- stuck to

Page 63

1 the rim due to paint?
 2 A Not that I'm aware of. Well, like I said, we -- we do
 3 paint our own just for -- for marking them during.....
 4 Q Yeah.
 5 Athese situations.
 6 Q Okay. And when you paint them, you paint the lid --
 7 the -- you paint the lid, you don't pain the whole
 8 valve box; is that right?
 9 A We'll paint the whole -- the whole top, the -- the lid
 10 plus the top section too.
 11 Q Okay. Do you paint -- paint it in such a way that you
 12 can take the lid off and on? In other words, do you
 13 paint it as a unit or do you just do you paint the lid
 14 and you paint the top section separate?
 15 A We just put the lid on it and paint it.
 16 Q And when you do that, do you -- you always make sure
 17 that the valve -- valve lid cover is back on after you
 18 leave?
 19 A Yes.
 20 Q Okay.
 21 A Yeah, the -- the lid is normally on it when we're
 22 painting it so.....
 23 Q With your system, is there -- for example, if the
 24 maintenance department gets a call about the valve -- a
 25 valve lid cover being missing, do they -- does their

Page 64

1 system link to your system as far as your computer
 2 systems or are they two separate systems?
 3 A They're -- they're -- they're separate systems.
 4 Q And what -- I think you said -- testified earlier here
 5 that -- that a -- even another separate sys -- you have
 6 a separate system even within AWWU for Mr. Bennett's
 7 group; is that correct? In other words, that's a
 8 separate system that's separately -- not interlinked
 9 with your system?
 10 MS. WEISS: Objection. Form. I think -- I know I'm
 11 confused. So I don't.....
 12 Q In other words, I'm asking is there one unified system
 13 you use for this -- for maintenance within AWWU or does
 14 Mr. Bennett have a separate system from yours?
 15 A For -- for maintenance, corrective maintenance,
 16 preventive maintenance, we have basically one which
 17 would be a product called Maximo, a computerized
 18 maintenance management system. They're in field
 19 service. They use a customer information system, which
 20 is a total separate system from our system.
 21 Q Okay. So the customer information system is separate
 22 from your system; is that right?
 23 A That's correct.
 24 Q And street maintenance would have a separate system?
 25 A That's correct.

Page 65

1 Q Were you aware that there was two falls that day?
 2 MS. WEISS: Objection. Asked and answered and
 3 hear.....
 4 Q I think you say that you weren't aware of that.
 5 A Yeah, I -- I wasn't aware.
 6 Q And what you're saying according to your records, no
 7 one from your department went out and looked at it that
 8 day?
 9 A Correct.
 10 Q And did you check with any of your other, you know, you
 11 have like -- you have -- with your crew, did you talk
 12 to any of your crew if they went by to check to see if
 13 it was -- the lid was on that day?
 14 A No, I haven't asked anybody.
 15 Q Okay. In other words, was -- would a -- that's what
 16 I'm getting to is you didn't check with the -- anybody
 17 that -- there's no one in your crew that you're aware
 18 that's going to come in and say, oh, I was there
 19 earlier that day and the lid was on?
 20 A That's correct.
 21 Q Okay. Who's David Baldwin? Do you know who that is?
 22 A Yeah, he works for MOA Risk Management.
 23 Q And as far as -- how about Doug -- Douglas K. Wilber.
 24 Do you know who that is?
 25 A Yes.

Page 66

1 Q Who is that?

2 A He is a field service supervisor. He's -- works under

3 Wayne Bennett. Wayne Bennett is his supervisor.

4 Q Okay. In other words, he's not someone within your --

5 your particular group; is that right?

6 A That's correct.

7 Q During -- do you have any record of how many times

8 during the year you re -- you replace valve box lid

9 covers or valve box lids?

10 A No, I wouldn't have -- well, we don't track that. So

11 there -- there would be no way.

12 Q In 2006, did you -- did you have anything in your

13 system as to how many valve box lids that you re -- and

14 when I say replaced, I mean you'd put a new one out on

15 them; do you know?

16 A No, I could -- you know, the -- the warehouse, would it

17 have a issued -- issues from the inventory showing how

18 many lids went out into the system. Whether they're

19 installed or not, I couldn't tell you.

20 Q Okay. Do you know -- do you have any way of telling us

21 how many -- how many lids were -- that were off that

22 were put back on -- on by your -- on by your

23 department?

24 A No.

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

Page 67

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

2 A I would say it's within that day. It could be as -- as

3 quick as 15 to 20 minutes if we have personnel out in

4 the field or it could be done, you know, by -- before

5 the end of business.

6 Q Okay. Once you get a call -- well, first of all,

7 doesn't sound you get -- sound like you get that many

8 calls.

9 A No, we don't.

10 Q Would there be any reason to leave it off for more than

11 24 hours?

12 A It probably depends on its location.

13 Q Downtown, like this lid here, would there by any -- any

14 reason to leave it off that it would -- that it would --

15 you would leave it off for more than 24 hours?

16 A No.

17 Q You're saying sometimes street maintenance will call

18 you about these lids?

19 A Yes.

20 Q And does sometimes Mr. Bennett's section call you about

21 the lids also?

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

23 they'll take of it.

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

25 A Yeah.

Page 68

1 Q That's kind of what I was -- do you know of the calls

2 you got in 2006, how many -- where they came from?

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

4 Q Okay. That's not on your maintenance records?

5 MS. WEISS: Objection.

6 A It's -- it's something we do not track. We just take

7 care of it and move on. We don't get very many calls

8 at all.

9 Q If you get a -- if you get a call -- let me ask maybe a

10 more important question. If someone were -- if someone

11 had called about this particular lid being off, is that

12 something that would have been in your system?

13 A I don't understand the question.

14 Q Okay. I was -- the assumption I have is your checked

15 your -- your maintenance system to see anything about

16 this particular being off; is that right?

17 A No, I checked our system for that -- the valve box

18 assembly itself, that valve. We -- we have a -- a

19 record and that -- that particular valve has an ID. I

20 can put that ID into our system and has any work been

21 done on that. And I'll look for corrective maintenance

22 work. And there wasn't any.

23 Q Okay. In other words, you're looking if someone went

24 out and anybody in your system went out and did work on

25 the valve box; is that right?

Page 69

1 A Which would -- valve box assembly and/or the valve. It

2 -- it's one complete....

3 Q I understand.

4 A Oh, okay.

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

6 A Yeah.

7 Q I think -- I guess what I'm trying to find out, in your

8 system, if someone call -- if someone called and says

9 the valve box lid was off, you wouldn't annotate what --

10 what -- that sent -- sent this -- sent someone out to

11 put it back on; would you?

12 A No.

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

14 A Correct.

15 Q Okay.

16 A It could be in an e-mail. If an e-mail -- we -- we

17 just don't track it. And it's -- and it's like a two

18 minute job, you know, to go throw a lid back on if it's

19 there. Sometimes when they -- people call, the lids

20 won't be off or somebody came by and put the lid back

21 on. So we'll find that the lid is on there. So it's --

22 in -- in our maintenance section, we just don't have

23 that many calls and we just don't -- we don't create a

24 work order for that.

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

Page 70

1 work order, it would be -- should be in the system; is
2 that right?
3 A Yeah, that's correct.
4 Q Okay. And this is something you don't put -- if -- if
5 someone had called earlier that day or the day before
6 and said your -- your lid's missing off the -- off the
7 sys -- off that system, you wouldn't have any record of
8 whether they called or not?
9 MS. WEISS: Objection. It's not what....
10 Q So does that make sense? I'll rephrase it if you want.
11 A Yeah, I'm not aware of anybody calling. That's --
12 that's all I can....
13 Q Well, I know you're not aware of....
14 A Okay.
15 Qbut you're not the only one who answers the phone
16 over there....
17 A Right.
18 Qis that right? And when people call when they
19 have problems, not all problems come through to you; is
20 that right?
21 A Yeah, well, we don't track this activity. So....
22 Q Okay.
23 Athe answer would be no.
24 Q Okay. That's -- that's fair to say.
25 A Okay.

Page 71

1 Q In other words, when you reviewed the -- as you sit
2 here today, you really can't say if someone called and
3 reported this before this to your -- to you.
4 MS. WEISS: Objection.
5 Q To -- not to you personally, but to your department?
6 A Yeah, all I can -- I'm not aware of any call that came
7 in for this.
8 Q Okay. Now, wait a second.
9 A Okay.
10 Q Let me rephrase it. I'm not -- and I'm not trying to
11 give you a rough time. You're personally are not aware
12 of any calls; is that right?
13 A Correct.
14 Q Okay. You don't know if someone called in to the
15 department and said, hey, there's -- we're missing a
16 valve lid cov -- lid cover over on -- on Third Avenue.
17 You -- you have no way of tracking if that happened or
18 not?
19 A That's correct.
20 Q Okay. In other words, that call could have come in and
21 that's just not something that would have been tracked
22 in your system?
23 MS. WEISS: Objection.
24 A It would not be tracked in our maintenance management
25 system. You're right.

Page 72

1 Q Okay. And the -- one of the reasons is that you don't
2 do a work order to send someone over and say just put
3 the lid back on; is that right?
4 A That's correct.
5 Q The work orders you tend to do, what you were looking
6 at on your work order section is only work orders where
7 someone go -- went out and worked on the valve box
8 itself; is that right?
9 A It could be a -- a variety of things. We would --
10 there may be work orders with valve box lids. I'm just
11 saying typically that because a call comes in during
12 the day, our personnel is out in the field, we'll say
13 can you go by here and throw the lid on. That's how
14 our, you know, our section operates. So generally,
15 we're not creating a work order for them, but there may
16 be a work order -- work orders for putting valve box
17 lids on.
18 Q Okay.
19 A I'm not aware of them.
20 Q Okay. In other words, the two way it work -- in other
21 words, normally, you don't put -- you don't normally
22 have a work -- a work order for putting a valve -- a
23 valve lid -- a valve box lid cover back on?
24 A Correct.
25 Q Okay. It may be done sometimes, but you're not a --

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1 that's not the normal way it's done?
2 A Right. In -- in operations and maintenance -- in our
3 -- in our maintenance section. That's correct.
4 MR. COE: I have nothing further.
5 MS. WEISS: Okay. I just have a few questions. But if
6 we're not done in 10 minutes, then we need to let Mr. Gilmore
7 go out and plug the meter.
8 MR. COE: I don't think -- well, that's okay.
9 JAMEY GILMORE
10 testified as follows on:
11 CROSS EXAMINATION
12 BY MS. WEISS:
13 Q Mr. Coe asked you questions about inspecting for lids
14 on the valve boxes. And I just wanted to -- you to
15 explain what, if any -- what -- why don't you inspect
16 for lids or the absence of lids on any sort of regular
17 maintenance program?
18 A I -- it -- it prob -- it's not a good use of manpower
19 resources based on the fact that we get very few calls.
20 We don't have that many lids that come off. There's
21 personnel that do travel around. If they see one come
22 off, they put the lid back on. We carry lids in -- in
23 our vehicles. So it's -- it's not a big ticket item.
24 We just don't have that many calls that would warrant
25 us to have an inspection program just for the lids.

Page 70

1 work order, it would be -- should be in the system; is
2 that right?
3 A Yeah, that's correct.
4 Q Okay. And this is something you don't put -- if -- if
5 someone had called earlier that day or the day before
6 and said your -- your lid's missing off the -- off the
7 sys -- off that system, you wouldn't have any record of
8 whether they called or not?
9 MS. WEISS: Objection. It's not what....
10 Q So does that make sense? I'll rephrase it if you want.
11 A Yeah, I'm not aware of anybody calling. That's --
12 that's all I can....
13 Q Well, I know you're not aware of....
14 A Okay.
15 Qbut you're not the only one who answers the phone
16 over there.....
17 A Right.
18 Qis that right? And when people call when they
19 have problems, not all problems come through to you; is
20 that right?
21 A Yeah, well, we don't track this activity. So....
22 Q Okay.
23 Athe answer would be no.
24 Q Okay. That's -- that's fair to say.
25 A Okay.

Page 71

1 Q In other words, when you reviewed the -- as you sit
2 here today, you really can't say if someone called and
3 reported this before this to your -- to you.
4 MS. WEISS: Objection.
5 Q To -- not to you personally, but to your department?
6 A Yeah, all I can -- I'm not aware of any call that came
7 in for this.
8 Q Okay. Now, wait a second.
9 A Okay.
10 Q Let me rephrase it. I'm not -- and I'm not trying to
11 give you a rough time. You're personally are not aware
12 of any calls; is that right?
13 A Correct.
14 Q Okay. You don't know if someone called in to the
15 department and said, hey, there's -- we're missing a
16 valve lid cov -- lid cover over on -- on Third Avenue.
17 You -- you have no way of tracking if that happened or
18 not?
19 A That's correct.
20 Q Okay. In other words, that call could have come in and
21 that's just not something that would have been tracked
22 in your system?
23 MS. WEISS: Objection.
24 A It would not be tracked in our maintenance management
25 system. You're right.

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1 Q Okay. And the -- one of the reasons is that you don't
2 do a work order to send someone over and say just put
3 the lid back on; is that right?
4 A That's correct.
5 Q The work orders you tend to do, what you were looking
6 at on your work order section is only work orders where
7 someone go -- went out and worked on the valve box
8 itself; is that right?
9 A It could be a -- a variety of things. We would --
10 there may be work orders with valve box lids. I'm just
11 saying typically that because a call comes in during
12 the day, our personnel is out in the field, we'll say
13 can you go by here and throw the lid on. That's how
14 our, you know, our section operates. So generally,
15 we're not creating a work order for them, but there may
16 be a work order -- work orders for putting valve box
17 lids on.
18 Q Okay.
19 A I'm not aware of them.
20 Q Okay. In other words, the two way it work -- in other
21 words, normally, you don't put -- you don't normally
22 have a work -- a work order for putting a valve -- a
23 valve lid -- a valve box lid cover back on?
24 A Correct.
25 Q Okay. It may be done sometimes, but you're not a --

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1 that's not the normal way it's done?
2 A Right. In -- in operations and maintenance -- in our
3 -- in our maintenance section. That's correct.
4 MR. COE: I have nothing further.
5 MS. WEISS: Okay. I just have a few questions. But if
6 we're not done in 10 minutes, then we need to let Mr. Gilmore
7 go out and plug the meter.
8 MR. COE: I don't think -- well, that's okay.
9 JAMEY GILMORE
10 testified as follows on:
11 CROSS EXAMINATION
12 BY MS. WEISS:
13 Q Mr. Coe asked you questions about inspecting for lids
14 on the valve boxes. And I just wanted to -- you to
15 explain what, if any -- what -- why don't you inspect
16 for lids or the absence of lids on any sort of regular
17 maintenance program?
18 A I -- it -- it prob -- it's not a good use of manpower
19 resources based on the fact that we get very few calls.
20 We don't have that many lids that come off. There's
21 personnel that do travel around. If they see one come
22 off, they put the lid back on. We carry lids in -- in
23 our vehicles. So it's -- it's not a big ticket item.
24 We just don't have that many calls that would warrant
25 us to have an inspection program just for the lids.

