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COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

Superior Court Department
 C.A. No. 2006-02328D

WILLIAM M. LONERGAN and)
 DIANE WHITNEY-WALLACE, ON)
 BEHALF OF THEMSELVES AND ALL)
 OTHERS SIMILARLY SITUATED,)
 Plaintiffs and)
 Defendants-in-Counterclaim,)
 VS.)

JAMES W. FOLEY, PETER A. FOOTE,)
 ALEXANDER B.C. MULHOLLAND, JR.,)
 DONALD F. WHISTON, ELIZABETH A.)
 KILCOYNE, PATRICK J. MCNALLY,)
 AND EDWARD B. RAUSCHER,)
 FEOFFEEES OF THE GRAMMAR SCHOOL)
 IN THE TOWN OF IPSWICH,)
 Defendants and)
 Plaintiffs-in-Counterclaim,)
 VS.)

DISTRICT ATTORNEY FOR THE)
 ESSEX DISTRICT, ATTORNEY)
 GENERAL OF THE COMMONWEALTH)
 OF MASSACHUSETTS, ET ALS,)
 Defendants-in-Counterclaim.)

DEPOSITION OF JAMES W. FOLEY,
 a witness called on behalf of the Plaintiffs,
 taken pursuant to the provisions of the
 Massachusetts Rules of Civil Procedure, before
 Kathleen M. McHugh, a Registered Professional/
 Certified Shorthand Reporter (#120093) and
 Notary Public in and for the Commonwealth of
 Massachusetts, at the offices of Masterman,
 Culbert & Tully, LLP, One Lewis Wharf, Boston,
 Massachusetts, on Tuesday, July 31, 2007,
 commencing at 10:16 a.m.

1 **APPEARANCES:**

2 **MASTERMAN, CULBERT & TULLY LLP**

3 (By: Mary E. O'Neal, Esquire)

4 One Lewis Wharf

5 Boston, Massachusetts 02110

6 Counsel for the Plaintiffs

7 **MACLEAN, HOLLOWAY, DOHERTY, ARDIFF & MORSE, P.C.**

8 (By: William H. Sheehan III, Esquire)

9 8 Essex Center Drive

10 Peabody, Massachusetts 01960

11 Counsel for the Defendants and

12 Plaintiffs-in-Counterclaim

I N D E XWitnessDirect**JAMES W. FOLEY**

(By Ms. O'Neal)

4

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STIPULATIONS

It is hereby stipulated and agreed by and between counsel for the respective parties that the deposition transcript will be read and signed by the witness within 30 days of receipt or the transcript will be deemed signed. Filing of the deposition may be waived.

It is further stipulated that all objections, except as to the form of the question, and motions to strike will be reserved until the time of the trial.

JAMES W. FOLEY, having been satisfactorily identified and duly sworn by the Notary Public, testified as follows in answer to direct interrogatories by Ms. O'Neal:

Q. Mr. Foley, would you state your name, please, sir, for the record?

A. James William Foley.

Q. Mr. Foley, I will be asking you questions today and you will be answering those questions under oath, and what I would ask you to do, please, is to let me finish my entire question before you undertake to answer it and then I will permit you to give a full and complete answer and

1 that way we will not be talking over one another
2 and making this a confusing deposition
3 transcript.

4 So do you understand what I just said?

5 A. Yes, I do.

6 Q. Thank you. Mr. Foley, have you ever
7 been deposed before?

8 A. Yes.

9 Q. On how many occasions approximately?

10 A. Approximately three or four.

11 Q. And when was the most recent?

12 A. Probably mid-1990s.

13 Q. So it's been some time ago?

14 A. Yes, yes.

15 Q. All right. What is your current
16 address?

17 A. 25 Meadowview, one word, Lane, Ipswich,
18 Mass.

19 Q. How long have you lived there?

20 A. Approximately 13 years.

21 Q. And do you lease any property at which
22 you periodically spend time in terms of a
23 domicile?

24 A. No.

1 Q. And can you tell me, sir, very briefly
2 and in summary form your educational background?

3 A. I attended Salem Public Schools; St.
4 John's Preparatory School in Danvers.

5 MS. O'NEAL: Off the record.

6 (Discussion off the record.)

7 Q. Okay, sorry about that.

8 A. St. John's Preparatory School in
9 Danvers and Salem State College in Salem, Mass.,
10 where I majored in criminal justice.

11 Q. When did you graduate from Salem State
12 College?

13 A. I did not.

14 Q. Did you obtain any sort of a post-high-
15 school graduate degree, associate's or bachelor's?

16 A. Yes, associate's in criminal justice
17 from North Shore Community College, and I believe
18 in December of this year I'll be finishing my
19 bachelor's from Salem State.

20 Q. In criminal justice?

21 A. Yes.

22 Q. Thank you. Can you briefly describe
23 for me your current employment?

24 A. I am employed by two entities, one, the

1 Feoffees of the Grammar School and, two, the Town
2 of Ipswich as a member of the Board of Selectmen.

3 Q. With respect to your position as a
4 selectman --

5 A. Yes.

6 Q. -- that is a position by which you are
7 employed as a selectman? Is that your testimony?

8 A. I'm elected and I receive no salary for
9 that.

10 Q. So selectmen in the Town of Ipswich
11 receive no compensation?

12 A. They do. I waived my compensation
13 probably five years ago, four years ago.

14 Q. If you had not waived it, what would
15 you have been entitled to, if you know?

16 A. Seven hundred fifty dollars per year.

17 Q. And you also indicated that you are
18 currently employed as a Feoffee?

19 A. Yes.

20 Q. And do you consider that a form of
21 employment?

22 A. I would, yes.

23 Q. And as a Feoffee are you compensated
24 for your employment?

1 A. Yes, I am.

2 Q. And at what level?

3 A. Twenty-five dollars per hour, yes.

4 Q. Do you periodically submit billings of
5 your hours --

6 A. Weekly.

7 Q. -- to which you've devoted time?

8 A. Weekly.

9 Q. Thank you. Do you happen to know,
10 Mr. Foley, what your compensation was for the
11 period ending June 30, 2006 from the Feoffees?

12 A. June 30, 2006, I do not know off the
13 top of my head. I'm sorry. I don't. I could get
14 that information and bring it back. I'm not --
15 I'm not familiar.

16 Q. I'm going to show you a document and I
17 will let your counsel look at it first and I
18 believe it to be the 2006 return of the Feoffees
19 of the Grammar School in the Town of Ipswich for
20 the period ending June 30th, '06.

21 A. I believe that is correct. I was going
22 to say 22, but I didn't know exactly what it was,
23 22,082.

24 Q. And that was your compensation as a

1 Feoffee?

2 A. Correct.

3 Q. For the period ending June 30, '06?

4 A. Correct.

5 Q. Now, Mr. Foley, would you agree with
6 me, sir, that the column under which that amount,
7 \$22,082, is reported indicates that it is an
8 amount that you received as an expense account and
9 other allowances?

10 A. I would state that that's what I
11 received for that period. I don't think there is
12 any additional -- I don't think there is any
13 additional fees that I received above and beyond
14 that, not that I'm aware of.

15 Q. So, when you told me that you receive
16 compensation based upon an hourly rate of \$25, is
17 it your understanding that whatever you billed
18 in '06 was reported on the document in front of
19 you in that column?

20 A. That would be my understanding.

21 Q. Do you happen to know why it's not
22 reported as a salary as opposed to an expense and
23 an allowance?

24 A. That I do not know. I don't know why

1 Mr. Clasby who is our accountant -- I don't know
2 why. I have no idea.

3 MS. O'NEAL: For the record could we
4 mark that as the first exhibit, please, since we
5 referred to it.

6 (2005 Form 990, consisting
7 of 14 pages, was marked Exhibit No. 1 for
8 identification.)

9 Q. Mr. Foley, for the period ending
10 June 30, 2006, was your compensation as a Feoffee
11 the same then as it is now?

12 A. Twenty-five dollars per hour, correct.

13 Q. So, if I were to divide the amount by
14 25, that would give me the number of hours that
15 you spent last year or -- I'm sorry -- period
16 ending June 30, '06?

17 A. Yes.

18 Q. Do you know approximately, sir, how
19 many hours per week you devote to your work as a
20 Feoffee?

21 A. Approximately 40 or more.

22 Q. And as among all of the other Feoffees,
23 do you devote the most time to your work as a
24 Feoffee?

1 A. Yes, I do.

2 Q. Are the other Feoffees compensated
3 based upon the same rate of pay being \$25 per
4 hour?

5 A. There is a -- there is a different
6 figure for -- there is a different figure for the
7 vice chairman and the -- and the treasurer based
8 on the number of meetings and their time.

9 I'm not -- I'm not sure on the figure.
10 Mine is based on the chairman and the manager's
11 position. Theirs is based on a monthly fee, but I
12 don't know exactly. I know I could get that for
13 you.

14 Q. So you are the chairman of the
15 Feoffees?

16 A. Correct.

17 Q. And you are the manager --

18 A. The manager of the Feoffees.

19 Q. And when you say the manager of the
20 Feoffees, is that really an informal title or have
21 you been elected or appointed as the managing
22 Feoffee?

23 A. There has been a manager for as long as
24 I -- which is an official title. Mr. Whiston had

1 held the title as chairman and manager for 30
2 years. Prior to that Jerome Richardson had held
3 the title for 20 or so years.

4 There are, I believe, five titles
5 for the Feoffees. There is a chairman, a vice
6 chairman, a treasurer, a secretary and a manager,
7 and through the years different -- obviously
8 different people have held different positions and
9 at one time Mr. Whiston held three positions. So
10 I'm not -- I don't know the history of it, but
11 it's an official title. That's correct.

12 Q. Am I correct that Mr. Foote is
13 currently the treasurer?

14 A. Treasurer/secretary, correct.

15 Q. Mr. Foley, who is the vice chairman?

16 A. Alexander B.C. Mulholland.

17 Q. And do you happen to know the rate
18 of compensation for the vice chairman and the
19 treasurer? You indicated, I believe, that it was
20 different. Do you happen to know what it is?

21 MR. SHEEHAN: Objection. This is the
22 deposition of LNWS.

23 MS. O'NEAL: I'm almost finished,
24 Bill. I promise.

1 MR. SHEEHAN: With that caveat, go
2 ahead. You can answer if you can.

3 A. To my knowledge it is, I believe, a
4 thousand dollars per month. There could be -- it
5 could be a small difference, a thousand thirteen
6 dollars or something of that nature, but I
7 don't -- I don't know exactly, but it's a thousand
8 dollars, I believe, per month.

9 Q. Mr. Foley, you submit your billings as
10 you've described weekly and they are approved and
11 paid in due course; is that a fair statement?

12 A. I would not call it a billing. I would
13 call it a time sheet and report, yes.

14 Q. And who approves it?

15 A. It could be Mr. Mulholland. Mr. Foote
16 is the treasurer.

17 Q. Now, your employment as a Feoffee and
18 your employment as a selectman you've told me
19 about. Are you employed by any other company --

20 A. No.

21 Q. -- or any other individual?

22 A. No.

23 Q. Are you currently an officer of any
24 other company?

1 A. No.

2 Q. Are you a partner in any partnership?

3 A. No.

4 Q. You are though a member of LNWS, LLC;
5 is that correct?

6 A. Yes, I am.

7 Q. And how long have you been a member of
8 LNWS?

9 A. Since it was created in -- I'm not sure
10 of the date.

11 Q. If I were to suggest to you it was
12 February of 2006, does that refresh your
13 recollection?

14 A. That would be fine.

15 Q. I'm going to show you, sir, a document
16 and I will show it to your counsel first. Mr.
17 Foley, do you recognize the document I put in
18 front of you, sir?

19 A. I have seen it.

20 Q. Can you tell me in your own words what
21 you believe it to be?

22 A. This is a -- actually it is, I believe,
23 the notice of the suit of the -- of the civil
24 procedure of the tenants at Little Neck, Mr.

1 Lonergan and Diane Whitney-Wallace, versus the
2 Feoffees of the Grammar School.

3 Q. Referring you to the very first page of
4 the document I put in front of you, would you
5 agree that the document is entitled Subpoena Duces
6 Tecum?

7 A. Yes.

8 Q. And are you here in my office today in
9 response to this document?

10 A. Yes.

11 MS. O'NEAL: Could we mark that as
12 the next exhibit, please.

13 (Subpoena Duces Tecum, dated
14 5/17/07, and Notice of Taking Deposition, dated
15 5/17/07, consisting of four pages, was marked
16 Exhibit No. 2 for identification.)

17 Q. Mr. Foley, referring you, sir, to
18 what's now been marked as Exhibit 2, do you
19 understand that this subpoena duces tecum required
20 the entity known as LNWS, LLC to designate a
21 person to testify on its behalf having the most
22 knowledge concerning the four items that appear on
23 page No. 2 --

24 A. Yes.

1 Q. -- right there?

2 A. Yes.

3 Q. And that you have been designated as
4 that person?

5 A. Yes.

6 Q. All right. Now, tell me, sir, if you
7 can, what was the process by which you were
8 designated as the person having the most knowledge
9 of the four items described in Exhibit 2?

10 A. The process, I believe that when
11 LNWS, LLC was formed, that at the time I was
12 transitioning in -- I was the vice chairman of the
13 Feoffees and -- in that time period and was taking
14 over from Mr. Whiston and Mr. Mulholland -- I
15 believe Mr. Whiston was the manager of the
16 Feoffees of the Grammar School -- and was involved
17 in the day-to-day operations of the installation
18 of the wastewater system as of last June -- not
19 June, '07, but June, '06, at Little Neck and I
20 believe that I was designated as the manager of
21 LNWS.

22 Q. Mr. Foley, do you agree that with
23 respect to LNWS, LLC you are the individual with
24 the most knowledge of the four subject matters

1 identified in Exhibit No. 2?

2 A. I don't know. I don't think I can
3 comment if I'm the most knowledgeable, but I am
4 knowledgeable on the matter.

5 Q. As among, sir, the other members of
6 LNWS, are you the member with the most knowledge
7 going to the four items listed in Exhibit 2?

8 A. Again I do not -- I do not know Mr.
9 Mulholland or Mr. Whiston's knowledge of the
10 entity or Mr. Foote's knowledge of the entity, but
11 I'm knowledgeable.

12 Q. Then how did it come to be that you
13 were the guy that was chosen to be here today
14 as opposed to Mr. Whiston, as opposed to Mr.
15 Mulholland, as opposed to any other member of
16 the LLC?

17 A. I'm both the chairman and the manager
18 of the Feoffees which includes Little Neck
19 Wastewater System.

20 Q. And is it by virtue of being -- strike
21 that.

22 Is it by virtue of your role with the
23 Feoffees that it translates into a person having
24 knowledge of the items listed in Exhibit 2 as

1 relate to LNWS? You should do your best to
2 answer -- answer the question and then I will
3 certainly let you confer with counsel.

4 A. I do not know -- I don't want -- I do
5 not know the knowledge of Mr. Mulholland, Mr.
6 Whiston or Mr. Foote of the wastewater account.
7 But, to respond to the question am I the most
8 knowledgeable, I don't know what their knowledge
9 is of that, but I am stating that I am the person
10 that has since its inception done the day-to-day
11 operation of the wastewater or representative
12 of the Feoffees for the installation of the
13 wastewater service.

14 Q. Do you equate that to LNWS, LLC?

15 A. Yes, yes.

16 Q. Thank you. Did you speak with either
17 Mr. Mulholland or Mr. Foote about the subpoena
18 duces tecum that was received which has been
19 marked as Exhibit 2?

20 A. I have not, no.

21 Q. To your knowledge were they aware of
22 the receipt of the subpoena duces tecum marked as
23 Exhibit 2?

24 A. I have no knowledge of that.

1 Q. So you didn't compare notes as to who
2 knew more about any one of the four items than the
3 other?

4 A. No, I did not.

5 Q. Who informed you that you would be
6 present here today in response to Exhibit 2?

7 MR. SHEEHAN: Objection. Don't
8 answer that, protected by the attorney-client
9 privilege.

10 MS. O'NEAL: Bill, even as to the
11 identity of who informed him, not the substance?

12 MR. SHEEHAN: Yes.

13 MS. O'NEAL: Yes?

14 MR. SHEEHAN: Yes.

15 MS. O'NEAL: And you're instructing
16 him not to answer?

17 MR. SHEEHAN: Yes.

18 Q. Did you speak with counsel before
19 coming here today; yes or no?

20 MR. SHEEHAN: You may answer that.

21 A. Yes.

22 Q. And what, if anything, did you do, Mr.
23 Foley, to prepare for giving deposition testimony
24 here today?

1 A. I don't think I did prepare. I spoke
2 with Mr. Sheehan this morning about coming in.

3 MR. SHEEHAN: No, no, just spoke with
4 Mr. Sheehan. That's fine.

5 A. Just spoke with Mr. Sheehan.

6 Q. Did you speak with him by telephone or
7 in person?

8 A. In person.

9 Q. How long a period of time did you speak
10 with him about your deposition testimony?

11 MR. SHEEHAN: Don't answer that.

12 MS. O'NEAL: With respect to the
13 length of time?

14 MR. SHEEHAN: Yes. That's
15 protected.

16 MS. O'NEAL: Are you instructing your
17 client not to answer?

18 MR. SHEEHAN: Yes.

19 Q. Are you represented by Mr. Foley in
20 your capacity as a member of the LNWS?

21 A. Could you repeat that?

22 MR. SHEEHAN: Objection to form.

23 Q. Mr. Foley, are you represented by Mr.
24 Sheehan as a member of LNWS?

1 MR. SHEEHAN: Answer the question as
2 best you can.

3 A. Yes.

4 Q. And when did you engage his services?

5 A. I believe Mr. Sheehan's firm has
6 been -- or the Feoffees engaged Mr. Sheehan's firm
7 over a year ago. I don't know the exact date.

8 Q. That I know in terms of his
9 representation of the Feoffees. My question was a
10 little bit different.

11 In your capacity as a member of LNWS,
12 did LNWS engage Mr. Sheehan to represent it?

13 A. For me to answer, I don't know
14 officially. I believe the firm has been hired
15 over a year ago to represent both the Feoffees and
16 LNWS.

