ORAL ARGUMENT NOT YET SCHEDULED

No. 22-7063

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

AMERICAN SOCIETY FOR TESTING AND MATERIALS, et al., Appellants

v.

PUBLIC.RESOURCE.ORG, INC., Appellee

Appeal from the United States District Court for the District of Columbia Hon. Tanya S. Chutkan, No. 1:13-cv-1215-TSC

PUBLIC APPENDIX VOLUME 3 (JA1298-JA1677) MATERIAL UNDER SEAL IN SEPARATE SUPPLEMENT

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| ASTM D3588 | 1998 | American Society for Testing and Materials | Standard Practice for Calculating Heat Value, Compressibility Factor, and Relative Density (Specific Gravity) of Gaseous Fuels | 40 CFR 75, Appendix F |
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| ASTM D4057 | 1995 | American Society for Testing and Materials | Standard Practice for Manual Sampling of Petroleum and Petroleum Products | 40 CFR 80.8(a) |
| ASTM D4084 | 1994 | American Society for Testing and Materials | Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method) | 40 CFR 60.334(h)(1) |
| ASTM D4177 | 1995 | American Society for Testing and Materials | Standard Practice for Automatic Sampling of Petroleum and Petroleum Products | 40 CFR 80.330(b)(2) |
| ASTM D4239 | 1997 | American Society for Testing and Materials | Standard Test Methods for Sulfur in the Analysis Sample of Coal and Coke Using High Temperature Tube Furnace Combustion Methods | 40 CFR 60, Appendix A- 7 |
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| ASTM D4329 | 1999 | American Society for Testing and Materials | Standard Practice for Fluorescent UV Exposure of Plastics | 49 CFR 571.106 |
| ASTM D4420 | 1994 | American Society for Testing and Materials | Standard Test Method for Determination of Aromatics in Finished Gasoline by Gas Chromatography | 40 CFR 61.67(h)(1) |
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| ASTM D4986 | 1998 | American Society for Testing and Materials | Standard Test Method for Horizontal Burning Characteristics of Cellular Polymeric Materials | 46 CFR 32.57-10(d)(7– a) |
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| ASTM D5673 | 1996 | American Society for Testing and Materials | Standard Test Method for Elements in Water by Inductively Coupled Plasma | 40 CFR 444.12(b)(1) |
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| ASTM D6216 | 1998 | American Society for Testing and Materials | Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications | 40 CFR 60, Appendix B |
| ASTM D6228 | 1998 | American Society for Testing and Materials | Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection | 40 CFR 60.334(h)(1) |
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| ASTM E11 | 1970 | American Society for Testing and Materials | Standard Specification for Wire Cloth and Sieves for Testing Purposes | 33 CFR 159.4 |
| ASTM E11 | 1995 | American Society for Testing and Materials | Standard Specification for Wire Cloth and Sieves for Testing Purposes | 33 CFR 159.125 |
| ASTM E23 | 1982 | American Society for Testing and Materials | Standard Test Methods for Notched Bar Impact Testing of Metallic Materials | 46 CFR 56.50-105(a)(1) (ii) |
| ASTM E23 | 1993 | American Society for Testing and Materials | Standard Test Method for Notched Bar Impact Testing of Metallic Materials | 46 CFR 56.50-105(a)(1) (ii) |
