

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

Superior Court Department
of the Trial Court
C.A.No.: 12-448

ALBERT R. DUBUQUE, JR.,
Executor of the Estate of
KIMMY A. DUBUQUE
PLAINTIFF

vs.

CUMBERLAND FARMS, INC. And
V.S.H. REALTY, INC.
DEFENDANTS

DEPOSITION OF: ARI N. HASEOTES

Taken before Roxanne C. Costigan,
Certified Merit Reporter, Notary Public, pursuant to
Rule 30 of the Massachusetts Rules of Civil
Procedure, at the law offices of CHRISTOPHER HAYS
WOJCIK & MAVRICOS, 446 Main Street, 8th Floor,
Worcester, MA, on May 7, 2014.

Roxanne C. Costigan
Certified Merit Reporter

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<p>1 S T I P U L A T I O N S</p> <p>2</p> <p>3 It is agreed by and between the parties</p> <p>4 that all objections, except objections as to the form</p> <p>5 of the question, and all motions to strike</p> <p>6 unresponsive answers are reserved to be raised at the</p> <p>7 time of trial for the first time.</p> <p>8 It is further agreed that the deponent</p> <p>9 will read and sign the deposition, notary waived, and</p> <p>10 that the sealing of said deposition will be waived.</p> <p>11</p> <p>12 ARI N. HASEOTES, the Deponent, having been</p> <p>13 first duly sworn and identified by production of his</p> <p>14 driver's license, deposes and says as follows:</p> <p>15</p> <p>16 DIRECT EXAMINATION BY MR. WEINBERG:</p> <p>17 Q. Good morning.</p> <p>18 A. Good morning.</p> <p>19 Q. Would you identify yourself, please?</p> <p>20 A. Ari Haseotes.</p> <p>21 Q. All right.</p> <p>22 A. Nicholas is my middle name. I am the</p> <p>23 President of Cumberland Farms.</p> <p>24 Q. Are you the Chief Operating Officer also?</p>	<p>1 A. Yes.</p> <p>2 Q. Are you the CEO?</p> <p>3 A. No.</p> <p>4 Q. Is that your aunt?</p> <p>5 A. Yes.</p> <p>6 Q. Lily Bentas, B E N T A S?</p> <p>7 A. Correct.</p> <p>8 Q. Who has day-to-day control of the</p> <p>9 operations?</p> <p>10 A. I do.</p> <p>11 Q. Of Cumberland Farms?</p> <p>12 A. Yes.</p> <p>13 Q. Have you ever been deposed before?</p> <p>14 A. Yes.</p> <p>15 Q. Well, let's go over just a few ground</p> <p>16 rules anyway.</p> <p>17 A. Okay.</p> <p>18 Q. Please let me finish a question, even if</p> <p>19 you think you know where the question is going before</p> <p>20 you answer, and I'll try to give you the same</p> <p>21 courtesy, I'll let you finish answering before I start</p> <p>22 the next question. If you need to take a break at any</p> <p>23 time, you may do so, but if a question is pending, I'd</p> <p>24 like you to answer the question first before you take</p>

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1 that break. Is that okay?
2 A. Okay. I will -- if I need to speak to
3 counsel, I will request the chance to do so.
4 Q. As long as a question isn't pending,
5 that's fine, but if a question is pending and it's not
6 objectionable by your counsel --
7 MR. CAMPBELL: I'm glad you added
8 that in there.
9 THE WITNESS: Okay. I'll defer to
10 counsel on that.
11 MR. CAMPBELL: We got it. Let's go.
12 Q. (By Mr. Weinberg) Do you know what the
13 case is about that brought you here?
14 A. Yes.
15 Q. What do you know?
16 A. Well, I know we're here due to a fatal
17 accident that occurred at a store we had owned and
18 operated in Chicopee, Massachusetts. I don't know the
19 exact date of it. The fall of --
20 Q. 2010.
21 A. 2010, okay.
22 Q. When did you first learn of the incident?
23 A. Within hours of it occurring.
24 Q. Typically, were you given notification of

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1 stated in the foregoing Answers are not within my
2 personal knowledge, and I am informed that there is no
3 single official of Cumberland Farms, Inc. who has
4 personal knowledge of all such matters, and that the
5 matters stated in the foregoing Answers to
6 Interrogatories have been assembled by representatives
7 and counsel to the Defendant Cumberland Farms, Inc.
8 So, I would just direct your attention to
9 interrogatory number 10, and the question was, State
10 the basis why no barrier was present in the front of
11 the premises, that is, the Chicopee store, between the
12 pedestrian walkway and entrance and the parking area
13 on November 28th, 2010, and the answer is, Barriers
14 were not present when the premises was purchased by
15 Cumberland.
16 MR. CAMPBELL: Are you going to ask
17 him whether he has any knowledge of these
18 interrogatories?
19 MR. WEINBERG: I'm going to ask if
20 he has any knowledge as to why barriers were
21 not present between the pedestrian walkway and
22 the parking area at Cumberland Farms on
23 November 28th, 2010.
24 MR. CAMPBELL: You're talking about

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1 any incident on Cumberland Farms property that
2 involved serious bodily injury?
3 A. Define serious. I guess to the extent it
4 was, yeah, significant injury, yes. Not if somebody
5 slipped and fell, for example.
6 Q. And that's a good distinction. So, a
7 serious bodily injury with broken limbs or a threat of
8 life or a death?
9 A. It would -- sorry.
10 Q. That would be something that you would be
11 notified of?
12 A. Yeah. Broken limb, probably not.
13 Something that was life threatening, I would suspect
14 so, yes.
15 Q. Did you have any role in preparing the
16 Cumberland Farms responses to the Plaintiff's
17 interrogatories, the written questions submitted?
18 A. No, sir.
19 Q. I have a copy, I didn't mark as an
20 exhibit, but the Answer was prepared overall by
21 Matthew Peterson from Risk Management. Do you know
22 Mr. Peterson?
23 A. Yes, I do.
24 Q. And he answers and he says, The matters

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1 the Chicopee store?
2 MR. WEINBERG: Yes.
3 MR. CAMPBELL: If you have any
4 knowledge of that.
5 THE WITNESS: I do not.
6 Q. (By Mr. Weinberg) Did you have any role
7 in the later installation of bollards after the
8 accident at the Chicopee store? Did anyone consult
9 you on that issue in any way?
10 A. Not at that particular store, no.
11 Q. After the accident, you were consulted in
12 an overall plan to install bollards at some Cumberland
13 Farms stores, is that correct?
14 A. I don't -- I believe it was before --
15 Q. All right.
16 A. -- the accident.
17 Q. We'll get into that. One general
18 question, who is Fran Sheflin?
19 A. He is Director of Planning and
20 Construction, maybe just Planning at this point. I'm
21 not sure what his title is.
22 Q. All right. Mr. Sheflin-- I'm going to
23 represent to you that Mr. Sheflin has testified that
24 approximately ninety-five percent of Cumberland Farms

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1 stores in 2010 had a design with nose-in parking where
2 the cars parked perpendicular to a pedestrian walkway
3 in front of and around the side of the store. Is
4 that -- do you agree with that characterization?
5 A. I wouldn't --
6 MR. CAMPBELL: Object to the form.
7 Go ahead. You can answer. Unless I tell you
8 not to answer, you can answer the question.
9 THE WITNESS: I wouldn't be able to
10 confirm or refute the number percentage-wise.
11 Q. (By Mr. Weinberg) Tell me about your
12 background, your educational background and your
13 experience at Cumberland Farms. That way, you can do
14 that from the top of your head.
15 MR. WEINBERG: Off the record.
16 (A recess was taken)
17 MR. WEINBERG: Back on the record.
18 Q. (By Mr. Weinberg) I was asking you to
19 tell us what your educational background and training
20 is.
21 A. So, I was educated in Massachusetts for
22 pre-college years.
23 Q. Public or private?
24 A. Private schools, both in Southborough,

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1 A. No, sir.
2 Q. While you were employed working your way
3 up through the ranks of Cumberland Farms, did you ever
4 learn about car strikes occurring at various
5 Cumberland Farms facilities?
6 A. I hadn't really been in a position to
7 hear about it in the roles I was in.
8 Q. You were once the Vice President of
9 Strategic Planning at Cumberland Farms?
10 A. Yes, sir.
11 Q. What did that involve?
12 A. Primarily financial planning and
13 long-term planning for the business, making decisions
14 on capital structure, what particular business lines
15 we were interested in pursuing more aggressively, what
16 we might be interested in pursuing less aggressively,
17 those types of things.
18 Q. As the VP, did you report to somebody as
19 the VP of Strategic Planning, that is?
20 A. Yes. Yes. I reported to the Chief
21 Financial Officer at the time.
22 Q. You became President and Chief Operating
23 Officer in January of 2008, and you said that you were
24 basically responsible for overall the day-to-day

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1 Massachusetts. I attended Boston College. I
2 graduated from BC in 1996.
3 Q. With a degree in what?
4 A. Business Administration, General
5 Management. I worked for several years thereafter in
6 a real estate business, self-storage in particular,
7 developing self-storage facilities. And I attended
8 then Harvard Business School, received my Master's in
9 Business Administration in 2003.
10 Q. And that's the highest level you've
11 attained is an MBA from Harvard Business?
12 A. Yes, sir.
13 Q. How about your employment besides the
14 self-storage business, you from time to time worked
15 your way up through the ranks at Cumberland Farms?
16 A. I did. I worked in stores as a young man
17 and I worked after graduating from college as a store
18 manager for a period of time, and then after graduate
19 school, worked in various positions in marketing and
20 finance until I was appointed President almost six
21 years ago.
22 Q. While you were employed at the store
23 level, were you ever employed at a store that was
24 struck by a motor vehicle?

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1 operations of Cumberland Farms, correct?
2 A. Yes.
3 Q. Can you describe, since you became the
4 present and COO, the five top initiatives that you
5 have been involved in?
6 A. Five top initiatives, I guess since I've
7 been President?
8 Q. Yes.
9 A. We have, I guess I would bucket them into
10 initiatives around asset redeployment in terms of
11 redeveloping stores.
12 Q. What does that mean?
13 A. Often means knocking down and rebuilding
14 stores, building new stores, selling stores,
15 effectively repositioning our store base to make sure
16 that we have the right locations in the right market
17 areas with all of the right attributes from a sales
18 and marketing standpoint.
19 Q. That's all under asset redeployment?
20 A. Yes.
21 Q. All right.
22 A. Technology initiatives, we have deployed
23 numerous technologies either to assist the stores to
24 operate with less administrative burden, also to give

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1 them better access to data on business performance,
2 sales mix and things like that. We have invested
3 aggressively in people related initiatives. So,
4 incentive plans and improvements to benefits plans for
5 our team members, our employees.
6 Q. You said team members or key members?
7 A. Team members.
8 Q. Team members, yes?
9 A. We have invested in a brief formatting
10 within the store to allow us to sell more fresh food
11 and beverage. It's been probably the biggest of our
12 initiatives over the past several years.
13 Q. So, that is sort of going head to head
14 with Dunkin' Donuts and McDonald's?
15 A. Yeah, you could say that. That's fair.
16 I guess that's four. I guess if there were a fifth, I
17 would say investments in advertising and other methods
18 to generate additional business to our stores.
19 Q. I've been hearing about your new coffee
20 every time I turn on a Red Sox game.
21 A. I'm glad to hear that.
22 MR. CAMPBELL: You want to hear that
23 he's buying it.
24 MR. WEINBERG: That's true.