17 Q. And, if you know, has LNWS as a
18 separate entity received bills from Mr. Sheehan's
19 office for legal services?

20 A. I'm not aware of that. I did not
21 handle the billing at all.

22 Q. You don't handle the finances of LNWS?

23 A. Our treasurer does, Mr. Foote.

24 Q. Is Mr. Foote the treasurer of LNWS or

1 is he the treasurer of the Feoffees?

2 A. Of both.

3 Q. So would it be your testimony that he's
4 more knowledgeable concerning the finances of LNWS
5 than are you?

6 A. In regards to billing, yes.

7 Q. How about in regards to payment of
8 invoices and bills?

9 A. The payment of bills would go through
10 Mr. Foote as well.

11 Q. And how about the collection of monies,
12 if there are any, by LNWS, would he be
13 knowledgeable about that?

14 A. That would be from American Water who
15 was a private firm hired by LNWS and then, in
16 turn, would be -- would go to Mr. Foote.

17 Q. I'm now going to show you another
18 document, Mr. Foley, and I will show it to your
19 counsel first. Do you recognize that document?

20 A. Yes.

21 Q. And is it a subpoena duces tecum?

22 A. Yes, it is.

23 Q. And to whom was it directed?

24 A. It was directed to keeper of the

1 records, LNWS, LLC, Alexander B.C. Mulholland,
2 Jr., 44 Plover Hill Road, Ipswich, Mass.

3 MS. O'NEAL: Could we please mark
4 that as Exhibit 3.

5 (Subpoena Duces Tecum, dated
6 5/17/07, consisting of four pages, was marked
7 Exhibit No. 3 for identification.)

8 Q. Mr. Foley, referring you, sir, to
9 what's now been marked as Exhibit No. 3, do you
10 agree that this is a subpoena duces tecum that
11 required that LNWS's keeper of the records produce
12 five categories of documents described on Schedule
13 A to Exhibit 3?

14 A. Yes, I do.

15 Q. And what steps, if any, did you
16 personally take in assembling documents responsive
17 to Exhibit 3?

18 A. None.

19 Q. And to your knowledge who undertook to
20 assemble documents that were responsive to Exhibit
21 3?

22 A. I'm not knowledgeable on that. I don't
23 know if it was other members of the Feoffees, Mr.
24 Mulholland, at the time who this was served to or

1 Mr. Greenough or Mr. Sheehan. I have no knowledge
2 of who that was.

3 Q. In terms of Mr. Mulholland, did you
4 speak with him about whether or not he had, in
5 fact, assembled documents responsive to Exhibit 3?

6 A. No, I did not.

7 Q. Same question with respect to Mr.
8 Foote?

9 A. No.

10 Q. Same question with respect to Mr.
11 Whiston?

12 A. No, I did not.

13 Q. Same question with respect to Attorney
14 Donald Greenough?

15 A. No.

16 Q. Same question with respect to Attorney
17 Bill Sheehan?

18 MR. SHEEHAN: Don't say anything
19 about what you and I talked to about. Objection,
20 Counsel.

21 MS. O'NEAL: Bill, are you
22 instructing him not to answer the question only
23 with respect to whether he spoke to you about your
24 assembly of documents?

1 MR. SHEEHAN: Right. I do object to
2 that.

3 MS. O'NEAL: Instructing him not to
4 answer?

5 MR. SHEEHAN: Yes.

6 MS. O'NEAL: Thank you.

7 Q. Did you speak with anyone about whether
8 or not any other person had assembled documents
9 responsive to Exhibit No. 3?

10 A. No, I did not.

11 Q. Who is the keeper of the records of
12 LNWS? Who is in charge of its records?

13 A. Peter Foote. Let me just answer this
14 in two parts. Peter Foote maintains all the
15 financial data of LNWS. Contracts or letters of
16 that nature would have always been reviewed by the
17 chairman and I believe at its time of inception
18 would have been Mr. Mulholland and now me.

19 Q. Now, when you said "chairman," Mr.
20 Foley, do you mean chairman of the Feoffees or
21 chairman of LNWS?

22 A. I guess I would say both.

23 Q. And to your knowledge is there an
24 official chairman of LNWS?

1 A. To my knowledge, no.

2 Q. Okay.

3 A. If I used the terms interchangeably,
4 I'm wrong.

5 Q. And I understand that, but I will
6 ask you if I believe it's appropriate for
7 clarification.

8 A. I meant chairman of the Feoffees.

9 Q. Thank you.

10 MS. O'NEAL: Excuse me for one
11 moment. I left the documents that you produced to
12 me downstairs. I'll be right back.

13 (Brief recess.)

14 Q. Mr. Foley, I'm now, sir, going to show
15 you a package of documents. I will show it to
16 your counsel first. Please take a look through.

17 A. Yes.

18 Q. Did you take a look through those
19 documents?

20 A. Yes, I did.

21 Q. Mr. Foley, would you agree, sir, that
22 the very first sheet on the pile of documents I
23 put in front of you is a fax cover sheet to me
24 from Attorney Robin Stein?

1 A. Yes, I will.

2 Q. And would you also agree that she or
3 someone on her behalf identified that there were
4 50 pages transmitted with the fax cover sheet?

5 A. Yes, I would.

6 Q. And would you take a look, sir, at the
7 very last sheet of the pile that you have in front
8 of you? Would you agree with me that at the top
9 upper left-hand corner of that sheet it indicates
10 that it is page 51?

11 A. Yes, I would.

12 Q. And does it, therefore, appear that
13 there were 51 sheets that comprised the package
14 that was sent to me by Attorney Robin Stein?

15 A. Yes.

16 Q. All right.

17 MS. O'NEAL: Could we mark that
18 entire package, please, as the next exhibit.

19 (Group of documents,
20 consisting of 51 pages, was marked Exhibit No. 4
21 for identification.)

22 Q. Mr. Foley, referring you now, sir, to
23 what's been marked as Exhibit No. 4, what do you
24 understand that package of documents to be?

1 A. A series of documents to you from
2 Attorney Robin Stein in regards to various --
3 various topics in regards to the Feoffees of the
4 Grammar School and LNWS.

5 Q. Mr. Foley, do you understand that the
6 documents that we've now marked as Exhibit 4
7 purported to be documents that were responsive to
8 the subpoena duces tecum directed to keeper of the
9 records of LNWS which we have marked as Exhibit
10 3?

11 A. Yes.

12 Q. And is it your understanding that the
13 documents produced that we've marked as Exhibit 4
14 supplemented by additional documents I was
15 provided this morning which we'll get to are a
16 full and complete response to the subpoena duces
17 tecum directed to LNWS's keeper of the records?

18 A. I believe so, with the addition of the
19 reports provided this morning.

20 Q. Now, Mr. Foley, tell me, sir, how it is
21 you know that to be true if you did not undertake
22 to assemble documents responsive to the subpoena?

23 A. I believe that the package provided
24 by -- I want to respond. I don't know if I can.

1 Q. Do your best.

2 MR. SHEEHAN: In your response I
3 don't want you to testify to any conversations
4 that you had with anyone in my office. So, if
5 your response requires such a statement, then just
6 let me know and then I'll object to it.

7 THE WITNESS: Okay. It does.

8 MR. SHEEHAN: I'll object on the
9 basis that apparently the inquiry is as to subject
10 matter which was covered in a conversation by
11 attorney and client.

12 MS. O'NEAL: Okay. And, Bill, I
13 assume, but I want a clarification that your
14 instruction to him is only with respect to
15 conversations that Mr. Foley had with counsel?

16 MR. SHEEHAN: Correct.

17 MS. O'NEAL: Because you said "anyone
18 in my office." You didn't mean to include
19 administrative staff; is that right?

20 MR. SHEEHAN: No, that's correct.

21 Q. Now, with that clarification, Mr.
22 Foley, are you able to answer the question without
23 divulging a conversation you had with counsel?

24 A. No.

1 Q. Okay.

2 MR. SHEEHAN: Can I just say for the
3 record, Beth, that there is a reference in the fax
4 cover sheet to certain documents which were not
5 included in the package that was faxed to you
6 because they had been previously delivered to
7 you.

8 MS. O'NEAL: Thank you. Yes, I
9 acknowledge that, and I will actually get to that
10 as well.

11 MR. SHEEHAN: Okay.

12 Q. Now, Mr. Foley, I'm going to show you,
13 sir, another package of documents that were
14 delivered to me this morning. Mr. Foley, what do
15 you understand that small package of documents to
16 be?

17 A. Correspondence that was provided to
18 you from Attorney Sheehan in regards to this
19 deposition.

20 Q. So do you understand that package of
21 smaller documents that I've put before you to also
22 be responsive to the subpoena duces tecum directed
23 to LNWS's keeper of the records?

24 A. Yes, I do.

1 Q. All right.

2 MS. O'NEAL: Can we mark that as the
3 next exhibit, please.

4 (Group of documents,
5 consisting of 13 pages, was marked Exhibit No. 5
6 for identification.)

7 Q. Mr. Foley, referring you, sir, to
8 what's now been marked as Exhibit No. 5, did you
9 assemble those documents for delivery to me today?

10 A. No, I did not.

11 Q. Do you know who did?

12 A. No, I do not.

13 Q. Did you have a conversation with either
14 Mr. Foote or Mr. Mulholland about their assembly
15 of the documents that we've now marked as either
16 Exhibits 4 or 5?

17 A. No, I did not.

18 Q. And, Mr. Foley, as your counsel pointed
19 out, sir, the first sheet of Exhibit 4 refers to
20 the exclusion from the documents produced of a
21 packet of April, 2007 wastewater bills that were
22 previously delivered to me.

23 Would you agree with that?

24 A. That's what I'm reading from the fax

1 cover sheet.

2 Q. All right. Have you previously seen
3 those April, 2007 wastewater bills?

4 A. In this packet?

5 Q. No, sir. At any time?

6 A. I believe I've seen April, 2007
7 wastewater bills, not the entire 167 homes, but I
8 know I have seen various wastewater bills.

9 Q. Okay. I'm going to show you a packet
10 of what I understand to be the April, 2007
11 wastewater bills that were provided to me and let
12 me ask you to look through that and then let me
13 know when you're done.

14 Do you recognize that packet as the
15 April, 2007 wastewater bills?

16 A. I do.

17 Q. Okay.

18 MS. O'NEAL: Could we mark that as
19 the next exhibit, please.

20 (Group of April, 2007
21 wastewater bills, consisting of 160 pages, was
22 marked Exhibit No. 6 for identification.)

23 Q. Mr. Foley, other than the documents
24 that we've marked here today as Exhibits 4, 5 and

1 6, are you aware of any documents that exist that
2 are responsive to Exhibit 3 that have not been
3 produced and marked here today?

4 A. Not that I am aware of.

5 Q. Is it fair to say that you're relying
6 mostly on counsel's having assembled the documents
7 that were produced in response to the subpoena and
8 that you have no personal knowledge?

9 A. Yes.

10 Q. I'll be referring during the
11 deposition, Mr. Foley, to certain documents that
12 are included in Exhibit 4, so if you could put
13 that in front of you, and, Mr. Foley, what I will
14 do when I refer to documents within Exhibit 4 is
15 I will refer to the fax page number that was
16 assigned to the various sheets and that appears in
17 the upper left-hand corner, okay?

18 A. Yes.

19 Q. Let's take a look, please, in Exhibit
20 No. 4 at Sheets 3 and 4. Would you agree that
21 Sheets 3 and 4 purport to be the certificate of
22 organization of LNWS, LLC?

23 A. Yes, I do.

24 Q. And who at the time were the managers

1 of LNWS, LLC?

2 A. Alexander B.C. Mulholland, Jr., Peter
3 A. Foote, James W. Foley.

4 Q. And do those three individuals continue
5 to be the managers of the LLC?

6 A. Yes, they do.

7 Q. Have there at any time been additional
8 individuals who were managers?

9 A. Not that I am aware of.

10 Q. So Mr. Whiston is not a manager,
11 correct?

12 A. Not that I am aware of.

13 Q. And is there some reason why he's not?

14 A. I could not answer that question.

15 Q. Did you ever speak with him about the
16 formation of LNWS?

17 A. No. The only thing I do know is that
18 when LNWS was being formed Mr. Whiston was
19 stepping down, I believe, as the chairman of the
20 Feoffees. Mr. Mulholland was becoming the
21 chairman of the Feoffees. Mr. Mulholland was
22 stepping down because of family medical issues.
23 At the time -- I'm only assuming that he wasn't
24 being part of this because of his family

1 obligations.

2 Q. And as of the present date, has he
3 stepped down as a Feoffee?

4 A. No, he's not.

5 Q. So he still remains a Feoffee?

6 A. He is a member, a life member.

7 Q. And would you agree with me that at
8 some time after LNWS was formed -- and that
9 occurred in February of 2006 -- that certain of
10 the selectmen of the Town of Ipswich began acting
11 as Feoffees?

12 A. Yes, that is correct.

13 Q. And was there any thought given to
14 making them managers of LNWS as well?

15 A. Not that I'm aware of.

16 Q. And would you agree that Sheet No. 3 of
17 Exhibit 4 identifies the office of LNWS as being
18 located at 25 Green Street in Ipswich? That, sir,
19 would be Item No. 3.

20 A. It does indicate on this sheet, yes, 25
21 Green Street, Ipswich, Mass.

22 Q. And that's the street address of
23 Ipswich Town Hall, correct?

24 A. Correct.

1 Q. Can you tell me why that particular
2 address was chosen as the designated office of the
3 LLC?

4 A. What I can recall at the time was
5 Attorney Greenough -- I don't know if -- my dates
6 might be wrong, but there was a question of why 25
7 Green Street was chosen, and Mr. Greenough who is
8 counsel for the Feoffees, long-time counsel for
9 the Feoffees, advised the board --

10 Q. I don't think you should tell me what
11 counsel advised his clients.

12 MR. SHEEHAN: Don't say it. You can
13 say that he advised the board and stop right
14 there.

15 A. Then I'll stop.

16 Q. So do you know why 25 Green Street was
17 chosen?

18 MR. SHEEHAN: Independent, after
19 conversation you had with counsel.

20 MS. O'NEAL: Yes. Thank you.

21 A. No.

22 Q. Has the LLC -- and when I refer to the
23 LLC, I mean LNWS. Do you understand that?

24 A. Yes, I do.

1 Q. Has the LLC ever maintained an office
2 at 25 Green Street?

3 A. No.

4 Q. Do you see on Sheet No. 3 that the
5 business of the LLC is described?

6 A. Yes, I do.

7 Q. Has the LLC engaged in the business as
8 described?

9 A. Yes, it has.

10 Q. Has it engaged in any other business
11 beyond that which is described?

12 A. No, it has not.

13 Q. Now, sir, I want to refer you to Sheet
14 6 of Exhibit 4. Do you recognize that as being
15 an amendment of the LLC's certificate of
16 organization?

17 A. Yes, I do.

18 Q. And referring you specifically to Item
19 No. 7, Mr. Foley, would you agree that the street
20 address of the LLC was changed from 25 Green
21 Street to 2 Depot Square?

22 A. Yes.

23 Q. And does the LLC maintain an office at
24 2 Depot Square?

1 A. No, it does not.

2 Q. What is at 2 Depot Square, if you know?

3 A. It previously at the time of this
4 document was the law office of Feoffees' counsel,
5 Donald Greenough.

6 Q. And do you know why 2 Depot Square was
7 chosen as the address for the LLC?

8 MR. SHEEHAN: If you have an
9 understanding and an ability to answer that
10 question independent of conversations you've had
11 with counsel, then you may answer, otherwise, I'm
12 going to ask you not to answer.

13 A. Then I cannot answer.

14 Q. Does the LLC maintain an office
15 anywhere?

16 THE WITNESS: How do I answer that?

17 Q. You can answer that yes or no.

18 MR. SHEEHAN: You can answer that.

19 A. Yes.

20 Q. And where is that?

21 A. At 2 Depot Square -- pardon me, at -- I
22 don't know the number on South Main Street, but
23 Mr. Greenough's new office is located on South
24 Main Street in Ipswich. I do not know the

1 number.

2 Q. And have you been to the LLC's office
3 at South Main Street in Ipswich?

4 A. I've been to Mr. Greenough's office,
5 yes.

6 Q. My question is a little bit different
7 than that. What I'm trying to find out, Mr.
8 Foley, is does the LLC, itself, actually have an
9 office? Does it maintain office space at Mr.
10 Greenough's office?

11 A. No, it does not.

12 Q. So is it fair to say that it's the
13 address for paperwork purposes?

14 A. Yes.

15 Q. And that, otherwise, the LLC does not
16 have a physical office where it transacts business
17 and maintains its records?

18 A. No.

19 Q. Where does the LLC's records -- I'm
20 sorry. Where are the LLC's records maintained?

21 A. There are two locations, I believe,
22 Mr. Greenough's office at -- on South Main Street
23 in Ipswich and the financial recordkeeping or
24 paperwork, I believe, transpires at Mr. Foote's

1 home on Colonial Drive.

2 Q. And the records to the extent that
3 there are any kept at Mr. Greenough's office --

4 A. Correct.

5 Q. -- what kind of records are they?

6 A. If there are transactions or copies of
7 transactions in regards to finances that Mr. Foote
8 as the treasurer conducts, I believe copies of
9 those records are kept at Mr. Greenough's office.

10 Q. Because he's legal counsel for the
11 Feoffees?

12 A. Correct.

13 Q. Is he legal counsel for the LLC?

14 A. Yes.

15 Q. I'm referring you now, Mr. Foley, to
16 Sheet No. 8 in Exhibit 4. Do you see that that
17 purports to be e-mails back and forth between Pio
18 Lombardo and Lawrence Hunter, copied to you and
19 others?