| ASTM E29 | 1967 | American Society for Testing and Materials | Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications | 40 CFR 86.609-98 |
| ASTM E29 | 1990 | American Society for Testing and Materials | Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications | 40 CFR 86.000-28(a)(4) (iii) |
| ASTM E29 (pdf) ASTM E29 (html) | 2002 | American Society for Testing and Materials | Standard Specification for Diesel Fuel Oils | 40 CFR 1065.701 Table 1 |
| ASTM E72 | 1980 | American Society for Testing and Materials | Standard Test Methods of Conducting Strength Tests of Panels for Building Construction | 30 CFR 75.333(e)(1)(i) |
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| ASTM E96 | 1995 | American Society for Testing and Materials | Standard Test Methods for Water Vapor Transmission of Materials | 24 CFR 3280.504(a) |
| ASTM E119 (pdf) ASTM E119 (html) | 2000 | American Society for Testing and Materials | Standard Test Methods for Fire Tests of Building Construction and Materials | 49 CFR 238 Appendix B(a)(1)(v) |
| ASTM E145 | 1994 | American Society for Testing and Materials | Standard Specification for Gravity- Convection and Forced- Ventilation Ovens | 40 CFR 63.14 |
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| ASTM E606 | 1980 | American Society for Testing and Materials | Standard Recommended Practice for Constant-Amplitude Low-Cycle Fatigue Testing | 24 CFR 200.946 |
| ASTM E681 | 1985 | American Society for Testing and Materials | Standard Test Method for Concentration Limits of Flammability of Chemicals | 49 CFR 173.115(a)(2) |
| ASTM E695 | 1979 | American Society for Testing and Materials | Standard Method of Measuring Relative Resistance of Wall, Floor and Roof Construction to Impact Loading | 24 CFR 200.946(a)(1) (viii) |
| ASTM E711 | 1987 | American Society for Testing and Materials | Standard Test Method for Gross Calorific Value of Refuse-Derived Fuel by the Bomb Calorimeter | 40 CFR 63, Subpart DDDDD, Table 6 |
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| ASTM F1020 | 1986 | American Society for Testing and Materials | Standard Specification for Line-Blind Valves for Marine Applications | 46 CFR 56.60-1(b) |
| ASTM F1120 | 1987 | American Society for Testing and Materials | Standard Specification for Circular Metallic Bellows Type Expansion Joints for Piping Applications | 46 CFR 56.60-1(b) |
| ASTM F1121 | 1987 | American Society for Testing and Materials | Standard Specification for International Shore Connections for Marine Fire Applications | 33 CFR 126.15(a)(5) |
| ASTM F1122 | 1987 | American Society for Testing and Materials | Standard Specification for Quick Disconnect Couplings | 33 CFR 154.500(d)(3) |
| ASTM F1123 | 1987 | American Society for Testing and Materials | Standard Specification for Non- Metallic Expansion Joints | 46 CFR 56.60-1(b) |
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| ASTM F1292 | 2004 | American Society for Testing and Materials | Standard Specification for Impact Attenuation of Surface Systems Under and Around Playground Equipment | 36 CFR 1191, App B, 105.2.3 |
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| ASTM F2413 (pdf) ASTM F2413 (html) | 2005 | American Society for Testing and Materials | Performance Requirements for Protective Footware | 29 CFR 1910 |