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1 You're putting words in his mouth. The
2 question that you posed suggested rank order of
3 priorities, which would be an unfair question
4 to begin with. He answered you appropriately.
5 Q. (By Mr. Weinberg) All right. Let me ask
6 you again, maybe if Mr. Campbell's suggestions helped
7 you in any way to answer or understand the question.
8 Is profitability the highest priority as COO?
9 A. No.
10 Q. What is the highest priority?
11 A. Sustainability as an entity, I guess, but
12 I guess I would say that it's -- with my role running
13 a corporation the size it is, it's very difficult to
14 put any kind of priority and sequencing to things.
15 There are factors, multiple factors for every decision
16 we make. I don't know that I could accurately say
17 what I would say is most important other than making
18 sure that the business is competitive for the
19 long-term.
20 Q. All right. If you became aware as COO
21 that Cumberland Farms had a particular safety feature
22 in place at its stores and there was an initiative to
23 reduce the safety of that feature because it would
24 save money, would that be an appropriate decision for

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1 THE WITNESS: It's the best deal in
2 town.
3 Q. (By Mr. Weinberg) I understand that one
4 obvious priority of a business such as yours is
5 profitability. Where does customer and employee
6 safety stand in your priorities as COO and President?
7 A. Could you repeat the question? I'm
8 sorry.
9 Q. Okay. I am now switching from top
10 initiatives to your priorities as COO and President of
11 Cumberland Farms, and I understand, and tell me if I'm
12 wrong, that one priority would be profitability
13 obviously, correct?
14 A. Yes.
15 Q. All right. So, my question is, is
16 another priority customer and employee safety?
17 A. I guess I would answer that by saying
18 that there are many priorities I have and I balance so
19 many. Certainly, the general safety of our facilities
20 is a consideration in decisions we make from time to
21 time.
22 Q. So, it's a consideration but not a
23 priority?
24 MR. CAMPBELL: I object to the form.

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1 Cumberland Farms to make?
2 A. I can't imagine that would be -- that
3 anyone would ever propose that in my organization. We
4 don't think about things like that that way.
5 Q. You're aware that at one point -- are you
6 aware that at one point in time there was -- to the
7 extent that Cumberland Farms stores had vertical
8 barriers called bollards, there was a standard design
9 to have bollards that were six inches in diameter and
10 made of schedule 40 steel, are you aware of that fact?
11 A. No, sir.
12 Q. Did you ever become aware -- involved in
13 any way in the details of the types of bollards that
14 were being installed in Cumberland Farms properties?
15 A. No, sir.
16 Q. If you learned that a decision was made
17 to reduce the strength of the bollards that originally
18 had been utilized in a Cumberland Farms program in
19 order to save money, would that have been an
20 appropriate decision?
21 A. No, sir.
22 Q. We'll discuss that later. When you
23 studied for your MBA at Harvard, did you take business
24 ethics?

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1 A. I'm not sure it was termed that. There
2 was probably several courses that were geared toward
3 general awareness of one's responsibilities as an
4 executive.
5 Q. All right. So, is that how you would
6 characterize the term business ethics? I think it's
7 appropriate.
8 A. Yeah. Sure.
9 Q. And you passed?
10 A. Yes.
11 Q. All right. Did you study statistics in
12 either your business administration course or your MBA
13 course?
14 A. Yes, sir.
15 Q. Are you familiar with the term predictive
16 modeling?
17 A. Yes.
18 Q. So we're on the same wavelength, do you
19 understand that to mean using certain facts and
20 helping in utilizing those facts to predict an
21 outcome?
22 A. Yes.
23 Q. All right. One of the aspects in this
24 case that we'll get to -- well, I'll get to it when we

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1 spreadsheet that you saw that was prepared in
2 connection with a bollard program, and I'm asking if
3 Exhibit 11 is that spreadsheet?
4 A. Are we distinguishing that from this
5 document because I --
6 Q. The document, that Bollard Program
7 Summary document was presented to us as connected to
8 what was marked as Exhibit 11.
9 A. Okay.
10 Q. As far as I can recall. If you want to
11 separate the documents, that's fine. And for
12 Mr. Campbell's sake, I have a large print version of
13 that document.
14 A. I believe this is the document that I was
15 referring to, yes.
16 Q. As one document or as two separate
17 documents?
18 A. I really don't recall whether --
19 Q. All right. So, why don't we separate --
20 I'm sorry. Go ahead.
21 A. I don't recall whether it was one or two.
22 Q. All right. Then I will refer to them
23 separately. So, Exhibit 11, the spreadsheet that is
24 before you, you had seen before?

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1 get to it.
2 What documents have you reviewed in
3 preparation for this deposition?
4 A. I think I was presented with something
5 that may have showed something I've viewed in the past
6 around our plan to deploy bollards when it was
7 presented to me.
8 Q. It was a spreadsheet?
9 A. I believe so, yes.
10 Q. Let's see if -- just so I can have it in
11 front of you when the time comes, I believe it's been
12 marked as Exhibit 11 at Mr. Sheflin's deposition.
13 MR. CAMPBELL: You believe that
14 document was marked as Exhibit 11?
15 MR. WEINBERG: I think the document
16 that I've handed Mr. Haseotes is in fact
17 Exhibit 11 from the Sheflin deposition.
18 MR. CAMPBELL: So far you haven't
19 established that this is anything he has ever
20 seen before.
21 MR. WEINBERG: I'm about to ask him
22 that, Mr. Campbell.
23 MR. CAMPBELL: Okay.
24 Q. (By Mr. Weinberg) You mentioned a

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1 A. Yes, sir.
2 Q. Had you seen it -- it's dated, I believe,
3 March 21, 2011?
4 A. Yes. That's what I see on here.
5 Q. Had you seen it around that time or at
6 some other time?
7 A. I presume it was around that time, but I
8 couldn't say for sure.
9 Q. How about the other document that's
10 entitled Bollard Program Summary, it also is dated at
11 the top, it says, distribution list March 21, 2011.
12 Had you seen that document before?
13 A. I don't recall it in particular. Reading
14 the document, it looks like it's the kinds of things
15 that were attached to this, but I don't recall the
16 document in particular.
17 Q. Do you recall that at some point a survey
18 was done of the Cumberland Farms stores, and I see at
19 the bottom of the summary, 591 stores?
20 A. Mm-hmm.
21 Q. If you see --
22 A. I see the summary number here, yes.
23 Q. Is that the number of stores that
24 Cumberland Farms operated in March of 2011?

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1 A. I couldn't say for sure. I presume
2 that's an accurate count.
3 Q. Do you recall that at some point at or
4 around March of 2011 a prioritization was made of
5 which stores would get bollards in the fiscal year and
6 which would not?
7 A. I believe a prioritization was presented,
8 yes.
9 Q. What role did you have in determining the
10 prioritization?
11 A. I was the recipient of the documents
12 which I reviewed. Beyond that, I didn't have any
13 involvement in them.
14 Q. Did you have final sign-off on the
15 program?
16 A. For this particular program, yes.
17 Q. So, did you have to be satisfied, for
18 example, of the cost of the program as projected?
19 A. I don't recall whether the cost was
20 presented as a part of this submission to me.
21 Q. All right. At some point, was cost
22 presented, of the overall cost, that is?
23 A. I presume it was presented to me, yeah,
24 as an estimate.

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1 Q. So, October 1 through September 30?
2 A. Correct.
3 Q. So, when we talk about fiscal year '11,
4 we're talking about a year that began October 1, 2010,
5 and ran through September 30th, 2011?
6 A. That's correct.
7 Q. So, if you look at the Bollard Program
8 Summary and maybe we should mark that just as a
9 separate -- why don't we mark Bollard Program Summary
10 as 1 and put an Exhibit 2 on what was marked as
11 Exhibit 11 in the Sheflin deposition?
12 (Exhibit 1, marked)
13 (Exhibit 2, marked)
14 Q. (By Mr. Weinberg) The Bollard Program
15 Summary has now been marked as Exhibit 1, and the
16 spreadsheet that we've been talking about has been
17 marked as Exhibit 2.
18 If you look at Exhibit 1, it indicates,
19 and again, I'm suggesting this was dated in March of
20 2011, that as of that date, there were twenty-two
21 stores in the Cumberland Farms system that appeared to
22 have bollards. Is that correct?
23 A. I see that here, yes, twenty-two
24 completed.

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1 Q. And you had to sign off whether it was an
2 acceptable amount or not?
3 A. Yes.
4 Q. Did you have any role in the ranking,
5 that is, in deciding which stores were going to get
6 bollards during this program?
7 A. Other than to review the document and
8 approve the proposal, none.
9 Q. By the way, we've had some confusion in
10 this. How does the Cumberland Farms fiscal year run,
11 from when to when?
12 A. October --
13 MR. CAMPBELL: Who had the
14 confusion?
15 MR. WEINBERG: Some of the
16 employees.
17 MR. CAMPBELL: Okay. Go ahead.
18 Sorry.
19 THE WITNESS: I would be surprised
20 to hear that, but October --
21 Q. (By Mr. Weinberg) I won't tell you who
22 they were.
23 A. October through September is our fiscal
24 year.

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1 Q. Did you ever commission a study or a
2 survey to find out in 2011 or whenever you first
3 became involved or aware of the bollard program to see
4 how many stores had bollards?
5 A. I don't believe I did.
6 Q. Did you have conversations with Thomas
7 Masiello from time to time on the subject of bollards?
8 A. I think around this time, yes, he had
9 brought to my attention bollards in general.
10 Q. How would you describe Mr. Masiello's
11 position on whether or not Cumberland Farms needed to
12 deploy bollards in its stores?
13 A. I would say he was an advocate of a
14 bollard program.
15 Q. Were there any other advocates?
16 A. Not to my recollection.
17 Q. Were there any other opponents during
18 this time on the idea of putting in bollards in
19 Cumberland Farms stores?
20 A. Other than to say that there's been this
21 long held debate about the efficacy of a bollard,
22 because if I'm on the wrong side of a bollard, I could
23 be injured if I'm walking across parking spaces where
24 someone's attempting to park, that was probably

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1 something that was brought up, if ever bollards were
2 brought up.
3 Q. Can you identify any person who
4 articulated that position more strongly say than
5 others during this time period?
6 A. I couldn't say who. I don't know.
7 Q. Did anybody in your system actually come
8 out and actively oppose the deployment of bollards?
9 A. No, other than, again, probably general
10 discussion around whether they actually improve the
11 safety of the store, which was probably a generally
12 held debated question.
13 Q. Ultimately, did you decide that they
14 would improve the safety of a store?
15 A. Again, the decision was made, I made the
16 decision based upon a host of factors, store down
17 time. You know, often what happens in our business is
18 -- all of the experience really that I were familiar
19 with was somebody pulling into a space and pressing
20 the gas versus the brake and, you know, crashing into
21 the front, generally not far into the front of a
22 store. So, decisions around having stores go out of
23 commission for several weeks and having to dispatch
24 emergency crews and the security of the building after

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1 better term, for the damage. I wouldn't know.
2 Q. Do you know whether efforts were in fact
3 taken?
4 A. I don't know.
5 Q. I'm going to show you what was marked as
6 Exhibit 2 at Mr. Sheflin's deposition. It was a
7 document produced by counsel in response to a
8 discovery request, and it's dated in the lower
9 left-hand corner July 12, 2010, from a man named Eric
10 Hemmalin, and ask you if you've seen that before?
11 MR. CAMPBELL: Let me just take a
12 look at it first. The question is whether he's
13 seen it before?
14 MR. WEINBERG: Correct.
15 THE WITNESS: I don't recall whether
16 I've seen the document or not.
17 Q. (By Mr. Weinberg) All right. The
18 document seems to be a survey of the number of car
19 strikes occurring in periods from 2009 -- from 2000
20 through 2009, do you agree?
21 A. Yes.
22 Q. And it appears to tally the amount of
23 recoverable damages for each of those years?
24 A. Yes.