20 A. Yes.

21 Q. And I'm referring you specifically to
22 the bottom of that Sheet 8. Do you know, Mr.
23 Foley, where the rest of that e-mail is that
24 appears to be partially set forth at the bottom of

1 Sheet 8?

2 A. Is this beginning with "Please see
3 Jean's question below"?

4 Q. It is.

5 A. I have no knowledge of where page two
6 is.

7 Q. Okay. Mr. Foley, what is LNWS? Tell
8 me in your own words, what is it?

9 A. LNWS is an account or a corporation set
10 up in regards to the wastewater collection system
11 billing and payment for the actual physical
12 wastewater system located at Little Neck,
13 Ipswich.

14 Q. And why was a separate entity, the
15 separate entity, the LNWS entity, set up to
16 undertake the business that you just described is
17 undertaken by LNWS?

18 A. I believe for three purposes, the
19 first, that it is a -- it was established for
20 banking purposes, meaning that the money -- the
21 wastewater accounts are billed by a private
22 entity, American Water, based on water
23 consumption.

24 There's a multiplier used to figure

1 a monthly wastewater fee. Then, in turn, the
2 residents mail to American Water a fee monthly,
3 depending on their water usage. It was
4 established, the account -- pardon me. LNWS was
5 established to receive money from that, from those
6 167 homeowners for banking purposes.

7 I believe the second reason that was
8 described to us from our attorney is a liability
9 issue and third as really a clearinghouse for a
10 separate entity other than the Feoffees to keep a
11 very clear and transparent operation of money in/
12 money out in regards to wastewater.

13 Q. So do I understand your testimony to
14 essentially be that it was viewed as proper and
15 advisable that an entity separate and apart from
16 the Feoffees be established in order to transact
17 banking relative to monies in and monies out
18 having to do with the central wastewater system on
19 Little Neck --

20 A. Mm-hmm --

21 Q. -- liability issues, and then, as
22 you've described it, clearinghouse for keeping
23 things truly separate and transparent?

24 A. Correct.

1 Q. You're not suggesting, are you, sir,
2 that the Feoffees couldn't have fulfilled the
3 three purposes you described; is that a fair
4 statement?

5 A. Could you repeat that?

6 Q. Sure, I can. You're not saying that
7 the Feoffees were not capable of fulfilling the
8 three purposes you described, are you?

9 A. No, I'm not.

10 Q. But it was viewed as preferable that it
11 be a separate, stand-alone entity?

12 A. That is correct.

13 Q. And Mr. Greenough represented the
14 members, the founding members, of LNWS; is that
15 correct?

16 A. Yes, he did.

17 Q. With respect to its formation and the
18 governing documents?

19 A. Correct.

20 Q. Now, let me ask you this. If you
21 know, what authority did the Feoffees have to
22 essentially establish, form, a separate LLC now
23 known as LNWS?

24 A. Could you clarify "authority"?

1 Q. I can. Did you seek permission from a
2 court -- did the Feoffees seek permission from a
3 court to form a separate, stand-alone entity now
4 known as LNWS?

5 A. I do not have that knowledge.

6 Q. Did the Feoffees receive any sort of an
7 opinion of counsel as to the propriety of the
8 Feoffees forming a separate, stand-alone LLC?

9 A. From Mr. Greenough.

10 Q. And was that opinion in writing?

11 A. I'm not aware of that.

12 Q. Are you aware that he gave a verbal
13 opinion that it was -- and you answer this yes
14 or no unless instructed by counsel. Did Mr.
15 Greenough give a verbal opinion to the Feoffees
16 regarding the formation of LNWS?

17 MR. SHEEHAN: Don't answer that.

18 Q. To your knowledge was permission or a
19 blessing for the formation by the Feoffees of a
20 separate, stand-alone entity now known as LNWS
21 secured?

22 THE WITNESS: I don't know how to
23 answer that.

24 MR. SHEEHAN: No. He can't answer

1 that.

2 A. Yes, I'm sorry, I cannot.

3 Q. Let me ask you this then. Other than
4 permission, if you will, from counsel, did the
5 Feoffees secure permission from any other person
6 or entity relative to the formation by the
7 Feoffees of a separate, stand-alone LLC?

8 A. I am not aware of any.

9 Q. Are you aware that that issue was ever
10 raised by anyone, meaning, gee, are the Feoffees
11 authorized to do this; yes or no?

12 A. No.

13 Q. You're not aware that that issue was
14 ever raised?

15 A. No.

16 Q. I'm referring you now, Mr. Foley, to
17 Sheet Nos. 34 through 40 -- excuse me, sir, 41, 34
18 through 41 of Exhibit 4.

19 A. Yes.

20 Q. Do you recognize that document, sir, as
21 the operating statement of the LNWS, LLC?

22 A. Yes.

23 Q. And would you take a look at the last
24 sheet of that, meaning Sheet 41?

1 A. Yes.

2 Q. Bear with me a moment, please. Would
3 you agree with me that that Sheet 41 identifies
4 that the sole member of the LNWS, LLC is the
5 Feoffees of the Grammar School in the Town of
6 Ipswich?

7 A. Yes.

8 Q. And that the Feoffees are a hundred
9 percent member?

10 A. Percentage interest, yes.

11 Q. And since the formation of LNWS, have
12 any other individuals or entities been admitted as
13 members?

14 A. Not that I'm aware of.

15 Q. And to your knowledge, Mr. Foley, have
16 there been any additional contributions of capital
17 by the Feoffees to LNWS other than the dollar that
18 is listed on Schedule A?

19 A. Not that I am aware of.

20 Q. Now, Mr. Foley, having in mind that the
21 operating agreement identifies that the Feoffees
22 are the sole member, how did it come to be that
23 you, Mr. Mulholland and Mr. Foote are the managers
24 of the LLC?

1 MR. SHEEHAN: I object to the form.
2 You may answer that question if you can.

3 A. Could you repeat the question?

4 Q. Sure, I can.

5 A. I'm sorry.

6 Q. Having in mind that the Feoffees were
7 the sole member of the LLC that was formed and,
8 if you know, how did it come to be that you, Mr.
9 Foote and Mr. Mulholland are identified as the
10 managers?

11 MR. SHEEHAN: Objection to the form.
12 Go ahead.

13 A. Again, I will repeat, the reason why
14 Mr. Whiston, I believe, was not a member was at
15 the time he was stepping away from his chairman
16 and manager responsibilities and was taking on
17 less of a workload from the Feoffees and that to
18 my knowledge is the only reason that Mr. Whiston
19 is not a member of that group.

20 Q. And let me ask you this: Do you know
21 the difference between the role of a member of an
22 LLC and the role of a manager of an LLC?

23 A. I believe that in this case
24 the managers of the LLC and members are

1 interchangeably, meaning that they both oversee
2 the LLC and its operation, and again, although
3 Mr. Whiston was a Feoffee and was stepping down
4 as just a member -- a life member of the Feoffees,
5 that he wasn't taking on any further
6 responsibility because of his personal status.

7 Q. And I'm sorry if I asked you this. I
8 think I might have. Since the selectmen, not
9 including you, have begun acting as Feoffees, have
10 they been made managers of the LLC?

11 A. Not that I'm aware of.

12 Q. Is there any intention to do so?

13 A. I'm not aware of that either.

14 Q. Are the managers that have been named,
15 being Mr. Mulholland, yourself and Mr. Foote, are
16 they managers because they're Feoffees?

17 A. Yes.

18 Q. Since the selectmen, excluding you,
19 have assumed responsibility as Feoffees, to your
20 knowledge have they ratified any of the contracts
21 that the LLC has entered into?

22 A. Since the three members, Mr. McNally,
23 Mr. Rauscher and Ms. Kilcoyne have become
24 Feoffees, I am not aware of any documents that

1 have been changed or ratified -- pardon me,
2 changed or altered since they have come on the
3 board of Feoffees.

4 Q. And would that include you're not aware
5 of any documents by which they ratified any
6 contracts that were entered into?

7 A. I'm not aware of that.

8 Q. Now, are you the general manager of the
9 LLC?

10 A. The manager, one of three managers, I
11 believe.

12 Q. And if in certain documents you've been
13 referred to as the general manager, is that a
14 mistake?

15 A. I think sometimes there is -- the terms
16 are interchanged because of the Feoffees' titles
17 and sometimes people could refer to me as the
18 general manager, meaning that I'm -- for this time
19 period I'm overseeing the day-to-day operations of
20 the Feoffees, but there's no formal title that I'm
21 aware of that someone has bestowed upon me as you
22 are the general manager.

23 Q. Of the LLC?

24 A. Correct.

1 Q. As between the three managers, yourself
2 included, do you devote the most time to duties
3 and responsibilities having to do with the LLC?

4 A. With the exception of the finances.

5 Q. Which are undertaken by Mr. Foote?

6 A. By Mr. Foote who is the treasurer of
7 the Feoffees.

8 Q. So would you say that you and he spend
9 equal time in your role as managers of the LLC?

10 A. I would say that I spend a considerable
11 amount of time in regards to the operation of the
12 wastewater system but a very almost negligible
13 time on the finances of the billing, accounts
14 receivable, things of that nature.

15 Q. So I understand that your areas, if you
16 will, of responsibilities are different --

17 A. Correct.

18 Q. -- but I'm asking you now, if you know,
19 in terms of how much time each of you spend, is
20 the time each of you spend essentially equal or do
21 you spend more than Mr. Foote?

22 A. I think that's a hard question to
23 answer in regards to being equal. I spend a
24 large -- a great portion of my time in regards to

1 the LLC is spent in regards to the general
2 operation. I do converse with Mr. Foote in
3 regards to an issue that might occur with the, for
4 example, a problem with a billing of an account
5 and Mr. Foote, I know, spends a considerable
6 amount of time in regards to the finances, but an
7 equal amount of time, I just -- I don't know how
8 to answer that really.

9 Q. Now, separating your duties as a
10 Feoffee, Mr. Foley, from your duties as a manager
11 of the LLC, how much time on average -- and let's
12 take it on a weekly basis -- do you devote to your
13 duties and responsibilities as a manager of the
14 LLC?

15 MR. SHEEHAN: Objection to the form.
16 You may answer.

17 A. I'm going to say give or take,
18 percentage-wise, because I don't, you know, I
19 can't narrow it down, but I spend -- presently I
20 spend 40 to 45 percent of my time in regards to
21 the Little Neck Wastewater System.

22 Q. Now, 40 to 45 percent of what though?
23 In other words, I believe you said that your
24 duties as a Feoffee or your responsibilities as a

1 Feoffee average about 40 hours per week; is that
2 correct?

3 A. Correct.

4 Q. So is it 40 to 45 percent of those 40
5 hours --

6 A. Correct.

7 Q. -- that are spent as manager of the
8 LLC?

9 A. Yes.

10 Q. So it's still a total of 40 hours,
11 correct?

12 A. Yes.

13 Q. But 40 to 45 percent of those total
14 hours are devoted to your LLC manager-like
15 duties?

16 MR. SHEEHAN: Objection to the form.
17 You may answer.

18 A. In regards to, again, the operation of
19 the wastewater system which comes under Little
20 Neck -- which comes under Little Neck, LLC.

21 Q. LNWS, LLC?

22 A. LNWS, I'm sorry.

23 Q. And it's still a total of 40 hours,
24 give or take?

1 A. Give or take, could be more certain
2 weeks but...

3 Q. Understood. And the time that you
4 devote to your duties as Feoffee at the rate of --
5 billing rate of \$25 an hour, does that time
6 include the 40 to 45 percent of the 40 hours where
7 you're performing your manager duties?

8 A. Correct.

9 Q. Are you separately or have you --
10 strike that.

11 Have you ever been separately
12 compensated for any work that you've done by the
13 LLC?

14 A. No.

15 Q. And that is accurate up until right
16 now?

17 A. Today.

18 Q. Now, tell me, is there some reason why
19 not, in other words, if you're devoting 40 to 45
20 percent of 40 hours per week to your role as a
21 manager of the LLC, is there some reason why the
22 LLC is not compensating you for that time?

23 A. The time that -- the manager's position
24 prior to the inception of the wastewater system

1 was a function of the Feoffees. Presently there
2 are no employees of the LLC and the agreement was
3 that the manager would oversee both, but there
4 would be no employees of the LLC -- LNWS, pardon
5 me.

6 Q. All right. Is there any sort of
7 reconciliation in terms of the LLC receiving money
8 from the Feoffees -- strike that -- the Feoffees
9 receiving money from the LLC to account for the
10 time that you devote to the LLC?

11 A. No, there's not.

12 Q. And how about vice versa?

13 A. No, there's not.

14 Q. And is there any reason why not?

15 A. I'm not aware of it, no.

16 Q. And in your role as being the general
17 manager concerning the general operation of the
18 wastewater system, do you report to anybody, Mr.
19 Foley, concerning those responsibilities that you
20 take on?

21 MR. SHEEHAN: Objection to the form.
22 You may answer.

23 A. Again I do not hold the title of
24 general manager that I know of. It has --

1 Q. If I said general manager, I misspoke
2 so --

3 A. I report to as the past hundred years
4 of the history of the Feoffees when I believe
5 there's been a manager, the manager reports to --
6 up until the three selectmen members came on as
7 Feoffees, the manager reports to the life members
8 of the Feoffees.

9 Since the -- since the selectmen, other
10 than myself, have come onto the board, I have been
11 giving updates, monthly updates, to -- in a report
12 form to the entire members of the Feoffees. So
13 there's a change obviously because of the three
14 members coming on board.

15 Q. And prior to the three selectmen
16 members commencing their duties as Feoffees, had
17 you provided any written reports to the life
18 members of the Feoffees?

19 A. Yes.

20 Q. And how frequently did you do that?

21 A. They could be monthly or two months and
22 they could be -- I'm going to say monthly or every
23 two months. I'm not -- there's no exact time
24 frame. Some could be verbally at meetings as

1 well.

2 Q. And were the monthly reports to the
3 extent that they were prepared ever prepared less
4 frequently than every other month?

5 A. There was no time frame on the
6 reports. If there was a large issue going on,
7 some of them again were done in meetings of the
8 Feoffees as past practice called for where when I
9 first came on the board Mr. Whiston would update
10 us verbally on his role as the manager and then
11 Mr. Mulholland did, and that's the course I
12 followed for -- for a short period of time and
13 then I began to issue reports -- I don't know if
14 they're monthly. They could be longer than
15 monthly. They could be two or three months. But
16 there's a combination of both.

17 Q. And the meetings to which you referred
18 when you said some of the reports were oral --

19 A. Yes.

20 Q. -- were those meetings of the Feoffees
21 or meetings of the LLC?

22 A. Feoffees.

23 Q. And the written reports to which you
24 referred, do you have copies of those?

1 A. Not with me, I do not.

2 Q. But you have access to those copies?

3 A. Yes.

4 Q. And, Mr. Foley, is there some reason
5 why those reports were not produced in response to
6 the subpoena directed to LNWS?

7 A. I'm not aware of any. Those are
8 reports dealing with the Feoffees of the Grammar
9 School, not specifically LNWS.

10 Q. Okay.

11 A. For example, there could be a
12 mention -- there are no -- there are no formal
13 manager reports in regards to LNWS. So there was
14 not -- there are no written reports meaning from
15 Manager Foley to the -- to the -- or from Chairman
16 Foley to the members of the Feoffees in regards to
17 LNWS.

18 My updates to the board could be an
19 issue dealing with the dock at Little Neck or
20 pavement issues or water issues or a number of
21 things and included there could be a mention of a
22 problem with River Road pumping station but never
23 a formal report in regards to LNWS.

24 Q. So let me see if I understand what you

1 just said. And by the way, when you referred to
2 board, were you referring to the Feoffees?

3 A. I'm sorry, the Feoffees.

4 Q. That's okay. So, to the extent that
5 there were written reports, they were not written
6 reports prepared by you in your capacity as
7 manager of the LLC but, rather, reports prepared
8 by you in your capacity as general manager of the
9 Feoffees?

10 MR. SHEEHAN: Objection to the form.

11 A. If I could just correct one thing, yes,
12 up until the point where again the report would be
13 from the chairman/manager to the Feoffees, not
14 general manager. I just want to be clear. I'm
15 not aware of that title.

16 Q. Thank you. Who among the LLC's
17 managers has the most knowledge, the most intimate
18 knowledge, concerning the operation of the
19 wastewater system? Is that you?

20 A. The operation, yes.

21 Q. And have you prepared any writings
22 concerning the operation of the wastewater system,
23 whether you've published them to anyone or not?
24 Have you prepared any writings concerning the

1 operation of the wastewater system?

2 A. Could you clarify writings?

3 Q. Sure. If you do a memo to yourself or
4 if you prepare something on your computer about
5 something that happened on a particular day, have
6 you reduced any to writing having to do with the
7 operation of the wastewater system?

8 A. Yes.

9 Q. And what form does that writing take?

10 A. Reports to the Feoffees in regards to
11 the operational issues or problems of the
12 wastewater system.

13 Q. And are those reports different than
14 the reports you've previously testified to
15 providing in your capacity as chairman and manager
16 of the Feoffees?

17 A. No, no.

18 Q. So one and the same?

19 A. One and the same.

20 Q. Would you review those reports and
21 provide to me in response to the subpoena directed
22 to LNWS those reports having to do or mentioning
23 the operation of the wastewater system, and I'll
24 let you confer with counsel?

1 MR. SHEEHAN: We'll take that request
2 under advisement.

3 MS. O'NEAL: Thank you.

4 MR. SHEEHAN: Sure.

5 Q. To your knowledge, Mr. Foley, are there
6 any other managers of the LLC other than the three
7 of you?

8 A. Not that I'm aware of.

9 Q. Have there ever been?

10 A. Oh, have there ever been, not that I'm
11 aware of, no.

12 Q. Are there any other officers or persons
13 who hold titles with respect to the LLC other than
14 the three of you?

15 A. No, and the only -- the only
16 discrepancy might be the reason why Don Whiston is
17 not on there. I don't know. I just thought it
18 was for personal issues. Other than that, I'm not
19 aware of any.