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1 Q Is there any way to predict which lids are most likely
2 to pop off or come off?
3 A I would say no.
4 Q And in that respect, Mr. Coe asked you a question about
5 when you inspected -- or when you looked at the valve
6 cover with Connie Ernst, if you recall.
7 A Yes.
8 Q And you didn't recall the specific dates. And he asked
9 -- I'm not sure if I have the question right, so Mr.
10 Coe can correct me if I'm wrong, he asked you about
11 whether there was anything you saw that made you
12 believe that traffic would have been the cause. And my
13 question is would there be anything visual -- would
14 there anything you could ever see that would show
15 whether -- whether or not traffic was the cause of a
16 valve box lid coming off?
17 A The only thing would be is if the lid was semi-loose.
18 And -- and as you walk on it or push on it, you know,
19 if it wobbles a little bit, that would -- that would be
20 the only indicator that -- that I would have.
21 Q But you would have needed it to be the lid that had
22 been on the box at the time that it came off?
23 A Correct.
24 Q And you stated that you did not know whether the lid on
25 that box was the one that had come off prior to Ms.

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1 Kelly's accident or the -- a different one; correct?
2 A Right. I do not know what -- the lid's on there.
3 Q This exhibit number 2 that Mr. Coe has marked exhibit
4 2, other than the information that's -- looks like
5 actually it's typed on at the bottom of that picture,
6 do you have any idea, any independent knowledge about
7 what date this photograph was taken?
8 A No.
9 Q The time?
10 A No.
11 Q Do you know who took this picture?
12 A No.
13 Q And when you went out to the site with Ms. -- with
14 Connie Ernst to look at the valve box cover, what was
15 the purpose for your accompanying her there?
16 A She wanted to get some measurements for the valve box
17 itself so she would understand it better.
18 Q Were you there to try to render an expert opinion about
19 why the valve box cover came off?
20 A No.
21 Q I mean -- Mr. Coe showed you an e-mail about -- and
22 perhaps this isn't -- I just want to make sure this is
23 clear for the record. He showed you an e-mail in which
24 you had responded to Connie Ernst's question about why
25 valve box lids come of -- come off and you listed a

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1 number of reasons. Mr. Coe suggested that you left
2 some things out and you guys discussed a couple of
3 things. Do you believe that your list is all-inclusive
4 and names every possible reason that a valve box lid
5 can come off?
6 A No.
7 Q And finally, you stated that you do not create work
8 orders for valve box lid replacements; is that correct?
9 Or typically do not create work orders?
10 A I'm going to say typically, no -- no, we do not.
11 That's correct.
12 Q Did I hear you correctly that you may -- that you said
13 that there may be other documents, there maybe e-mails
14 reflecting calls or any other communications? How do
15 you typically communicate? If a call comes in, how do
16 they normally communicate with you in the field?
17 A I know I've received e-mails in the past, that, hey,
18 you know, there's a valve box lid off, and we would
19 respond to it.
20 Q Okay.
21 A Phone calls from within -- within our -- within AWWU,
22 you know, depending upon what department or section
23 would get a call. Street maintenance, they would give
24 -- they could give us a call. I don't recall APD, but,
25 you know, they certainly could -- could give us a call.

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1 Q And as -- I hope I -- make sure I get -- you're a
2 superintendent, is -- right? That you're a
3 superintendent of operations and maintenance or a
4 supervisor?
5 A Correct.
6 Q Okay. Would you -- would you likely know about calls
7 about missing valve box.....
8 A Unless I.....
9 Qlids?
10 Awas called directly or e-mailed directly or a work
11 order sent over directly, then no, I would.....
12 Q Okay.
13 Anot be aware of it.
14 Q That's all I have.
15 JAMEY GILMORE
16 testified as follows on:
17 REDIRECT EXAMINATION
18 BY MR. COE:
19 Q So really if a val -- a valve box lid is off, someone
20 could call over to dispatch, the dispatch person would
21 just tell someone out in the field to go fix it or to
22 -- or -- or alert them on it; is that right?
23 A Yeah, you -- that sounds correct, but I would ask Wayne
24 Bennett. In our section, we would -- one of our
25 foreman would dispatch or a -- or myself or the other

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1 superintendent there, we would dispatch.
 2 Q Okay, but you don't keep track -- you don't log that?
 3 A No.
 4 Q Okay.
 5 A But we -- there may be some work orders with that
 6 activity. I'm just not aware of them.
 7 Q Okay. I guess what I'm getting at is it's not -- it's
 8 not all-inclusive. And as you sit here today, you
 9 can't say that someone -- someone didn't call in and
 10 just told them, hey, go check this out?
 11 A All I can say is that I have no knowledge of it.
 12 Q I know you have no knowledge, but as you sit here
 13 today, you don't -- you don't -- your record system
 14 isn't all-inclusive where that type of call comes in,
 15 you record it?
 16 A Correct.
 17 Q Now as far as when you went out and checked this lid,
 18 do you know when you went out, what year you went out
 19 and checked that lid.....
 20 A That was with.....
 21 Qwith Connie Ernst?
 22 A That was with Connie, '08 or '07.
 23 Q '08 or '07 this.....
 24 A I keep -- I keep thinking it was last year. I --
 25 I.....

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1 Q It was last year? Okay. And we can find out from
 2 Connie. I think I have copies of -- unfortunately, the
 3 pictures doesn't quite show the date on it -- I mean,
 4 that I have. I mean, I could.....
 5 MS. WEISS: Our supplemental disclosures would
 6 typically state the day on which those.....
 7 MR. COE: Yeah. They.....
 8 MS. WEISS:pictures were taken.
 9 MR. COE: You know.....
 10 MS. WEISS: So.....
 11 Q I could show you -- is -- is that.....
 12 A There was -- there wasn't snow out there, so it's -- it
 13 was -- I keep thinking it was last year sometime.
 14 MS. WEISS: You know, if it's not the cd.....
 15 MR. COE: Right.
 16 MS. WEISS:that we concluded, if you send me a
 17 discovery request, I'll definitely get the answer for you.
 18 MR. COE: He'll probably send you a letter.
 19 MS. WEISS: Send me something.....
 20 MR. COE: Send me something.
 21 MS. WEISS:because I -- don't want.....
 22 MR. COE: I understand.
 23 MS. WEISS:to promise to be handing over
 24 things.....
 25 MR. COE: I understand.....

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1 MS. WEISS:without having to be asked for that.
 2 MR. COE:that. That way you can send it out. I
 3 understand.
 4 MS. WEISS: Uh-huh.
 5 Q So let me ask you. You go out and take a look at this
 6 lid. Was it loose?
 7 A I don't think this one was wobbly if that's what you're
 8 asking.
 9 Q All right. It didn't look like something that was --
 10 that traffic had loosened it up; is that correct, from
 11 what you could see -- what you recall? If you want me
 12 -- let -- let me rephrase that. When you looked at
 13 that lid, is -- is it correct -- when you went out with
 14 Connie Ernst, looked at the lid, you couldn't -- you
 15 couldn't look at it and say, jeez, traffic loosened
 16 this lid up?
 17 A Yeah. I -- I -- I couldn't tell.
 18 Q Okay. In fact, you -- as you sit here today, you don't
 19 recall it being that loose; is that right? You can't
 20 say it was loose, can you?
 21 A Right, it -- it -- I had to pull it off so it wasn't
 22 loose.
 23 Q Okay.
 24 A Yeah.
 25 Q It looks like it has notches on the side from the

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1 pictures we see. Somehow indentations make is easier
 2 to pull up; is that.....
 3 A Correct. It's supposed to be -- those are ears to be
 4 able to lift it up.
 5 Q Is it -- when you say ears, is that on the lid itself
 6 or holes where you can stick a -- a, you know, you have
 7 your picture here. I don't know if the lid has ears on
 8 it -- if the lid has ears on it or if the -- if the
 9 hole around it has -- has indentations where you lift
 10 under the lid.
 11 A Well, the -- the lid is a round object with a couple of
 12 ears protruding.....
 13 Q Oh.
 14 Afrom it that sits down in the top section and has
 15 those slots for those two years to slide into.
 16 Q Okay. I got you. So the lid itself even though it's
 17 just on a round lid, it actually has these ears that
 18 sli -- that sits in slots?
 19 A Correct.
 20 Q And it makes it a little bit more simpler to pick up
 21 that way?
 22 A Yeah. Generally, you have to use a screwdriver or a
 23 different tool to help pry it up to be able to -- to
 24 lift it off.
 25 Q Okay. In other words, something of a prying nature

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

Case No. 3AN-08-04271 CI

VIDEOTAPED DEPOSITION OF ROBERT WAYNE BENNETT

March 4, 2009

APPEARANCES:

FOR THE PLAINTIFF:	MR. CHARLES W. COE Attorney at Law 810 West Second Avenue Anchorage, Alaska 99501 (907) 276-6173
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FOR THE DEFENDANT:	MS. PAMELA WEISS Municipality of Anchorage Department of Law Civil Division 632 West Sixth Avenue, Suite 730 Anchorage, Alaska 99501 (907) 343-4545
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ALSO PRESENT:	MS. KELLY
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1 second. Okay. That's how you view it. You're the
2 sole people. I had Mr. Gilmore saying his people put
3 them on too.
4 MS. WEISS: Well, I -- I think that....
5 Q And I want to make.....
6 MS. WEISS:the reason I objected to form.....
7 MR. COE: Right.
8 MS. WEISS:is I think the question is vague.
9 Who's you?
10 Q Well, let me ask you this. I just want to clarify that
11 while you're -- we're all thinking on the same terms.
12 Your department is not the only one within AWWU that
13 either replaces or put valve covers on; is that
14 correct?
15 A That's correct.
16 Q Okay. I do -- I -- in other words, I know you're not
17 -- I know you're not intentionally saying something
18 incor -- I'm just saying is I -- Mr. Gilmore said that
19 his department puts them on too.
20 MS. WEISS: I -- might....
21 Q It.....
22 MS. WEISS:it help if we....
23 Q Well, let me ask.....
24 MS. WEISS:clarified the -- the structure -- it
25 might help if you clarified.....

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1 Q Well.....
2 MS. WEISS:the structure of the organization.
3 Qlet me clarify the structure. You have customer --
4 customer -- you -- you have a -- you have field
5 service.
6 A Uh-huh. (Affirmative)
7 Q Okay. Mr. Gilmore's department is maintenance; is that
8 right?
9 A Correct.
10 Q Okay. My understanding, when I say your department,
11 what I'm referring to, you're in charge of Mr. Gilmore;
12 is that right?
13 A That's correct.
14 Q Okay. Two separate departments; is that right? You're
15 separate, but you're all under AWWU?
16 A Correct.
17 Q Now if that's not correct.....
18 A Well.....
19 Qwill you -- go ahead, and please correct.....
20 A Can I add some clarity?
21 Q Yeah, go ahead. Add some clarity.
22 A Structurally-wise, department is AWWU.
23 Q Okay.
24 A We're -- we're -- we're different divisions in that
25 department.

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1 Q Oh, Okay. Thank you.
2 A So -- so when you're saying you, you to me means AWWU.
3 Q Okay. Okay. And let -- thank you. As a division of
4 AWWU, other divisions have the authority to place a
5 valve box cover on when it's missing or displaced; is
6 that correct?
7 A That's correct.
8 Q And one of those divisions would be Mr. Gilmore's
9 division; is that correct?
10 A Correct.
11 Q Is there other divisions that would have that authority
12 to do that?
13 A Yes, sir.
14 Q And what divisions are those?
15 A Engineering division would do that.
16 Q Okay. In 2006, who was in charge of the individ -- if
17 you know? Who was in charge of the engineering
18 division in 2006; do you know?
19 A Their director would be Kurt Vause.
20 Q Kurt Vause?
21 A V-A-U-S-E.
22 Q V-A-U-S-E. Any other divisions?
23 A No, sir.
24 Q Okay. So Mr. Devause [sic] -- I'm sorry.
25 A Can I backup? That would have the authority to put,

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1 our treatment division.
2 Q Treatment division? Do -- would they have the
3 authority to put a valve box cover back on?
4 A Yes, sir.
5 Q Okay. Who's in -- who was in charge of that in 2006,
6 if you know?
7 A I'm not sure when the new director went on -- whether
8 he come on now -- what -- what time he came on. The
9 current director Craig Wolard.
10 Q Craig what?
11 A Craig Wolard.
12 Q Willard [sic]; is that right?
13 A W-O-O-L-A-R-D.
14 Q Okay. W-O-O -- so really, each of these divisions
15 would have the authority to do that; is that right?
16 A Yes, sir.
17 Q Okay. Is this something through AWWU that -- is there
18 publications or policies that tell everybody if you see
19 something like this, to put it back on?
20 MS. WEISS: Objection. Form.
21 Q If you know.
22 A Not that I know of.
23 Q Okay. Why would the indi -- engineering division have
24 the authority to do that?
25 A Their mobile fleet is -- is out there and they -- they