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1 a strike were factors. Certainly, we're always
2 looking to try to make our site safer, understanding
3 that perfection is impossible.
4 Q. You knew, if I understand from your
5 answer, that from time to time, vehicles would crash
6 into the front of a store and penetrate it to some
7 extent?
8 A. Yes.
9 Q. Did you know that efforts were made to
10 determine the damage that was being caused by such
11 incidents?
12 A. In terms of dollars --
13 Q. Correct.
14 A. -- of cost? I don't recall ever seeing
15 any analysis.
16 Q. What did Cumberland Farms do if a driver
17 of a vehicle -- strike that.
18 What did Cumberland Farms do if a driver
19 lost control of a vehicle and crashed into its store
20 and caused damage, what steps did Cumberland Farms
21 take to try to recover any money that it lost as a
22 result?
23 A. I really don't know the extent of how
24 much we would pursue the perpetrator, for lack of a

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1 Q. And it also appears to tally the personal
2 injury claims or liability claims for each of those
3 years?
4 A. I see a paid to date personal injury
5 claims figure here, yes.
6 Q. By the way, did you ever become aware of
7 an incident in a South Deerfield Cumberland Farms
8 store in the early 2000s, in and around 2001, where a
9 person was struck by an out of control vehicle while
10 in a Cumberland Farms sidewalk?
11 MR. CAMPBELL: You can answer that
12 question other than by reference to any
13 conversations that you had with the lawyers
14 representing the company.
15 MR. WEINBERG: And that's a fair
16 characterization.
17 Q. (By Mr. Weinberg) I'm representing that
18 an incident happened in South Deerfield in 2001 where
19 a customer was struck by a vehicle while on the
20 sidewalk in front of a store and lost his leg. Did
21 you ever, prior to 2010, become aware of that
22 incident?
23 A. I believe I probably heard about it,
24 yeah.

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1 Q. Did you hear about the lawsuit that
2 resulted because of that incident?
3 A. I believe I did, yeah.
4 Q. And were you aware that money was paid to
5 settle that lawsuit?
6 MR. CAMPBELL: Object.
7 MR. WEINBERG: You can answer.
8 MR. CAMPBELL: You can answer. He
9 didn't ask you who paid the money. He didn't
10 ask you when. And none of this would be
11 admissible. So, don't worry about it.
12 THE WITNESS: I believe I heard a
13 reference to it, yes. I don't know much beyond
14 that.
15 Q. (By Mr. Weinberg) As a result of that
16 incident that we're just talking about, were any
17 discussions held in Cumberland Farms about the need to
18 install vertical barriers or bollards between the
19 pedestrian walkway and the parking spaces that were
20 perpendicular to it?
21 A. Well, pre-dated me by, I believe, at
22 least several years.
23 Q. Yes. But you -- you were the VP of
24 Strategic Planning in 2005, were you not?

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1 Q. Cumberland Farms is a privately owned
2 business?
3 A. Yes, sir.
4 Q. Owned by your family?
5 A. Yes.
6 Q. Are there any other employees of
7 Cumberland Farms who are members of your family?
8 A. Well, my aunt.
9 Q. Lily Bentas?
10 A. Yes. And I have a second cousin, I
11 believe, and I have a few other in-laws, maybe two --
12 Q. Okay.
13 A. -- that aren't lineal descendants.
14 Q. At present, how many Cumberland Farms
15 either own or operate?
16 A. 530 or so, thereabouts.
17 Q. I read on the paper that recently some
18 stores in the central states, the central atlantic
19 region were sold. How many were sold?
20 A. Twenty-seven.
21 Q. How long had that sale been planned?
22 MR. CAMPBELL: Is any of this
23 relevant to this case?
24 MR. WEINBERG: Yes.

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1 A. Yes.
2 Q. And you had -- you were VP of Marketing
3 prior to that, correct?
4 A. Actually, subsequent to that.
5 Q. I thought you bracketed -- okay.
6 A. Yeah.
7 Q. When did you first ascend to an executive
8 position in Cumberland Farms?
9 A. I guess I was an executive when I became
10 Vice President of Strategic Planning which was around
11 '05 or '06.
12 Q. And before that, you were not an
13 executive?
14 A. Correct.
15 Q. And did you ever -- so, how did you learn
16 about the incident in South Deerfield?
17 A. I recall hearing about it.
18 Q. At the dinner table?
19 A. Somewhere, yeah. I don't know.
20 Somewhere.
21 Q. All right.
22 A. I couldn't say where.
23 Q. Okay.
24 A. Or when.

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1 MR. CAMPBELL: How?
2 MR. WEINBERG: I'll explain it
3 later.
4 Q. (By Mr. Weinberg) How many -- how long
5 was the sale of those stores planned?
6 A. I believe over the last couple of years.
7 Q. All right. Were stores that were slated
8 to be sold ever -- did they ever have bollards
9 deployed on them?
10 A. I couldn't say.
11 Q. Specifically, were you aware of a
12 decision that was made not to deploy bollards at
13 stores that were going to be gotten rid of in one way
14 or the other?
15 A. I believe if there was a plan to divest
16 of the store in the immediate term, then we may
17 have -- we may not have made a decision to do so.
18 Q. Are you aware that in 2011, stores that
19 were targeted to ultimately be divested were, I'll use
20 the word triaged so as not to have bollards?
21 A. As a general matter, we would not be
22 spending capital on sites that were planned for
23 divestment.
24 Q. I may have interrupted you when I asked

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1 you the reasons, your reasons for installing bollards.
2 If I did, I apologize.
3 Q. Could you tell me what led you to
4 ultimately sign off on the bollard program?
5 A. Again, I would say there were a host of
6 factors. Store down time, profitability, certainly
7 safety of our team members, our employees in the
8 stores were probably the factors, amongst others, I
9 considered. I think I had been particularly
10 frustrated by having had a store that we had recently
11 re-invested in significantly, have that get struck
12 within days and then have to shut the store down for a
13 month.
14 Q. When was that?
15 A. I don't know specifically. I'm guessing
16 it was 2009 or '10. It's a store we opened with much
17 fanfare, and immediately after opening the doors, we
18 had to close them to -- close it to fix all the
19 beautiful fixtures and furniture we just installed.
20 Q. This was one of your AIM stores?
21 A. Yes, sir.
22 Q. Where was it located?
23 A. Hopkinton, Massachusetts.
24 Q. While I'm on that subject, what does AIM

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1 A. Those would be the major factors, I
2 guess, amongst others that I was considering.
3 Q. And after you made the decision that they
4 were -- that bollards were a good idea for your
5 stores, when was that, by the way?
6 A. I don't know the specific date. I really
7 don't.
8 Q. Well, was it around the time that your
9 AIM store in Hopkinton got taken out?
10 A. I don't know the specific dates.
11 Honestly, I'd have to look at -- you would have to
12 tell me when that was.
13 Q. All right.
14 A. I just don't know.
15 Q. Well, whenever it was, was that -- was
16 that the tipping point?
17 A. I wouldn't say it was the tipping point.
18 I would say I was presented with a proposal. It
19 seemed to make sense to me --
20 Q. All right.
21 A. -- for the reasons I suggested, and that
22 might have been something that also was in my head at
23 the time.
24 Q. All right. We're going to get to some

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1 stand for?
2 A. Accelerated In-Store Margin, I believe.
3 Q. You started to list some of the reasons
4 why you were in favor of bollards. You said store
5 down time, and I'm glad you clarified. I thought you
6 meant originally that it would take a lot of time to
7 install the bollards, but that's not what you meant,
8 correct?
9 A. Correct.
10 Q. You meant -- did you mean the store down
11 time after being struck by a vehicle?
12 A. Yes, sir.
13 Q. All right. And then profitability.
14 Stores that were struck by vehicles and closed for any
15 period of time had their profitability affected?
16 A. Yes, sir.
17 Q. All right. And then you had safety.
18 Were there any other reasons besides those three?
19 A. Well, I linked profitability with down
20 time, of course, and the inability for our customers
21 to use the site, which in our business is a serious
22 issue. Customers are creatures of habit, and we want
23 to be there for them every day.
24 Q. Sure.

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1 evidence, I think the discussions that you are first
2 involved in on bollards appear to have started
3 sometime in 2009.
4 A. Okay.
5 Q. Does that jibe with your recollection?
6 A. The dates are a blur to me --
7 Q. All right.
8 A. -- with the amount of decisions I make on
9 various things every day.
10 Q. Fair enough. We'll get to the documents.
11 A. Okay.
12 Q. Once you made, whenever it was, once you
13 made the decision that bollards were a good idea to be
14 deployed, did you have any idea -- strike that -- any
15 way in mind to find the best possible bollard that
16 could be installed?
17 A. I asked my team of experts to come up
18 with a proposal.
19 Q. All right. What types of incidents were
20 you looking to prevent when you signed off on the
21 bollard program?
22 MR. CAMPBELL: I think he's already
23 answered that question.
24 Q. (By Mr. Weinberg) She gets paid by the

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1 word.

2 A. I would say the types of incidents that

3 were described to me in the documents, this document

4 Exhibit 1 and the Summary, where we had building

5 strikes that caused store down time and damage.

6 Q. Did you have any idea about the rate of

7 speed that vehicles that were damaging your buildings

8 were traveling at?

9 A. No, sir.

10 Q. Did you have -- did you give any

11 direction to your employees to find a bollard that

12 would withstand the types of vehicle impacts that were

13 occurring on Cumberland Farms property?

14 A. No.

15 Q. Understanding that safety was one of the

16 priorities, did you want to do everything reasonably

17 possible to insure that the barriers that were

18 installed were capable of preventing vehicle intrusion

19 beyond that?