20 Q. And has the LLC as a party entered into
21 contracts?

22 A. I believe they have.

23 Q. They have?

24 A. They have.

1 Q. And can you tell me what contracts
2 they've entered into?

3 A. Waterline Engineering, I believe. Let
4 me just -- if I could strike that for a minute. I
5 believe the contract is with American Water for
6 billing purposes. I will have to check. I don't
7 know if the yearly maintenance of the wastewater
8 pumping stations are between the Feoffees of the
9 Grammar School and Waterline, Incorporated of New
10 Hampshire or LNWS and Waterline of New Hampshire.
11 I'm -- I believe it could be LNWS, but I'm not
12 sure.

13 Q. So there may be a contract between LNWS
14 and Waterline, Inc. of New Hampshire?

15 A. They provide the monthly service for
16 the three pumping stations and the tanks located
17 at Little Neck. There is a possibility though
18 that contract could have been signed between the
19 Feoffees and Pio Lombardo representing the
20 Feoffees and Waterline. I'm not sure. I'm not
21 sure who is the actual --

22 Q. Signatory?

23 A. -- signatory of that.

24 Q. And tell me again, please, what type of

1 services they provide. Monthly service for the
2 what?

3 A. They provide monthly maintenance
4 service contract -- a monthly maintenance service
5 contract for the three pumping stations and the
6 emergency generator located at Little Neck if
7 there's a power outage. That's all I'm aware of.
8 But, again, I just want to clarify, I don't know
9 if the contract is between the Feoffees and
10 Waterline or LNWS and Waterline.

11 Q. And there's a contract between LNWS and
12 American Water; is that correct?

13 A. For billing purposes, yes.

14 Q. For the billing to the users of the
15 system of fees related to disposal; is that right?

16 A. No. They are -- American Water is the
17 agent that bills for wastewater usage.

18 Q. Meaning wastewater that comes out of
19 the cottage and into your system?

20 A. Right, which is different than the
21 hauling which is D.F. Clark.

22 Q. Understood.

23 A. So I just want to be clear.

24 Q. And then any other contracts that LNWS

1 has entered into?

2 A. For hauling purposes which hauls the
3 effluent from the holding tanks at Little Neck
4 to the town wastewater system, D.F. Clark,
5 Incorporated of Ipswich, Mass.

6 Q. Any other contracts?

7 A. Not that I'm aware of.

8 Q. Has the LLC entered into any other
9 consultant, consultancy, consulting contracts?

10 A. Not that I'm aware of. I don't know at
11 the time if there were any contracts with Pio
12 Lombardo, but I believe those were with the
13 Feoffees and Pio Lombardo.

14 Q. Taking a look at Exhibit 4 again, Sheet
15 No. 42 through 46, would you take a look at that,
16 please?

17 A. Yes.

18 Q. What is that?

19 A. That is an agreement, formal contract,
20 made on the 11th of April, 2006, between LNWS and
21 the Feoffees of the Grammar School in the Town of
22 Ipswich with D.F. Clark, Inc. of 24A Mitchell
23 Road, Ipswich, Mass.

24 Q. Is that one of the contracts to which

1 you just testified?

2 A. Yes. Excuse me.

3 Q. And to your knowledge has this contract
4 been amended?

5 A. Not that I'm aware of.

6 Q. And to your knowledge is it still in
7 effect?

8 A. Yes, it is.

9 Q. And to your knowledge are these sheets
10 that are identified as Sheets 42 through 46 the
11 entire contract that was entered into with D.F.
12 Clark?

13 A. As far as I -- as far as my knowledge,
14 yes. I'm not aware of any additional contracts.

15 Q. What is the fee or the contract fee
16 being paid to D.F. Clark for its services?

17 A. Are you asking on a per gallon -- I'm
18 sorry.

19 Q. However it is paid, I'm asking how much
20 does he get under the contract?

21 A. I can't answer that right now. I
22 don't -- I don't know the exact amount. I believe
23 it's -- I'm not -- it's based on -- it's based on
24 gallons pumped and transported to the wastewater

1 facility without the tipping fee which I believe
2 is separately paid to the town.

3 Q. Is D.F. Clark paid a tipping fee or is
4 that tipping fee paid directly to the town?

5 A. It is paid to the town to my
6 knowledge.

7 Q. And that's what I understood as well.

8 A. Correct.

9 Q. So how much does D.F. Clark get paid?

10 A. I'm not sure. I can't tell you how
11 much he is paid on a -- per year or per -- I'm not
12 sure. I can't tell you that. Mr. Foote could.

13 Q. Do you know if the rate paid to Mr.
14 Clark has ever changed?

15 A. No, it has not.

16 Q. It has always been the same?

17 A. As far as I know, yes.

18 Q. I'm going to show you a document,
19 Mr. Foley, that was marked at the deposition of
20 Mr. Clark as Exhibit 3 and I will show it to your
21 counsel first.

22 Do you recognize that document?

23 A. Yes.

24 Q. What is it?

1 A. It is a wastewater hauling service
2 contract document, dated March 7th, 2006, I
3 believe, prepared by Lombardo Associates of
4 Newton, Mass.

5 Q. Before I ask you some questions -- no,
6 strike that.

7 Have you seen that document that was
8 marked as Exhibit 3 at Mr. Clark's deposition
9 previously?

10 A. I have seen -- yes, yes.

11 Q. And does that appear to be a more
12 complete copy of the contract between and among
13 LNWS, Feoffees and D.F. Clark --

14 A. Than --

15 Q. -- than Sheets 42 through --

16 A. Yes, that's correct.

17 Q. Mr. Foley, taking a look, sir, at
18 Exhibit 3 from Mr. Clark's deposition, would you
19 go to the third sheet and that third sheet is
20 entitled Section 00520-Agreement?

21 A. Yes.

22 Q. Would you agree with that?

23 A. Yes.

24 Q. And it appears to be the exact same

1 sheets as are shown in Exhibit 4 as Fax Sheets 42
2 through 46. Would you agree with that?

3 A. That is correct.

4 Q. Okay. Now, I'm going to attempt to
5 refresh your recollection, Mr. Foley, as to the
6 amounts that are being paid to Mr. Clark by
7 referring you to the second to last sheet in
8 Exhibit 3 from Mr. Clark's deposition.

9 Would you take a look at that, please?

10 A. Yes.

11 Q. Taking a look at that, do you agree
12 with me that it states in Mr. Clark's quote that
13 he will transport wastewater from Little Neck to
14 the Ipswich wastewater treatment plant -- and it
15 gives the hours and the days of the week -- at
16 .085 per gallon?

17 A. Yes.

18 Q. And does that refresh your recollection
19 as to what Mr. Clark is being paid?

20 A. I think I misinterpreted your question
21 and I'm very familiar with the cost per gallon.
22 I'm not -- I'm not familiar with his monthly
23 billing to Mr. Foote in regards to the number of
24 gallons transported. So, if I misinterpreted, I

1 apologize.

2 Q. I understand. So you're not sure what
3 he's actually pumped, but you are familiar with
4 the level of his services --

5 A. Yes, for the contract, but not -- I
6 don't know what the monthly bill is to Mr. Foote
7 in regards to the number of gallons pumped. So I
8 misinterpreted it.

9 Q. Got it. What's the tipping fee that is
10 paid?

11 A. To the town?

12 Q. Yes.

13 A. I believe it's the difference between
14 085 and 090, I believe. I'm not too sure on
15 that. There is a fee -- there is a fee paid to
16 the Town of Ipswich. I'm not -- I'm not exactly
17 sure on the direct amount. It's based on the
18 number of gallons. I know that.

19 Q. Meaning what, if there were fewer
20 gallons, it's a higher or different fee than if
21 there were lots of gallons?

22 A. No. I believe it's based on -- I'm
23 not -- I'm not sure of the exact amount. I
24 believe that it is calculated at not a septic

1 hauler's fee but as a sewer usage charge.

2 Q. And you don't know how much the money
3 is that's being charged to the Feoffees for
4 disposal at the Ipswich treatment plant?

5 A. On a -- I'm not familiar.

6 Q. How about a per gallon -- isn't it a
7 half a cent per gallon?

8 A. Well, it's the difference, I believe,
9 between per gallon -- 085 and nine, but I believe
10 it's based on a sewer usage fee and not a hauling
11 fee. Am I not being clear?

12 Q. You are not being clear and I don't
13 understand. So can you try to explain it to me?

14 A. Okay, sure. I believe the town fee for
15 the number of gallons tipped at the wastewater
16 treatment plant is the difference between -- well,
17 you call it a half a cent. Previously you said a
18 half a cent. I believe it's the difference
19 between what's in Mr. Clark's contract and the
20 half cent you're talking about.

21 The issue that I thought I'm explaining
22 is that it's not being charged at a septic hauler
23 fee but as a sewer use fee. So maybe I'm being a
24 little -- I'll take the half cent. That's fine.

1 Q. So, no matter what it's called, is it
2 your testimony that the cost is a half of a penny?

3 A. Yes, it is, .5 of a penny, correct.

4 Q. And what it's called is a sewer usage
5 fee?

6 A. It's called a tipping fee based on a
7 sewer usage charge, correct.

8 Q. As opposed to what?

9 A. A septic hauler's charge.

10 Q. What's the difference, if you know?

11 A. The difference is if Mr. Jones
12 transports septic to the town facility, there's a
13 fee, but based on the number of gallons that the
14 Feoffees produce to a treatment plant, their
15 figure is based on Mr. Jones having municipal
16 sewerage.

17 So there is a town policy that's been
18 in effect for years that if you can produce X
19 amount of gallons or greater, it's a better fee
20 than it would be to have one truck come in.

21 Q. So does --

22 A. There is a benefit to Little Neck in
23 regards to the number of gallons produced and
24 dumped at the wastewater treatment plant than it

1 would be a single-family residence that is not on
2 the wastewater system. I know I'm sounding very
3 confusing, but I apologize.

4 Q. No, actually, it's not. You've made
5 yourself clearer.

6 So the services performed by Clark, the
7 end result of where they're dumped, that's at a,
8 to use your word, better fee?

9 A. It's at a -- it's a more advantageous
10 rate to the Little Neck homeowner than it would
11 be -- instead of a half a cent -- I don't know --
12 could it be a cent if it was a single-family
13 dwelling.

14 Q. Got it. Now, who pays the tipping fee
15 and I'll call it a tipping fee?

16 A. The tipping fee is paid by LNWS,
17 meaning Mr. Foote pays the Town of Ipswich
18 directly.

19 Q. And does the Town of Ipswich issue
20 bills for that tipping fee?

21 A. Yes, they do. I am aware of that.

22 Q. And how frequently?

23 A. That I'm not -- I've seen one of the
24 bills or two of the bills. I don't know. I think

1 they're for periods longer than a month. I
2 think -- I've observed one that could literally be
3 six months long or five months long.

4 Q. To your knowledge has the rates at a
5 half a penny per gallon been the rate since the --
6 since the central wastewater system went on-line
7 up at Little Neck?

8 A. Yes. It has not changed.

9 Q. Is it expected that it will change?

10 A. Not that I'm aware of.

11 Q. Mr. Foley, is there some reason why
12 those documents concerning the charges to the LNWS
13 and the payment of those charges by LNWS related
14 to the tipping fees were not produced in response
15 to the subpoena?

16 A. Meaning a bill from the town?

17 Q. Sure.

18 A. I'm not aware of any.

19 Q. You're not aware of any reason why they
20 weren't produced?

21 A. Correct.

22 MS. O'NEAL: I would request that
23 they be produced, please.

24 MR. SHEEHAN: We'll take that under

1 advisement, sure.

2 MS. O'NEAL: Thank you.

3 Q. Having in mind that LNWS is a party to
4 the contract with D.F. Clark, are you, Mr. Foley,
5 familiar with the bidding procedures that were
6 undertaken concerning the contract that was
7 eventually entered into with D.F. Clark?

8 A. I was not involved in the bidding
9 procedure at all at the time. It was, I believe,
10 Mr. Lombardo and Mr. Mulholland who was the
11 chairman at the time.

12 Q. Okay. Understanding that you weren't
13 involved, I'll just ask you a couple of
14 questions.

15 A. All right.

16 Q. Do you know if anyone other than D.F.
17 Clark responded to the bidding procedures that
18 were undertaken?

19 A. It was my understanding -- and again I
20 was not part of it. I did not review the bids. I
21 was informed from Mr. Lombardo that firms not only
22 took out bids, but bids were received by the
23 Feoffees other than Mr. Clark.

24 Q. Have you ever seen those responses by

1 those other firms?

2 A. No, I have not.

3 Q. Do you have any knowledge as to what
4 their quotes were in terms of what they would
5 propose be charged to the Feoffees and LNWS for
6 their services?

7 A. I am not familiar with that.

8 Q. So I take it then you can't say one way
9 or the other whether D.F. Clark was the lowest
10 bidder?

11 A. My understanding -- my understanding is
12 that Mr. Clark was the lowest bidder and fulfilled
13 all the obligations of the RFP.

14 Q. But you have no personal knowledge as
15 to the -- the quotes or the bids by others?

16 A. Correct.

17 Q. So it's something that you were told?

18 A. I was advised by Mr. Lombardo and Mr.
19 Mulholland.

20 Q. Take a look, please, at Exhibit 4,
21 Sheets 47 through 51.

22 A. I'm sorry, 47 --

23 Q. Through 51?

24 A. Yes.

1 Q. What do those sheets comprise?

2 A. Billing service contract between LNWS,
3 LLC and Applied Water Management, Inc.

4 Q. And does Applied Water Management, Inc.
5 do business as American Water?

6 A. Yes.

7 Q. So they're one and the same?

8 A. Correct.

9 Q. Tell me about this billing services
10 contract. What do you know about it?

11 A. This was a firm that was, I believe,
12 retained by Mr. Lombardo who was the engineering
13 firm hired by the Feoffees to design the
14 wastewater system. This, American Water, was a
15 firm that was hired by Mr. Lombardo and, I
16 believe, Mr. Mulholland to -- to be -- well, I
17 don't know, to be under contract by the Feoffees
18 to bill the individual homeowners at Little Neck
19 based on water usage provided by the Town of
20 Ipswich in regards to the individual meters at the
21 167 homes at Little Neck.

22 They, in turn, would bill each customer
23 on a monthly basis and then, in turn, the
24 homeowner would mail their check or their fee to

1 American Water and then American Water would
2 provide a lump sum or transfer a lump sum to LNWS
3 account for wastewater usage.

4 Q. Do you know the whys and wherefores
5 concerning why a separate company was contracted
6 with to do that?

7 A. There was discussion at the time when
8 all this wastewater system was about -- about to
9 go on-line and being constructed, should their --
10 I believe a lengthy discussion should the billing
11 be done in-house, meaning would Mr. Foote do the
12 billing, or would we retain a firm to do the
13 billing, and I believe the discussion was it was
14 more cost-effective and easier for the billing to
15 be contracted out than to do it in-house.

16 Q. What was easier about having an outside
17 entity do the billing?

18 A. We did not have the -- we did not have
19 the services, meaning the whole -- a whole series
20 of did we have a software; did we have the
21 administrative help; do we have the ability while
22 this system was going on-line to do our own
23 in-house billing.

24 I think it was agreed upon that we

1 would contract it out for a period of time and
2 to see if that was effective, if it was cost-
3 effective, and then re-examine it later should it
4 be brought back in-house or should it be brought
5 in-house.

6 Q. And what was more cost-effective about
7 going with American Water?

8 A. I believe it was the start-up of
9 billing software and the ability to spend the time
10 literally transforming the town bills or the town
11 water usage into wastewater costs. I believe
12 there was a time factor and we felt at the time --
13 and my discussion was limited so I don't want to
14 say "we," but I know I was present for some of
15 those discussions that to have a professional
16 utility billing company, like American Water, who
17 does water billing and wastewater billing -- I
18 believe they also do some power billing -- for
19 different entities, that this would be the most
20 effective -- effective measure.

21 Q. Does American Water do the water
22 billing for the Town of Ipswich?

23 A. No, no, it does not.

24 Q. To your knowledge who does the water

1 billing for the Town of Ipswich?

2 A. The town does.

3 Q. Itself?

4 A. The town bills and there is a private
5 company that does the lock box issue, but, other
6 than that, the town does their own. There are
7 five -- I believe there are five people in the
8 utilities department.

9 Q. Was it ever considered having the Town
10 of Ipswich, their utilities department, do the
11 billing for the wastewater -- did you refer to it,
12 Mr. Foley, as haulage or disposal, the type of
13 billings that American Water is sending out? Are
14 they for the haulage or the disposal? I want to
15 use the right term.

16 A. They were for the usage.

17 Q. Was consideration given to having the
18 Town of Ipswich, their utilities department, do
19 the billing for the usage?

20 A. There was some discussion, yes, there
21 was.

22 Q. And what was the result of that?

23 A. That the town presently or at the time
24 did no private billing for entities such as, I

1 believe, the examples were used Turner Hill golf
2 course, Ipswich Country Club, large, privately
3 owned areas with multiple dwellings; that the town
4 has always billed for the municipal services only,
5 whether it be for water, wastewater or electric
6 light use.

7 Q. So the town did do billings for
8 sewerage to those users?

9 A. No. I said they did not.

10 Q. And to your knowledge who does billing
11 for those services for the town?

12 A. Well, the town -- okay. The town does
13 their own billing for water, municipal water,
14 accounts, municipal wastewater accounts and
15 municipal electric light accounts. They do no
16 private billing for -- and my example was what
17 could Little Neck be compared to, Turner Hill,
18 Ipswich Country Club, and the town does not do any
19 of those billings. They do their own billings.

20 Q. For their own sewerage?

21 A. Correct.

22 Q. And to your knowledge is the town's
23 billing that it does for its own sewerage based
24 upon water in?

1 A. Yes.

2 Q. And that is, in fact, how American
3 Water does it?

4 A. Correct.

5 Q. It's based on water in?

6 A. Right, and literally water out.

7 Q. Presumed water out based on water in;
8 is that a fair statement?

9 A. Correct, correct, metered water in.

10 Q. Got it. So did you ever have any
11 discussions with any of the town's officials about
12 whether they could take on the billing role for
13 the Little Neck cottage owners?