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| AWPA A2 | 1991 | American Wood Preservers Association | Standard Methods for Analysis of Waterborne Preservatives and Fire- Retardant Formulations | 7 CFR 1728.201(i)(1)(iii (A) |
| AWPA A3 | 1991 | American Wood Preservers Association | Standard Methods for Determining Penetration of Preservatives and Fire Retardants | 7 CFR 1728.201(k)(3) |
| AWPA A5 | 1991 | American Wood Preservers Association | Standard Methods for Analysis of Oil-Borne Preservatives | 7 CFR 1728.202(g)(1)(v (B) |
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| AWPA A9 | 1990 | American Wood Preservers Association | Standard Method for Analysis of Treated Wood and Treating Solutions by X-ray Spectroscopy | 7 CFR 1728.202(g)(1)(\ (C) |
| AWPA A11 | 1983 | American Wood Preservers Association | Standard Method for Analysis of Treated Wood and Treating Solutions by Atomic Absorption Spectroscopy | 7 CFR 1728.201(i)(1)(iii (B) |
| AWPA M3 | 1981 | American Wood Preservers Association | Standard Quality Control Procedures for Wood Preserving Plants | 7 CFR 1728.202(f)(1) |
| AWPA P1 | 1991 | American Wood Preservers Association | Standard for Coal Tar Creosote for Land and Fresh Water and Marine (Coastal) Water Use | 7 CFR 1728.201(i)(1)(i) |
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| AWS D1.1 | 2000 | American Welding Society | Structural Welding CodeSteel | 30 CFR 250.901(a)(20) |
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| BSI EN-14439 (pdf) BSI EN-14439 (html) | 2006 | British Standards Institute | CranesSafetyTower Cranes | 29 CFR 1926 |
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| CABO | 1992 | Council of American Building Officials | One and Two Family Dwelling Code | 24 CFR 200.926b(c) |
| CABO | 1993 | Council of American Building Officials | One and Two Family Dwelling Code with Errata Package and 1993 Amendments | 24 CFR 200.926(d)(1)(ii) ((B)(2)(ii) |
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| CGA C-5 | 1991 | Compressed Gas Association | Cylinder Service Life-Seamless Steel High Pressure Cylinders | 49 CFR 173.302a(b)(3) (i)(A) |
| CGA C-8 | 1985 | Compressed Gas Association | Standard for Requalification of DOT- 3HT Cylinders | 49 CFR 180.205(f)(1) |
| CGA C-11 | 2001 | Compressed Gas Association | Recommended Practice for Inspection of Compressed Gas Cylinders at Time of Manufacture | 49 CFR 178.35(g) |
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| CGA C-13 | 2000 | Compressed Gas Association | Guidelines for Periodic Visual Inspection and Requalification of Acetylene Cylinders | 49 CFR 173.303(e) |
| CGA G-1 | 2009 | Compressed Gas Association | Acetylene | 29 CFR 1910.102(a) |
| CGA G-2.2 | 1985 | Compressed Gas Association | Guideline Method for Determining Minimum of 0.2% Water in Anhydrous Ammonia | 49 CFR 173.315(I)(5) |
| CGA G-4.1 | 1985 | Compressed Gas Association | Cleaning Equipment for Oxygen Service | 49 CFR 178.338-15 |
| CGA P-1 | 1965 | Compressed Gas Association | Safe Handling of Compressed Gases | 29 CFR 1910.101(b) |
| CGA P-20 | 2003 | Compressed Gas Association | Standard for the Classification of Toxic Gas Mixtures | 49 CFR 173.115 |