20 MR. CAMPBELL: I object to the form.

21 Q. (By Mr. Weinberg) You can answer.

22 A. Could you repeat the question for me?

23 Q. Given that safety was one of the

24 priorities, one of the reasons that you gave for

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1 Q. What does the schedule refer to, the

2 thickness of the steel?

3 A. I don't know.

4 MR. CAMPBELL: He just said he

5 doesn't know if it's steel or plastic.

6 Q. (By Mr. Weinberg) Does it refer to

7 thickness?

8 A. I thought it was the -- I thought it

9 could refer to plastic or metal, I guess. So, I'm not

10 sure.

11 Q. Are you aware that at some point the

12 decision was made to switch from a six inch schedule

13 40 steel bollard to a four inch schedule 20 steel

14 bollard?

15 A. No, sir.

16 Q. Did you ever become aware that -- well,

17 strike that.

18 What type bollards were installed in the

19 Cumberland Farms stores as part of this program?

20 A. I would not get involved in those

21 details.

22 Q. Did you ever become aware that in fact

23 the bollards that were installed were suffering a lot

24 of damage and were failing when hit by motor vehicles

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1 installing bollards, did you feel it necessary to do

2 everything reasonably possible to insure that the

3 bollards that were installed were capable of

4 withstanding the types of impacts that were occurring

5 on Cumberland Farms properties?

6 MR. CAMPBELL: I object to the form.

7 He's already told you what he did.

8 Q. (By Mr. Weinberg) You can answer.

9 A. My response would be that I really am not

10 versed in the dynamics of these types of things, and I

11 asked our team to come up with an appropriate way to

12 deploy the program. Presumably, they used their own

13 experts to assist them and their own judgment. Those

14 are the -- I don't get into the kind of details beyond

15 that, sir.

16 Q. Are you aware sitting here today that at

17 one point, initially, the plan was to have six inch

18 bollards of what's called schedule 40 steel, have you

19 ever heard that phrase?

20 A. Not in regards to this. I know what

21 schedule 40 material is.

22 Q. What is it?

23 A. Piping. I don't know if it's plastic or

24 metal but --

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1 in Cumberland Farms parking lots?

2 A. No.

3 Q. Would that have been a concern for you,

4 if you had been made aware of that fact?

5 A. I presume if -- I presume so, yeah.

6 Q. I've read that, in 2011, Cumberland Farms

7 had \$13 billion in sales. Is that more or less your

8 memory, your recollection?

9 MR. CAMPBELL: Object to the

10 question. What relevance is the revenue of

11 this company?

12 MR. WEINBERG: The relevance, the

13 net worth of a company can be discovered when

14 punitive damages are at issue.

15 MR. CAMPBELL: I'm going to instruct

16 him not to answer any questions about the net

17 worth of the company until you get an Order

18 from the Court saying discovery on that topic

19 is relevant and discoverable.

20 MR. WEINBERG: Actually,

21 Mr. Campbell, I've put up with a lot of

22 coaching so far, but you're the one who is

23 required to get an Order. If you instruct him

24 not to answer on relevance grounds, you'll the

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1 one that has to get the Court Order.
2 MR. CAMPBELL: Fair enough. I will
3 get the Court Order.
4 MR. WEINBERG: While you do, I would
5 ask you to consider your own office was
6 involved in that question, Stone versus
7 Frontier, on a summary judgment on punitive
8 damages and lost in front of Judge Young who
9 found that we had presented sufficient facts to
10 the Court --
11 MR. CAMPBELL: My office has
12 forty-five lawyers and we have hundreds of
13 clients. I have no idea what Stone versus
14 Frontier is. We advocate on behalf of a wide
15 variety of clients, including individuals,
16 corporations, and insurance companies, and so,
17 your reference to something that Judge Young
18 did in a case that I have no involvement in is
19 meaningless. I will move for a Protective
20 Order. Do you want to continue with the
21 deposition until your --
22 MR. WEINBERG: I don't --
23 MR. CAMPBELL: Or do you want me to
24 suspend now?

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1 Summary, can you explain, in the middle third, it
2 indicates, we already discussed, that twenty-two
3 stores apparently had bollards completed in previous
4 fiscal years. The next item is 81. It says, Upcoming
5 CapEx. Does that refer to capital expenditure?
6 A. Yes, sir.
7 Q. And there are eight locations with
8 tenants, 56 FY11 projects, seven FY12 projects, and
9 eighteen future projects. What does that refer to,
10 what I just read?
11 A. I assume those numbers aggregate to the
12 81 --
13 Q. All right.
14 A. -- upcoming projects.
15 Q. So, were those stores that were capital
16 expenditures projects going to get bollards as part of
17 an overall renovation of the store?
18 A. I believe so.
19 Q. All right. Then there were 70 stores
20 that were high risk with two or more building strikes?
21 A. I see that.
22 Q. Were you part of any discussions where,
23 again, I'm going to use the word triaging was made to
24 determine which stores would get bollards as opposed

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1 MR. WEINBERG: I want to be clear,
2 so, if I ask Mr. Haseotes questions about
3 Cumberland Farms sales and net profit, you're
4 going to instruct him not to answer?
5 MR. CAMPBELL: Yes. Until the Judge
6 of the Superior Court tells me that this is
7 relevant and appropriate discovery in this
8 case.
9 MR. WEINBERG: Okay. So, your
10 intention then is to immediately file for a
11 Protective Order?
12 MR. CAMPBELL: Yes. I will do that,
13 I'll suspend right now for that purpose, if you
14 want, or you can continue the deposition until
15 you feel that it's concluded.
16 MR. WEINBERG: No. We can certify
17 those questions and proceed.
18 MR. CAMPBELL: Okay.
19 MR. WEINBERG: I'm happy to -- you
20 may be back.
21 MR. CAMPBELL: If we're back, we're
22 back.
23 Q. (By Mr. Weinberg) If you look at Exhibit
24 1 that was marked for today, the Bollard Program

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1 to which would not?
2 A. Well, again, I think I was presented with
3 a proposal, this likely being a part of it, where this
4 type of a prioritization was presented to me.
5 Q. All right. So, as you sit here, do you
6 remember how the decision was made that stores that
7 had been hit two or more times would have a priority
8 for installation of bollards as opposed to some other
9 store?
10 A. I can't say. I don't know.
11 Q. We talked about predictive analysis
12 earlier, and I'm going to ask you to assume that
13 Mr. Sheflin testified that ninety-five percent of all
14 Cumberland Farms stores had the same basic
15 arrangement, that is, nose-in parking, perpendicular
16 to a pedestrian walkway along the front or side of the
17 store.
18 A. Mm-hmm.
19 Q. If that's true, is the fact that a
20 building had two or more strikes, does it make it any
21 more likely than a building that has not yet had a
22 strike to have another strike?
23 MR. CAMPBELL: Are you asking him
24 whether he did that analysis at that time?

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1 Q. (By Mr. Weinberg) No, based on his
2 training he has had in predictive analysis and
3 statistics, I'm asking if he can make any sense of
4 that prioritization?
5 A. I --
6 MR. CAMPBELL: You don't have to
7 render opinions or do analyses from the seat of
8 your pants here as a witness. If you did it in
9 the regular course of your business, fine,
10 that's fair game. You don't have to do that
11 here in a deposition.
12 Q. (By Mr. Weinberg) As you sit here, I'm
13 asking, does this make sense based on you -- on your
14 own training and experience, that a building that's
15 had two or more strikes would have a priority as
16 opposed to another building similarly laid out that
17 had not yet had a strike?
18 A. I presume that would make sense to me. I
19 approved it, so.
20 Q. Why would it make sense? Why would that
21 building be more likely to have another strike as
22 opposed to a building that had not yet had one?
23 A. I'm really not qualified to answer why.
24 I'm not an -- while I understand statistics,

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1 Q. And the rest of the stores were not
2 slated to get bollards, is that correct?
3 A. Within that year, I suppose, yeah.
4 Q. Well, in fact, did the bollard program
5 continue after fiscal year '11?
6 A. I couldn't recall, sir.
7 Q. The documentation we have, and we'll get
8 to some of it, indicates that the bollard program
9 stopped as far as this is laid out in Exhibit 1 after
10 the fiscal year '11 and then only -- well, only stores
11 in the AIM program or Cap Expenditure programs got
12 bollards.
13 A. Okay. I'm not sure I understand the
14 question.
15 Q. I'm just stating as a fact as I
16 understand it from the depositions, that the bollard
17 program as laid out on Exhibit 1 appears to have
18 ceased at the end of fiscal year 2011 and the only
19 stores that got bollards after that were stores that
20 were part of the AIM program or slated as part of a
21 Capital Expenditure program. I'm asking if that's
22 your memory as well?
23 A. I don't recall. I do not recall.
24 Q. As you sit here today, do all Cumberland

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1 basically, I'm not sure I could understand other
2 factors that could contribute beyond statistics.
3 Q. And you had no discussion about that fact
4 when you were presented with the Bollard Program
5 Summary?
6 A. I assume -- I don't really -- I don't
7 recall what conversations I even had around this.
8 Q. Okay.
9 A. I really don't.
10 Q. Well, let's go down to the next number.
11 It says 119, the remainder of the top 200 FY10 EBITDA.
12 What does EBITDA, E B I T D A mean?
13 A. Earnings before interest, taxes,
14 depreciation, and amortization.
15 Q. Is that more or less gross profit?
16 A. No. That's a proxy for cash flow.
17 Q. Cash flow. Okay. So, it says, the
18 stores that are in the top 200 producers were going to
19 get bollards?
20 A. Looks like that from this.
21 Q. And the subtotal is the 70 high risk
22 stores and the 119 top producers totalling 189 were
23 going to be given bollards during fiscal year 2011?
24 A. I see that.