14 A. Yes. We've had discussions with Mr.
15 Henry in the past if that could be done and we
16 would literally if the town was agreeable to
17 that -- I believe the discussions were if the town
18 was agreeable to that, they would charge a fee to
19 the Feoffees, like American Water, and there is
20 no interest in the town getting involved to my
21 knowledge.

22 Q. So did you have, personally,
23 discussions with Mr. Henry about that subject?

24 A. I don't know if personally, but Mr.

1 Henry originally came to our meetings when we were
2 talking about a master meter that the town -- I
3 believe the discussion was with Mr. Lombardo,
4 should the Town of Ipswich and the Feoffees
5 install -- pardon me, should the Feoffees install
6 a master meter at the front gate of Little Neck,
7 and I believe the discussions then led to -- with
8 Mr. Lombardo present, would the town be interested
9 in billing or why do you need a master meter or
10 should we even have a master meter.

11 Turner Hill does have a master meter
12 system and Ipswich Country Club does not. So I
13 think those discussions were all part of that
14 master meter issue.

15 Q. What did Mr. Henry say to you
16 concerning the town's level of interest in taking
17 on this task?

18 A. I don't know if he spoke to me
19 directly, but I think he said to the group
20 that the town or -- pardon me, the utilities
21 department's feeling was that they would like to
22 see the Feoffees install a master meter at the
23 front gate of Little Neck and that eventually,
24 eventually, they would like to bill the Feoffees

1 one water bill instead of 167 individual homeowner
2 bills like they do at Turner Hill. I think that's
3 where the discussion ended.

4 For example, if I could for a minute,
5 at Turner Hill Country Club they installed a
6 master meter somewhere off the main line on
7 Topsfield Road. So, when the Town of Ipswich
8 sends a bill to Turner Hill Country Club or
9 Raynham properties, there's one bill for the
10 entire water usage.

11 Q. Now, is that one bill for the water
12 usage?

13 A. Water, first, water usage.

14 Q. So that master meter as you've referred
15 to it measures water in?

16 A. Correct, to the entire property. Then
17 it's up to the entity, whether it be Turner Hill
18 or whoever owns the property at the time, to
19 somehow divide the water bills and the sewer usage
20 fee to each --

21 Q. Among the various users?

22 A. Correct. And that was discussed at
23 length with Mr. Henry and Mr. Lombardo. There is
24 a master meter installed at the front gate of

1 Little Neck as well which we use every day.

2 Q. So do I take it then that what Mr.
3 Henry expressed that the utilities department
4 wanted to see has, in fact, been accomplished,
5 being the installation of a master meter?

6 A. A master meter, but the town is
7 continuing to bill the 167 homeowners for water
8 usage.

9 Q. Is the town willing to go to a system
10 whereby they would bill the Feoffees for water in
11 through the master meter?

12 A. With a condition, yes.

13 Q. What's that condition?

14 A. That the Feoffees would take over the
15 entire ownership and billing of the individual
16 meter systems at residences.

17 Q. And what's the Feoffees' position on
18 whether they're willing to do that or not?

19 A. It would be a very expensive --
20 presently it would be a very expensive undertaking
21 by the Feoffees.

22 Q. Okay.

23 A. You'd literally have to buy the
24 individual meters and transponders and then come

1 up with a separate billing system for water or
2 contract out to American Water for water billing
3 where right now water billing -- the Feoffees have
4 no -- there's no charge for water billing. It's
5 from the town to the homeowner. Right presently
6 we don't want to get involved in any other
7 additional billings than wastewater.

8 Q. Now, Mr. Foley, each cottage has its
9 own water meter presently, correct?

10 A. Correct.

11 Q. So have you looked into whether or not,
12 according to Mr. Henry's plan, if you will, you
13 could, in fact, take the water through the master
14 meter and have it going to each individual house
15 and use each individual house's water meter that
16 is currently present in each house in order to
17 figure out who uses what?

18 A. The master -- the master meter would
19 give a total reading per month. The individual
20 homeowner's would give a total reading for a
21 period of days. The difference -- hopefully the
22 original purpose of the master meter other than
23 billing is to make sure that there are no leaks in
24 the system, so the total at the master meter, and

1 if you add up the 167 homes, what in all actuality
2 it should be is there should be a zero loss in the
3 system.

4 So there's a leak detection purpose.
5 There's also a billing purpose. And for the
6 Feoffees to buy and maintain the individual water
7 meters for 167 homes presently would be to me, to
8 my knowledge, would be not cost-effective for the
9 Feoffees.

10 Q. Okay. I understand your answer and
11 that's what I thought you said.

12 A. Correct.

13 Q. So my question is why would you have to
14 buy all the individual meters when every single
15 cottage already has one?

16 A. Because the meters are owned -- the
17 transponders are owned by the town. They're not
18 owned by the individual. So we would literally
19 have to buy them from the town.

20 Q. Is that right?

21 A. Yes.

22 Q. And have they said that to you, that
23 you would have to purchase those transponders from
24 the town?

1 A. That was my knowledge.

2 Q. At how much, if you know?

3 A. I'm not aware. I can't recall that
4 conversation.

5 Q. They wouldn't simply let you use them
6 or give them to you?

7 A. Oh, no, no, no, no.

8 Q. Was the town unwilling to take on the
9 responsibility of billing for the usage fees?

10 A. What I can recall is that it's not been
11 done before. So I'm not -- I can't answer are
12 they unwilling. I'm just -- I remember the
13 discussion of it's never been done.

14 Q. Did the Feoffees decide not to pursue
15 it any further with the town?

16 A. No. I don't think that's -- I think
17 that that would be a discussion with the
18 wastewater subcommittee in the town which is a
19 couple of members of the Board of Selectmen, the
20 utility director. I don't know what the -- I
21 don't know at the time what progress Mr.
22 Mulholland and Mr. Lombardo made with that
23 discussion.

24 Q. Are there any plans to pursue such

1 discussions?

2 A. I think anything could be on the table,
3 absolutely.

4 Q. To your knowledge are there any
5 definitive plans to pick that discussion back up
6 and to review it further?

7 A. The only -- in regards to the
8 wastewater billing, I'm not aware presently. The
9 only discussions I know that are going on are with
10 some tenants and Mr. Henry about water deduct
11 meters but not picking up the sewer bill.

12 Q. And a water deduct meter is what?

13 A. A water deduct meter is an -- an
14 individual home has a water meter. It counts the
15 number of cubic feet of water from the municipal
16 system into the home.

17 The Town of Ipswich provides a program
18 to municipal water users where they can buy from
19 the town a second meter that flows off the first
20 meter that would record any outside watering,
21 gardens, lawns, with the exception of showers
22 which are not allowed by law; that the caveat that
23 I'm aware of presently is that those are allowed
24 to only municipal wastewater customers.

1 So, if you are on the town's wastewater
2 system, you're allowed to buy one. If you're on
3 a -- if you're out on Linebrook Road where there
4 is no municipal sewerage but you have municipal
5 water, they're not sold to those customers because
6 they're not on the municipal wastewater system.

7 Q. So there's no need for them?

8 A. Correct.

9 Q. So how far have those discussions
10 gotten, if you know?

11 A. I believe -- in regards to the deduct
12 meters, I believe there was a meeting a month ago
13 between some residents of Little Neck and Mr.
14 Henry and the water subcommittee in regards to
15 those. I have not been brought up to speed on
16 where they were on that, but I believe the policy
17 has not changed.

18 Q. Do you have any idea, generally
19 speaking, how much those deduct meters cost?

20 A. I believe they're a hundred dollars.

21 Q. Per unit?

22 A. Per unit, which is the second meter.

23 Q. Understood. Back to the American Water
24 contract --

1 A. Yes.

2 Q. -- was that put out to bid, Mr. Foley,
3 to your knowledge?

4 A. I'm not aware of that. I was not part
5 of that. I don't know. That would be between
6 Mr. Lombardo and Mr. Mulholland.

7 Q. And was Mr. Lombardo acting on behalf
8 of the Feoffees in terms of the relationship with
9 American Water?

10 A. Yes.

11 Q. To your knowledge did he ever report to
12 you that they were the best price or they had
13 looked into other providers?

14 A. I know I was present at a meeting where
15 Mr. Lombardo stated that he did contact -- I don't
16 know the amount or the names -- other utility
17 billing companies and that they had chosen
18 American Water.

19 Q. How frequently is American Water
20 sending bills to the tenants on Little Neck?

21 A. Presently -- before -- when the system
22 was first up and running, it was monthly, and then
23 because of the lawsuit and the refusal to pay
24 utility bills by the tenants, there was, I

1 believe, a long period of time where no bills were
2 going out.

3 Then the stipulation came and I believe
4 it was a six-month period and there have been two
5 two-month periods, and I believe August 1st
6 they're going back to monthly billing. Does that
7 make sense?

8 Q. Mr. Foley, is it your understanding
9 that there was a refusal to pay the usage fees as
10 compared to the \$40 a month -- what's that, a
11 maintenance fee? What's the \$40 a month fee?
12 Let's call it something.

13 A. The operating and maintenance fee.

14 Q. Let's call it a maintenance fee.

15 A. Okay, right.

16 Q. Was it your understanding that there
17 was a refusal to pay the maintenance fee?

18 A. Maybe I shouldn't have used the word
19 "refusal," that that was not being paid.

20 Q. The maintenance fee?

21 A. Correct.

22 Q. And was it also your understanding that
23 the usage fees --

24 A. Yes.

1 Q. -- were not being paid?

2 A. It was my understanding, yes.

3 Q. So American Water was sending out
4 monthly bills that were not being paid?

5 A. I don't believe they were being -- I
6 don't believe they were being sent out.

7 Q. I agree with you. Why weren't they
8 being sent out, if you know?

9 A. That is --

10 Q. Do the best you can.

11 A. I don't think I can answer that
12 question.

13 MR. SHEEHAN: Without getting into a
14 discussion between attorney-client?

15 THE WITNESS: Yes.

16 MR. SHEEHAN: Fair enough.

17 Q. Well, the contract contemplates, does
18 it not, Mr. Foley, that American Water is going to
19 bill monthly, 12 billing cycles per year?

20 A. Correct.

21 Q. And the contract started in May of
22 2006, correct?

23 A. Yes.

24 Q. Prior to May of 2006, had American

1 Water sent out any bills?

2 A. Prior to May?

3 Q. Prior to May of '06, had American Water
4 sent out any bills?

5 A. I'm trying to think of when the system
6 came on-line. I don't know the exact date when
7 the system came on-line.

8 Q. And since May of 2006 --

9 A. Correct.

10 Q. -- they have not billed each and every
11 month; is that fair to say?

12 A. Correct.

13 Q. Now, have you folks billed -- I'm
14 sorry. Have you folks paid American Water as if
15 they've billed each and every month?

16 THE WITNESS: I don't know if I can
17 answer that without --

18 MR. SHEEHAN: Okay. Then don't
19 answer it. If you can't answer that without
20 getting into a conversation between attorney and
21 client, then I instruct you not to answer.

22 A. Then I can't answer it.

23 Q. Well, Mr. Foley, putting aside for the
24 moment a conversation you had with counsel, do you

1 not know as a manager of LNWS whether or not the
2 entity with which you have a contract, American
3 Water, has billed every single month?

4 A. I do know. I don't know how to step
5 outside of a --

6 MR. SHEEHAN: Can I make a
7 suggestion?

8 Q. Sure.

9 MR. SHEEHAN: You've been at it for a
10 little over two hours. Why don't we take a little
11 break. Off the record.

12 (Discussion off the record.)

13 (Recessed at 12:18 p.m.)

14 (Resumed at 12:36 p.m.)

15 MS. O'NEAL: All right. Back on.

16 Q. Mr. Foley, has American Water billed
17 LNWS for its services every single month?

18 A. They have billed. That is correct.

19 Q. And has LNWS paid the billings that
20 it's received from American Water?

21 A. Yes, with the exception of a period
22 that is in discussion with American Water right
23 now.

24 Q. And when you say a period that's in

1 discussion, do you mean a period of time for which
2 bills were sent to LNWS by American Water?

3 A. Correct.

4 Q. And by "discussion," do you mean that
5 there's some issue concerning whether or not LNWS
6 feels that it is appropriate to pay those bills?

7 A. Correct.

8 Q. Now, let me ask you this, if American
9 Water has not, in fact, issued bills to the Little
10 Neck tenants every single month -- and I believe
11 we established that they had not done so -- why
12 would American Water bill LNWS for those billing
13 services that it didn't perform?

14 A. The question was were the bills sent
15 and my response was yes. Did American Water send
16 a monthly invoice to LNWS? Yes, they did. My
17 response is that presently the Feoffees, LNWS, is
18 in discussions with American Water in regards to
19 the payment of those monthly bills for a period of
20 time where bills were not being sent to the
21 individual homeowners due to litigation.

22 Q. So there was a period of time when
23 bills were not being sent by American Water to
24 the tenants for reasons associated with the

1 litigation?

2 A. Correct.

3 Q. So were no bills actually sent by
4 American Water to the tenants?

5 A. Correct.

6 Q. Were they produced by --

7 A. I do not believe they were produced,
8 no.

9 Q. But, yet, I take it from your
10 testimony, notwithstanding the fact that American
11 Water for some period of time didn't bill the
12 tenants, yet American Water is looking to bill
13 LNWS for its services as if it did send the bills
14 for that period of time?

15 A. Not in a -- there is not an adversarial
16 relationship.

17 Q. And I didn't suggest that there is.

18 A. Okay.

19 Q. So can you answer my question?

20 A. That invoices were sent to the
21 Feoffees, to LNWS, for a period of time from the
22 inception of the contract until this month and
23 there is a period of time due to litigation that
24 bills were not sent to the individual homeowners.

1 Q. And the bills that were sent by
2 American Water to LNWS, billing LNWS for American
3 Water's services, were the amounts of those bills
4 calculated in accordance with this contract?

5 A. Yes.

6 Q. So it's as if American Water had sent
7 the bill to the tenants, but yet they didn't?

8 A. Correct.

9 Q. And they're billing LNWS as if they
10 had?

11 A. Correct.

12 Q. All right.

13 A. And if I could just finish for a
14 minute, when the stipulation was signed between
15 the tenants and the Feoffees that a wastewater
16 bill for an extended period of time, meaning
17 months, was put together by American Water and
18 billed, then it was -- to clarify my point, it was
19 not a monthly billing in that first case. It was
20 multiple months.

21 Q. Presumably, Mr. Foley, American Water
22 was told by someone not to send monthly billings
23 to the tenants at Little Neck for some period of
24 time; is that a fair statement?

1 A. Correct.

2 Q. Who told American Water to not send
3 bills to the tenants for some period of time?

4 A. It was counsel for the Feoffees, I
5 believe.

6 Q. And without divulging any communication
7 that you had with counsel, do you know the reason
8 why American Water was told not to send the bills?

9 A. The original -- the reason was that
10 bills were sent and at a period, I believe, in
11 August, that bills were not being paid by the
12 tenants because of the lawsuit. The bills -- they
13 were not being paid and then --

14 Q. Go ahead. I don't want to interrupt
15 you.

16 A. And then after that, after a time
17 period, I believe, Attorney Greenough spoke with
18 American Water in regards to the billing.

19 Q. And is it your understanding, Mr.
20 Foley, that the stipulation to which you referred
21 which for the record I agreed that there was a
22 stipulation entered into between counsel for the
23 Feoffees, Mr. Sheehan, and counsel for many of the
24 tenants, our office, relative to a variety of

1 topics.

2 .Is it your understanding that that
3 stipulation specifically had to do with monthly
4 bills for the usage?

5 A. It covered a variety of issues but
6 including, including, wastewater usage.

7 Q. Is it your understanding that the
8 stipulation also covered the \$40 a month
9 maintenance fee?

10 A. Yes.

11 Q. Now, when was the last time you saw the
12 stipulation?

13 A. When it was -- I believe when it was
14 signed. I have not seen it in a while. I have
15 not reread it.

16 Q. Now, are you aware of the fact that the
17 stipulation recites having to do with the billings
18 to be sent by -- it doesn't identify American
19 Water, but the billings to be sent by American
20 Water, that the rate that the tenants are going to
21 pay is nine and a half cents per gallon? Are you
22 aware that the stipulation says that?

23 A. That the stipulation calls for nine and
24 a half cents, I believe I did read that.

1 Q. And do you think that's a mistake, a
2 simple mistake?

3 A. I thought there were discussions --

4 MR. SHEEHAN: The question is did you
5 think -- do you think that was a mistake? Just
6 answer the question if you can.

7 A. No. Did I question it?

8 Q. No, no, no. I think you said that you
9 were aware that the stipulation referred to nine
10 and a half cents?

11 A. Mm-hmm.

12 Q. And my question to you is do you think
13 that's a mistake?

14 A. I guess my answer -- my answer would be
15 that I questioned at the time the figure. I don't
16 have the stipulation with me.

17 Q. What was the outcome of your having
18 questioned the figure?

19 THE WITNESS: I think, Bill, that
20 goes into --

21 MR. SHEEHAN: Then don't answer it.

22 Q. As a member of LNWS, are you looking to
23 earn some extra money off the tenants for the
24 water usage fee?

1 A. Is that a question?

2 Q. Yes, it is.

3 A. That is absurd, of course not, no.

4 Q. Let's take a look at Exhibit 4, Sheet
5 33 -- actually, 32 and 33, please.

6 A. Okay, 32, Janet Maloney?

7 Q. Yes. So would you agree that that
8 purports to be a bill from American Water issued
9 to Janet Maloney?

10 MR. SHEEHAN: Hold on one second.
11 I'm just trying to find it. My pages aren't
12 numbered.

13 MS. O'NEAL: At the very top, Bill.

14 MR. SHEEHAN: I have what was sent.
15 Jim has the page number.

16 MS. O'NEAL: Sorry.

17 MR. SHEEHAN: That's okay. This one
18 I haven't been able to catch up on so quickly.

19 Q. Mr. Foley, would you agree that Sheets
20 32 and 33 purport to be a bill from American Water
21 to Janet Maloney for the billing period from
22 July 31, '06 to February 28, '07?