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1 know about valves and they would put them back on if
 2 they saw one missing.
 3 Q Okay. Now I'm going to ask you -- I mean, kind of a
 4 simple -- maybe a stupid question. Why would they know
 5 that about -- if they -- is that something that's -- is
 6 that something that each -- each division is talked --
 7 told about in AWWU?
 8 MS. WEISS: Objection. Foundation.
 9 Q How would -- if I -- let's say I'm in treatment, how
 10 would I know that, that I have the authority to put the
 11 valve box cover on?
 12 A Common practice is if you see one off, you put it back
 13 on.
 14 Q Okay. As a member of the public, I don't know that.
 15 It -- it may be common -- is that common practice in
 16 AWWU?
 17 A Yes.
 18 Q Okay. Is there like a course that you go through that
 19 -- that you talk to people about that or, you know,
 20 like, you know, let's say you get hired with AWWU -- in
 21 other words, how would you -- I know it's common
 22 practice, but where -- is it in writing, is it in
 23 courses or what is it? How do you know that?
 24 A Just from workmanship knowledge.
 25 Q When you say common practice, would you feel there's a

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1 -- if you -- if you work for AWWU and -- in any of
 2 these four divisions, if you see a valve box cover off,
 3 would you have a duty to -- to put it back on?
 4 MS. WEISS: Objection. Calls for a legal conclusion.
 5 Q If -- if you know. Duty, obligation, however you want
 6 to rephrase it, you know.
 7 A I wouldn't say a duty. I would -- yeah, I wouldn't say
 8 a duty to do that.
 9 Q Okay.
 10 A There -- there -- I would say an expectation to do
 11 that.
 12 Q Okay. So really if -- if someone in engineering is
 13 driving around and they see a -- a valve -- valve box
 14 cover off.....
 15 A Uh-huh. (Affirmative)
 16 Qyou would expect that they would re -- they would
 17 put it back on or replace it?
 18 A Yes, sir.
 19 Q Okay. How about with -- does treatment also have
 20 people in the field?
 21 A Yes, sir.
 22 Q Okay. So really, you have about -- is the -- those are
 23 the four divisions that -- in other -- can I -- let me
 24 rephrase this. Would peop -- would you generally have
 25 this expectation of it -- anybody, any of your field

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1 people out in the field, whether it be any of these
 2 divisions to put a cover back on the valve box?
 3 MS. WEISS: Objection.
 4 Q I say cover, a lid.
 5 A I would have that for -- for my crew. I don't -- can't
 6 speak for what their directors would have for
 7 expectations for them.
 8 Q Okay. But would -- you said -- I think what -- maybe
 9 we've put this.....
 10 A Uh-huh. (Affirmative)
 11 Qmaybe the framework was I asked you who had
 12 authority and you said each of these divisions does; is
 13 that correct?
 14 A Uh-huh. (Affirmative)
 15 Q Okay. So they have the authority to do that whether
 16 their field director, their field manager expects it or
 17 not is another issue; is that right?
 18 A That's unknown to me.
 19 Q Okay. You're just saying is you would expect the
 20 people in your division, if they see something missing
 21 like this, to -- to put it back on?
 22 A Yes, sir.
 23 Q Does your division carry -- carry with it extra lids?
 24 Do your people out in the field?
 25 A Yes, sir.

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1 Q Okay. How is that work? Does each car always have an
 2 extra lid or, you know, or, you know, or -- you know,
 3 in other words, you -- how many -- how many -- you have
 4 10 people out in the field. Is there 10 vehicles
 5 or.....
 6 A They're all fleet trucks. Yes, sir.
 7 Q They're all fleet -- and about how many do you have?
 8 A Every employee has a truck.
 9 Q So every field service has a truck or every division
 10 has a truck?
 11 A Every employee that's in a field has their own vehicle. -
 12 Q Field truck. Okay. Okay. Thank you. And in each of
 13 the field trucks is a lid -- is lids kind of standard?
 14 A Yes, sir.
 15 Q Extra lids. When -- when people replace lids, do they
 16 normally have to annotate that they replaced it?
 17 MS. WEISS: Objection.
 18 Q In your division? Okay.
 19 A They would only annotate it they was dispatched to do
 20 that.
 21 Q Okay. So in other words, if -- if a -- if a lid is
 22 missing, there may be people who have -- who have
 23 replaced lids out there in your division that really
 24 there's no dispatch order; is that right?
 25 A I'm sorry, rephrase that, please.

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<p>1 Q In other words, there's not always -- there's not 2 always an order that you can look in your system to 3 find that someone replaced the lid. 4 A Correct. 5 Q In other words, someone -- let's say when your field 6 service people go out -- and we're talking about your 7 division, when they go out, see a lid missing, replace 8 it or put it back on, you know, just -- they -- they 9 see it off and put it back on or replace the lid, you 10 don't always know about it? 11 A Correct. 12 Q Okay. In other words, they don't call it in and log 13 every time they do that; is that right? 14 A Correct. 15 Q Okay. Do you have any knowledge about any of the other 16 divisions like engineering or treatment, what they do? 17 A I do not. 18 Q Okay. Do you know if -- if a call -- if a call goes 19 into engineering or treatment, that a -- that a lid is 20 off, would they -- they have the authority to go out 21 and put it back on; is that right? 22 A Yes, sir. 23 Q If other divisions such as engineering, treatment or 24 even mis -- maintenance, I guess it's maintenance. Is 25 that.....</p>	<p>1 can, you know, you can probably hit the computer and 2 tell me how many times the dispatch has gone out to 3 that particular valve cover, the valve involved with 4 this case. Could you do that? 5 A Yes. 6 Q Okay. I'm going to ask you about that in a little bit, 7 but what you can't say is if there was calls into other 8 divisions about this particular problem; is that 9 correct? 10 A Correct. 11 Q Is there any kind of way -- let me ask this. It sounds 12 like there's no unified system for -- there's no single 13 source for going out and putting lids -- lids on a 14 valve box cover -- valve boxes..... 15 MS. WEISS: Objection. 16 Qis that right? 17 MS. WEISS: Form. 18 Q In other words, within -- within AWWU, there's no sole 19 source, no sole division that does that? 20 A That's correct. 21 Q Okay. The same thing -- do you know anything about 22 whether street -- whether street maintenance replaces 23 valve box covers that are either missing -- either 24 missing or that they take off? 25 MS. WEISS: Objection.</p>
Page 19	Page 21
<p>1 A Uh-huh. (Affirmative) 2 QMr. Jamey Gilmore's division is? 3 A Yes, sir. 4 Q If they -- do you know if -- if -- when they get those 5 calls, are they all directed to you, your department? 6 MS. WEISS: Objection. Foundation. 7 Q If you know. 8 A They would not necessarily would be to our department, 9 no. 10 Q Okay. In other words, they can handle it on their own; 11 is that right? 12 A Yes, sir. 13 Q I guess what I'm getting at is your -- you -- your 14 departments is not the sole source of all notifications 15 to the municipality that a lid is missing from a -- 16 from a hole; is that right? In other words, you don't 17 -- as far as on behalf of the municipality, you can't 18 state as you sit here today, you can't say our 19 department get all calls for lids being off? 20 A Correct. 21 Q Okay. In fact, even the system that you look at, you 22 know, the -- let's say you have a -- your order -- your 23 dispatch system, is -- is that computerized? 24 A Yes. 25 Q In other words, you know, probably in this case, you</p>	<p>1 A I would not know that, no. 2 Q And the main reason you don't, you know, you don't 3 know, you don't work in street maintenance; is that 4 right? 5 A Correct. 6 Q Okay. I -- I guess what I'm saying is, I'm trying to 7 figure out is you don't -- even though you're -- you're 8 in charge of the division, your division doesn't -- 9 doesn't control what street maintenance does or does or 10 does -- does or doesn't do; is that right? 11 A Correct. 12 Q They have their own managers, their own rules and 13 regulations. 14 A Correct. 15 Q Let me ask you -- you would have an expectation from 16 someone at AWWU if they saw a valve box cover missing 17 to either replace it or put it back -- back on? 18 MS. WEISS: Objection. Form. 19 Q That's an expectation; is that right? I mean, you 20 termed it as an expectation. 21 A That's my personal expectation, yes. 22 Q Okay. Is there any rules, any written rules to do 23 that? 24 A There is none. 25 Q How about any regulations that within AWWU or the</p>

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1 Q I'll give you the service order. I -- why don't you go
2 over that. I don't -- I don't really -- I, you know,
3 let's go over it and let me tell you -- is this a
4 standard service order?
5 A Yes, sir.
6 Q What a -- it's a service type W-33 repair key box?
7 A That's just the event code that Ms. Gordaoff used for
8 the dispatch.
9 Q Do you know what that means? It says repair key box.
10 I don't know -- do you anything about that? In other
11 words, why doesn't it say replace lid?
12 A We don't have event codes for replace lids.
13 Q So if we, you know, if we hit her system to find out
14 how many lids were replaced in a -- in a year, we
15 couldn't do that?
16 A That's correct.
17 Q Okay. And going on, it says notes. Who would have
18 generated these notes?
19 A Ms. Gordaoff.
20 Q Okay. This -- in other words, this is a service order.
21 Is this is -- this is from Ms. Gordaoff then; right?
22 A The first three lines.
23 Q Okay. The first three lines, would you go -- would you
24 read those for the -- for us so that -- you know,
25 because there's some codes and annotation there that I

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1 don't understand.
2 A Okay. So I -- do I need to....
3 Q Yeah.
4 Atranslate.....
5 Q Go ahead and read it.....
6 Awhat all the.....
7 Qyeah. Yeah.....
8 Awhat all.....
9 Qwe're going to -- you're going to translate it.
10 Okay. Go ahead. And in other words, it starts at
11 5/22/06 per.....
12 A Per FC's phone call. Christine -- what's that say?
13 Christine.....
14 Q It looks like probably Christine, but it's like
15 Cherastine.
16 A Cherise Lyons, HR, the Hilton, can be reached at
17 265-7181. Found one of the two valve box and white
18 paint area, east lane of Third Avenue, west of F
19 Street. Christine of public works already contacted
20 risk management. Needs cover replaced. Then the last
21 line, the next line was Craig Walker put in valve --
22 put new lid in valve can. And that's -- that number is
23 just a number that valve can -- all of our -- all of
24 our -- all of our valves are systematically numbered.
25 Q Do you know.....

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1 A CW is Craig Walker.
2 Q Craig Walker. Okay. And it says put new lid in valve
3 can. And so what you're -- the way you're interpreting
4 that is that he put a new lid on.....
5 A Yes, sir.
6 Qyou know, a brand new lid. Do you know if there
7 was an existing lid laying around somewhere?
8 A Not to my knowledge.
9 Q Okay. Would he have -- would -- would he have
10 annotated differently if he just found the existing lid
11 and put it back on?
12 A He.....
13 Q Or do you know?
14 A I don't know what he would have said. Expectation, it
15 would have been replace lid.
16 Q Okay. So you don't know if the existing lid was
17 somewhere -- laying around somewhere; is that right?
18 A It could be in somebody's car.
19 Q It could be. Or, you know, or it could be that he got
20 there, the hole was open, he just put a lid on it
21 without looking -- looking around the area; is that
22 right?
23 A It's a guess. Being a seasoned employee, I assume he
24 would have looked around.
25 Q Okay. Now let's go to the first sections of it. It

Page 49

1 says -- it looks like -- do you know who -- it says
2 phone call Cherastine -- and it's probably Christine.
3 Do you know who that is?
4 A No.
5 Q Okay. And what's PW mean? Cherastine -- it says phone
6 -- FC is Cherastine.....
7 A I don't know what the PW is.
8 Qphone call. Do you know what PW is?
9 A No.
10 Q No. And then it says Cherise -- it looks like Cherise
11 Lyons/HR of Hilton and -- and indicates she -- was an
12 indication she fell in or -- there's CBR. Is that her
13 phone number?
14 A She can be reached at, right.
15 Q Can -- can be reached at. Fell in one of two -- one of
16 our -- one of our two valve boxes in pai -- white paint
17 area of east lane of Third Avenue, west of F Street.
18 So that's the location?
19 A Uh-huh. (Affirmative)
20 Q And it says -- who's Chris -- once again, Christine of
21 PW.
22 A Oh, she -- she means public works.
23 Q Oh, public works. Okay. So they got a call from
24 Christine of public works -- okay, I get it. In other
25 words, phone call, Christine, PW would be public works?

Page 50

1 A Yes.

2 Q Is that right?

3 A So Cherise Lyons called Christine at public works. And

4 Christine called AWWU.

5 Q Okay. And then it looks like Christine at P -- PW

6 already contacted risk management, needs -- needs --

7 needs covers replaced. What's that mean; do you know?

8 A That's two sentences, two different statements.

9 Q Do you know why she contacted risk management?

10 A That's -- she -- Diane would have put that in, because

11 -- because that's what Christine told her.

12 Q Okay. Is there any requirement -- do they -- when they

13 get a call like this to call risk management?

14 A Don't know.

15 Q Don't know? Okay. Well, in your practice, what -- is

16 there -- and when you get a contact like this, do you

17 call risk management or.....

18 MS. WEISS: Objection.

19 Qhave you ever done that?

20 A No.

21 Q Okay. It says something about needs covers replaced.

22 It sounds like more than one cover needs replaced; can

23 you tell?

24 A No.

25 Q Who is DSG? Is that.....

Page 51

1 A Diane Gordaoff.

2 Q Okay. So this would be -- this is the e-mail portion

3 of the service order. Is this what it looks like?

4 A No, that's -- that's the actual electronic service

5 order, the -- the -- that dispatched Mr. Walker to the

6 field.

7 Q Okay.

8 MS. WEISS: Can I ask, Charlie, how -- only because I'm

9 looking at 12:30.

10 MR. COE: Okay.

11 MS. WEISS: And I -- I promised him that I would ask

12 for a break about every hour, but if you're -- I don't know how

13 much more you have. If you just.....

14 MR. COE: Well, I have.....

15 MS. WEISS:have a little bit.

16 MR. COE:I have probably another half hour to --

17 I won't say an hour, but at least another half hour. Okay.

18 MS. WEISS: So I'm wondering if.....

19 MR. COE: Yeah.

20 MS. WEISS:it's a good time to take maybe 10

21 minutes, five minutes?

22 MR. COE: Let me get a copy -- let me do this here

23 first and then let's do that real -- he may not know what this

24 is.