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1 Farms stores have bollards in the interface between
2 the pedestrian walkway and the parking slots?
3 A. I don't know.
4 Q. Is there any reason why, having made the
5 decision to have bollards in 2009 or 2010, that you
6 would let a store similarly situated to the other
7 stores with the perpendicular parking not have a
8 bollard?
9 A. Could you repeat the question?
10 Q. It was a long question. I said, is there
11 any reason you can think of why having, once having
12 made the decision to begin to deploy bollards
13 throughout the Cumberland Farms system, you would
14 allow any number of stores not to have bollards
15 deployed?
16 A. I approved this as presented to me. What
17 happened after that, I don't know.
18 Q. Okay. Well, would it be appropriate in
19 your opinion to leave a number of stores, it appears
20 as many as 299 stores, out of the bollard program?
21 A. Could you repeat that question? I'm
22 sorry.
23 Q. All right. It appears by Exhibit 1 that
24 as of, at least as far as fiscal year '11, there were

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1 going to be 299 stores that were not going to have
2 bollards deployed, correct?
3 A. What I don't understand is whether we did
4 them after this. I didn't -- I think I was presented
5 with this. I don't know what happened to the balance
6 of the stores.
7 Q. All right. And I'm asking you, would it
8 be appropriate in your opinion to leave 299 stores
9 without bollard protection?
10 A. I'd have to defer to the folks internally
11 that I asked to deploy the program to help me
12 understand what's appropriate or not.
13 Q. Well, you indicated that store down time,
14 impact on profitability, and safety were the reasons
15 why you signed off on the program?
16 A. Amongst others, yes.
17 Q. Amongst others?
18 A. Yes.
19 Q. So, with all those reasons in mind, based
20 on the decision that you made, would it have been
21 appropriate to Ari Haseotes to leave as many as 299
22 stores without bollards?
23 A. Presuming that we conferred with the
24 folks in the field who understand the given attributes

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1 presented, I'm not -- I'm not aware that there wasn't
2 a plan to do them at a later time or otherwise.
3 Q. All right. Well, whether or not there
4 was a plan to do them at a later time, what basis
5 would you have for signing off on a plan that held 210
6 bottom performers without bollards?
7 A. I presume factors including how much we
8 can actually do in a given year with mobilizing teams
9 to do it. I presume other plans for the site. Those
10 would be factors, and then again, an understanding
11 from or feedback, I presume, was gathered from field
12 operations as to whether they were in their opinion
13 required would be factors that would have led us to
14 this decision.
15 Q. Okay. Did you have any questions about
16 that prioritization?
17 A. I don't believe so.
18 Q. So, as you sit here today, is it correct
19 that your memory is that you saw the way the
20 priorities were being laid out and you accepted them
21 and signed off on it?
22 A. Yes, that would be reasonable to assume.
23 Q. Was there a specific amount of money that
24 you were willing to spend in a given year to install

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1 of a site and it was determined then that they weren't
2 required, I would say that it would be appropriate.
3 Q. When you say weren't required, what do
4 you mean?
5 A. We would -- again, I would ask the
6 personnel who are familiar with these matters and the
7 particulars of any given site to help us to understand
8 whether the plan made sense beyond what I approved,
9 so.
10 Q. Well, you approved a plan or you appear
11 to have approved a plan that left 299 stores without
12 bollard protection at least for fiscal year 2011,
13 correct?
14 A. Yeah. I presume so, yeah.
15 Q. And among them are 210 what are called
16 bottom performers?
17 A. Mm-hmm.
18 Q. What is meant by that?
19 A. Stores with lower profitability, I
20 presume.
21 Q. So, a store with lower profitability was
22 not going to get bollard protection according to the
23 plan that you signed off on?
24 A. According to this plan that was

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1 bollards?
2 A. No, sir.
3 Q. If you look at what was marked as Exhibit
4 2 in Mr. Sheflin's deposition, the spreadsheet showing
5 the property damage and incidents from 2000 to 2009,
6 do you see a projected cost for 537 sites at the
7 bottom?
8 A. Yes.
9 Q. What was the cost that the author
10 projected for 530 odd Cumberland Farms sites?
11 A. Looks like \$1.8795 million.
12 Q. Was that an amount that you were willing
13 to spend if asked to protect all the Cumberland Farms
14 stores in your system as of July of 2010?
15 A. I didn't propose a cost to them. I
16 wouldn't understand what the cost would be. So, I'm
17 not sure I understand the question.
18 Q. Well, somebody, and it -- I don't know if
19 you recognize Eric Hemmalin's handwriting. Do you?
20 A. I do not.
21 Q. All right. Somebody, and it says from
22 Eric Hemmalin at the bottom, indicates that there are
23 537 sites and it's good for budget using six inch
24 bollards and the price is \$1.8 million for 537 sites.

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1 So, my question is, did anyone ever propose that that
2 amount be spent to cover all the Cumberland Farms
3 sites?
4 A. I don't recall.
5 Q. What's Eric Hemmalin's position at
6 Cumberland Farms?
7 A. He's in the Purchasing Group.
8 Q. Was he the head of the Purchasing Group
9 in July of 2010?
10 A. I don't recall what exactly he was.
11 Q. Does he head it right now?
12 A. I believe so, yes.
13 Q. Your best memory is that you -- correct
14 me if I'm wrong, that you never asked for the overall
15 cost of a project to do all the Cumberland Farms
16 sites?
17 A. That's correct.
18 Q. Seeing the reference here in July of 2010
19 to six inch bollards, do you recall any discussions
20 that you were a participant in about the size or
21 thickness of the bollards that Cumberland Farms was
22 proposing to use?
23 MR. CAMPBELL: Objection. He
24 already answered that question.

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1 certain really. I don't know how we use it today.
2 Q. Before we took the break, I was asking
3 you about -- I was about to ask you about the
4 difference between four inch bollards and the smaller
5 bollards that are in use at Cumberland Farms, and I'm
6 going to show you what was marked as Exhibit 7 at
7 Mr. Sheflin's deposition, and I would ask you to look,
8 first, it's an e-mail, it's a portion of this e-mail
9 from Manny Paiva, who is Manny Paiva?
10 A. He works for Fran. I don't know what his
11 title is.
12 Q. All right. And he writes to a man named
13 Jack O'Leary. He says, Jack, this is the detail we
14 use at our stores in July of 2010. Have you ever seen
15 what's shown in the second page of Exhibit 7, that
16 kind of bollard detail?
17 A. No, sir.
18 Q. The second page of the document is the --
19 what Mr. Paiva refers to as what we use at our stores,
20 it seems to indicate schedule 40 six inch nominal
21 size. Having read that, does that refresh your
22 recollection whether Cumberland Farms had a standard
23 bollard design of six inches in diameter and schedule
24 40 steel?

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1 Q. (By Mr. Weinberg) I'm asking if that
2 refreshes his recollection.
3 A. No, sir.
4 MR. WEINBERG: If you need to take a
5 break for a second, I just have to find a
6 document.
7 (A recess was taken)
8 MR. WEINBERG: Back on the record.
9 Q. (By Mr. Weinberg) Quick change of topic
10 and then we'll get back to what we were talking about.
11 A. Sure.
12 Q. What is V.S.H. Realty?
13 A. It is a -- I'm not sure if it's a
14 subsidiary company. At one point, it held certain of
15 our real estate assets or it was just something
16 internally, a division, the real estate division
17 internally.
18 Q. Does it still exist as far as you know
19 today?
20 A. I think it does where we have tenanted
21 spaces and we may be --
22 Q. Tenanted?
23 A. Yes, where we may be the landlord, we may
24 be billing ourselves as V.S.H. Realty, but I'm not

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1 A. No, sir.
2 Q. As you sit here, did you ever learn that
3 the bollards that were put in were based on a decision
4 to save money?
5 A. No, sir.
6 MR. WEINBERG : Why don't we mark
7 this as the next exhibit?
8 (Exhibit 3, marked)
9 Q. (By Mr. Weinberg) This is a two-page
10 document, an e-mail chain that's in December of 2010,
11 and if you would look at the first page, at the bottom
12 half, there's an e-mail from Eric Hemmalin that begins
13 Friday, December 10th, at 10:46 a.m.?
14 A. Yes.
15 Q. It's addressed to Fran Sheflin who we
16 know, we've already identified. Who is Muriel Tyler?
17 A. She worked in the Construction Department
18 at one point.
19 Q. No longer at Cumberland Farms?
20 A. Correct.
21 Q. Who is Jose Moreira?
22 A. He's in the Construction Department as
23 well.
24 Q. All right. And Manny Paiva, we've

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1 already identified.
2 A. Yeah.
3 Q. Susan Medeiros?
4 A. She's an employee that works for Fran, I
5 believe.
6 Q. All right. And Robert Beatty?
7 A. Was in the Construction Department at one
8 point. I believe he is no longer employed.
9 Q. All right. And is the Construction
10 Department located at the Cumberland Farms
11 headquarters in Framingham?
12 A. Yes.
13 Q. And is that where you spend most of your
14 days?
15 A. Yeah, fair part of my time in Framingham.
16 Yeah.
17 Q. Was that true in 2010?
18 A. Yes.
19 Q. And is Mr. Sheflin's department also
20 located at the Cumberland Farms headquarters?
21 A. Yes.
22 Q. If you see Mr. Hemmalin in the e-mail we
23 were just discussing is writing to Mr. Sheflin and
24 everybody else saying that he's sending forward the

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1 question.
2 MR. CAMPBELL: I objected to the
3 form for record purposes.
4 THE WITNESS: Okay.
5 MR. CAMPBELL: Unless I tell you not
6 to answer, you have to answer the question.
7 THE WITNESS: Okay. Could you
8 repeat the question? I want to make sure I
9 understand what's being asked.
10 Q. (By Mr. Weinberg) All right. If you had
11 learned that Cumberland Farms had effected a savings
12 of \$1.3 million by changing the specifications of the
13 bollards that were going to be installed and that
14 change resulted in those bollards being less able to
15 withstand motor vehicle impacts, would that have been
16 appropriate?
17 MR. CAMPBELL: Object to the form of
18 the question. It's a hypothetical.
19 THE WITNESS: Yeah. I'm not sure I
20 can understand. I wasn't involved in this
21 level of detail. So, I'm not sure --
22 Q. (By Mr. Weinberg) I understand.
23 A. -- I understand specs and costs at all.
24 Q. I'm asking you as the COO and decision

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1 final pricing for bollards and sleeves with new spec
2 and delivered to Westborough?
3 A. Okay.
4 Q. The last thing he says is, Based on the
5 spec change and pricing negotiation the savings on
6 this is 1.3 million based on historic pricing. Do you
7 see that?
8 A. I do see that.
9 Q. Did you ever become aware either from
10 Mr. Hemmalin or anybody else that Cumberland Farms had
11 effected a savings of \$1.3 million by changing the
12 bollard specification?
13 A. No, sir.
14 Q. Would that have been a concern to you if
15 you knew that doing so effected the safety of the
16 bollards?
17 MR. CAMPBELL: Where is the proof of
18 that?
19 THE WITNESS: I --
20 MR. CAMPBELL: I object to the form.
21 THE WITNESS: I'm not sure I
22 understand.
23 MR. CAMPBELL: No. No.
24 MR. WEINBERG: You can answer the

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1 maker.
2 A. Yes.
3 Q. If you had learned that while -- that
4 that cost savings of 1.3 million was coming at the
5 cost of a bollard that was less able to withstand
6 vehicle impact, would that have been a concern for
7 you?
8 MR. CAMPBELL: Object to the form of
9 the question.
10 THE WITNESS: I would have deferred
11 to the team to understand whether they were
12 making the correct decision on specifications.
13 So, I don't think I would have challenged and
14 known to ask whether it was the right
15 specification or not.
16 Q. (By Mr. Weinberg) Well, if you had
17 learned that in fact these bollards were not -- these
18 four inch bollards were not standing up to the types
19 of impacts occurring in Cumberland Farms stores, would
20 that have caused you to question whether the decision
21 had been correct?
22 MR. CAMPBELL: You already asked him
23 that. I object. You already asked that
24 question.