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| CGA S-1.2 | 1980 | Compressed Gas Association | Safety Release Device Standard Cargo and Portable Tanks for Compressed Gases | 49 CFR 178.277(e)(4) (iv) |
| CGA S-7 (pdf) CGA S-7 (html) | 2005 | Compressed Gas Association | Method for Selecting Pressure Relief Devices for Compressed Gas Mixtures in Cylinders | 49 CFR 173.301(c) |
| CGA TB-2 | 1980 | Compressed Gas Association | Guidelines for Inspection and Repair of MC-330 and MC-331 Cargo Tanks | 49 CFR 180.407(g)(3) |
| CGA TB-25 | 2008 | Compressed Gas Association | Design Considerations for Tube Trailers | 49 CFR 173.301 |
| CGSB 43.147 | 2005 | Canadian General Standards Board | Construction, Modification, Qualification, Maintenance, and Selection and Use of Means of Containment for the Handling, Offering for Transport, or Transportation of Dangerous Goods by Rail | 49 CFR 171.12 |
| CGSB 43.147 | 2005 | Office des Normes Generales du Canada | Construction, Modification, Qualification, Entretien, Selection Et Utilisation Des Contenants Pour La Manutention, La Demande De Transport Ou La Transport Des Marchandises Dangereuses Par Chemin De Fer | 49 CFR 171.12 |
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| CI 101-7 | 1993 | Chlorine Institute | Excess Flow Valve with Removable Seat | 49 CFR 178.276(c)(7)(i) |
| CI 104-9 | 2002 | Chlorine Institute | Standard Chlorine Angle Valve Assembly | 49 CFR 178.337-9(b)(8) |
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| CTIOA R8-103-62 | 1969 | Ceramic Tile Institute of America | Standard Specifications for the Installation of Tile Lined Shower Receptors | 24 CFR 200, Subpart S |
| CSVA | 2004 | Commercial Vehicle Safety Alliance | North American Standard Out-of- Service Criteria and Level VI Inspection Procedures and Out-of- Service Criteria for Commercial Highway Vehicles | 49 CFR 385.415(b)(1) |
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| FGMA | 1990 | Flat Glass Marketing Association | Glazing Manual | 24 CFR 200, Subpart S |
| GLI METHOD 2 | 2009 | Great Lakes Instruments | Turbidity | 40 CFR 141.74(a)(1) |
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| GPA 2261 | 2000 | Gas Processors Association | Analysis of Natural Gas and Similar Gaseous Mixtures by Gas Chromatography | 40 CFR 75, Appendix F |
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| IAPMO PS-9 | 1984 | International Association of Plumbing and Mechanical Officials | Material and Property Standard for Diversion Tees and Twin Waste Elbow | 24 CFR 3280.604(b)(2) |
| IAPMO PS-14 | 1989 | International Association of Plumbing and Mechanical Officials | Material and Property Standard for Flexible Metallic Water Connectors | 24 CFR 3280.604(b)(2) |
| IAPMO PS-23 | 1989 | International Association of Plumbing and Mechanical Officials | Material and Property Standard for Dishwasher Drain Airgaps | 24 CFR 3280.604(b)(2) |
| IAPMO PS-31 | 1977 | International Association of Plumbing and Mechanical Officials | Material and Property Standard for Backflow Prevention Devices | 24 CFR 3280.604(b)(2) |
| ICAO 9284 | 2011 | International Civil Aviation Organization | Technical Instructions for the Safe Transport of Dangerous Goods by Air | 49 CFR 171.7 |
| ICAO Annex 2 | 1990 | International Civil Aviation Organization | Convention on International Civil Aviation, Rules of the Air | 14 CFR 135.3(a)(2) |
| ICAO Annex 16 | 2008 | International Civil Aviation Organization | Environmental Protection, Volume II Aircraft Engine Emissions | 40 CFR 87.89 |
| ICBO | 1991 | International Conference of Building Officials | Uniform Building Code (1991) | 24 CFR 200.925c(a)(1) (iii) |
| ICBO | 1991 | International Conference of Building Officials | Uniform Mechanical Code (1991) | 24 CFR 200.925c(c)(3) |
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| WIPO ST.25 | 2001 | World Intellectual Property Organization | Handbook on Industrial Property Information and Documentation | 37 CFR 1.821(a)(1) |
| WQA S-100 | 1985 | Water Quality Association | Water Softeners | 24 CFR 200, Subpart S |
| WQA S-200 | 1988 | Water Quality Association | Water Filters | 24 CFR 200, Subpart S |
| WQA S-300 | 1984 | Water Quality Association | Point-of-Use, Low Pressure Reverse Osmosis Drinking Water Systems | 24 CFR 200, Subpart S |
| WQA S-400 | 1986 | Water Quality Association | Point-of-Use Distillation Drinking Water Systems | 24 CFR 200, Subpart S |
| WSTDA T-1 | 2005 | Web Sling and Tiedown Association | Recommended Standard Specification for Synthetic Web Tiedowns | 49 CFR 393.104(e)(3) |