25 MS. WEISS: Okay.

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1 REPORTER: Would you like this entered as Exhibit 2?

2 MR. COE: Exhibit 3 [sic].....

3 MS. WEISS: 2.

4 MR. COE: Exhibit 2.

5 (Deposition Exhibit 2 marked)

6 REPORTER: Exhibit 2 marked.

7 Q Now this may be two different things.

8 MS. WEISS: Can I see it?

9 Q I'll show you that. I got that from this --

10 municipality. Have you ever seen that before, that

11 document? The -- looks like there's a -- it's a phone

12 message. Have you ever seen that?

13 A I don't recall seeing this.

14 Q Is that something that would have went to your --

15 through your department? Any indication if that would

16 -- if that's a document that would be part of your

17 division?

18 MS. WEISS: Objection. He already said it isn't.

19 Q If you know.

20 A I don't know.

21 Q Okay. Let's take a short break. Okay.

22 A Use the.....

23 REPORTER: Okay. Off record.

24 (Off record)

25 (On record)

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1 REPORTER: On record.

2 Q Mr. Bennett.....

3 A Yes, sir?

4 Qdo you have any idea about this -- this phone

5 message here as to.....

6 A I do not.

7 Q Let me ask you, from your service order, what -- can

8 you tell what -- what time you got dispatched out

9 there? Or from any -- any document, do you know what

10 time you got dispatched?

11 A They're not time stamped.

12 Q Are they normally time stamped or something?

13 A No, sir.

14 Q Is there a -- they're calling this a service order.

15 I've seen another -- I think I've seen another document

16 in -- that appears. Is there a work order that's

17 different than this, like a more formal document

18 showing how much time that everything was involved? I

19 think counsel has the same thing I do. I'm reading

20 upside down.

21 MS. WEISS: Is this it?

22 MR. COE: Yeah.

23 MS. WEISS: Are you looking at this?

24 MR. COE: Yeah.

25 Q Do you know -- and I -- I have that too. I'm just

Page 66

1 Q Go ahead. I'm sorry.
 2 A There's only a portion of the events where the people
 3 are dispatched for.
 4 Q Let me ask.....
 5 A And so a miscellaneous field investigation would be
 6 something that would get dispatched. A W-33 repair key
 7 box is dispatched. So if they need to dispatch
 8 somebody, they use one of the ones that actually do
 9 field dispatch.
 10 Q Okay. Now on some of the other codes, what the -- does
 11 it mean that they -- that no one -- does -- can you
 12 have stuff that is billed that's not the -- that there
 13 was no dispatch?
 14 A Most definitely.
 15 Q Okay. And some -- to find out if your reps were
 16 dispatched, is there cer -- is -- can that be under a
 17 miscellaneous code also?
 18 A Yes.
 19 Q Okay. And tell me how many times say in 2006 before
 20 May 22nd people from your division was dispatched to
 21 the Hilton for any reason?
 22 A Can I -- I don't recall how many times, if any.
 23 Q You would have to look at this system.....
 24 A Uh-huh. (Affirmative)
 25 Qto find out?

Page 67

1 A Yes, sir.
 2 Q Okay. Were they dispatched more than once other than
 3 May 22nd -- prior to May 22nd say between January and
 4 May, do you know?
 5 A I do not know.
 6 Q Okay. As you sit here today, you couldn't tell me how
 7 many times; is that right?
 8 MS. WEISS: Objection. Asked and answered.
 9 Q Okay.
 10 A Correct.
 11 Q Okay. You -- okay. Okay. This -- this is a -- a
 12 problem that comes up with questioning sometimes.
 13 A Uh-huh. (Affirmative)
 14 Q As you sit here today, you just don't recall how many
 15 times it went out to the Hilton between -- in 2006; do
 16 you?
 17 MS. WEISS: Objection.
 18 A Correct.
 19 MS. WEISS: Asked and answered.
 20 Q Okay. And the reasons, you can't tell me all the
 21 reasons they went out to the Hilton in 2006.....
 22 MS. WEISS: Objection.
 23 Qcan you?
 24 A I'm sorry?
 25 Q As you sit here today, you can't tell me all the

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1 reasons they went out to the Hilton?
 2 MS. WEISS: Objection.
 3 Q Correct.
 4 MS. WEISS: He isn't even sure how many other times
 5 they went.
 6 Q Okay. That's right. Not sure how many times they went
 7 out. Can't tell me the reasons. Okay. So and -- and
 8 as you sit here today, they could have went out to the
 9 Hilton, they could have went -- each time they went out
 10 to the Hilton, they could have replaced the valve --
 11 not replaced, but they could have -- if they saw the
 12 valve cover off, they could have put it back on; is
 13 that right?
 14 MS. WEISS: Okay. Objection. I -- at this point, I'd
 15 say just ask me a discovery request and we'll get you whatever
 16 documents.....
 17 MR. COE: Well.....
 18 MS. WEISS: He doesn't -- he already told you he
 19 doesn't know.
 20 MR. COE: Okay. My concern is, you know, if his -- the
 21 deposition will be used for -- for summary judgment, then I
 22 just want to clear that up. In other words, I'm trying to.....
 23 MS. WEISS: He said he.....
 24 MR. COE:have a.....
 25 MS. WEISS:has no -- he does not recall.

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1 MR. COE: Okay. Okay.
 2 MS. WEISS: So he would -- I mean, I -- I don't think
 3 there's anything you can do about that. If he -- if he's able
 4 to go back and look in, you know, do an affidavit, I'll -- he
 5 still doesn't recall today.
 6 MR. COE: Okay.
 7 MS. WEISS: But if you have documents that you want us
 8 to produce or questions you have.....
 9 MR. COE: Okay.
 10 MS. WEISS:for us to -- ask to research, then ask
 11 them in discovery request and we'll answer it.
 12 MR. COE: Okay.
 13 Q Well, let -- let me ask you it in -- in a different
 14 way; okay? If the valve cover was off, if the valve
 15 box was off in that location next to the Hilton, would
 16 that been annoti -- annotated on each work order?
 17 MS. WEISS: Objection. Form. Speculation.
 18 Q You know, in other words, let's say you sent a -- you --
 19 you have a -- your field -- field service guy go out,
 20 valve cover is off, he puts it back on. Would that be
 21 annotated in each work order?
 22 A If.....
 23 MS. WEISS: Same Objection.
 24 Q Go ahead.
 25 MS. WEISS: Go ahead.

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1 A If he was dispatched for this service order, he would
2 have put that in.
3 Q Okay. In other words, if that's the purpose of the
4 dispatch, you would put it in; is that right? In other
5 words, that's the purpose of the dispatch order to go
6 out and do that and you annotate that way.
7 A Correct.
8 Q Okay. If you go out and you find something like that,
9 you don't necessarily annotate it; do you?
10 A That's correct.
11 Q In fact, I think to correct your testimony earlier,
12 each time your reps, your field service division finds
13 either a -- a cover missing or a cover that's not on --
14 on a valve box, that's not annotated in your system?
15 MS. WEISS: Objection.
16 A That's correct.
17 MS. WEISS: I don't -- you -- you're correcting his
18 testimony. I think that was precisely his testimony.
19 Q I think that, you know, and I want to make sure
20 that's.....
21 A That's correct.
22 Qthat -- okay. And I -- and I -- I don't want to
23 imply that you said something different earlier. I
24 just want to make sure that I understand what you're
25 saying. Okay. Let me ask you this. Do you -- what's

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1 the rules with valve box covers? Do you -- is there
2 any rules about painting them?
3 A No.
4 Q Okay. Do you know -- do you know what the rules are on
5 that? In other words, should they be painted or not
6 painted?
7 MS. WEISS: Objection. He already stated.....
8 A There's no rule.
9 MS. WEISS:there's no rules.
10 Q Okay. Do you handle -- do you -- who does the painting
11 of crosswalks and -- and -- in the city, if you know
12 that?
13 A That's a different department.
14 Q Different department? Do you know if they're asked not
15 to paint valve box covers?
16 A I do not know.
17 Q Would that be your division that would tell them not to
18 do that?
19 A No.
20 Q Who would do that?
21 MS. WEISS: Objection.
22 Q If you know.
23 A I don't know. Sorry.
24 Q And if I were to show you, this was Exhibit 2 to Mr. --
25 just to know, you're not -- not the only one being

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1 abused in this process. Here's -- here's Mr. Gilmore's
2 -- I'll show you Exhibit 2 that we showed Mr. Gilmore
3 yesterday to his deposition. Have you ever seen that --
4 that hole, that -- the valve box depicted in the.....
5 A I -- I've never seen that valve box.
6 Q Okay. Okay. And I think I'm -- I think what you're
7 saying is you're familiar with the location, but that
8 you didn't go out and intentionally take a look at it;
9 is that right?
10 A Correct.
11 Q Okay. So as you sit here today, you couldn't -- you --
12 you don't recall going out and seeing something like
13 that; is that right?
14 A I don't recall.
15 Q Okay.
16 MS. WEISS: I -- actually, I want to object. I don't
17 think he said.....
18 MR. COE: What's that?
19 MS. WEISS:he doesn't recall. I think he's
20 already said he did not go out.
21 MR. COE: He did not go out.
22 A Yeah.
23 Q Just making sure. And as you sit here today, do you
24 know how many people fell in that hole that day?
25 MS. WEISS: Objection.

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1 A No.
2 Q And reports that -- reports -- would it be -- is it
3 fair to say that reports about missing valve box lids
4 come into a variety of divisions at AWWU?
5 A Yes.
6 Q And all you can testify is what your division knows
7 about; is that right?
8 A Correct.
9 Q Okay. Did you -- did you interact with any follow-up
10 investigation involving Ms. Kelly's fall at all? In
11 other words, were you -- were you -- were you asked to
12 do follow-up investigation on her fall.....
13 MS. WEISS: Objection. Form.
14 Qas to whether the -- as to what happened? In
15 other words, there -- I see a series of e-mails and I
16 don't know if you were just cross copied with them or
17 what -- what occurred?
18 A In all those e-mail strings, I -- I was copied a lot of
19 that.
20 Q Okay. And a lot of them are going directly to Mr.
21 Wilber as opposed to you.
22 A Yes, sir.
23 Q Okay. Do you know why that was happening? In other
24 words, why -- is Mr. Wilber -- I thought he worked for
25 you. I didn't know.....

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1 REPORTER: I'm out of tape.
2 MR. COE: All right.
3 (Off record)
4 (On record)
5 REPORTER: On record.
6 MS. WEISS: Okay.
7 Q I just want to make sure that as we go through this
8 list of things that you know or don't know on, as far
9 as when -- when that particular area was painted, would
10 you have been placed on notice the -- when that's --
11 when that walking area -- that a crosswalk area was
12 painted?
13 A No.
14 Q Would you have been asked to go out and replace the --
15 the lid cover before or after it was painted?
16 A I don't know.
17 Q Okay. Is that something maintenance would ask you to
18 do or do you know?
19 A I don't know.
20 Q And as you sit here, you don't know what maintenance --
21 maintenance's rules are with lid -- lid covers; is that
22 correct? Does street maintenance, you don't know....
23 A Street maintenance, I do not.
24 Q Okay. You only know what your expectations are for the
25 division of -- you know, you only know what your

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1 expectations are for AWWU?
2 A Exactly.
3 Q Okay. Have you worked in other divisions of AWWU?
4 A Yes, sir.
5 Q What other divisions?
6 A Engineering.
7 Q Engineering. Same expectation when you worked in
8 engineering?
9 A A different discipline.
10 Q Different discipline.
11 A Yeah.
12 Q But, you know, you still have field -- field service
13 people going out? Do you still have field people going
14 out?
15 A Engineering?
16 Q Yeah.
17 A Yes.
18 Q And would you have expected -- when you were working
19 for them, did you expect the same thing if you saw
20 something like that, put it back on or call it in?
21 MS. WEISS: Objection. Form.
22 A When I was in engineering, the discipline I was in was
23 not field -- was not field related work.
24 Q Okay. So in other words, but there is a division and
25 -- and -- and part of engineering does field related

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1 work....
2 A Yes, sir.
3 Qis that right? And I guess -- so, you know, it
4 sounds like you're -- you're being precise. You
5 wouldn't know what the expectation is of your field
6 service people in engineering?
7 A Correct.
8 Q Okay. Is -- would you have an expectation if -- if
9 someone took off the valve box cover for whatever
10 reason they put it back on?
11 MS. WEISS: Objection. Form.
12 A Repeat your question or rephrase your question.
13 Q I'll re -- let me rephrase it. Would it -- would it be
14 safe to say that if -- if in your division, if someone
15 took off that valve box cover, you would expect them to
16 put it back on?
17 A Yes, sir.
18 Q Okay. Do you have any valve box covers that lock on to
19 the -- to the valve box? Do you know what I mean?
20 A Probably a Jamey question. I don't.
21 Q Okay. That's something you're not aware of; is that
22 right?
23 A Correct.
24 Q Kind of a simple question, but do you know how much --
25 how many valve -- in your division -- I mean, since you

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1 have work orders and that, do you know how many valve
2 boxes covers in a year you -- you replace?
3 A I can't imagine -- one or two maybe at the most.
4 Q One or two in the whole....
5 A The -- for -- for the folks for work for me, that's
6 probably the most.
7 Q Okay.
8 A There's no -- no -- they're not categorized so I can't
9 be precise on that.
10 Q Okay, but based on your experience, you know, they'll
11 replace about one or two a year?
12 A Very seldom, yes.
13 Q In other words -- in other words, it's -- it's
14 something that -- it's not happening on a -- on a real
15 frequent basis; is that right?
16 A Correct.
17 Q Okay. Do you know the reasons why valve -- valve box
18 covers come loose or come off of a valve box?
19 A It can -- there's a lot of opinions on that. I don't
20 know. There's no design reason the thing should ever
21 come off.
22 Q Okay. I mean, you've been in the -- you've been....
23 A Uh-huh. (Affirmative)
24 Qin your division for -- you actually had been in
25 engineering and this division for a long time. What