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1 Q. (By Mr. Weinberg) You may answer.
2 A. I wouldn't be involved in the decision
3 there. I really -- I wouldn't -- they had a process
4 and a plan for what they were trying to accomplish,
5 and if a decision were made, I would have gone with
6 it.
7 Q. You would have been happy -- well, did
8 you ever learn that there was a \$1.3 million savings
9 by changing the bollard specifications?
10 MR. CAMPBELL: Just asked. Just
11 answered.
12 THE WITNESS: I answered the
13 question no.
14 Q. (By Mr. Weinberg) You did not?
15 A. No, I'm not aware.
16 MR. WEINBERG: Why don't we mark
17 this as the next exhibit?
18 (Exhibit 4, marked)
19 Q. (By Mr. Weinberg) Mr. Haseotes, Exhibit
20 4 is an e-mail chain in April of 2011 and you are not
21 copied in the chain, but if you would start at the
22 bottom, you'll see that the addressee is Michael
23 Durant. Who is Michael Durant?
24 A. He's an employee in the Construction

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1 Q. At some point, Cumberland Farms had an
2 arrangement with Red Box to start to install Red Box
3 video storage units on Cumberland Farms property?
4 A. Yes.
5 Q. When did that begin?
6 A. I have no recollection.
7 Q. Were you involved in negotiations with
8 Red Box?
9 A. No, sir.
10 Q. Was that something you supported?
11 A. Something I approved, I presume.
12 Q. So, you didn't -- it wasn't an initiative
13 of yours?
14 A. No, sir.
15 Q. But you approved it once it was done?
16 A. I approved a proposal to install them, I
17 believe.
18 Q. And have they been installed at
19 Cumberland Farms stores?
20 A. In some stores, yes.
21 Q. Did Red Box have any requirements for the
22 protection of its boxes?
23 A. I wouldn't know.
24 Q. As you -- prior to November, 2010, as you

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1 Department.
2 Q. And he's writing to Dominic -- he's also
3 writing to Dominic Taverna. Who is Dominic Taverna?
4 A. Employee in the Construction Department.
5 Q. And he says, I was reviewing more of the
6 plans today and noticed that the bollard size is a
7 schedule 20. I noticed at a new store in Mass that
8 they are easily bent. Should we move up in wall
9 thickness to try to prevent this in the future?
10 MR. CAMPBELL: You stated in your
11 question that this was a missive from Michael
12 Durant. That doesn't appear to be accurate.
13 Q. (By Mr. Weinberg) If I did, I misspoke.
14 It's from Shaun Lappen to Michael Durant.
15 MR. CAMPBELL: Shaun Lappen from
16 something called Image Plus.
17 Q. (By Mr. Weinberg) But I read it
18 correctly, did I not?
19 A. Yes, sir.
20 Q. Having seen that commentary from
21 Mr. Lappen, does that refresh your recollection
22 whether you ever heard about any problems with the
23 schedule 20 bollards that were installed?
24 A. No.

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1 went -- strike that.
2 Was it your custom to visit Cumberland
3 Farms stores throughout your system once you became
4 COO?
5 A. Yes.
6 Q. As you before November of 2010 visited
7 various stores in the system, did you notice various
8 types of what I'll call vertical barriers in place?
9 A. I can't recall any specific times.
10 Q. Well, for example, gas pumps, do you
11 notice that there are U-bolts?
12 A. Yes.
13 Q. U shaped bollards in front on each end of
14 a gas pump?
15 A. Yes.
16 Q. And you noticed them in various of the
17 stores, correct?
18 A. Yes, sir.
19 Q. Did you ever notice any particular
20 protection such as guardrails at or around Cumberland
21 Farms properties?
22 A. I can't recall any particular instance.
23 I presume we have them. I don't know.
24 Q. Did you ever experience incidents where

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1 say vacuum cleaners or air pumps on Cumberland Farms
2 properties were being hit by cars?
3 A. No, I am not aware.
4 Q. So, did you ever make a directive that
5 those devices on Cumberland Farms properties should be
6 protected in some way?
7 A. No, sir.
8 Q. Did you ever notice such protection
9 around those types of devices, air pumps, vacuum
10 cleaners, ice chests, things like that?
11 MR. CAMPBELL: So, the question is
12 whether you took note of that, if you happened
13 to be on --
14 MR. WEINBERG: Yes.
15 MR. CAMPBELL: -- a site, would you
16 actually take note of it?
17 MR. WEINBERG: He understands me.
18 So, that's a good clarification.
19 THE WITNESS: I don't know whether
20 I've noticed them or not. I look at many, many
21 different aspects of a site when I'm there, so.
22 Q. (By Mr. Weinberg) Did you ever keep
23 track of how much property damage was being done to
24 Cumberland Farms properties on account of vehicle

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1 THE WITNESS: I'm responsible for
2 everything.
3 MR. CAMPBELL: He's the COO.
4 Q. (By Mr. Weinberg) Were you responsible
5 for the concept of concept stores?
6 A. Ultimately, I'm responsible for
7 everything, I guess.
8 Q. Who -- all right. Let's -- I'm sorry. I
9 are had questions. Is a concept store a model store
10 that other Cumberland Farms will be built according
11 to?
12 A. It's a -- I would describe it as a store
13 that we would be attempting to use as a --
14 Q. Model?
15 A. Yeah. Having the characteristics of, you
16 know, the things that we think will be successful
17 going forward.
18 Q. All right. And you indicated and
19 identified earlier that asset redeployment was one of
20 the initiatives that you set in motion once you became
21 COO, correct?
22 A. Yes, sir.
23 Q. And we had the AIM stores as being a
24 project as part of that asset redeployment?

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1 strikes?
2 A. Did I personally?
3 Q. Yes.
4 A. NO, sir.
5 Q. Did you ever ask that that be done?
6 A. No, sir.
7 Q. Did you ever look at any figures showing
8 on a regular basis, besides the exhibit we looked at
9 earlier, did you ever look at any figures showing on a
10 regular basis how much damage was being incurred by
11 Cumberland Farms buildings due to things such as car
12 strikes?
13 A. I cannot recall.
14 Q. What is a concept store?
15 A. I'm not sure it's a term I -- I guess we
16 generally would use that term to reference a store
17 that had our latest offerings, consumer offerings.
18 Q. It's a term that comes up in Cumberland
19 Farms publications. That's where I got it from.
20 A. Okay.
21 Q. Were you responsible for the -- for
22 concept stores once you became COO?
23 MR. CAMPBELL: Well, what do you
24 mean by that?

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1 A. Yes, sir.
2 Q. And were the concept stores part of that
3 asset redeployment?
4 A. Yes, sir, I believe used in conjunction
5 with AIM.
6 Q. And I read something that said, at one
7 point in time, there were five concept stores. Is
8 that a number that you recall?
9 A. I can't recall a specific number.
10 Q. Was the Hopkinton store that was struck
11 shortly after being opened a concept store?
12 A. It was an AIM store, yeah. Yeah.
13 Q. Who designed the concept stores?
14 A. I don't know. What aspects?
15 Q. Overall aspects, was that something that
16 Mr. Sheflin's department was responsible for, or was
17 there another outside firm brought in?
18 MR. CAMPBELL: Like an architectural
19 firm, you mean?
20 MR. WEINBERG: Yes.
21 THE WITNESS: We use one or two, I
22 think, architectural firms to assist with
23 different aspects of it.
24 Q. (By Mr. Weinberg) All right. Have you

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1 ever seen the barrier protection set out in your
2 concept stores?
3 A. No, sir, I don't believe so.
4 Q. So, do you know whether or not the
5 barrier protection, that is, bollards or other
6 vertical barriers as set out in your concept stores is
7 different in any way from the types of barriers set
8 out in the bollard program that we talked about
9 earlier?
10 A. I don't know if they're any different or
11 not.
12 MR. WEINBERG: Off the record.
13 (Off record conference)
14 MR. WEINBERG: Back on the record.
15 Q. (By Mr. Weinberg) Do you know, Mr.
16 Haseotes, before the bollard program began, the
17 official program, in the twenty-two stores that we
18 identified in Exhibit 1, how the -- who had the
19 decision making power whether or not to install
20 bollards at a particular store?
21 A. In the twenty-two that were done --
22 Q. Prior to 2011?
23 A. I don't exactly know how that would have
24 been made really.

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1 that I've mentioned, yeah. Yeah. It would be
2 something we would be looking to do, yeah.
3 Q. I'm going to show you what was marked as
4 Exhibit 16 at Mr. Masiello's deposition. Again, no
5 need to re-mark it. It's an e-mail to you -- I'm
6 sorry -- from you to Mr. Masiello responding to an
7 e-mail from him to you in April of 2010. Is April of
8 2010 when you were first approached with the idea of a
9 bollard program and given some data on that idea?
10 A. I don't know specific dates. I'm sorry.
11 Q. Well, he asked if there's any additional
12 bollard information that might be helpful for your
13 review, and you say, No. I'll be in touch soon.
14 Correct?
15 A. Yes.
16 Q. So, having read that, what information
17 had you been given by that time?
18 A. I don't know.
19 Q. All right.
20 A. I don't know.
21 Q. This is a year before the distribution
22 list of March, '11, that we're talking about earlier
23 -- that we've talked about earlier.
24 A. Oh.

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1 Q. Would a store manager have had that
2 authority, or would somebody higher up on the chain?
3 A. It would not have been a store manager.
4 Q. Was that, if you know, the type of
5 decision that was made from central headquarters or
6 by, for example, the regional manager?
7 A. You're asking would it have been made by
8 a regional manager?
9 Q. Yeah.
10 A. It would have been a decision we would
11 have allowed a regional manager to make, yeah.
12 Q. Okay. Something that was marked as
13 Exhibit 13 at Mr. Masiello's deposition, I'll just
14 show it to you. We don't have to remark it. It's an
15 e-mail in January of -- an e-mail chain of January
16 2010 involving Mr. Paiva and Mr. Masiello. Do you see
17 that?
18 A. Yes, sir.
19 Q. In the e-mail from Mr. Masiello to
20 Mr. Paiva, he says, Our goal is to provide bollards
21 where pedestrians are at risk.
22 Is that a goal that you shared as COO of
23 Cumberland Farms?
24 A. I would say yes, amongst the other goals

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1 Q. It's April of 2010.
2 A. I see that. Yeah.
3 Q. So, we're now in fiscal 2010?
4 A. Yes, sir.
5 Q. All right.
6 A. Correct.
7 Q. So, do you agree that Mr. Masiello
8 appears to have given you some information in April of
9 2010 and asking you if you needed anything else to
10 decide whether to go forward with a bollard program?
11 A. Yeah.
12 Q. And then do you remember whether
13 Mr. Masiello continued to inquire whether you needed
14 any more information?
15 A. I don't remember.
16 Q. All right. A month later -- and I guess
17 we will mark this as an exhibit.
18 (Exhibit 5, marked)
19 Q. (By Mr. Weinberg) This is a month later.
20 Mr. Masiello writes you and Mark Howard. Who is Mark
21 Howard?
22 A. Our general counsel.
23 Q. All right. So, Mr. Masiello says, In
24 meeting with Mark Howard this morning, he asked about

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1 the status of the bollard project. Please let me know
2 if there's anything further we can do to assist your
3 efforts in this initiative.
4 And you respond saying it's still in my
5 in box. I will get to it soon. I apologize for the
6 delay.
7 Do you -- without going into any
8 conversations, do you remember at some point that your
9 general counsel became involved in the decision
10 whether or not to deploy bollards in Cumberland Farms
11 stores?
12 A. I don't recall.
13 Q. And having looked at Exhibit 5, does this
14 refresh your recollection as to whether there were any
15 reasons why you weren't getting to this program?
16 A. Other than being busy, I don't know.
17 Q. All right.
18 A. I'm going by what I wrote here, so.
19 Q. By this time, were you aware -- strike
20 that.
21 By this time, is it fair to say you were
22 in favor of deployment of bollards?
23 A. By the time of this writing?
24 Q. Yeah, April and May of 2010.