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EXHIBIT 3

JA01329

PREAMBLE-NOT PART OF THE SPECIFICATION

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Standard Consumer Safety Specification for Toy Safety¹

This standard is issued under the fixed designation F963; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last reapproval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or reapproval.

¹ This consumer safety specification is under the jurisdiction of <u>ASTM</u> <u>Committee F15</u> on Consumer Products and is the direct responsibility of <u>Subcommittee F15.22</u> on Toy Safety.

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INTRODUCTION

The purpose of this consumer safety specification is to establish nationally recognized safety requirements for toys. Although this specification will not eliminate the need for the exercise of parental responsibility in selecting toys appropriate to the age of a child, or parental supervision in situations in which children of various ages may have access to the same toys, its application will minimize accidents in the normal, intended use and reasonably foreseeable abuse of the toys covered by this specification. This specification was developed originally as a Voluntary Product Standard under the auspices of the National Bureau of Standards, Department of Commerce, and published in 1976 (PS 72-76). The present revision is intended to update the safety requirements to include the following by reference: published federal mandatory requirements, relevant voluntary standards, certain new requirements for addressing potential hazards, and several technical revisions based on producer experience with the original standard.

1. Scope

1.1 This specification² relates to possible hazards that may not be recognized readily by the public and that may be encountered in the normal use for which a toy is intended or after reasonably foreseeable abuse. It does not purport to cover every conceivable hazard of a particular toy. This specification does not cover product performance or quality, except as related to safety. Except for the labeling requirements pointing out the functional hazards and age range for which the toy is intended, this specification has no requirements for those aspects of a toy that present an inherent and recognized hazard as part of the function of the toy. Such an example is a sharp point necessary for the function of a needle. The needle is an inherent hazard that is well understood by the purchaser of a toy sewing kit, and this hazard is communicated to the user as part of the normal educational process.

² Toy Industry Association, Inc. (TIA) sometimes provides its interpretations of this specification through its counsel as a service to its members and others. The TIA's interpretations are not reviewed or 1.2 On the other hand, while a riding toy has inherent hazards associated with its use (for example, falling off onto the sidewalk), the possible hazards associated with its construction (sharp edges, exposed mechanisms, etc.) will be minimized by the application of this specification.

1.3 This specification covers requirements and contains test methods for toys intended for use by children under 14 years of age. Different age limits for various requirements will be found in this specification. These limits reflect the nature of the hazards and expected mental or physical ability, or both, of a child to cope with the hazards.

1.4 Articles not covered by this specification are as follows:

- Bicycles
- Tricycles
- Non-Powered Scooters (see Consumer Safety Specification F2264)
- Recreational Powered Scooters and Pocket Bikes (see Consumer Safety Specification F2641)
- Sling shots and sharp-pointed darts
- Playground equipment
- Non-powder guns
- Kites
- Hobby and craft items in which the finished item is not primarily of play value
- Model kits in which the finished item is not primarily of play value
- Crayons, paints, chalks, and other similar art materials in which the material itself or the finished item is not primarily of play value, except that all art materials, whether or not a component of a toy, must comply with LHAMA, in accordance with <u>4.29.1-4.29.3</u>.
- Toy Chests
- Sporting goods, camping goods, athletic equipment, musical instruments, juvenile products, and furniture; however, toys that are their counterparts are covered. (It is recognized that there is often a

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fine line between, for example, a musical instrument or a sporting item and its toy counterpart. The intention of the producer or distributor, as well as normal use and reasonably foreseeable abuse, determines whether the item is a toy counterpart.)

- Powered models of aircraft, rockets, boats, and land vehicles; however, toys that are their counterparts are covered.
- Constant air inflatables

1.5 General guidelines for age labeling toys and toy packaging are contained in <u>Annex A1</u>.

1.6 Information regarding packaging and shipping is contained in Annex A2.

1.7 This consumer safety specification includes the following sections:

[See Table of Contents]

1.8 The values stated first are to be regarded as the standard. The values given in parentheses are for information only.