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10/22/06 at 10:00 AM
and Avenue Crosswalk
Accident Team (1/1/07)
R: 10/22/06

that there is a duty, it does not arise until there is notice of the defect.⁴

[1-3] The trial court misconstrued the role of notice in a negligence action against the state for a defective road condition. Johnson's evidence was to be measured against the substantive negligence standard of due care. The duty of care owed by the state to users of its highways is defined by ordinary negligence principles. *State v. Guinn*, 555 P.2d 530, 535 (Alaska 1976); *State v. I'Anson*, 529 P.2d 188, 195 (Alaska 1974); *State v. Abbott*, 498 P.2d 712, 724-25 (Alaska 1972). That duty requires one to act with the amount of care which a reasonably prudent person would use under the same or similar circumstances. *Leigh v. Lundquist*, 540 P.2d 492, 494 (Alaska 1975).⁵ Notice is relevant, and necessary, when the dangerous condition is not caused by the state. In such a case, the plaintiff must establish either actual or constructive notice. Constructive notice can result if a dangerous condition exists for such a period of time prior to the accident, and is of such an obvious nature, that the defendant public entity, in the exercise of due care, should have discovered the condition and its dangerous character. See *Atlanta v. Williams*, 119 Ga.App. 353, 166 S.E.2d 896, 897 (1969); *Galbreath v. Logansport*, 151 Ind.App. 291, 279 N.E.2d 578, 581 (1972); *Peters v. State*, 400 Mich. 50, 252 N.W.2d 799, 804 (1977); *James v. Nashville & Davidson County*, 55 Tenn.App. 622, 404 S.W.2d 249, 252 (1966). Cf. *Living v. City of Chicago*, 26 Ill.App.3d 850, 326 N.E.2d 170, 174 (1975) (continued

existence of a defect is sufficient to charge the government with notice); *Freeport Transport v. Commonwealth*, 408 S.W.2d 193, 195 (Ky.App.1966) (same). Notice is also a permissible inference that the jury may draw where there is evidence of prior accidents caused by the asserted dangerous condition. See *Burgbacher v. Mellor*, 112 Ariz. 481, 543 P.2d 1110, 1112 (1975); *Atlanta v. Williams*, 119 Ga.App. 353, 166 S.E.2d 896, 897 (1969); *City of Chicago v. Jarvis*, 226 Ill. 614, 80 N.E. 1079, 1080 (1907).

[4] When the public entity itself causes the defect, however, notice is not required. *Wisener v. State*, 123 Ariz. 148, 598 P.2d 511, 513 (1979); *Aguirre v. City of Los Angeles*, 46 Cal.2d 841, 299 P.2d 862, 864 (1956); *Muszynski v. City of Buffalo*, 305 N.Y.S.2d 163, 33 A.D.2d 648 (App.Div.1969), *aff'd*, 29 N.Y.2d 810, 327 N.Y.S.2d 368, 277 N.E.2d 414 (1971); *Gordon v. Provo City*, 15 Utah 2d 287, 391 P.2d 430, 432-33 (1964). The rule has been well stated as follows in its application to municipalities. Because the standard of care required of the state in keeping its highways safe is the same as that required of a municipality, *Wisener*, 598 P.2d at 513, the following rule regarding notice applies equally to the state:

"In seeking a recovery against a city for injuries due to an allegedly defective public way, it is only where the negligence relied on is the failure of the city to remove an obstruction or to repair a defect in the street, not caused by its own act or neglect, that the question of notice of obstruction or defect is an essential

signed for bicycles. I think everybody would admit that."

5. Paraphrasing *State v. Abbott*, 498 P.2d 712, 725 (Alaska 1972), the factors to be considered in a negligence action against the state for a dangerous highway condition not caused by it would be (a) whether the state had notice of the dangerous condition, (b) the length of time the dangerous condition existed, (c) the availability of employees and equipment to remedy

4. The trial court stated:
"Nobody notified the State and I think that stands as undisputed evidence in the case. So, the notice to the State, if there's going to be notice there, it has to be or should have known. The mere fact that a condition exists there does not create a hazard—or notice of a hazardous condition. . . . I don't know whether there was notice of a defect or not.

element. If the defective condition is due to the act of the municipality itself, or its act or negligence in connection with the acts of others, or to the acts of others as its contractors or employees, no notice of any kind, either actual or constructive, is necessary. This rule extends to municipal negligence in the original construction of the offending public way and applies to affirmative municipal negligence in maintaining a nuisance. No notice of any kind is required in the aforementioned instances . . ." (emphasis added, footnotes omitted).

19 E. McQuillin, *The Law of Municipal Corporations* § 54.104 (3d ed. 1967).

[5] Johnson claimed that the state was negligent in three ways: (a) in the design of the roadway where the spur track crosses it; (b) in the signing of the roadway; and (c) in the maintenance of the roadway. Under the rule just stated, proof of notice was not required for Johnson to prevail on her claims of unsafe design or failure to sign, because any dangerousness resulting from such acts devolves from the state's own conduct or omission.⁶ Thus the court erred in directing, because of the absence of notice, a verdict against Johnson on these claims. On retrial Johnson must still convince the jury that there was in fact a dangerous condition.

The court also erred in directing a verdict for the state on Johnson's claim of negligent maintenance. Taking the evidence most favorably to Johnson, as we must when reviewing a directed verdict, we conclude that a jury question was presented as to whether there was a maintenance defect and whether the state had constructive notice of that defect.

Kenneth Ulz, a civil engineer, testified that the asphalt of the roadway should butt up against the outer rail or railroad crossings. Keeping the asphalt flush with the outer rail, he stated, is a maintenance function. As a former engineer for both the

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

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

Case No. 3AN-08-4271 CI

REQUEST FOR ORAL ARGUMENT

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

DATED this 18th day of August, 2009.

CHARLES W. COE
Attorney for Plaintiff

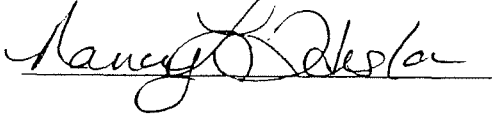


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I certify that on August 18, 2009,
I served a copy of the foregoing by
U.S. Mail upon:

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Kelly v MOA
Request for Oral Argument
Case No 3AN-08-4271 CI
Page 2 of 2

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

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

Case No. 3AN-08-4271 CI

ORDER

IT IS HEREBY ORDERED that;

Oral argument on the issues presented in the Defendant's Motion for
Summary Judgment is scheduled for the _____ day of _____, 2009, at
_____.

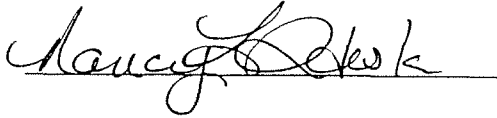
DATED this _____ day of _____, 2009.

Superior Court Judge

CHARLES W. COE
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ANCHORAGE, ALASKA 99501
(907) 276-6173

I certify that on August 18, 2009,
I served a copy of the foregoing by
U.S. Mail upon:

Pamela D. Weiss
Assistant Municipal Attorney
Municipality of Anchorage
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Kelly v MOA
Order
Case No 3AN-08-4271 CI
Page 2 of 2

000031

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

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

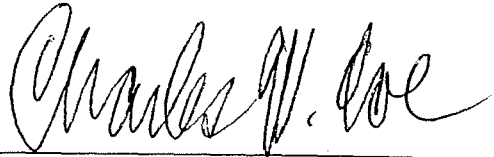
Case No. 3AN-08-4271 CI

NOTICE OF FILING UNSIGNED AFFIDAVIT OF CHARISSE LYONS

COMES NOW, the plaintiff, ETHEL B. KELLY, by and through her attorney, CHARLES W. COE, will hereby gives notice of filing the unsigned Affidavit of Charisse Lyons. The signed affidavit will be filed when received.

DATED this 24th day of August, 2009.

CHARLES W. COE
Attorney for Plaintiff

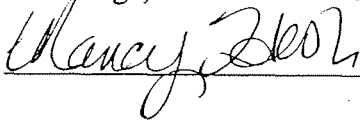


Charles W. Coe
ABA#7804002

CHARLES W. COE
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I certify that on August 24, 2009,
I served a copy of the foregoing by
Mail upon:

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Kelly v MOA
Notice of Filing Unsigned Affidavit
Case No 3AN-08-4271 CI
Page 2 of 2

000033

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

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

Case No. 3AN-08-4271 CI

AFFIDAVIT OF CHARISSE LYONS

STATE OF TEXAS)
) ss:
 COUNTY OF _____)

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

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

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

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

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

DATED this _____ day of August, 2009.

Charisse Lyons

SUBSCRIBED AND SWORN to before me this _____ day of August, 2009.

Notary Public in and for Texas
My Commission Expires: _____

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I certify that on August 24, 2009,
I served a copy of the foregoing by
Mail upon:

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

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RECEIVED NOV 09 2009

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

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

MUNICIPALITY'S OPPOSITION TO PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT

AND

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

The Municipality agrees, at least for purposes of this motion, that Ms. Kelly stepped into a valve box on May 22, 2006 and, for some reason, the lid was not on that valve box. Further, the Municipality agrees the valve box at issue is part of Anchorage Water & Wastewater Utility's ("AWWU") infrastructure. Finally, the Municipality admits it does not have a formal program for inspecting valve box lids (nor did it at the time of Ms. Kelly's fall) but, instead, responds promptly to notification that a lid needs replacing.¹ However, the fact that the Municipality does not drive or walk the streets checking the tens of thousands of valve boxes to look for the occasional missing lid is

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¹ Exhibit E, Additional portions of Tr. of Deposition of Jamey Gilmore (3/3/09) at 10, 17, 24; Exhibit F, Additional portions of Tr. of Wayne Bennett (3/4/09) at 7.

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irrelevant.² As both parties recognize, the key question in these cross-motions is whether the Municipality caused the lid to be missing or whether it had notice it was missing, but failed to take appropriate action. Absent a dispute of material fact on this point, summary judgment is warranted.

In an attempt to avoid summary judgment, plaintiff makes numerous factual assertions that, at a minimum, reflect confusion of the issues or, at worst, are aimed at misleading the court. These statements, which are presented as "facts," are actually plaintiff's theory of the case. More important, they are not supported by any witness statement or other evidence and, at times, contradict what the evidence really shows.

For example, plaintiff seems to suggest that Charisse Lyons' prior fall at the same location gave the Municipality notice.³ But the mere fact that Ms. Lyons tripped on that same box a few days earlier does not establish notice the Municipality was ever informed of the missing lid. In the same vein, plaintiff mischaracterizes Wayne Bennett's testimony as somehow suggesting the Municipality has a duty to fix things, even if it has no knowledge.⁴ Aside from the fact that any such statement would be inconsistent with the law,⁵ that is not what he says at all. Rather, he stated only that his department has a duty to dispatch someone if it had a report of a missing valve cover.⁶

² See Exhibit E, Tr. at 11, 25 (stating there are over 30,000 valve boxes throughout Anchorage); Exhibit F, Tr. at 85 (stating missing lids are seldom or infrequent occurrence).

³ Plaintiff's Memorandum in Support of Opposition to MSJ and Plaintiff's Cross Motion ("Mtn") at 5.

⁴ *Id.*

⁵ See *Johnson v. State*, 636 P.2d 47 (Alaska 1981) (notice is an essential element where there is no evidence the Municipality created the hazard).

⁶ Exhibit F, Tr. at 7.

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Even more egregious is plaintiff's insinuation that the Municipality does not dispute facts that show it is liable. Specifically, plaintiff claims the Municipality:

does not dispute that [it] erroneously left this cover off while maintaining the crosswalk, that the city public works/maintenance crews drove over the uncovered box without stopping to cover it, or that the city was notified through other departments by the Hilton that the valve box cover was off prior to Ms. Kelly's fall.⁷

This statement suggests that there is something to dispute. But that is misleading since plaintiff has never put forth any specific facts or evidence suggesting any of the above scenarios occurred. Moreover, the citations to Mr. Gilmore and Mr. Bennett's deposition testimony unfairly characterize their statements. They simply said that their section may be notified of a missing lid, but other sections could as well.⁸

Plaintiff is clearly grasping at straws. Instead of presenting evidence sufficient to overcome summary judgment in favor of the Municipality and show that there are at least *some* facts tending to show the Municipality caused the hazard or had notice of it, she instead attempts to manipulate the standard of review and the facts in this case. For the reasons discussed below, these attempts do not meet her burden and overcome summary judgment on behalf of the Municipality.

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⁷ Mtn. at 2.

⁸ Exhibit E, Tr. at 25, 33-34, 39-40, 64; *Id.* at 45 (stating that if someone removed a lid, they should put it back on); Exhibit F, Tr. at 10, 12, 20.

I. Plaintiff Manipulates and Distorts the Applicable Standards.

Plaintiff takes positions that are contrary to the case law regarding liability and the standard of review for summary judgment. First, she recognizes that *Johnson v. State* controls.⁹ At the same time, she suggests the Municipality has a blanket duty to prevent accidents, regardless of notice.¹⁰ But that is inconsistent with the case law, which provides that notice is an essential element in the absence of evidence the public entity caused the hazard.¹¹

Additionally, plaintiff tries to avoid the requirements of Rule 56 to present sufficient evidence by claiming that “minimal evidence” is required to overcome summary judgment.¹² But the cases plaintiff relies on for this proposition, in fact, never say that only “minimal evidence” is needed; rather, they show that plaintiff must set forth “specific facts” that show there are genuine issues of material fact.¹³ This rephrasing of the Rule 56 standard appears to be an attempt to avoid having to present the type of evidence the law require. These cases are also clear that, while a non-movant is not required to show he/she will win, he/she must provide more than a mere “scintilla” of

⁹ Mtn. at 6-7.

¹⁰ See Mtn. at 1.

¹¹ *Johnson*, 636 P.2d 47. See, *supra*, note 5 and accompanying text.

¹² Mtn at 3-4 (claiming only “minimal evidence” is necessary).