23 A. Yes, I do.

24 Q. And would you agree that Sheet 33, as I

1 understand it, is the reverse side of Sheet 32?

2 A. Correct.

3 Q. And that it refers to the fact that the
4 calculation of the amounts billed represent costs
5 associated with pump-out and transport and the
6 disposal fee at the IWWTP --

7 A. Correct.

8 Q. -- at the rate of nine cents per
9 gallon?

10 A. Correct.

11 Q. So are the tenants being billed nine
12 cents per gallon by American Water?

13 A. Yes.

14 Q. And is that what they're supposed to be
15 billed by American Water?

16 A. Correct.

17 Q. So what's the explanation for why the
18 stipulation refers to nine and a half cents per
19 gallon?

20 A. That was my question and I have to
21 refer to a discussion with counsel on that.

22 Q. Do you intend to collect nine and a
23 half cents per gallon from the tenants?

24 A. No.

1 Q. To your knowledge, Mr. Foley, have any
2 of the tenants been billed at the rate of nine and
3 a half cents per gallon?

4 A. Not that I'm aware of.

5 Q. I apologize if I asked you this
6 before. I just don't remember. Do you have
7 documents that would reflect amounts as invoiced
8 to LNWS by American Water and LNWS's payments of
9 those amounts?

10 A. Mr. Foote would have those, yes.

11 Q. And they have not been produced in
12 response to the subpoena duces tecum, correct?

13 A. Not that I'm aware in this package,
14 no.

15 MS. O'NEAL: Again, subject to
16 counsel's say-so, I'd request that they be
17 produced.

18 MR. SHEEHAN: I'll take that request
19 under advisement.

20 MS. O'NEAL: Thank you.

21 Q. Is it intended, Mr. Foley, that
22 American Water will also bill the tenants the \$40
23 per month maintenance fee or is that separate?

24 A. Clarify your question. A separate bill

1 or is it part of -- I believe that it is part of
2 the entire rental package. So it would be bills
3 on an American Waterworks' letterhead or billing
4 and then the homeowner, in turn, would mail that,
5 excuse me, or send that to American Water.

6 Q. Okay. So it is intended that the
7 American Water bill to the tenants reflects the
8 \$40 per month maintenance fee?

9 A. I'm not aware that Mr. Foote is sending
10 a separate invoice other than American Water. I'm
11 not aware of that at all.

12 Q. To your knowledge have any of the
13 bills that have issued to date from American Water
14 to the tenants reflected the \$40 per month
15 maintenance fee?

16 A. I'm not aware of that. I don't --

17 Q. You don't know one way or the other?

18 A. No, I do not.

19 MR. SHEEHAN: I think it's important
20 to clarify. That's inconsistent with the
21 stipulation.

22 MS. O'NEAL: I agree with you, Bill.

23 MR. SHEEHAN: I don't think there's
24 any billing going on. I don't want the record to

1 be confused and I don't mean to testify.

2 MS. O'NEAL: Off the record.

3 (Discussion off the record.

4 Q. Let's talk about the \$40 per month
5 maintenance fee though. What is that supposed to
6 be for?

7 A. That \$40 maintenance fee is for the
8 care and maintenance of the following: River Road
9 pump station; Plum Sound Road pump station; Bay
10 Road pump station; the holding tanks at the ball
11 field; all telemetry units that are used in
12 regards to the holding tanks; the force and
13 gravity mains that are installed in the system.

14 A small percent is set aside for any
15 emergency work, for example, an item that might
16 be outside Waterline Industry's contract, for
17 example, a distribution break in the system. It
18 also cares for the maintenance of the MIS system
19 and the remote repeaters that read the billing
20 system from water meters. So, in general, it
21 literally -- operation and maintenance is
22 specifically designated for the repairs and the
23 maintenance of the wastewater system.

24 Q. Who set the \$40 per month as an

1 appropriate fee to do all those things you just
2 described?

3 A. I believe it was Pio Lombardo
4 calculated -- at a meeting that I was present for
5 and I was not the chairman calculated the cost of
6 the maintenance contract with Waterline. There is
7 a subcontractor that Waterline employs called
8 Ellis Engineering who takes care of all the
9 telemetry work and all the MIS work, and divided
10 that amongst 167, I believe, billing customers,
11 including the community center, and came up with
12 a figure and a very -- again, a very small
13 contingency or set-aside for -- not capital but
14 for emergency work, very small, and I believe that
15 was agreed upon by Mr. Mulholland and Mr. Lombardo
16 at the time.

17 Q. Do I understand your testimony to be
18 to the effect that it was really driven by Mr.
19 Lombardo in terms of his expertise, figuring out
20 how much was an appropriate fee?

21 A. I think it was strictly driven by the
22 cost of the contract with Waterline and what the
23 subcontractor of Ellis was charging to Waterline
24 and setting aside again a small contingency fund

1 for emergencies, so, to use his area of expertise,
2 absolutely.

3 Q. Now, is it expected that every tenant
4 pays \$40 per month? Is that the intention?

5 A. Correct.

6 Q. And does that include \$40 for 12 months
7 for those folks who use their cottages seasonally?

8 A. Correct.

9 Q. And what's the rationale, if you know,
10 for charging somebody who doesn't use their
11 cottage seasonally \$40 per month to maintain a
12 system?

13 A. Because the system operates 12 months,
14 regardless if someone is in the house or not.

15 Q. And, if you know, those folks that have
16 signed a lease with the Feoffees, are they being
17 charged \$40 a month?

18 A. Are the individual leaseholders?

19 Q. Yes.

20 A. Yes.

21 Q. And, Mr. Foley, are you certain of
22 that?

23 A. I'm certain of that.

24 Q. Are they paying it as a separate \$40 a

1 month fee or is it included in their rent?

2 A. It's included in their rent. I mean,
3 it's included in the big -- it's included in the
4 total package. They're paying \$40 per month times
5 12, the same as the Plaintiffs in the legal action
6 are paying. So there's no delta, there's no
7 difference, in \$40 for a leaseholder than there
8 would be for someone who's a nonleaseholder.

9 Q. But the \$40 being paid by the
10 leaseholder, is that amount included in the, for
11 example, \$9700 a season being paid by a seasonal
12 tenant?

13 A. Yes, yes.

14 Q. So it's not broken out as a separate
15 line item, if you will?

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

17 Q. Does LNWS have records concerning the
18 actual operation and care of the system for which
19 it has made payments?

20 A. Records in regards to only a contract
21 with Waterline for the maintenance, but, other
22 than that, there are no -- I'm not aware of any
23 records.

24 Q. Has LNWS had any expenses related to

1 the maintenance of the system over and above
2 whatever the contract amount is that is paid to
3 Waterline?

4 A. I'm not aware of any -- I'm not aware
5 of any additional expenses other than payments to
6 Waterline with the exception -- there could be an
7 exception during the Mother's Day storm in regards
8 to a lightning strike that might have gone above
9 and beyond Ellis's contract, but, other than that,
10 no. A repeater was disabled by lightning. I
11 don't know if that was covered or not, the
12 Mother's Day storm a year ago.

13 Q. And I take it that the amounts paid to
14 Waterline, that records exist concerning how much
15 was been paid?

16 A. Oh, absolutely, correct.

17 Q. And you would agree that those have
18 not been produced in response to the subpoena,
19 correct?

20 A. I have not seen them in here.

21 MS. O'NEAL: And I would make that
22 request that they be produced as well.

23 MR. SHEEHAN: I'll take that request
24 under advisement as well.

1 Q. The Mother's Day, May, '06, storm,
2 there was -- and I'm asking you. Do you agree
3 that there was pumping of water that had
4 infiltrated the wastewater system that was
5 billed by D.F. Clark as emergency pumping?

6 A. Correct.

7 Q. Would that be part of the maintenance
8 costs associated with the system?

9 A. Not maintenance. D.F. Clark would
10 have billed individually for pumping, number of
11 gallons, because of the storm but would have
12 nothing to do with Waterline's and at the time RJV
13 who was the installer of the distribution system,
14 what their issues were.

15 Q. How would the Feoffees pay for the cost
16 associated with D.F. Clark's emergency pumping,
17 out of what bucket, if you will?

18 A. It would have been paid by -- the
19 billing process for hauling wastewater from that
20 storm would not vary from billing of any other
21 month. The issue was not D.F. Clark's, but the
22 issue was why there was water in the system, why
23 there was additional water in the system that was
24 above and beyond the period of time of year.

1 Q. I'm trying to get a sense of whether
2 the \$40 per month being paid by the tenants was
3 used in part to cover the emergency pumping
4 costs.

5 Is that the type of cost associated
6 with maintaining the system that the \$40 is
7 intended to cover?

8 A. Yes, but it would -- yes.

9 Q. Yes?

10 A. But, as a caveat, there would be --
11 that \$40 would have covered the emergency work as
12 part of the contract for Waterline but would not
13 have covered the work from RJV Construction
14 because there were various reasons why there was
15 an additional infiltration and inflow into the
16 system during that storm.

17 Q. And who's RJV Construction?

18 A. RJV Construction is the contractor that
19 installed the distribution system at Little Neck.
20 They were literally the general contractor who
21 installed the mains, the force mains and the
22 gravity mains, and the services to the house.

23 Q. Did they have anything to do with the
24 issues concerning the infiltration?

1 A. Yes.

2 Q. What did they have to do with that?

3 A. They located the various problems where
4 there was an infiltration inflow into the system
5 during that Mother's Day storm.

6 Q. And what did they determine?

7 A. That there were, I believe, four
8 locations that were causing infiltration. The
9 first three were various individual homeowners,
10 individual residents, who had either hooked up --
11 I believe three individual locations where there
12 were hookups from private plumbers that were an
13 issue, that it was either not hooked up
14 correctly. I can think of at least two on River
15 Road that -- let me just back up for a minute.

16 The Feoffees literally installed the
17 sewer system to the home. The individual hookup
18 in the home is the responsibility of the
19 individual homeowner. There were problems with at
20 least two individual homeowners where the hookup
21 was done incorrectly and there was infiltration
22 and inflow coming into the system.

23 Q. Coming into the wastewater system?

24 A. Correct.

1 Q. From where?

2 A. From storm water --

3 Q. Okay.

4 A. -- from the Mother's Day storm.

5 Q. With respect to two homes?

6 A. Right, with respect to two homes, the
7 Maloney home and the Hanson home on River Road.
8 There was an individual problem on River Road -- I
9 can't think of the number -- but near -- I can't
10 think of the number of the house, I'm sorry --
11 that there was a crack in the line, the service
12 line, that was caused possibly by backfilling the
13 trench during construction. That was taken care
14 of and paid for by RJV Construction.

15 Q. Why, because it was their
16 responsibility to have done it correctly?

17 A. Absolutely, absolutely.

18 Q. Okay.

19 A. So those were the first three
20 individual issues. There have always been and
21 I know of two now -- the issue of individual
22 homeowners hooking up into the system sump pumps
23 in their basements that could have been hooked up
24 during that Mother's Day storm to the wastewater

1 system which according to our rules and
2 regulations are illegal.

3 Q. How many such homes have sump pumps to
4 your knowledge?

5 A. I don't know the amount. I know that
6 there were two that we spoke to the individual
7 homeowners to make sure that they weren't hooked
8 up.

9 Q. And who were they?

10 A. One was named Siphol or Siphol at the
11 corner of Middle and River and the other gentleman
12 was on Hilltop Road. I can't remember his name.
13 I believe Pio Lombardo spoke to him. But there
14 were reports that there were sump pumps literally
15 being pumped into the system.

16 Q. And, Mr. Foley, to your knowledge was
17 that found to be true?

18 A. I know in my discussions with one
19 individual homeowner, he denied that that was
20 happening.

21 Q. And was that Siphol or the one whose
22 name you can't remember?

23 A. Siphol. I did not have a second
24 discussion.

1 Q. Did you have any reason to doubt what
2 he told you?

3 A. I know that when RJV Construction
4 brought in-line camera equipment and used the
5 system -- used the camera equipment through the
6 entire system, that there were indications that
7 sump pumps were being used that were flowing into
8 the system. Could they pinpoint the individual
9 houses, no.

10 That also could be caused from the
11 following. For years -- and I'm sure you've been
12 to Little Neck -- some houses have basements, some
13 don't, and there are floor drains in the basements
14 obviously of homes that have foundations. Some
15 could be hooked into the wastewater distribution
16 system.

17 So there was some discussion about
18 individual houses. I know another one on Bay Road
19 at the corner of Plum Sound and River Road that
20 was the homeowner and the site manager, Kevin
21 McElhinney, had discussions about the cellar
22 flooding and flowing into the wastewater system.

23 Then the last issue was there was a
24 possibility at the time of Tank No. 3 located at

1 the ball field that were causing -- because of a
2 loose gasket, that was causing some infiltration
3 and inflows into the ball field.

4 Waterline Industries literally sent
5 divers into the tank to look at that. I believe
6 that the flanges -- I'm not really an engineer,
7 but the flanges were tightened and that
8 alleviated -- along with repairing the three
9 individual homeowner issues, that relieved the
10 infiltration inflow problem. But none were
11 additional costs that I know above the maintenance
12 contract for the Waterline and RJV covered that
13 one house that was caused by their firm
14 backfilling a trench.

15 Q. So the two homeowners whose hookups had
16 not been done properly were repaired to your
17 knowledge?

18 A. They were repaired and inspected.

19 Q. And the one homeowner, the line to
20 whose home had had a crack in it --

21 A. Correct.

22 Q. -- that was also repaired?

23 A. Correct, and inspected.

24 Q. Were there any repairs necessary to any

1 of the tanks?

2 A. Tank?

3 Q. Tank No. 3?

4 A. Tank No. 3.

5 Q. Was there anybody who determined in
6 terms of the order of magnitude of the water that
7 was pumped as a result of the so-called Mother's
8 Day storm how many gallons were attributed to
9 these various issues that you've identified?

10 A. I believe Pio Lombardo did a -- who was
11 still on-site with Mr. McElhinney at the time did
12 a calculation of additional infiltration and
13 inflow. Remember, during May, there are not
14 many -- not many summer residents there.

15 Q. Would you agree that there was a
16 significant number of gallons pumped as a result
17 of that storm?

18 MR. SHEEHAN: Objection.

19 A. Absolutely.

20 Q. In excess of a hundred twenty thousand
21 gallons?

22 A. I'm aware there was an excess of
23 gallons due to that storm, no question about it.

24 Q. Let me show you what we marked at

1 D.F. Clark's deposition as his Application and
2 Certification for Payment as of the May 14th
3 date.

4 MR. SHEEHAN: What exhibit was that?

5 MS. O'NEAL: It was Exhibit 9.

6 Q. And I draw your attention, Mr. Foley,
7 to the first sheet and do you see where it
8 indicates towards the top of the first sheet,
9 total pumped this period, GAL, gallons, 121,945,
10 total pumped this period?

11 A. Yes, 121,945.

12 Q. And taking a look, sir, at the second
13 sheet, would you agree that at least according to
14 this record all of those gallons were pumped on
15 one day, May 14th, 2006?

16 A. Yes.

17 Q. And you have testified that you believe
18 that Mr. Lombardo in some way measured how many of
19 those gallons were attributable to the two
20 homeowners' improper hookups and the one
21 homeowner's crack in the service line?

22 A. Just two things, one is I believe
23 Mr. Lombardo calculated the additional or the
24 infiltration inflow for the entire system that was

1 inconsistent with the time of the year for normal
2 sewer use. I don't know -- I doubt he broke it
3 down to individual homes.

4 The other -- if I could just --
5 I find -- I'm just looking at page one of this.

6 Q. The first sheet?

7 A. The first sheet.

8 Q. Yes.

9 A. Usually -- I've never seen one and
10 maybe this is a copy before it was sent out. I've
11 never seen one that's not been approved by either
12 Mr. -- at the time Mr. Lombardo or, I believe, Mr.
13 Mulholland. So I just want to mention that.

14 Q. And where is the approval typically --

15 A. At the bottom.

16 Q. -- indicated. At the bottom of the
17 first sheet?

18 A. Yes, for payment anyways, for payment
19 purposes.

20 MS. O'NEAL: Just for the record none
21 of the applications and certificate for payments
22 that Mr. Clark produced have any such detail.

23 Q. But your understanding is that when
24 they're approved for payment, they're signed off

1 by Mr. Lombardo?

2 A. Correct, and at the time Mr.
3 Mulholland, too.

4 Q. And Mr. Mulholland as a Feoffee or as a
5 member of LNWS?

6 A. As the chairman of the Feoffees at the
7 time.

8 Q. And the application and certificate for
9 payment that comes from Mr. Clark actually is
10 issued to LNWS; is that right?

11 A. Yes.

12 Q. Is it your testimony though that it's
13 paid by the Feoffees?

14 A. No. I'm just saying that at the time
15 the -- these were being signed off for review by
16 the engineer of the project, Mr. Lombardo, and
17 also the chairman of the Feoffees.

18 Q. Thank you.

19 A. Not being paid by another entity,
20 no.

21 MS. O'NEAL: Could we mark that
22 application and certificate for payment as the
23 next exhibit, please.

24

1 (Application and Certificate
2 for Payment, dated 5/16/06, consisting of six
3 pages, was marked Exhibit No. 7 for
4 identification.)

5 Q. Mr. Foley, does LNWS maintain any sort
6 of an office up on the Neck?

7 A. Well, there is an MIS building that
8 houses both the monitoring equipment for the
9 wastewater system and the generator and that's it,
10 but the actual -- I believe we've always used --
11 well, I shouldn't say that because it was 25 --
12 well, I believe we've always used the South Main
13 Street address now that Mr. Greenough has.

14 Q. I'm not asking what address is used,
15 but I'm simply asking is there an office with a
16 desk and a chair?

17 A. Yes.

18 Q. Up on Little Neck?

19 A. Yes.

20 Q. Who is that used by?

21 A. It's used by myself, Mr. Foote
22 sometimes. It's used by Waterline engineers.
23 It's used by Ellis Engineering who does the
24 technology equipment, and it's been used by in the

1 past an engineering firm that we've used during
2 this litigation.