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1 recollection whether or not the Hopkinton store had
2 been hit by May of 2010?
3 A. Oh, I would have absolutely no idea.
4 Q. All right. We can find that out.
5 A. I'm sorry. There's a lot of decisions
6 across my desk every day and incidents --
7 MR. CAMPBELL: You don't have to
8 apologize. You answered his question.
9 MR. WEINBERG: Exhibit 6.
10 (Exhibit 6, marked)
11 Q. (By Mr. Weinberg) This is a chain in
12 June of 2010 and you are copied by David Merriam, you
13 and Thomas Cacciola are copied at the end of the
14 chain.
15 A. Okay.
16 Q. It seems to indicate that there was a car
17 strike in, I'm going to represent to you later that it
18 was a car strike, it appears, in New York in Long
19 Island. Were you routinely notified of -- I think you
20 indicated you were routinely notified of car strikes
21 where there was serious bodily injury?
22 A. I think I am, yes.
23 Q. All right. Why is it -- do you know why
24 David Merriam is writing to you and Mr. Cacciola? He

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1 A. I don't know that I could say that if I
2 hadn't reviewed the data that was provided, if I'm
3 understanding the question.
4 Q. Yes.
5 A. Yeah.
6 Q. So, you don't -- as you sit here today,
7 you don't know whether this period of time you had an
8 opinion one way or the other?
9 A. I believe that's correct. I don't know
10 that I had -- I assume I did not have an opinion if
11 it's still in my inbox.
12 Q. Let's see. If we can take a moment and
13 look at the spreadsheet.
14 A. Okay.
15 Q. You don't have -- the Hopkinton store, if
16 you look at Exhibit 12, what was marked at Exhibit 12
17 in Mr. Masiello's deposition, the Hopkinton store
18 appears to have had two building strikes as of March
19 of 2011.
20 A. Okay.
21 Q. And it's listed as a high risk store.
22 Does that -- is it then your memory that you describe
23 a disastrous hit on the Hopkinton store right after it
24 was reopened as an AIM store, does that refresh your

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1 is the Purchasing Manager, correct?
2 A. Mr. Merriam?
3 Q. Yes.
4 A. No, sir.
5 Q. Oh. What is Mr. Merriam?
6 A. He is the Vice -- Senior Vice President
7 of Store Operations.
8 Q. I see. Why is he writing to you and
9 Mr. Cacciola, who is head of construction, correct?
10 A. No. Tom, I believe, was in the
11 Maintenance Facilities Support.
12 Q. All right.
13 A. Both Tom and David report or reported to
14 me at the time. I assume David is just bringing us
15 into the loop.
16 Q. Just to really close a loop, I'm going to
17 show you -- and I didn't prepare copies, but there's
18 an e-mail from Manny Paiva to Eric Hemmalin, Thomas
19 Cacciola, Thomas Masiello, and Michael Esposito dated
20 July 2nd, 2010. You are not copied on it. But it
21 says, All, attached is the revised standard detail to
22 be used from this point forward for use at store front
23 Red Box or customer service pads, and it shows a four
24 inch schedule 20 steel. As I said, the e-mail is

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1 dated July 2nd, 2010.
2 Does that refresh your recollection
3 whether you heard at any point and for any reason that
4 Cumberland Farms was changing its specifications for
5 the types of bollards that it was going to be using?
6 A. No, sir.
7 Q. What was marked as Exhibit 17 at
8 Mr. Masiello's deposition is part of an e-mail chain
9 around that same time, July 6, 2010, and you'll see
10 that Mr. Masiello is responding to the revised
11 standard detail, and he asks the question, What is the
12 cost differential? Do you see that?
13 A. Yes.
14 Q. And he is told by Manny Paiva that that
15 should be asked to Eric Hemmalin. Again, having
16 looked at that, does that refresh your recollection
17 whether anybody ever examined the money saving that
18 could be effected by changing the specification from
19 six inches to four inches and from schedule 40 to
20 schedule 20?
21 A. No, sir.
22 Q. Do you have any idea why Mr. Masiello
23 would be asking that question?
24 A. No.

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1 privileged communication. I object to it.
2 MR. WEINBERG: So, are you
3 instructing the witness not to answer any
4 questions on it?
5 MR. CAMPBELL: I think I should,
6 because, I mean, look, it's a communication
7 involving three lawyers and Mr. Haseotes. I
8 mean, it shouldn't have been disclosed.
9 MR. WEINBERG: We have fought the
10 issue of Mr. Masiello, whether he's acting as
11 risk manager or a lawyer, the fact is he --
12 MR. CAMPBELL: You haven't fought it
13 in this case.
14 MR. WEINBERG: We fought it in the
15 Storozuk case.
16 MR. CAMPBELL: Yeah, but that's not
17 this case. That's not this case. Mr. Masiello
18 is a lawyer.
19 MR. WEINBERG: So, are you --
20 MR. CAMPBELL: And -- what's the
21 date of this document? I mean, leave aside
22 Masiello, you have Howard and Boissonneault
23 here, they're both lawyers in the employ of the
24 company. It's communication from a client to a

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1 Q. What was marked -- and I don't have
2 another copy of -- as Exhibit 19 at Mr. Masiello's
3 deposition is an e-mail from you to Mr. Masiello, Mark
4 Howard, and Diane Boissonneault dated August 18, 2010,
5 and you say in response to some questions that, We are
6 planning a major initiative for fiscal year '11. You
7 can discuss the scheduling with Fran Sheflin, although
8 I think what's more important to convey than actual
9 timing is that we've committed to a large scale
10 deployment in the coming twelve months.
11 MR. CAMPBELL: Can I see that?
12 MR. WEINBERG: Actually, I'm sorry,
13 Dick, I do have a copy of it.
14 MR. CAMPBELL: Just let me take a
15 look at it. You've got a communication here
16 from a client, two lawyers, Mark Howard and
17 Diane Boissonneault. Masiello is a lawyer too.
18 But let me just take a look at it.
19 It looks like, to me, that that was
20 an inadvertent disclosure. This appears to be
21 a privileged communication.
22 MR. WEINBERG: It was marked without
23 objection at Mr. Masiello's deposition.
24 MR. CAMPBELL: It appears to be a

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1 lawyer.
2 MR. WEINBERG: Are you instructing
3 the witness not to answer?
4 MR. CAMPBELL: I think I should.
5 MR. WEINBERG: And are you?
6 MR. CAMPBELL: Yes, I think I
7 should. I think I'm obligated to do it.
8 MR. WEINBERG: Okay. Then we'll
9 move on. The next exhibit which I'd like
10 handed to the witness after it's marked.
11 (Exhibit 7, marked)
12 Q. (By Mr. Weinberg) Mr. Haseotes, you may
13 want to take a second to read this.
14 MR. CAMPBELL: This is bottom of the
15 document that you showed him?
16 MR. WEINBERG: Yes, I believe that's
17 the case.
18 THE WITNESS: Okay.
19 Q. (By Mr. Weinberg) This document chain is
20 in March of 2011, and it involves, among others, Susan
21 Medeiros, you, Mr. Merriam, Mr. Sheflin, and others.
22 If you would start at the bottom, on the bottom on
23 page 1, that is a continuation of a discussion on page
24 2, Mr. Campbell pointed out, and I'm going to suggest

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1 to you that the Excel file that Miss Medeiros
2 references is the document we looked at earlier, the
3 spreadsheet that we marked.
4 A. Okay.
5 MR. CAMPBELL: If you can confirm
6 that, if you can recognize the relationship,
7 that would be good. If you can't, you can take
8 his representation if you wish.
9 Q. (By Mr. Weinberg) You can look at the
10 Bollard Program Summary, it will help you, you will
11 see that she sorts them by stores with completed
12 bollard stores, with upcoming Cap expenditures, stores
13 that are high risk locations, stores that are the top
14 200 EBITDA locations, bottom performers, and canceled
15 locations.
16 Having seen that, and if you would look
17 at the spreadsheet again, do you agree that it appears
18 that she's forwarding the spreadsheet in March of 2011
19 to you and others for review?
20 A. It seems to reference the same materials.
21 I don't recall it being -- I don't recall receiving --
22 I don't know what time I received various
23 correspondence.
24 Q. Okay. All right. A year has gone by

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1 program has still not been approved?
2 A. I don't understand. I don't -- I don't
3 know when it was approved, honestly. I don't know.
4 Q. Well, if you look at the second page,
5 right here, Miss Medeiros says, We are looking for
6 final approval from you --
7 A. Right.
8 Q. -- so we can proceed with the project.
9 Once approved, we will set a schedule. A contractor
10 is ready to start at a moment's notice.
11 A. Okay.
12 Q. So, it appears that you still had not
13 given approval to this project, is that correct?
14 A. It would appear that way, although I --
15 yeah, I don't understand. I don't know that I can
16 remember the sequencing.
17 Q. Can you think of any reason why the
18 program would not have been delayed -- well, would not
19 have been approved earlier?
20 A. I cannot recall why.
21 Q. Do you recall now having had any
22 questions about the cost, for example?
23 A. No.
24 Q. Do you recall now having any questions --

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1 since the earlier documents we looked at dated April,
2 2010.
3 A. Okay.
4 Q. Is that correct?
5 A. What documents?
6 Q. We just questioned --
7 MR. CAMPBELL: He's talking about
8 the e-mails that he showed you a little while
9 ago.
10 Q. (By Mr. Weinberg) The e-mail that
11 Mr. Masiello showed you in April of 2010 that were
12 marked earlier.
13 A. Okay.
14 Q. When he wanted to -- he asked you if you
15 needed any further information --
16 A. Okay.
17 Q. -- before signing off on the bollard
18 program. Do you recall those?
19 A. Yes.
20 Q. All right. So, I'm suggesting almost a
21 year has gone by since Mr. Masiello posed that
22 question to you.
23 A. Okay.
24 Q. And do you agree it appears that the