¹³ *Alakayak v. British Columbia Packers, Ltd.*, 48 P.3d 432, 447-448 (Alaska 2002); *Preblich v. Zorea*, 996 P.2d 730 (Alaska 2000). It is worth noting that the conclusion in *Alakayak* – that there were issues of material fact – was driven in large part by the standards specific to antitrust cases. See 48 P.3d at 448-449 (discussing summary judgment principles in antitrust litigation).

evidence and that evidence must be enough to “reasonably tend [] to dispute or contradict” movant’s.¹⁴

In accepting *Johnson* as the applicable law, plaintiff acknowledges her burden in this case is to establish that the Municipality either caused the dangerous condition or had notice of the condition.¹⁵ She must therefore present something at this stage to show there is a genuine factual question about whether the Municipality caused the lid to be off or had notice of the missing lid, but failed to act before Ms. Kelly’s fall.¹⁶ As explained below, she has failed to do that.

**II. Plaintiff Fails to Demonstrate There
Are Genuine Issues of Material Fact.**

Plaintiff’s opposition and cross-motion rest entirely on two affidavits, those of Terri Wakefield and Charisse Lyons. Careful review of the affidavits themselves, particularly in conjunction with their own deposition testimony, makes clear there are no genuine issues of material fact for trial since plaintiff has no evidence of a critical part of her case.

A. Plaintiff Has Not Presented Evidence Sufficient to Create a Genuine Issue of Material Fact as to Whether the Municipality Caused the Dangerous Condition.

Plaintiff has not provided any evidence creating an issue of fact as to whether the Municipality actually created the condition that resulted in plaintiff’s alleged injury. The statements relied upon in the affidavits with respect to the cause of the hole are not

¹⁴ *Alakayak*, 48 P.3d at 449.

¹⁵ Mtn. at 6-7 (citing *Johnson*).

¹⁶ *See Himschoot v. Dushi*, 953 P.2d 507, 509-510 (Alaska 1998) (required to submit material, admissible evidence to establish a prima facie case).

simply not specific. For example, when asked at her deposition, Ms. Lyons stated that she recalled some construction workers nearby but they were not at the crosswalk and she did not know exactly where they were working. Moreover, she did not know exactly when it was or, in fact, whether they were Municipal workers at all.¹⁷

Ms. Wakefield's statements are equally inconclusive and equivocal. At first glance, her affidavit appears to suggest that city workers may have been responsible, stating "when the city painted this crosswalk or performed maintenance...[they] put cones over the hole or near the hole" and "[a]fter the cones were removed they left the hole in the crosswalk without putting a lid cover or marking on the hole."¹⁸ However, when queried further at her deposition, she was unable to say exactly when this painting took place,¹⁹ exactly who did the painting,²⁰ or exactly where cones were placed.²¹ In fact, she acknowledged she had not even seen the open hole until the day that Ms. Kelly fell.²²

Meanwhile, the Municipality has specific evidence showing that the crosswalk at issue was not painted in 2006.²³ Moreover, Jamey Gilmore explained that his maintenance and operations crew had not worked on the valve box at any time prior to Ms. Kelly's fall.²⁴ It appears that instead of putting forth specific facts, plaintiff expects

¹⁷ Exhibit G, Tr. of Deposition of Charisse Lyons at 18-19, 29.

¹⁸ Affidavit of T. Wakefield at ¶ 7; attached to plaintiff's opposition and cross-motion.

¹⁹ Exhibit H, Tr. of Deposition of Terri Wakefield at 22-23.

²⁰ *Id.* at 25.

²¹ *Id.* at 25-26.

²² *Id.* at 26, 27.

²³ See Exhibit I, Paint Sheet.

²⁴ Exhibit B, Aff. Gilmore at ¶ 4.

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the court to require the Municipality present an affidavit of every single employee stating that they were not there (or did not see it). But that is both absurd and unnecessary since plaintiff does not put forth any specific facts tending to show the Municipality caused the condition.

B. Plaintiff Has Not Presented Evidence Sufficient to Create a Genuine Issue of Fact as to Whether the Municipality Had Actual Notice of the Dangerous Condition.

Plaintiff also appears to argue that summary judgment should be denied solely on the basis that Wayne Bennett and Jamey Gilmore's statements at their deposition are not good enough because their computer systems do not show all calls.²⁵ But merely pointing to possible gaps in the information without presenting any evidence of their own is insufficient to overcome summary judgment, particularly where the ultimate burden at trial of proving her case will fall on plaintiff.

In fact, the two employees at AWWU most likely to know of a call or complaint of a missing lid have testified that no phone calls were received.²⁶ Meanwhile, plaintiff has not provided any evidence that anyone else actually did call the Municipality to notify them. Ms. Wakefield and Ms. Lyons never called the Municipality themselves, at least before the date of the accident; all they did was notify Hilton security.²⁷ And they both admitted they did not know for sure what security did with that information.²⁸ Ms.

²⁵ Mtn. at 5.

²⁶ Exhibit E, Tr. at 7; Exhibit G, Tr. at 7, 39.

²⁷ Exhibit G, Tr. at 16; Exhibit H, Tr. at 20.

²⁸ Exhibit G, Tr. at 16 ("whether they [called the Municipality] or not, I'm not sure"); Exhibit H, Tr. at 20.

Lyons herself concedes she did not know if the Municipality knew at all.²⁹ Accordingly, neither individual's statements constitute sufficient evidence to create an issue of fact about whether the Municipality received actual notice of the missing lid prior to Ms. Kelly's fall.

C. Plaintiff Has Not Presented Evidence Sufficient to Create a Genuine Issue of Fact as to Whether the Municipality Had Constructive Notice of the Dangerous Condition.

Plaintiff's attempt to create issue of fact surrounding constructive notice also fails. "[C]onstructive notice can result if a dangerous condition exists for such a period of time prior to the accident, and is of such an obvious nature, that the defendant public entity, in the exercise of due care, should have discovered the condition and its dangerous character."³⁰ However, her opposition and cross-motion present absolutely no evidence that the hole was there for an extended period of time or that it was obvious.

Plaintiff has not presented any specific evidence that the open hole was there for any length of time. Despite the statement in her affidavit that the hole had been uncovered for days, Ms. Wakefield at her deposition repeatedly said she herself had not noticed the hole until the day Ms. Kelly fell into it.³¹ Ms. Lyons, for her part, first noticed it when she tripped, perhaps a few days before Ms. Kelly's incident.³² By contrast, the condition in *Johnson* had been there at least 4 years.³³

²⁹ Exhibit G, Tr. at 18.

³⁰ *Johnson*, 636 P.2d at 52.

³¹ Exhibit H, Tr. at 21. Apparently she had just heard of this fact from others.

³² Exhibit G, Tr. at 11 (not long before); Tr. at 15 (maybe a week or few days).

³³ 636 P.2d at 50.

More important, there is absolutely no evidence it was “so obvious in nature.” Counsel’s assertion that it is “almost impossible to imagine” how it went unnoticed³⁴ is actually contradicted by the evidence submitted. It is undisputed that the valve box lid is a 5-6” hole.³⁵ Further, the only specific evidence presented on this point by plaintiff is that the hole was difficult to see.³⁶ In fact, her attempts to show that a Municipal employee had or should have seen the hole backfired since neither Ms. Lyons nor Ms. Wakefield was able to ever place any Municipal employee at that crosswalk.³⁷ Indeed, Ms. Wakefield said she had not seen Municipal workers drive down the roadway.³⁸

Finally, her reliance on *Edenshaw v. Safeway, Inc.*³⁹ for proposition that this should go to jury⁴⁰ is completely at odds with the decision itself (and plaintiff’s own agreement that the *Johnson* standard applies here). In *Edenshaw*, the court declined to extend the notice requirement in *Johnson* to a private grocery store.⁴¹ Thus, the same sort of considerations and facts would not have been at issue.

III. Plaintiff’s Cross-Motion Should be Denied.

In the event the court declines to grant summary judgment in favor of the Municipality, plaintiff’s cross-motion too should be denied. Even if the facts asserted by plaintiff as the basis for cross-motion are undisputed, they do not add up to Municipal

³⁴ Mtn. at 6.

³⁵ Exhibit-E, Tr at 13; Plaintiff’s Exhibit I-(photograph).

³⁶ Affidavit of C. Lyons at ¶ 7; Exhibit G, Tr. at 17, 23 (stating it is “not easily visible”).

³⁷ See *supra* notes 17-22 and accompanying text.

³⁸ Exhibit H, Tr. at 28.

³⁹ 186 P.3d 568 (Alaska 2008).

⁴⁰ Mtn at 8.

⁴¹ *Id.* at 570.

liability. The alleged undisputed facts are that Ms. Kelly stepped into the hole and was injured, the Municipality owned and maintained the valve box and lid, and the lid box was off.⁴² As explained at the outset, the Municipality is willing to stipulate to these facts for purposes of these cross-motions. However, the last "fact" - that "if the city left the lid off or were notified, it would be responsible for putting the lid back on" - is not a fact at all. Rather, it is a restatement of the law from *Johnson*.

These three facts and this one statement of the law do not, however, justify summary judgment in favor of Ms. Kelly on liability. In other words, none of these undisputed facts establishes the required notice or causation. None of these facts shows the Municipality actually did leave the lid off or that the Municipality did have notice before Ms. Kelly's fall but failed to replace the lid in a timely fashion.

While she claims to have submitted proof that city left lid off or was on notice, that is not the case. As described above, there is nothing in the record thus far. Not one witness is able to provide specific facts tending to show the Municipality painted that crosswalk in the days or weeks prior to Ms. Kelly's fall and left off the lid, thus causing the hole. Nor is any witness able to provide specific facts tending to show that someone actually called the Municipality.

Finally, plaintiff seems to suggest that summary judgment is warranted not because she has any specific evidence but because "Gilmore and Bennett do not testify that there were no call-ins regarding this condition."⁴³ Putting aside the fact it is not the

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⁴² Mtn at 8.

⁴³ Mtn at 8.


Municipality's responsibility to disprove her case absent facts establishing a prima facie case, the fact is, Mr. Gilmore did state he was not aware of anybody calling into maintenance and operation about that valve.⁴⁴ Further, Mr. Bennett specifically testified there is no record of a dispatch to that valve, which would have come as a result of a phone call or request.⁴⁵ It is plaintiff's responsibility to provide some admissible evidence that the Municipality had notice or caused the condition. However, she has failed to do that and, therefore, her request for summary judgment should be denied.

Conclusion

For the foregoing reasons, plaintiff's cross-motion should be denied and the Municipality's motion should be granted.

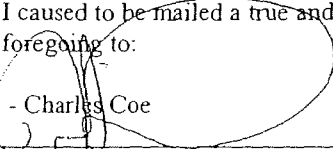
Respectfully submitted this 5th day of November, 2009.

DENNIS A. WHEELER
MUNICIPAL ATTORNEY

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

Certificate of Service

I hereby certify that on this 5th day of November, 2009
I caused to be mailed a true and correct copy of the
foregoing to:


- Charles Coe

Jennifer Richardson, Legal Secretary
Municipal Attorney's Office

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⁴⁴ Exhibit E, Tr. at 70.

⁴⁵ Exhibit F, Tr. at 7, 39.

1 your department, your maintenance department?

2 A I don't understand the question.

3 Q Well, let me ask you this.

4 A Okay.

5 Q Okay. Do you have any written rules as far as
6 inspection of valve boxes, any policies, things in
7 writing governing valve boxes?

8 A We don't have any -- we -- we do not have a valve box
9 maintenance program if that's what you're asking.

10 Q Okay.

11 A I -- I.....

12 Q Do you have a -- do you have a program involving
13 inspections to make sure valve box covers or lids are
14 on?

15 A No.

16 Q Okay. Is there any rules that govern, that you look
17 towards as to how often they should be checked to see
18 if they're working, on or not?

19 MS. WEISS: I'm going to say objection.

20 Q You know, in other words, is there any -- anything in
21 writing of -- of how to go about, you know, inspecting
22 to make sure you got your valve box covers on, lids?

23 A Nothing specifically that would be focused on the valve
24 box lid, no.

25 Q How about is there anything that talks about, you know,

1 going out and inspecting to make sure there's no open
2 holes like this?

3 A Our crews are always on the lookout for, you know, lids
4 that may be off, but we -- we're not specifically going
5 out on a task to check for valve box lids system by
6 system if that's what you're asking me.

7 Q Okay. In other -- and how do you go about finding out
8 if the valve box lid is on or off?

9 A Most of our reports of a lid being -- being off will
10 come from the public. It could come from any other
11 entity within the MOA. It could come from -- you know,
12 a person in the public that notices it.

13 Q Okay. So in -- but you have no program of going out
14 and looking for this; is that correct?

15 MS. WEISS: Objection. Asked and answered.

16 Q Go ahead if you can.

17 A It's -- we don't have a program specifically for
18 inspecting valve boxes for -- for the lid, no.

19 Q Okay. Is -- as part of when -- as of your -- when
20 you're -- do you have a program in place for when you
21 work on a valve box and make sure the lid is cov -- the
22 lid is placed on it after you leave?

23 A Yeah, it's part of the last step that you would do when
24 you access a valve box and replace the lid.

25 Q Okay. Is that in writing?

1 Q And what's the purpose of the lid at the road surface?

2 A It.....

3 Q Why do you -- why do you have it there?

4 A Probably two reasons. One to protect it so somebody
5 wouldn't, you know, fall in, but also to protect debris
6 from going down the valve box.

7 Q Okay. So if you get like snow or debris going down
8 there, it could be -- it could interfere with the
9 function of the valve box?

10 A It.....

11 Q With the function of the valve system?

12 A Correct. You would have to clean this assembly out to
13 get on the control and that -- on top of the valve down
14 on the bottom.

15 Q So the valve is all the down at the bottom; is that
16 right?

17 A Correct.

18 Q Okay. And as far as -- and how far from the road
19 surface to the pipe is -- to the valve is?

20 A It varies on the depth of the main.

21 Q How big is a valve box normally -- the valve box lid
22 cover?

23 A I would have to measure it. I don't know -- I don't
24 know the -- by the top of my head. This is a five inch
25 valve box assembly. The pipe material is five inches.

1 know, his personnel, if -- if they happen to get a call
2 over there, they'll dispatch their personnel. If
3 there's a -- a lid that's discovered off, and so they
4 do some of the same things that our crews would --
5 would do.

6 Q In other words, his -- his function would be to report
7 to you if there's a valve box lid missing or did --
8 does he crew also do it?