3 Q. And does it have any -- no one stays
4 there overnight? It doesn't have any sleeping or
5 showering facilities up there, does it?

6 A. No, no water, no bathroom, no -- I
7 think we're lucky to have a chair and a table.

8 Q. To your knowledge is the wastewater
9 system up on Little Neck presently watertight?

10 A. Yes.

11 Q. By that I mean no infiltration from --

12 A. Not that I'm aware of.

13 Q. Were there issues concerning water
14 infiltration other than what we've talked about
15 today?

16 A. Not that I'm aware of.

17 Q. Has anybody ever undertaken, Mr. Foley,
18 to determine what the differential is between the
19 water in charges that the residents are paying
20 versus the gallons actually pumped? Do you
21 understand my question?

22 A. I think I do. Are you saying
23 gallons -- the water -- water in by the town water
24 meter versus gallons out by what we monitor,

1 okay. I guess I could answer that question yes in
2 two different -- not as a sum total, but there
3 have been individual cases where, for example, a
4 homeowner -- I can think of at least two in the
5 past month where an individual homeowner has
6 complained that water out has or due to their
7 billing has exceeded greatly usage.

8 Q. Meaning water in?

9 A. At the time it was unknown.

10 Q. So wait a minute. Water out, the
11 homeowner claimed that water out exceeded usage,
12 meaning water in?

13 A. Their claim was that the total of their
14 bill --

15 Q. From American Water?

16 A. -- from American Water is greater than
17 what they felt was used.

18 Q. Based on water in?

19 A. Based on -- based on the time they're
20 at their house, meaning that they might have gone
21 home in September after Labor Day and received
22 that extended bill and it was enough water, I
23 mean, it was so much water that they could have
24 been running the GE. It was huge.

1 What I did was figure out the
2 difference, the delta, between water in and water
3 out and then determined that somehow there was a
4 problem after the meter and in both cases, at
5 least in both cases, there were massive water
6 breaks internally in their own homes.

7 Q. When you say "water breaks," what do
8 you mean by that?

9 A. That somehow a pipe or a service had
10 broken after the meter. So the meter internally
11 was recording water in, and when the homeowner
12 received the bill, it's based on water in, but
13 their usage or their time period was not
14 consistent with what was being used.

15 Q. Gallons in?

16 A. Correct.

17 Q. So where did the water go?

18 A. In one case it destroyed a first floor
19 basement. In the second case it was a break in
20 the cellar after the meter. So it was recording
21 in the meter and it literally broke and flooded
22 onto the floor.

23 We waived that fee for the individual
24 homeowner because our policy has always been it's

1 not going into the system.

2 Q. Now, when folks are paying for the
3 usage fee --

4 A. Correct.

5 Q. -- it's based upon water in?

6 A. Correct.

7 Q. And it's assumed or presumed that every
8 gallon in is a gallon out, at least as far as the
9 billing goes?

10 A. Yes.

11 Q. My question is we know that not every
12 gallon in is a gallon out; would you agree with
13 that as a statement?

14 A. Absolutely.

15 Q. So my question is has anybody ever
16 attempted to determine based upon actual gallons
17 out which D.F. Clark keeps track of what the delta
18 is in terms of the difference between water in,
19 which the folks are paying for, and gallons out?

20 A. I think that's -- again, I will answer
21 that in total, no, from D.F. Clark's standpoint,
22 but, yes, on an individual basis monthly by -- I
23 know I did. I literally read every homeowner's
24 water usage on a monthly -- their monthly billing

1 from the town.

2 So what I've done is -- and I do this
3 every month -- is take the grand total and
4 compare it to Mr. Clark's pumping records which we
5 have to -- the reason why I do this is we have to
6 send that to DEP just to make sure, not by a small
7 number, I want to make sure that they're not a
8 large delta monthly.

9 Q. And what has been when you did that
10 analysis?

11 A. That there hasn't been other than that
12 May storm.

13 Q. There hasn't been a difference?

14 A. There's been differences, but there
15 hasn't been a break in the system.

16 Q. My question though is on the
17 differences, regardless of their costs --

18 A. Right.

19 Q. -- what have you learned in terms of
20 the delta? Can you express what you've learned in
21 number of gallons or percentages?

22 A. That there haven't been -- I guess I
23 could answer this in a general way -- that there
24 haven't been breaks in the system that we -- the

1 reason why I look at these is to make sure that
2 there are not literally breaks in the system, I
3 mean, sewer breaks, wastewater breaks. Is there
4 an infiltration and inflow from another source
5 other than the individual homeowners? I have yet
6 to determine any other infiltration and inflows.

7 Q. All right. And what have you been able
8 to determine is the delta when you compare water
9 in versus water pumped by D.F. Clark?

10 A. It has been fairly, fairly consistent.

11 Q. Is there an order of magnitude of the
12 difference that is normal?

13 A. I don't think you could use the term
14 "normal." I think every system is different. So
15 I don't think I can answer what is normal.

16 I know that by comparing the records
17 you could determine if the Mother's Day storm had
18 occurred again, for example, during April of this
19 year, when there was a -- what I call the
20 \$2,000,000 -- the April 24th storm, did the system
21 receive any internal damage that would cause a
22 huge delta in the system, no.

23 So I don't think there's a norm to it,
24 but you can tell by reading the water -- reading

1 the water meters monthly if there is a break in
2 the system.

3 Q. Mr. Foley, are any of the various
4 components of the wastewater system as designed
5 not operating properly?

6 A. The only problem that I have seen is
7 there were two problems. One is that there was a
8 small, a very small, motor that allowed for odor
9 control in the ball field area and the system
10 works, you know, in a way that when effluent is
11 pumped from the holding tanks into the -- into the
12 transport truck, there is always the concern or
13 there is an engineering concern, that is, that
14 effluent is pumped, that it will cause odors, and
15 any system like this gives off odors.

16 The system was designed that literally
17 the odors will go through an area where there are
18 flowers planted and they're kept moist and the
19 odors will dissipate. A small motor that pumps
20 water to that -- that odor control system burned
21 out. It was determined by Waterline that the
22 motor was built -- pardon me -- placed lower
23 than -- lower than the odor control system and it
24 would flood. So, when the engine would come on,

1 it burned out.

2 That was the first -- that's the first,
3 I believe, system that is not the -- the motor is
4 under warranty, so it's about to be replaced, and
5 the second was the problem that we've been having
6 in the past about sending signals from the remote
7 location at the top of Hilltop Road which is a
8 repeater down to the MIS building to pick up
9 various flows in regard to water. But that's all
10 I'm aware of.

11 Q. D.F. Clark testified that he used to be
12 able to monitor the gallons in the holding tanks
13 remotely --

14 A. Correct.

15 Q. -- and that he cannot do that anymore
16 and hasn't been able to do that anymore because
17 they're not working. Are you aware of that?

18 A. That's the system that I just talked to
19 you about, the repeater. What happens is signals
20 are transferred from individual meters either
21 directly to the MIS building or because Little
22 Neck is literally a hill to a series of
23 repeaters.

24 We have Ellis Engineering. When Mr.

1 Clark reported that, we found that the repeaters
2 on Hilltop Road and I believe one of the pumping
3 stations were malfunctioning. So Mr. Clark was
4 getting literally a blank signal as it was being
5 fed to the control unit -- the control unit at the
6 ball field that would then go to the MIS system.

7 What Ellis Engineering has found is
8 that they had to order a part in regards to the
9 ball field flow regulator that would give off
10 that signal to Mr. Clark. So that's the second
11 issue that I talked to you about. It's an issue
12 about -- again I'm not an MIS person, but it's in
13 regards to the repeater system that feeds the MIS
14 system. That's the best I can do.

15 Q. So you have four tanks up there,
16 correct?

17 A. Four.

18 Q. How many of the tanks are not able
19 to be read remotely by Mr. Clark as to their
20 capacity?

21 A. It's not the individual tanks that
22 are -- it's not the individual tanks that are
23 read. It's -- what we try to do is at the low --
24 pardon me, at the high season which is obviously

1 summer, all four tanks are in service. What we
2 try to do is take two of the tanks out in the
3 winter months and use the two that are located
4 near where Mr. Clark hauls.

5 What Mr. Clark used to be able to do
6 and will be able to do August 1st -- that's when
7 this part is coming in at his office -- go on line
8 and see the individual tank users. The repeater
9 is not allowing that. What he has to do is
10 manually read it from the indicator board. So
11 that's -- that's -- I think I've answered that.

12 Q. When you said individual tank users, do
13 you mean each of the four tanks?

14 A. They each have user signals that come
15 in.

16 Q. So each of the four tanks has a user
17 signal?

18 A. To the board.

19 Q. Understood.

20 A. So Mr. Clark right now I could bring in
21 and open up the door if I had the keys and said,
22 okay, Tank 1, Tank 2, Tank 3, Tank 4. I can
23 receive it in the MIS building remotely, but the
24 repeater for whatever reason with this the

1 lightning storm has continued to be an issue.

2 Q. So how many of the tanks is he able to
3 read remotely?

4 A. He can't read any tanks remotely.

5 Q. Should he be able to once what you've
6 just described is fixed?

7 A. I'm hoping by next week he'll be able
8 to read -- and it was more of a matter -- let me
9 just finish. I'm hoping by the first of August,
10 which is the first -- or the first couple of weeks
11 of August, he'll be able to read them remotely,
12 but it was more of a convenience added to the
13 system so he could know the number of trucks that
14 he should send that day.

15 Q. When Mr. Clark bills LNWS, he bills you
16 for gallons that he pumps out and disposes of,
17 correct?

18 A. That's my understanding, yes.

19 Q. Is it also your understanding that his
20 men or women are recording gallons pumped, giving
21 that to you essentially and billing you based upon
22 their own records of gallons pumped?

23 A. My understanding or my -- it's my
24 understanding and visually I've seen that the

1 truck operators or people that are there are
2 recording manually and then giving it to Mr. Clark
3 and then we'll receive or Mr. Foote will receive
4 the number of gallons pumped and what the cost
5 is. That's my understanding.

6 Q. And the numbers that are recorded by
7 D.F. Clark's people, where are they read from? Do
8 you understand my question?

9 A. The indicator panel of the telemetry
10 unit at the ball field. So literally Mr. Clark's
11 truck would pull up, open one of the control
12 panels -- and there are three of them -- and then
13 he would literally -- depending on the truck --
14 this is my understanding from Mr. Clark.
15 Depending on the truck, he would literally set the
16 amount he wants pumped, for example, 2900 gallons
17 per truck as a safety measure, and then that, in
18 turn, would indicate 2900 was pumped into that
19 truck.

20 Q. And what would indicate that 2900 came
21 out of the tank?

22 A. The indicator panel.

23 Q. On?

24 A. On our side of the -- Mr. --

1 Q. Go ahead.

2 A. Mr. Clark also has an indicator on the
3 truck with a safety device, I believe, set for,
4 we'll say, 2900 gallons, but if the truck driver
5 wasn't paying attention, then an alarm would sound
6 and say, oh, we've put 3500. It's flowing into
7 the street. So I think it checks itself.

8 Q. Has there ever been any concerns,
9 Mr. Foley, that the indicator in terms of gallons
10 pumped of the tanks into the truck is not working
11 properly?

12 A. I've never had with the exception of
13 this issue that you were talking about, remote
14 readings, maybe with the exception of a light bulb
15 because of the light bulb burning out or some
16 minor maintenance problem from Waterline, I've
17 never heard of any indication where the system is
18 in failure, or there was an incident where a
19 lightning storm literally -- Mr. Clark went to the
20 area and couldn't somehow read the panel and Ellis
21 Engineering found that it had tripped out a fuse,
22 but nothing major, not that I've ever heard of or
23 been informed of.

24 Q. Are you familiar with the process of

1 dewatering?

2 A. In another capacity as selectman, yes,
3 I am.

4 Q. What does that mean?

5 A. At the town water treatment plant?

6 Q. No. Dewatering of the wastewater
7 system on Little Neck during wet periods whereby,
8 as I understand it, there is groundwater that is
9 removed along the sides of the underground tanks?

10 A. But that term is not dewatering.

11 Q. What is the correct term?

12 A. I think what you're referring to is the
13 following: That when the tanks -- when the tanks
14 were installed at the ball field at Little Neck,
15 they're buried in -- the tanks are literally
16 placed on a cement pad. They're held to that
17 cement pad by steel strapping and the tanks are
18 literally encased in stone, not gravel.

19 The idea is because the Little Neck
20 ball field is a bowl groundwater flows to the
21 lowest level, and from an engineering standpoint,
22 that if it was not encased in stone, those tanks
23 would fill or the gravel in the tanks would pop.

24 The stone allows any groundwater to

1 literally not move the tanks, but it flows up, and
2 then allows if there was a wet season, after the
3 wet season finished, the groundwater to go back
4 into the aquifer, let's say.

5 There are wet wells that are located at
6 the front of the tanks where water has been pumped
7 down manually -- and this is how the system is
8 designed. It's not a, you know, it's not unique
9 to this system -- where a manual pump allows
10 groundwater to be pumped off the system for -- if
11 someone was going to go into the top hatches of
12 the system and inspect the tank which we've done
13 in the past. I think that's happened on at least
14 two occasions.

15 It's also happened where the -- the
16 vaults at the front of the holding tanks, there
17 are three vaults. One of them is not waterproof
18 and it was designed that way apparently and
19 Waterline will literally -- they'll manually pump
20 down groundwater to get into that tank to inspect
21 it.

22 So a vault is put in and a vault is put
23 in in three layers. It's not a waterproof vault.
24 So, if the groundwater exceeds the height of the

1 vault, you could get infiltration inflow, not
2 wastewater, but groundwater, into that tank. So
3 you could manually pump it out from a wet well
4 that's probably that big (indicating), and then
5 the water can flow -- literally pump it out and it
6 will flow back into the ground somewhere else at a
7 lower level.

8 Q. Is it your testimony that the system
9 was designed so that what you just described to me
10 is a normal function of the system?

11 A. My understanding -- again, I'm not an
12 engineer, but my understanding after being a part
13 of this is that the tanks are installed and
14 encased in stone to collect groundwater so the
15 tanks will not pop from the ground. If they're
16 filled with gravel, there's the possibility that
17 tanks like that could literally pop, meaning they
18 could break their anchors and go to the top.

19 Q. Mr. Foley, I appreciate what you just
20 said, but my question was a little bit different
21 than that.

22 My question was are you telling me
23 that what you just described as to the pumping
24 procedures are within the norm of how this system

1 was designed and intended to operate?

2 A. And my response is that the pumping
3 which is -- the pumping that you're talking about
4 which is not dewatering --

5 Q. I understand that.

6 A. -- was designed that a manual pump
7 could be installed in the wet well area to pump
8 out for purposes of inspection or maintenance of
9 those vaults. That's my understanding.

10 Q. Okay. What's dewatering? And I
11 obviously misused the word. What is dewatering?

12 A. Dewatering is a system at a wastewater
13 treatment plant where water or gray water is
14 removed from solids. So the gray water could be
15 treated with ultraviolet light and literally put
16 back into the groundwater. Solids would be
17 removed and then added to, for example, fertilizer
18 or whatever.

19 Q. Is there any of that going on at Little
20 Neck, true dewatering?

21 A. Oh, no, no.

22 Q. Can you tell me briefly the status of
23 the pump-out station, the location over which
24 there was some litigation? Has that been

1 resolved?

2 A. The litigation has been resolved.

3 There was no appeal filed.

4 Q. Was there actual litigation filed or
5 was it some sort of an appeal process --

6 A. Appeal process, I'm sorry --

7 Q. -- at the town level?

8 A. -- by a Little Neck resident, Gerald
9 Donovan, versus the town Conservation Commission.
10 That has been resolved.

11 Q. In what way?

12 A. That Mr. Donovan did not file a second
13 appeal and that -- that now it is solely based on
14 a decision of the Feoffees about moving the
15 location of the pumping station from the community
16 center on Bay Road to the corner of what we call
17 the Kings Way site.

18 Q. Is that closer to the site, the Kings
19 Way site?

20 A. Yes.

21 Q. What is the Feoffees' present intention
22 concerning moving it?

23 A. It's in discussions. We are having and
24 we probably would have had those before this April

1 24th storm which moving that site has taken second
2 place to repairing the damage from the storm.

3 We're asking Waterline to freshen their
4 cost estimates of moving the site and that's where
5 we are. We haven't really -- my thought would be
6 that until we resolve with the federal government
7 and the state government about funding for storm
8 damage, that that will come after that, meaning
9 we'll discuss the Kings Way site after the
10 resolution of the storm damage repair.

11 Q. And if the Feoffees had their druthers,
12 would they go forward with moving it down to the
13 location -- to the gate?

14 A. I don't know what the individual
15 members are -- I think that was solely based on
16 two factors, one, safety, and second, the shortest
17 distance to travel from the gate by those large
18 trucks to a point.

19 It was the request of the Little Neck
20 homeowners through their own independent study
21 that concurred that either the first or second
22 house on Bay Road should be the location of the
23 pump-out facility because of the location of the
24 pump-out facility at the ball field in regards to

1 children.

2 Obviously, residents of Plum Sound,
3 Kings Way and Baycrest were not in agreement with
4 that, moving that site, to the corner of Kings
5 Way, so I know there is some dissension amongst,
6 you know, members or residents of Little Neck.

7 Q. Are the two factors that you've
8 enunciated still viable factors?

9 A. I have not seen any difficulties at
10 all, safety, traffic, pumping. I have not seen
11 any difficulty at the present site which is
12 nonjurisdictional from the Conservation
13 Commission.

14 It's still an emergency site and there
15 are some -- obviously some residents that still
16 have issues with safety at the ball field, but I
17 have not seen any -- any problems presently.

18 Q. Does the system have an alarm -- does
19 the wastewater system have an alarm system?

20 A. There are different alarms.

21 Q. How many different alarms?

22 A. There is an intrusion alarm. There is
23 a pumping system failure alarm, meaning that the
24 system isn't pumping, and there is a light

1 indicating system that, for example, with a
2 lightning strike, if a breaker went out, it would
3 indicate that there was an issue. I believe
4 that's it.