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1 having had any questions about the feasibility of the
2 program during that almost one-year period?
3 A. No, sir. No, sir.
4 MR. WEINBERG: Mark this, please.
5 (Exhibit 8, marked)
6 Q. (By Mr. Weinberg) Again, Mr. Haseotes,
7 this is an e-mail chain in March of 2011 involving the
8 same people we discussed a moment ago and others.
9 A. Okay.
10 Q. And Ms. -- it appears that Ms. Medeiros
11 is trying to set up a meeting to get the bollard
12 program going during the fiscal year, and you ask, on
13 the first page of Exhibit 8 in an e-mail dated March
14 22, 2011, What is the plan for seasonal stores?
15 Do you remember this discussion, this
16 e-mail discussion?
17 A. No.
18 Q. Was there any plan or any priority given
19 to seasonal stores to have bollards?
20 A. Not to my recollection. I don't know. I
21 don't know.
22 Q. I don't have a copy of what was marked as
23 Exhibit 22 at Mr. Sheflin's -- strike that -- what was
24 marked as Exhibit 2 at Mr. Masiello's deposition, but

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1 it's an e-mail chain from December of 2011. Do you
2 know who Frank Carney is?
3 A. Yes.
4 Q. Who is Frank Carney?
5 A. He works in the Facilities Support
6 Department.
7 Q. What division?
8 A. I'm not sure.
9 Q. All right. Mr. Carney writes to Muriel
10 Tyler and Michael Logan, among others, again, you're
11 not included, and he says he's trying to get bollards
12 -- he says, I feel we will have a full-time job in the
13 upcoming season replacing hit and broken ones. Then
14 he goes on, he says, They were installed as part of
15 the AIM job. I do know that this was one of the sites
16 we used the thin wall pipe before we recognized that
17 they were inferior and changed to the thicker wall
18 pipe. And then there is a discussion about the fact
19 that the thinner wall pipe is the schedule 20 pipe.
20 A. Okay.
21 Q. You can look at the e-mail if you choose.
22 Having heard what I just read, does that refresh your
23 recollection that you ever learned that the bollards
24 that Cumberland Farms was in fact installing as part

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1 A. I have no recollection.
2 Q. Would you have been involved -- strike
3 that.
4 Would you have expected that you would
5 have been involved in any decision whether to continue
6 the program or discontinue the program?
7 A. It's reasonable that I might not have
8 been involved.
9 Q. Well, I ask because, again, in April,
10 2010, we know -- we just looked at correspondence that
11 people were looking to you to get permission to start
12 the program.
13 A. Right.
14 Q. And we looked in March of 2011, people
15 were still looking to you to sign off on the program
16 because it was ready to go with your signature. Do
17 you believe that anyone in your Cumberland Farms would
18 have had authority to discontinue the program without
19 your authority?
20 A. I don't know what's meant by discontinue
21 really. I'm not sure I understand what -- I'm not
22 aware if there was a discontinuation. So, I --
23 Q. Well -- I'm sorry.
24 A. I guess I'm confused. I don't know.

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1 of the bollard program were inadequate to withstand
2 vehicle impacts on Cumberland Farms property?
3 A. No, sir.
4 Q. I just have a couple more documents and
5 then I think we're done. I asked you earlier whether
6 the bollard program continued into fiscal year '12.
7 A. Mm-hmm.
8 Q. And I'm going to show you a document we
9 just got recently, and I didn't make copies, but it's
10 an e-mail from Manny Paiva to Fran Sheflin and Robert
11 Schuler, S C H U L E R, dated April 4th, 2012. That's
12 into the fiscal 2012 year, correct?
13 A. What is the date again?
14 Q. April 24th, 2012.
15 A. That would be fiscal 2012.
16 Q. '12. And Mr. Paiva asks Mr. Sheflin,
17 Fran, there is no "bollard program" anymore, correct?
18 Again, I asked if there was any -- if the program
19 continued past the 2011 fiscal year, and I think you
20 said you weren't aware whether it had or not. Looking
21 at that e-mail, and we don't have Mr. Sheflin's
22 response, but does that refresh your recollection
23 whether a decision was made not to continue the
24 program into fiscal 2012?

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1 Q. Well, we looked at Exhibit 1, and it
2 looked like the plan was to install bollards at 189
3 locations with multiple strikes and were high earners,
4 correct?
5 A. Right.
6 Q. And the other 292 stores were not slated
7 to get bollards during fiscal year '11?
8 A. 299, I see here, I guess, yeah.
9 Q. Right. So, earlier, I asked you and you
10 said you weren't aware whether those stores were going
11 to get bollards in 2012, and it appears that that may
12 not have been the case. So, again, if the plan was to
13 continue into 2012 and didn't -- and it didn't occur,
14 was there anyone else besides you who would have had
15 authority to terminate the plan?
16 MR. CAMPBELL: Object to the form.
17 THE WITNESS: I don't know. I don't
18 know.
19 Q. (By Mr. Weinberg) Okay. Again, I would
20 show you documents we received just recently, an
21 e-mail bearing bate number 46243 in the lower
22 right-hand corner.
23 A. Okay.
24 Q. It appears to be an e-mail from Susan

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1 Medeiros dated May 15th, 2012, addressed to Dave
2 Merriam. She says, Hi, Dave. The bollard program has
3 completed at this time. All bollard installations
4 being done at this time are part of a capital job.
5 A. Okay.
6 Q. So --
7 MR. CAMPBELL: Is he on that
8 document?
9 MR. WEINBERG: He doesn't appear to
10 be on the document.
11 MR. CAMPBELL: So, are you going to
12 show it to him or you're just reading from it?
13 Q. (By Mr. Weinberg) I'm showing it to him.
14 We were looking on and we were cutting you out of the
15 discussion.
16 MR. CAMPBELL: If you're going to
17 show it to him, hand it to him so he doesn't
18 have to crane his neck.
19 MR. WEINBERG: He's younger than I
20 am, Dick.
21 MR. CAMPBELL: Much younger than you
22 and me, but still.
23 Q. (By Mr. Weinberg) You're not copied on
24 that list.

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1 A. Vaguely, yes.
2 Q. What do you remember about?
3 A. That we had one.
4 Q. Was anyone hurt?
5 A. I don't recall.
6 Q. Were bollards in place?
7 A. I don't know.
8 Q. Two questions. You referred to
9 Mr. Masiello as being an advocate for bollards. Do
10 you remember?
11 A. Yes, sir.
12 Q. What did he say that -- or what did he
13 say to you that led you to believe that he was an
14 advocate for bollards?
15 A. I believe he was the initiator of the
16 proposal initially effectively. So, I knew he wanted
17 to do it based upon that.
18 Q. Did he give you any reasons, did he tell
19 you that he --
20 MR. CAMPBELL: In other words, what
21 do you remember he said to you, if anything?
22 THE WITNESS: I don't recall
23 specifically. I think he had a bunch of
24 different things he must have used to try to

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1 A. Okay.
2 Q. But it appears -- does it appear to you
3 that Ms. Merriam -- I'm sorry -- Ms. Medeiros is
4 telling Mr. Merriam that the bollard program as of
5 May, 2012, is finished and that only capital
6 expenditure stores were going to have bollards
7 installed from that point on?
8 A. That's what I am reading here, yes.
9 Q. And, again, were you aware of such a
10 decision?
11 A. No. I was aware -- I don't know -- I
12 honestly can't recall what decisions I made when about
13 what.
14 Q. All right.
15 A. And when I was informed about various
16 aspects.
17 Q. Unless Mr. Lefebvre has some other
18 questions, I have one last document I'd like marked.
19 (Exhibit 9, marked)
20 Q. (By Mr. Weinberg) This is an e-mail from
21 Mr. Cacciola to you dated May 15, 2012, and he asks if
22 you have two minutes to talk about the Inwood New York
23 car strike. Do you remember the Inwood New York car
24 strike?

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1 make an argument.
2 Q. (By Mr. Weinberg) Did he tell you, for
3 example, that he had commissioned the survey of the
4 number and frequency of car strikes at Cumberland
5 Farms properties?
6 A. I don't remember that. He might have.
7 Q. Did he tell you that he had been
8 cataloging how much money had been spent to repair
9 Cumberland Farms properties because of car strikes?
10 A. He may have.
11 Q. Last question is, who at Cumberland Farms
12 is responsible for customer safety?
13 MR. CAMPBELL: You mean like one
14 person as opposed to everybody having something
15 to do with it?
16 Q. (By Mr. Weinberg) Anybody, who are the
17 people who are primarily in charge -- person or
18 persons who are primarily in charge of customer safety
19 at Cumberland Farms?
20 MR. CAMPBELL: Object to the form of
21 the question.
22 THE WITNESS: What do I do with
23 that?
24 MR. CAMPBELL: You can answer it. I

1 mean, he's presupposing there's one person, one
 2 group.
 3 Q. (By Mr. Weinberg) Person or persons?
 4 MR. CAMPBELL: I mean, everybody is.
 5 THE WITNESS: There is not -- we
 6 look at it as the responsibility of the team.
 7 Q. (By Mr. Weinberg) So, there's no one
 8 person who is specifically designated as a safety
 9 officer at Cumberland Farms?
 10 A. We have someone who works in safety, but
 11 I don't know, I think they do more employee safety,
 12 you know, not to stand on a bucket that's upside down
 13 or, you know, that kind of a thing.
 14 Q. So, as far as customer safety, there's --
 15 that's just left to the team?
 16 A. I believe the team would be making those
 17 decisions. Various disciplines would have different
 18 things to say on that whether it's in store design or
 19 store operations or what have you. So, I don't know
 20 that we have one person that would be ultimately
 21 responsible.
 22 MR. WEINBERG: We're done.
 23 (Witness excused)
 24 (Deposition concluded)

1 COMMONWEALTH OF MASSACHUSETTS
 2 Hampden, ss.
 3
 4 I, ROXANNE C. COSTIGAN, a Notary Public in and
 5 for the Commonwealth of Massachusetts, do certify
 6 that pursuant to notice, there came before me on May
 7 7, 2014, at the offices of CHRISTOPHER HAYS WOJCIK &
 8 MAVRICOS, 446 Main Street, 8th Floor, Worcester, MA,
 9 the following named person, to wit: ARI N. HASEOTES,
 10 who was by me duly sworn to testify to the truth and
 11 nothing but the truth as to his knowledge touching
 12 and concerning the matters in controversy in this
 13 cause; that he was thereupon examined upon his oath
 14 and said examination reduced to writing by me; and
 15 that the deposition is a true record of the testimony
 16 given by the witness, to the best of my knowledge and
 17 ability.
 18 I further certify that I am not a relative or
 19 employee of counsel or attorney for any of the
 20 parties, or a relative or employee of such parties,
 21 nor am I financially interested in the outcome of the
 22 action.
 23 WITNESS MY HAND, this 20th day of May, 2014.
 24

 Roxanne C. Costigan
 My Commission expires: July 7, 2017

1 SIGNATURE/ERRATA SHEET
 2 I have read the foregoing, and it is a true
 3 transcript of the testimony given by me at the taking
 4 of the subject deposition with the following
 5 corrections/changes, if any:
 6
 7
 8 Date ARI N. HASEOTES
 9
 10 PAGE LINE CHANGE REASON
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 22 Case Name: DUBUQUE V. CUMBERLAND FARMS
 23 Date Taken: May 7, 2014
 24 rcc