9 A His -- his crew would pri -- be the primary people that
10 would actually put the lid back on. Depends on where
11 the call would -- would come in at. If our shop
12 received a call and were able to dispatch somebody
13 that's already out in the field, they would go place
14 the lid back on.

15 Q Does street maintenance have anything to do with it?

16 A As far as.....

17 Q You know, if they -- if there's a valve box -- valve
18 box lid missing, does street maintenance have anything
19 -- any functions to put it back on?

20 A No. We've received calls, but I'm sure if it was hit
21 -- well, I would say if I was street maintenance and
22 I'd seen it, I would put the lid back on.

23 Q If you saw it, you would put the lid back on; is that
24 right?

25 A Yeah, I've gotten calls from people that -- that found

- 1 Q And once again, I think that's a guess, you know.
- 2 A If I had to guess, that would be my guess. But I'd --
- 3 I do not know.
- 4 Q Since the valve box -- the valve boxes are -- are part
- 5 of your department, I mean, that's, you know, a valve
- 6 box and a valve box cover is part of the AWWU; is that
- 7 right?
- 8 A The ones that are out in the right-of-way, yes.
- 9 There's -- there's -- there's valve boxes on private
- 10 property that we do not maintain.....
- 11 Q Okay.
- 12 Aand we do not own.
- 13 Q Well, the one -- this one involves a valve box cover
- 14 across from the -- from the -- across from the Hilton
- 15 Hotel.
- 16 A Uh-huh. (Affirmative)
- 17 Q Are you aware of that?
- 18 A Yes.
- 19 Q Is that within your.....
- 20 A Yes.
- 21 Q Okay. And that would be within your control or under
- 22 your supervision; is that right?
- 23 A Yes.
- 24 Q Okay. Are you made aware when they're going to -- are
- 25 you -- are you made aware when they're going to paint

1 -- paint over a valve box? Are you told about that?

2 A No.

3 Q Someone just does it; is that right?

4 MS. WEISS: Objection.

5 Q If you know.

6 A I just know we're not told.

7 Q When a valve box cover is missing, completely missing,
8 are you notified?

9 A I -- we may be notified.

10 Q Well, I'm talking about -- let's say -- let me go ahead
11 and correct that. When a valve box cover lid is --
12 cover is off, you're one of the groups that -- that may
13 be notified; is that right?

14 A Right. Our work section may -- may be notified of it,
15 yes.

16 Q Okay. And as far as if the -- if the cover is missing
17 altogether, in other words, you can't find the cover
18 somewhere, is your -- who -- who replaces those?

19 A It could be many different work sections with -- within
20 -- within Anchorage Water and Wastewater. All -- most
21 vehicles, repair vehicles or field service vehicles
22 carry spare lids on them.

23 Q Oh, okay. And so this -- in other words, that's --
24 that goes to what I was asking. Your particular
25 division doesn't necessarily go out and replace all

1 maintenance work order for that valve, but I would have
2 to check and verify.

3 Q So do you know if any -- any other department removed
4 that valve box lid?

5 A I -- I couldn't tell you. I -- I do not have that
6 knowledge.

7 Q Would be -- there would be other departments that would
8 have -- that could have removed the valve box though;
9 is that right?

10 A An.....

11 Q Other than.....

12 A Any person.....

13 Qwithin this -- public works?

14 Acould -- could remove the valve box. But, so -- I
15 mean, I -- I -- I would not be aware of that. So it's
16 -- it's -- I can't answer your question.

17 Q Okay. And that -- that's fair.

18 A Okay.

19 Q Okay. In other words -- in other words, you can -- you
20 -- all you can say is according to your records, you
21 can only tell me when your department was last -- last
22 worked with that valve box; is that right?

23 A Correct.

24 Q You can't tell me if street -- street maintenance took
25 the valve box lid off to do -- to paint it, can you?

1 A No.

2 Q So if someone from -- if someone from the Hilton were
3 able say that street -- street main -- that someone was
4 painting the crosswalk and took the valve -- the valve
5 box lid off and didn't replace it, you would have no
6 way to dispute that, would you?

7 MS. WEISS: Objection. Form.

8 A I won't have any knowledge of it.

9 Q All right. And since you don't -- you don't perform
10 any check of that area; is that right? You know, just
11 routine checks of valve box lid -- lids, you -- you
12 wouldn't -- you would have no way of knowing it either;
13 is that right?

14 MS. WEISS: Objection. Form.

15 A I guess I don't understand the question.

16 Q Kind of simple, is this, is that you don't have a --
17 you don't have a system in place to check to see if the
18 valve box lids are -- are covering the valve box; is
19 that right? There's no system that you have?

20 A There is no specific program for only inspecting valve
21 box lids. That s correct.

22 Q Okay. How many -- how many valve boxes are there on
23 Third Avenue downtown?

24 A I couldn't tell you.

25 Q I mean, you -- you are the maintenance guy.

1 Q Does it have a number of who to call if it's -- if it's
2 missing?

3 A No, it does not.

4 Q Okay. Let me ask you this. If the lid is missing
5 altogether, who would -- how would I know who to call?
6 MS. WEISS: Objection.

7 A I can't answer that. I mean, you'd start somewhere,
8 with either street maintenance or -- I mean, we -- we
9 receive calls from street maintenance, from where --
10 whoever the person that eventually calls, I mean,
11 they're going to keep passing them around till they do
12 get -- get to us.

13 Q So in other words, you don't get all the calls on this
14 by any means.....

15 A No.

16 Qis that right?

17 A We get very few calls out there.

18 Q Very few calls?

19 A Yes.

20 Q Are you getting calls from other departments about it
21 as -- as opposed to the public? In other words, do --
22 does the calls largely come from other -- other
23 departments of the municipality rather than say just
24 everyday citizens?

25 A For calls to come into operations and maintenance, it's

1 usually from another department.

2 Q Do the police report it?

3 A They may.

4 Q Do you get calls from the police department?

5 A I -- I -- I can't recall one, but I.....

6 Q In other words, I know they can do it if they want, but
7 do you get those calls?

8 A We receive calls from APD on various things, so a valve
9 box lid would not be out of question.

10 Q Do you know on the valve box calls that you get, do you
11 know how many come from APD?

12 MS. WEISS: Objection.

13 A No.

14 Q Do you know if -- if -- do you know how many -- on the
15 day Ms. Kelly fell, do you know how many APD vehicles
16 were up and down that street?

17 MS. WEISS: Objection.

18 Q Third Avenue?

19 A I would have no idea.

20 Q It would be safe to say that 2:30 in the afternoon, an
21 APD, more likely than not, an APD vehicle would have
22 went -- went down Third Avenue?

23 MS. WEISS: Objection.

24 A I -- I -- I have no knowledge of what APD or where
25 their whereabouts were on that day.

1 Q Yeah. It was painted -- it appear -- is it correct --
2 and doesn't it appear that that -- take a good look at
3 it. Does it appear that -- that someone removed a lid
4 and painted it.....

5 MS. WEISS: Objection.

6 Qfrom that photo?

7 A It appears it was possibly painted without the lid.

8 Q Okay. And if it was painted without the lid, someone
9 would have had to put the lid back on it; is that
10 right?

11 MS. WEISS: Objection. Form.

12 A I do not know. I -- I don't know when the lid would
13 have come off and how long it was off. And I -- I
14 answered it.

15 Q Well, let me ask you this. If the person painting --
16 painting that area removed the lid, you -- you would --
17 whoever is doing the painting, you'd expect that they
18 would -- they would be required to put the lid back on
19 after they left?

20 A Correct.

21 Q Does this appear to be a hole without a lid?

22 A Yes. It appears to be a -- a top section without a
23 lid.

24 Q I's a top section.

25 A A valve box top sect.....

1 system link to your system as far as your computer
2 systems or are they two separate systems?

3 A They're -- they're -- they're separate systems.

4 Q And what -- I think you said -- testified earlier here
5 that -- that a -- even another separate sys -- you have
6 a separate system even within AWWU for Mr. Bennett's
7 group; is that correct? In other words, that's a
8 separate system that's separately -- not interlinked
9 with your system?

10 MS. WEISS: Objection. Form. I think -- I know I'm
11 confused. So I don't.....

12 Q In other words, I'm asking is there one unified system
13 you use for this -- for maintenance within AWWU or does
14 Mr. Bennett have a separate system from yours?

15 A For -- for maintenance, corrective maintenance,
16 preventive maintenance, we have basically one which
17 would be a product called Maximo, a computerized
18 maintenance management system. They're in field
19 service. They use a customer information system, which
20 is a total separate system from our system.

21 Q Okay. So the customer information system is separate
22 from your system; is that right?

23 A That's correct.

24 Q And street maintenance would have a separate system?

25 A That's correct.

1 work order, it would be -- should be in the system; is
2 that right?

3 A Yeah, that's correct.

4 Q Okay. And this is something you don't put -- if -- if
5 someone had called earlier that day or the day before
6 and said your -- your lid's missing off the -- off the
7 sys -- off that system, you wouldn't have any record of
8 whether they called or not?

9 MS. WEISS: Objection. It's not what.....

10 Q So does that make sense? I'll rephrase it if you want.

11 A Yeah, I'm not aware of anybody calling. That's --
12 that's all I can.....

13 Q Well, I know you're not aware of.....

14 A Okay.

15 Qbut you're not the only one who answers the phone
16 over there.....

17 A Right.

18 Qis that right? And when people call when they
19 have problems, not all problems come through to you; is
20 that right?

21 A Yeah, well, we don't track this activity. So.....

22 Q Okay.

23 Athe answer would be no.

24 Q Okay. That's -- that's fair to say.

25 A Okay.

1 A The only -- the only duties we would have would be to
2 dispatch if we had a report of a valve cover missing.
3 Q Okay. And how do you get those reports?
4 A They come in through the call to our customer service
5 department.
6 Q Do you know where they come in from or who -- who
7 provides that information?
8 A They can come from -- from anybody in the general
9 public, municipal government.
10 Q Where do you normally get the -- the -- get -- do you
11 get -- are those calls all logged in?
12 A Are the calls logged in?
13 Q Yeah, for valve box covers, are they all logged in?
14 A Yes, sir.
15 Q Okay. And let's say how would the general public know
16 to call you?
17 MS. WEISS: Objection.
18 Q How would -- how would I know to call you about a --
19 let's say a valve box cover.....
20 MS. WEISS: Objection. Form.
21 Qas opposed to calling the mayor or someone else?
22 MS. WEISS: Go ahead and answer even if I object.
23 Q You go ahead and answer if you can, you know.
24 A I don't know that they would. They would probably call
25 just the municipality or the water utility.

1 second. Okay. That's how you view it. You're the
2 sole people. I had Mr. Gilmore saying his people put
3 them on too.

4 MS. WEISS: Well, I -- I think that.....

5 Q And I want to make.....

6 MS. WEISS:the reason I objected to form.....

7 MR. COE: Right.

8 MS. WEISS:is I think the question is vague.

9 Who's you?

10 Q Well, let me ask you this. I just want to clarify that
11 while you're -- we're all thinking on the same terms.
12 Your department is not the only one within AWWU that
13 either replaces or put valve covers on; is that
14 correct?

15 A That's correct.

16 Q Okay. I do -- I -- in other words, I know you're not
17 -- I know you're not intentionally saying something
18 incor -- I'm just saying is I -- Mr. Gilmore said that
19 his department puts them on too.

20 MS. WEISS: I -- might.....

21 Q It.....

22 MS. WEISS:it help if we.....

23 Q Well, let me ask.....

24 MS. WEISS:clarified the -- the structure -- it
25 might help if you clarified.....

1 Q Oh, Okay. Thank you.

2 A So -- so when you're saying you, you to me means AWWU.

3 Q Okay. Okay. And let -- thank you. As a division of
4 AWWU, other divisions have the authority to place a
5 valve box cover on when it's missing or displaced; is
6 that correct?

7 A That's correct.

8 Q And one of those divisions would be Mr. Gilmore's
9 division; is that correct?

10 A Correct.

11 Q Is there other divisions that would have that authority
12 to do that?

13 A Yes, sir.

14 Q And what divisions are those?

15 A Engineering division would do that.

16 Q Okay. In 2006, who was in charge of the individ -- if
17 you know? Who was in charge of the engineering
18 division in 2006; do you know?

19 A Their director would be Kurt Vause.

20 Q Kurt Vause?

21 A V-A-U-S-E.

22 Q V-A-U-S-E. Any other divisions?

23 A No, sir.

24 Q Okay. So Mr. Devause [sic] -- I'm sorry.

25 A Can I backup? That would have the authority to put,

1 can, you know, you can probably hit the computer and
2 tell me how many times the dispatch has gone out to
3 that particular valve cover, the valve involved with
4 this case. Could you do that?

5 A Yes.

6 Q Okay. I'm going to ask you about that in a little bit,
7 but what you can't say is if there was calls into other
8 divisions about this particular problem; is that
9 correct?

10 A Correct.

11 Q Is there any kind of way -- let me ask this. It sounds
12 like there's no unified system for -- there's no single
13 source for going out and putting lids -- lids on a
14 valve box cover -- valve boxes.....

15 MS. WEISS: Objection.

16 Qis that right?

17 MS. WEISS: Form.

18 Q In other words, within -- within AWWU, there's no sole
19 source, no sole division that does that?

20 A That's correct.

21 Q Okay. The same thing -- do you know anything about
22 whether street -- whether street maintenance replaces
23 valve box covers that are either missing -- either
24 missing or that they take off?

25 MS. WEISS: Objection.

1 A Yes.

2 Q Really -- and in this particular case, after -- did you
3 look at the service order in this case that day after
4 he came back or did he just tell you about it?

5 A I did not see the service order that day. I just was
6 aware of the dispatch that day.

7 Q Okay. How -- was there any other dispatches as -- same
8 day dispatches that day; do you recall?

9 A For this site? No.

10 Q Okay. According to your -- okay. And have you done a
11 computer check of -- at this site about how many times
12 they've gone out to replace -- either replace the --
13 replace or place a valve cover on this particular site?

14 A That would be a Mr. Gilmore question on -- on -- from --
15 from his system, what he controls. I -- I have no
16 record of any dispatches through -- through my section.