1.9 The following precautionary statement pertains only to the test methods portion, <u>Section 8</u>, of this specification: *This standard does not purport to address all of the safety concerns, if any, associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

2. Referenced Documents

- 2.1 ASTM Standards: ³
 - D374 Test Methods for Thickness of Solid Electrical Insulation
 - D642 Test Method for Determining Compressive Resistance of Shipping Containers, Components, and Unit Loads
 - D880 Test Method for Impact Testing for Shipping Containers and Systems
 - D999 Test Methods for Vibration Testing of Shipping Containers
 - <u>D1193</u> Specification for Reagent Water
 - D2240 Test Method for Rubber Property–Durometer Hardness

- D3421 Practice for Extraction and Determination of Plasticizer Mixtures from Vinyl Chloride Plastics4
- D4236 Practice for Labeling Art Materials for Chronic Health Hazards
- D5276 Test Method for Drop Test of Loaded Containers by Free Fall
- F404 Consumer Safety Specification for High Chairs
- <u>F406</u> Consumer Safety Specification for Non-Full-Size Baby Cribs/Play Yards
- F834 Consumer Safety Specification for Toy Chests
- F1313 Specification for Volatile *N*-Nitrosamine Levels in Rubber Nipples on Pacifiers
- F1148 Consumer Safety Performance Specification for Home Playground Equipment
- F2264 Consumer Safety Specification for Non-Powered Scooters
- F2641 Consumer Safety Specification for Recreational Powered Scooters and Pocket Bikes
- F2853 Test Method for Determination of Lead in Paint Layers and Similar Coatings or in Substrates and Homogenous Materials by Energy Dispersive X-Ray Fluorescence Spectrometry Using Multiple Monochromatic Excitation Beams
- F2923 Specification for Consumer Product Safety for Children's Jewelry

³ For referenced ASTM standards, visit the ASTM website, <u>www.astm.org</u>, or contact ASTM Customer Service at <u>service@astm.org</u>. For *Annual Book of ASTM Standards* volume information, refer to the standard's Document Summary page on the ASTM website.

Withdrawn. The last approved version of this historical standard is referenced on <u>www.astm.org</u>.

2.2 ANSI Standards:

- C18.1 American National Standard for Dry Cells and Batteries— Specifications
- <u>S1.4</u> Specification for Sound Level Meters

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Electronic copy available from American National Standards Institute website: <u>www.ansi.org</u>; hard copies from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112.

2.3 European Standards:

- EN 71-1 Safety of toys Part 1: Mechanical and physical properties
- EN 71-3 Safety of toys Part 3: Migration of certain elements

Available from European Committee for Standardization (CEN), Avenue Marnix 17, B-1000, Brussels, Belgium, <u>http://www.cen.eu</u>.

2.4 Federal Standards:

- <u>15 CFR 1150</u> Marking of Toys, Look-Alike and Imitation Firearms
- <u>16 CFR 1303</u> Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead Containing Paint
- <u>16 CFR 1500</u> Hazardous Substances Act Regulations, including the following sections:
 - 16 CFR 1500.3 (c) (6) (vi) Definition of "flammable solid"
 - <u>16 CFR 1500.14</u> Products requiring special labeling under section 3(b) of the act
 - <u>16 CFR 1500.18</u> Banned toys and other banned articles intended for use by children
 - <u>16 CFR 1500.19</u> Misbranded toys and other articles intended for use by children
 - <u>16 CFR 1500.44</u> Method for determining extremely flammable and flammable solids
 - <u>16 CFR 1500.47</u> Method for determining the sound pressure level produced by toy caps
 - <u>16 CFR 1500.48</u> Technical requirements for determining a sharp point in toys and other articles intended for use by children under 8 years of age
 - <u>16 CFR 1500.49</u> Technical requirements for determining a sharp metal or glass edge in toys and other articles intended for use