5 Q. Are they working?

6 A. Yes.

7 Q. Have they always been working?

8 A. As far as I know, they've always
9 worked.

10 Q. So none of the three have ever gone
11 down to your knowledge?

12 A. To my knowledge, no.

13 Q. You indicated that LNWS may be a party
14 to the Waterline contract, correct?

15 A. Oh, yes.

16 Q. Would you agree that that has not been
17 produced among the documents produced in response
18 to this subpoena?

19 A. Yes.

20 MS. O'NEAL: I would make a request
21 for that.

22 MR. SHEEHAN: That request is under
23 advisement, sure.

24 MS. O'NEAL: Thank you.

1 Q. Do you happen to know the particulars
2 of the Waterline contract, how much you're paying
3 Waterline?

4 A. I do not know the particulars of the
5 maintenance contract, but they're readily
6 available in the contract.

7 Q. Do you know, Mr. Foley, the methodology
8 for paying them? Is it per something? Is it per
9 hour, per job, per what?

10 A. It's per -- there are two provisions to
11 the contract. There is a monthly inspection where
12 Waterline would come out and inspect the pumping
13 facilities and the generator facilities.

14 Then there is an emergency clause if
15 there is something above and beyond the regular
16 maintenance, monthly maintenance, that they would
17 charge. I'll pick a number, if it's a hundred
18 dollars an hour or something like that.

19 Q. Do you know how much the monthly
20 maintenance, the routine maintenance, cost is?

21 A. I don't. I know I'm drawing a blank on
22 this. I've seen it. I just don't know it off the
23 top of my head. I'm sorry.

24 Q. You can't even give me your best

1 estimate?

2 A. I can't. I don't have it. I'm sorry.

3 Q. Where does LNWS maintain banking
4 relationships, with what institutions?

5 A. I believe prior to the merger it was
6 strictly Ipswich Cooperative Bank and I believe
7 they have merged within the past month with the
8 Newburyport Institution for Savings which is now
9 Institution for Savings. That's my knowledge of
10 that.

11 Q. So is that the only financial
12 institution, whether it's still Ipswich or the new
13 institution's name, where LNWS maintains a banking
14 relationship?

15 A. As far as I know. At one time there
16 was, I believe, an account the Feoffees maintained
17 at the First National Bank of Ipswich, but that's
18 all I'm aware of. Again I do not handle the
19 financial part of it, but to my best -- pardon
20 me. To my knowledge it is Ipswich Cooperative
21 Bank.

22 Q. Did LNWS ever establish a bank account
23 in Hershey, Pennsylvania?

24 A. A bank account, the only thing I know

1 in Hershey, Pennsylvania is American Water.
2 I'm not familiar with that unless there is an
3 account that allows the money to go in and be
4 wire-transferred to the -- but I don't want to
5 comment on that because I'm not sure.

6 Q. Would you agree that there were no
7 banking records, financial records, produced in
8 response to the subpoena?

9 A. I have not seen any.

10 MS. O'NEAL: Then I would request
11 that those be produced.

12 MR. SHEEHAN: That request is under
13 advisement.

14 MS. O'NEAL: Thank you.

15 Q. Would you, Mr. Foley, take a look,
16 please, sir, at Exhibit 5 which is right there?

17 A. Certainly.

18 Q. And I'd ask you to take a look at the
19 last sheet which is entitled Twelve-Month Cash
20 Flow?

21 A. Yes.

22 Q. What is that?

23 A. I can't comment on this because I
24 believe this was a document that I have never --

1 I've never seen or I can't recall seeing until
2 today that was prepared by Pio Lombardo as a -- as
3 a model of what the system would look like, moving
4 from April forward, but that's the best of my
5 recollection.

6 Q. Okay. I actually see at the top that
7 it says, Operations Cash Flow Analysis, April,
8 2006 through March, 2007, Prepared April 13th,
9 2006?

10 A. Mm-hmm.

11 Q. So that would be consistent with your
12 testimony that you understood it to be a model?
13 Would you agree with that?

14 A. Correct.

15 Q. So you don't recognize this as an
16 actual operations cash flow report of LNWS; is
17 that right?

18 A. I cannot even testify on who prepared
19 this. I'm assuming that it was Lombardo
20 Associates.

21 Q. Okay. Mr. Foley, has LNWS been sued by
22 Pio Lombardo?

23 A. Mr. Lombardo is in litigation with the
24 Feoffees. I can't testify if it's with LNWS or

1 the Feoffees, but he is -- I'm not trying to be
2 evasive to you, but he is in litigation with the
3 Feoffees. I don't know which entity it is.

4 Q. Can you tell me in your own words
5 and briefly what's the nature of the Lombardo
6 litigation? What are they alleging that the
7 Defendants failed to do or did improperly?

8 A. Very briefly, I believe it is some
9 issues of payment in the last -- pardon me, in the
10 first quarter of '06, payments to Mr. Lombardo or
11 invoices received from Mr. Lombardo in regards to
12 that.

13 Q. Is the litigation pending?

14 A. Yes.

15 Q. So it's outstanding?

16 A. Correct.

17 Q. To your knowledge have the Defendants
18 asserted any sort of a counterclaim against Mr.
19 Lombardo's outfit?

20 A. Not that I'm aware of.

21 Q. To your knowledge do the Feoffees
22 intend to do so?

23 A. I would think that's a question I
24 wouldn't answer.

1 Q. I'm sorry. I didn't hear that.

2 A. I think that's a question that would be
3 attorney-client privilege.

4 MR. SHEEHAN: Okay.

5 Q. Mr. Foley, if you know, what is an
6 S-k-a-d-a, Skada, System?

7 A. Skada System.

8 Q. What is that?

9 A. A Skada System is a system that is used
10 by -- my knowledge of it is the Town of Ipswich
11 uses the Skada System in regards to the water
12 treatment plant. I don't know if there's one at
13 the sewer treatment plant or not.

14 The Skada System would indicate during
15 a time period that the plant would not be staffed
16 if various chemicals are going into the water
17 system properly, if there is a break in the
18 system where massive amounts of water at a water
19 treatment plant are flowing out. It's really an
20 indicator system.

21 Q. Is there one at Little Neck?

22 A. Skada System is a brand name, I
23 believe. So we have alarms, but a Skada System
24 literally is a system where you can build on --

1 you could include the electric light plant, for
2 example, or the water treatment -- pardon me, the
3 wastewater treatment plant if you were adding
4 chlorine to the system during unmanned hours.

5 The system at Little Neck has emergency
6 devices that, for example, if the pumping system
7 at River Road failed, it would send a direct
8 signal to Waterline Industries for emergency
9 repairs. So we have a warning device, but I've
10 always believed that Skada was a system that is a
11 name other than just warning devices.

12 So I guess I'm -- I guess I'm speaking
13 from an experience of what the Town of Ipswich
14 has installed at their water treatment plant and
15 actually a section of the generating plant as
16 well.

17 Q. Was it originally contemplated by
18 Lombardo, Mr. Foley, that the \$40 a month
19 maintenance fee would cover the costs, among other
20 things, of billing and collection?

21 A. Billing and collection both?

22 Q. Yes.

23 A. I've never heard that.

24 Q. Just for your information, take a look,

1 please, at Exhibit 4, Sheet 26, and that appears
2 to be a Pio Lombardo newsletter.

3 A. Newsletter.

4 Q. Sheet 25 indicates it's dated May
5 8th, '06, and then Sheet 26 indicates it's dated
6 May 8th, '05, but I actually do believe they
7 should have both said '06.

8 I draw your attention to the section on
9 Sheet 26 under Wastewater Bills. Would you read
10 that to yourself, please?

11 A. I'm sorry. Where are you indicating me
12 to read?

13 Q. Under Wastewater Bills, left-hand
14 column, and it's Sheet 26.

15 A. Wastewater bills, I'm sorry. I was
16 looking at the wrong thing. Okay. I've read
17 that.

18 Q. Okay. Having read that, does that
19 refresh your recollection as to whether or not at
20 some point in time the \$40 per month fixed fee was
21 contemplated to cover the cost among other things
22 of billings and collection?

23 A. I have to say that this is -- this is
24 the first I've read of that method. I've not been

1 aware of that or Mr. Lombardo's feelings up until
2 seeing this. So I don't know whether it was
3 something that was printed in Mr. Lombardo's
4 newsletter, sent out, but up until reading this,
5 which obviously it indicates -- I was not aware of
6 it.

7 Q. And I think your testimony has been
8 that the \$40 fee doesn't cover billings?

9 A. Correct.

10 Q. Mr. Foley, you're aware, are you not,
11 sir, that the -- many of the people who live on
12 Little Neck think the nine cents per gallon that's
13 being charged to them for disposing of their
14 wastewater is excessive? You're aware of that
15 sentiment, aren't you?

16 A. I'm aware that some people have
17 expressed that to me.

18 Q. Are you aware that one of residents on
19 Little Neck, Dick Doherty, at one point in time
20 got proposals from other pumpers and haulers, for
21 lack of a better word? Are you aware that he did
22 that?

23 A. It was indicated to me in a public
24 meeting by Mr. Doherty that he had spoken to

1 wastewater haulers that, quote, were upset that
2 they were not asked to bid and that he could
3 again, quote, have a cheaper rate at six or seven
4 cents. This was in a public meeting.

5 Q. And other than his saying that at a
6 public meeting, had you ever learned in any other
7 way and from any other source that, in fact, Mr.
8 Doherty had secured proposals from other pumpers
9 and haulers whose prices were less than what the
10 folks up there are now paying, nine cents per
11 gallon?

12 MR. SHEEHAN: Objection to the form.
13 You may answer.

14 A. I'm only aware and without
15 justification that Mr. Doherty again spoke in
16 public session and advised a very emotional crowd
17 of people, very emotional group of people, that
18 he had secured quotes that were cheaper than Mr.
19 Clark that were unsubstantiated at the time of his
20 statement.

21 Q. Unsubstantiated by Mr. Doherty?

22 A. Yes.

23 Q. Let me ask you this: Did you ever
24 follow up with Mr. Doherty in terms of were these

1 proposals real, were these quotes real and were
2 they less expensive than what the folks were
3 paying through D.F. Clark?

4 A. I believe I had an e-mail with Mr.
5 Doherty in regards to providing the contractors'
6 names that he spoke with and then I believe it was
7 either copied or mailed to either Mr. Greenough or
8 myself, the people that he spoke with.

9 Q. What then happened with that
10 information that Mr. Greenough may have received?

11 A. I believe that's part of attorney-
12 client privilege.

13 MR. SHEEHAN: Is it something
14 Attorney Greenough said to you?

15 THE WITNESS: Correct.

16 MR. SHEEHAN: Don't answer that.

17 Q. Mr. Foley, do you have any objection
18 to trying to get -- not you, personally, but
19 Feoffees, LNWS, trying to get the best price that
20 can be had for the disposal fees that folks up
21 there are going to pay?

22 A. I think that has been the Feoffees'
23 basis since this project started.

24 Q. Okay. I'm going to ask you if you've

1 seen this document before. Before I do that, when
2 was this public meeting at which Mr. Doherty spoke
3 to which you've testified?

4 A. It was -- I believe it was the last
5 Feoffees' meeting that occurred in June.

6 Q. June of '07?

7 A. Yeah, June of '07, or it could have
8 been the end of May, but May or June of '07.

9 Q. I'm going to show you this document.
10 Well, let me have you show it to Mr. Sheehan
11 first, please.

12 A. Mm-hmm.

13 Q. Would you take a look at that, please,
14 and let me know when you're done?

15 A. Okay.

16 Q. Would you agree that what's in front of
17 you purports to be an e-mail from me to Attorney
18 Sheehan, dated February 15, 2007?

19 A. Yes.

20 Q. Have you ever seen this before?

21 A. No. I'm not familiar with this exact
22 e-mail.

23 Q. Okay. Were you ever informed of the
24 identities of Wind River Environmental, J&S

1 Development Corp., d/b/a Stewart's Septic Service,
2 and Preventative Septic and Drain, LLC, as being
3 companies from whom Mr. Doherty had received any
4 proposals?

5 MR. SHEEHAN: Other than any
6 conversations that you and I may have had.

7 A. I will tell you that I don't know
8 whether this was through e-mail or mail. I am
9 not familiar with J&S Development and I am not
10 familiar with Preventative Septic and Drain. I
11 believe -- and this is only from memory -- that
12 Mr. Doherty provided the names of three companies
13 that he's spoken with, Wind River Environmental,
14 George Kicker and Sons of Hamilton and a company
15 from Middleton by the name of Courier. I've never
16 seen J&S Development and Preventative Septic, but
17 the other three ring a bell to me.

18 MS. O'NEAL: Could we mark this as
19 the next exhibit, please.

20 (Two e-mails were marked
21 Exhibit No. 8 for identification.)

22 (Recessed at 2:06 p.m.)

23 (Resumed at 2:11 p.m.)

24 Q. Mr. Foley, are you personally --

1 and I'm now asking you personally -- are you
2 personally opposed to trying to work with the
3 tenants in terms of getting the best deal that can
4 possibly be had for these usage fees?

5 A. Again I will restate the Feoffees'
6 position and my position that we have always tried
7 to maintain and receive the best services for the
8 best cost for both the tenants and the Feoffees.

9 Q. Would you be willing to follow up on
10 these proposals or to authorize your counsel to do
11 so?

12 A. I think I have been doing that as
13 well. I guess my comment is yes.

14 Q. Thank you.

15 MS. O'NEAL: I think that's it. Let
16 me just check my notes.

17 (Pause.)

18 Q. Notwithstanding the lawsuit between
19 Pio Lombardo and the Feoffees, has Pio Lombardo
20 continued to provide all the services that the
21 Feoffees contracted for with him?

22 A. Are you asking is he continuing, no.

23 Q. He doesn't provide any services for the
24 Feoffees currently?

1 A. No.

2 Q. When was the last time he provided
3 services for the Feoffees?

4 A. In the -- I believe in the fall of -- I
5 don't know the exact month, in the fall of '06.

6 Q. I don't know if this is the correct
7 wording. Has the DEP accepted and signed off
8 entirely on the system?

9 A. Yes, yes.

10 Q. When did they do that?

11 A. I can't tell you the exact date. I
12 know in the spring or summer of '06.

13 Q. '06?

14 A. '06.

15 Q. Has the DEP been involved in any issues
16 concerning the proper operation of the system
17 since their final sign-off?

18 A. The DEP -- well, obviously we
19 provide -- they provide a yearly inspection of the
20 system which we just passed with flying collars
21 and then, in turn, we provide monthly pumping
22 records.

23 The only issue that I can recall was a
24 complaint to the DEP by a resident -- I think both

1 town officials and to the DEP was a resident that
2 is adjacent to the ball field, his name is Tom
3 Allen, who was insistent that there was an odor
4 coming from the tanks and it was leaking -- it was
5 sewerage -- in the spring, and after inspections
6 by the Board of Health, by Waterline Industries,
7 and, believe it or not, by our landscape
8 architect, it was determined that the odor that
9 was coming from the Little Neck ball field was the
10 same as the ball field on Green Street, Ipswich,
11 and the high school, that it was decomposition
12 caused from ice melting and carbon dioxide being
13 given off from fertilizer. I'm not an agronomist,
14 but that's the only interaction I've had with the
15 DEP.

16 Q. You're not a what?

17 A. Agronomist.

18 Q. New word for me. Does LNWS maintain a
19 separate bank account into which the \$40 per month
20 maintenance fee when paid by the tenants as well
21 as the disposal fees as billed by American Water
22 are deposited?

23 A. It is my understanding -- and again
24 you'd have to refer to Mr. Foote -- that LNWS

1 maintains a separate -- I don't know, a banking,
2 checking or both account with, I believe, the
3 Ipswich Cooperative Bank for LNWS. I don't think
4 there are two accounts that I know of, but that's
5 not -- you'd have to check with Mr. Foote on that.

6 Q. And, if you know, are the \$40 a month
7 payments made by the tenants as well as the
8 payments of their usage fees deposited into that
9 account?

10 A. I do not know.

11 Q. All right.

12 MS. O'NEAL: I will suspend, and the
13 reason I say that, Bill, is because I've requested
14 additional documents that I think were not
15 provided in response to the subpoena. So that's
16 why I will suspend.

17 MR. SHEEHAN: Okay. I'll just
18 reserve my rights on that.

19 The one thing I think we should do is
20 just mark, if you don't mind, Clark Exhibit No. 3
21 since we referred to it. Do you mind marking that
22 again here? That will be Exhibit No. 9. And I
23 have no questions of Mr. Foley.

24 MS. O'NEAL: Not at all.

(Contract Documents, dated
3/7/06, consisting of 48 pages, were marked
Exhibit No. 9 for identification.)

(Whereupon the deposition was
suspended at 2:18 p.m.)

C E R T I F I C A T E

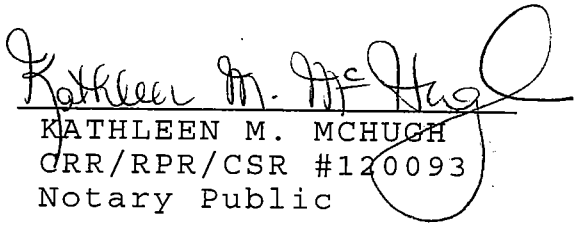
COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

I, Kathleen M. McHugh, a Notary Public
in and for the Commonwealth of Massachusetts,
do hereby certify:

That **JAMES W. FOLEY**, the witness whose
testimony is hereinbefore set forth, was duly
sworn by me and that such testimony is a true and
accurate record of my stenotype notes taken in the
foregoing matter, to the best of my knowledge,
skill and ability.

IN WITNESS WHEREOF, I have hereunto
set my hand and Notarial Seal this 1st day of
August, 2007.


KATHLEEN M. MCHUGH
CRR/RPR/CSR #120093
Notary Public

My Commission Expires: August 8, 2008

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