17 Q Okay. Let me ask you. How -- how far back does your
18 system go? A couple of years or.....

19 A Our billing system goes back for -- back to the 80's.

20 Q Okay. That's the billing system; is that right?

21 A That's where the dispatches come out of.

22 Q Okay. Was this -- was this billed to anybody?

23 A No.

24 Q Okay. Would you be able to check your system to see
25 how many -- how many times lid covers were -- were

F

1 A Security.

2 Q Do you remember, approximately, when you tripped
3 in that hole?

4 A No, I don't. I know it wasn't -- it wasn't long
5 before she did.

6 Q And who did you report that to?

7 A Security.

8 Q Anyone else?

9 A No, huh-uh. That's all that we were supposed to
10 do.

11 Q You mentioned something about there being a
12 director. Do you know the name of the director?

13 A Angela Yager.

14 Q And what was her position, to the best of your
15 knowledge?

16 A Human Resources Director. Like I said, I don't
17 know if she was there or on her way out, but I know -- like
18 I said, we were in transition. So there was a lot going on.

19 Q And what's your understanding about what Angela
20 would have did with respect to this incident, if any?

A She would have made sure there was a report done.
At that time, there was the -- that was the -- the length of
our responsibility, to make sure that an incident report was
done.

Q And, again, when you talk about the report, you're

1 what, but we parked on one level and the rest of it was
2 public parking.

3 Q So anybody could use the garage?

4 A Correct.

5 Q And guests of the Hilton, did they park in that
6 garage?

7 A I believe they could have, yes.

8 Q But that wasn't -- that wasn't Hilton's exclusive
9 garage or was it?

10 A No, we did lease it out.

11 Q Number -- paragraph 4, you say, "As I walked
12 across the street using the crosswalk, my foot fell into an
13 uncovered pipe hole. This hole had no lid cover. The lid
14 cover was completely missing and could not be located." And
15 we talked a little bit -- You said this was not too long
16 before the incident involving Ms. Kelly. Do you have any --
17 So you don't recall the exact day or how long before?

18 A I'm not sure when. I know it was -- maybe a week
19 or a few days or something. It wasn't a long time.

20 Q Prior to your fall or tripping and falling, had
21 you noticed that there was this hole?

22 A No, I don't. I didn't notice it. I don't recall.

23 Q And after you fell, you said that you reported it
24 to Security?

25 A Yes.

1 Q Did you call anybody else?

2 A No.

3 Q Did you call the Municipality?

4 A No. That was -- Security's supposed to do that.

5 Q Okay. You said in paragraph 5, which is
6 consistent with what you just told me, you said, "I reported
7 this condition to Security," you said, "who were to report
8 it to the Municipality...."

9 A Yes.

10 Q And what's that based on, when you say were to
11 report it? I guess, what do you mean by they were to report
12 it?

13 A 'Cause it wasn't property of the Hilton, but the
14 Hilton employees would be injured in it. So they -- it
15 was -- they were supposed to report to the Municipality.
16 Whether they did or not, I'm not sure. But in the meantime,
17 because Hilton employees were going to be impacted by it.

18 Q Okay. So you're saying that they were supposed to
19 do it because it could have an impact on Hilton employees?

20 A Correct.

21 Q And then in paragraph 6, you say, "The hole
22 remained uncovered for a period of time after I stepped into
23 it." Did you do anything between the time that you stepped
24 into it up until Ms. Kelly's accident? Did you report it to
25 anybody else? And I'm not saying you're right or wrong for

1 doing it. I'm just trying to get the facts.

2 A No. I reported it immediately. After that, no, I
3 didn't do anything else.

4 Q Okay. You said the hole was difficult to see and
5 observe as you walked. Do you recall the location of the
6 hole with respect to the crosswalk? Can you describe the
7 crosswalk and where the hole is in the crosswalk?

8 A I think it was, like, in the middle. It was in
9 the middle. I'm not -- It was -- I know it was in the
10 middle, but it was in a location where, if you weren't
11 paying attention, if you were running across, you would fall
12 into it.

13 Q So was it in the painted line or was it in the
14 part that's asphalt colored?

15 A That I don't recall.

16 Q So you said the hole was difficult to see and
17 observe as you walked due to its location in the crosswalk.
18 What about it made it difficult to see?

19 A I'm going to say that maybe because it was -- it
20 was all black like -- Okay. The asphalt. I don't think
21 there was any painted lines.

22 Q Okay. Can you -- Do you know about, approximately,
23 how many inches across the hole is? I mean,
24 obviously, I don't expect you to have a tape measure in your
25 head, but to the best of knowledge, or if there's an object

1 that you can use as a reference point for how big this hole
2 is.

3 A No. I know it was big enough for my foot to fit
4 in it. That's all I know.

5 Q Was it as big as a basketball? Or is it smaller
6 than that?

7 A No. I think it was bigger than a basketball.

8 Q And then in your paragraph 7 of your affidavit, it
9 says, "I know of no reasons why it could not have been
10 marked or covered by the Municipality sooner...." Do you
11 know for sure that the Municipality even knew about it?

12 A No, I don't.

13 Q And you said, "Also, I do not know why it could
14 not have been covered by the municipal workers using the
15 area...." What workers are you referring to?

16 A There was construction work being done or some
17 kind of -- I know there were people -- the workers out
18 there, 'cause I seen the yellow -- I remember the yellow
19 vests. Exactly where they were, I don't -- I don't know.

20 Q So you don't recall whether they were at the
intersection on 3rd and F?

21 A I know they weren't right there at -- at that
location, on that corner. I know they weren't. But I know
they were in the area.

22 Q Do you know what -- Did they have anything on them

1 that identified them as being a municipal worker?

2 A The yellow vests, I know. They had yellow vests
3 on. I remember that.

4 Q Did they say anything on them?

5 A No, I don't recall.

6 Q And do you know when, approximately, that was that
7 you saw those folks?

8 A Around the same time.

9 Q You said they weren't right at 3rd and F. Do you
10 remember where they were working?

11 A I don't recall.

12 Q And then I have one final question. Did you, as
13 Human Resources -- You were the manager, correct?

14 A Yes.

15 Q Okay. I just want to make sure I got that right.
16 Did you accept or receive any documents from Ms. Kelly about
17 terminating her employment?

18 A No. I wouldn't have.

19 Q Who would that go to?

20 A It would have gone to the Director, but she was
still working when I left.

21 Q And you left, you thought, at the end of June?

22 A Right about that time, yes. She was -- she was
still employed.

23 Q To the best of your knowledge, if there was any

1 wheelchair; is that right?

2 A That's correct.

3 Q Then you would have had to go back over that --
4 over that area in order to get back to your car in the
5 parking lot that afternoon?

6 A That's correct.

7 Q So when you went back from the hotel to go to your
8 car after Ms. Kelly fell, did you notice if the hole was
9 covered at that time?

10 A It was not.

11 Q Okay. Now, at that time, prior to Ms. Kelly's
12 fall, you said that you don't know exactly if it was within
13 a couple days or a week, but you had tripped in the same
14 hole; is that correct?

15 A That's correct.

16 Q And why did you trip in it? In other words, was
17 it something that -- it was something that was easy -- was
18 it easy to see or not see or....

19 A It was not easily visible. I would have walked
20 around it.

21 Q Okay. In other words, if you were paying
22 attention to the traffic, is it something that you can miss?

23 A That's correct.

24 Q Now, let me ask you, Ms. Lyons, after you tripped
25 in the hole, I take it, you didn't get -- you weren't -- you

1 too long?

2 A But not six hours.

3 Q Okay. And then Mr. Coe also asked you some
4 questions about the construction workers that you and I
5 talked about. And I just want to clarify, to the best of
6 your recollection, they were not working at that
7 intersection?

8 A To the best of my knowledge, no, I don't think so.

9 Q Okay. And you don't recall exactly where they
10 were working? Or do you have any recollection?

11 A I know they were in my line of sight going to my
12 car. So exactly where they were at, I'm not sure.

13 Q But they weren't right there in the intersection?

14 A No, they were not.

15 Q And then we established that they were wearing
16 yellow vests?

17 A Right.

18 Q Are you -- How do you know that they were with the
19 Municipality?

20 A I don't. I just know they had those -- those
21 vests on that they usually wear when they're working out
22 there. Now, whether they said Municipality on the vest or
23 not, I'm not sure.

24 Q Do you know what kind of work they were doing?

25 A I know they were worker vests. That's all I can

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

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EX-104

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000125

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

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1 a.....

2 A Yes ma'am but -- just sometimes I don't even go this
3 way.

4 Q Okay.

5 A You know.

6 Q Here's my question is,.....

7 A Uh-huh (affirmative).

8 Qin -- do you -- are you referring to an incident
9 that occurred sometime shortly before Ms. Kelly's fall
10 or are you referring to, you know, something that may
11 have happened two or three years before?

12 A No, I'm talking about prior.

13 Q Right.

14 A This was painted and then the cone was on there. Only
15 thing I know is, when they had pain- -- I -- you know
16 you -- what I'm saying is, only thing I know I remember
17 is they did do some maintenance out there and they had
18 cones out in the street.

19 Q And can you give me an idea of how long before.....

20 A No I can't. I really can't 'cause it's been -- you
21 know -- you know, my memory ain't that sharp.

22 Q Right.

23 A I wish it was, you know.

24 Q Well I'm just trying to get a sense of whether you know
25 are you talking about a couple weeks or a couple months

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

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000128

1 Qor is it you know the year before?

2 A No. The same -- in the same time frame.

3 Q Okay.

4 A About a month or so.

5 Q And do you know who it -- I mean how do you know it was
6 City folks that were painting is my question. Or how
7 did.....

8 A I don't think.....

9 Q What led you.....

10 Aanybody else is.....

11 Qto the conclusion?

12 A I don't think nobody else is gonna go out there and do
13 -- paint a crosswalk unless they work for the City, you
14 know. I don't know.

15 Q So you were.....

16 A I'm not a City person.

17 Q You're assuming that they were City beca.....

18 A Yes ma'am.

19 Q Okay.

20 A Yes ma'am.

21 Q And it states: The City maintenance crew put cones
22 over the hole or near the hole for a period of time.
23 And can you -- do you recall where; maybe you can
24 indicate even on the picture with a pen if you
25 recall.....

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000129

1 A I don't --

2 Qwhere they put the cones?

3 A I don't recall.

4 Q Okay.

5 A That's been a while.

6 Q And after the cones were removed they left the hole in
7 the crosswalk.....

8 A Uh-huh (affirmative).

9 Qwithout putting a lid. Here's the question I have
10 though, you said that you didn't notice that the hole
11 was uncovered until the day of the incident.

12 A Everybody -- people were talking about people -- you
13 know, just like I said, they was complaining about the
14 holes out there. I don't know when -- when they was
15 talking about, I'm just going by what I heard. But I'm
16 saying when -- after they painted, evidently the hole
17 was there and they covered it with the cones. Then
18 they moved the cones, that's what I'm saying.

19 Q Did you actually -- do you recall seeing the cones?

20 A Yes ma'am. I did see the cones out there.

21 Q But you're telling me that you did not recall seeing
22 that there was a hole left open after the cones were
23 removed? That is just what you heard from other
24 people?

25 A Right. Right.

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000130

1 Q And do you recall who talked about that?

2 A Just a couple people, you know and -- just like I just
3 said before, it was a couple people and then Charise
4 had said something about that -- somebody else said
5 that she had fell out there. That's all I know. I
6 -- you know you keep saying the same old thing over and
7 over. I'm just going by what I seen and what I was at
8 when I seen the incident happen.

9 Q Well that's what I'm trying to distinguish between, the
10 things that you know or.....

11 A Uh-hum.

12 Qthe things that you heard.

13 A Uh-hum.

14 Q And that's where I'm trying to get -- it sounds like
15 you're saying that you saw people put cones around but
16 you didn't see or notice that there was a hole after
17 they left?

18 A Right. Right.

19 Q That you heard from other people?

20 A Yes ma'am.

21 Q Okay. You know, paragraph 8, I'm thinking about, you
22 said something -- at the last sentence it says: The
23 hole was left uncovered for days prior to Ms. Kelly's
24 injury. And we already established.....

25 A Uh-huh (affirmative).

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000131

1 Qthat you didn't know that yourself but you heard
2 other people?

3 A Yes ma'am.

4 Q And should have been covered by the Municipality
5 workers working or driving over this area. Did you see
6 any workers working in that area in those days prior
7 -- in just the few days prior to Ms. Kelly's.....

8 A Unh-unh (negative).

9 Q Okay. And then you mentioned or driving over this
10 area. Did you see any Municipal workers drive across
11 -- down the road?

12 A No.

13 Q Okay. And you mentioned that the hole -- we talked
14 about the hole and the size and I think we came up with
15 that maybe it was a softball size, that it was -- is
16 that something that you think somebody would be able to
17 see when they were driving down the road?

18 A Well if it was reported, somebody should have come out
19 there and checked it.

20 Q Okay.

21 A You know, 'cause it was reported.

22 Q But you didn't report it yourself?

23 A Not at -- when the incident happened we went in there,
24 we made a report.

25 Q Sure.

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5/3/06

Paint Sheet

Date 5-3-06

103	104	105	106	107	107	107
Dual Turns	Striping	Cross Walks	Arrows	Stop Bars	Curbs	Islands
C	C	C ✓	C	C	C	C
S	S	S	S	S	S	S

Location	S	C
3rd + Post Allway		4
3rd + Karluk E ladder		1
4th + Karluk E ladder		1
3rd + Ingra N		1
3rd + Eagle		1
3rd + AST Allway	3	
3rd + CST EWN	4	
3rd + EST Allway		4
3rd + FST N		1
2nd + EST EWS		3
2nd at Ped Xwalk		1
1st at Railroad Depot 2-ladders		2
2nd at Christensen Hill N		2
	(7)	21

Labor			Equipment		Materials	
Name	Work Authorized	Hours	Number	Usage	Type	Quantity
JD	105	3	36025	4		
Jrann	105 T	1.5	32055	4		
Ben	"	"	36035	4		
orlenn	"	"	32045	4		
Bob	"	"				
Das h	"	"				
Ralph	"	"				
Stous	"	"				
har	"	"				
Tom	"	"				

I