- <u>16 CFR 1500.50</u>-<u>1500.53</u> Test method for simulating use and abuse of toys and other articles intended for use by children
- <u>16 CFR 1500.83</u> Exemptions for small packages, minor hazards, and special circumstances
- <u>16 CFR 1500.85</u> Exemptions from classification as banned hazardous substances
- <u>16 CFR 1500.86</u> Exemptions from classification as a banned toy or other banned article for use by children
- <u>16 CFR 1500.87</u> Children's products containing lead: inaccessible component parts
- <u>16 CFR 1500.88</u> Exemptions from lead limits under section 101 of the <u>Consumer Product Safety Improvement Act</u> for certain electronic devices
- <u>16 CFR 1500.91</u> Determinations regarding lead content for certain materials or products under section 101 of the <u>Consumer Product Safety Improvement Act</u>
- <u>16 CFR 1501</u> Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts
- <u>16 CFR 1505</u> Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children
- <u>16 CFR 1510</u> Requirements for Rattles
- <u>16 CFR 1511</u> Requirements for Pacifiers
- <u>16 CFR 1610</u> Standard for Flammability of Clothing Textiles
- <u>21 CFR 110</u> Current Good Manufacturing Practice in Manufacturing, Processing, Packaging, or Holding Human Food
- 21 CFR 170-189 Food for Human Consumption
- 21 CFR 700-740 Requirements for Specific Cosmetic Products
- <u>21 CFR 73</u>, <u>74</u>, <u>81</u>, <u>82</u> Color Additives
- 49 CFR 173.100, 109 Definition of Class C Explosives

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- <u>CPSC-CH-E1001-08.1</u> Standard Operating Procedure for Determining Total Lead (Pb) in Metal Children's Products (including Children's Metal Jewelry)
- <u>CPSC-CH-E1002-08.1</u> Standard Operating Procedure for Determining Total Lead (Pb) in Non-Metal Children's Products
- <u>CPSC-CH-E1003-09</u> Standard Operating Procedure for Determining Lead (Pb) in Paint and Other Similar Surface Coatings
- <u>CPSC-CH-E1004-11</u> Standard Operating Procedure for Determining Cadmium (Cd) Extractability from Children's Metal Jewelry
- <u>SS-T-312B</u> Tile, Floor: Asphalt, Rubber, Vinyl, VinylAsbestos
- Voluntary Product Standard <u>PS 72-76</u> Toy Safety¹⁰

Available from U.S. Consumer Product Safety Commission website: www.cpsc.gov or U.S. Government Printing Office, Superintendent of Documents; P.O. Box 371954, Pittsburgh, PA 15250-7954; website: www.gpo.gov

Available from U.S. Consumer Product Safety Commission (CPSC), 4330 East West Hwy., Bethesda, MD 20814, <u>http://www.cpsc.gov</u>.

Available from U.S. Government Printing Office Superintendent of Documents, 732 N. Capitol St., NW, Mail Stop: SDE, Washington, DC 20401, <u>http://www.access.gpo.gov</u>.

¹⁰ Available from U.S. Government Printing Office Superintendent of Documents, 732 N. Capitol St., NW, Mail Stop: SDE, Washington, DC 20401, <u>http://www.access.gpo.gov</u>.

- 2.5 ISO and IEC Standards: 11
 - ISO 3696 Water for analytical laboratory use Specification and test methods
 - ISO 3746:1995 Acoustics—Determination of Sound Power Levels of Noise Sources Using Sound Pressure—Survey Method Using an Enveloping Measurement Surface Over a Reflecting Plane
 - ISO 7779 Acoustics-Measurement of Airborne Noise Emitted by Computer and Business Equipment
 - <u>ISO 8124-1</u> Safety of toys Part 1: Safety aspects related to mechanical and physical properties

- ISO 8124-3 Safety of toys Part 3: Migration of certain elements
- ISO 11202 Acoustics—Noise Emitted by Machinery and Equipment— Measurement of Emission Sound Pressure Levels at a Work Station and at Other Specified Positions—Survey Method in situ
- ISO 11204 Acoustics—Noise Emitted by Machinery and Equipment— Measurement of Emission Sound Pressure Levels at a Work Station and at Other Specified Positions—Method Requiring Environmental Corrections
- IEC 60086-2 Primary Batteries: Physical and Electrical Specifications
- <u>IEC 61672-1</u> Electroacoustics—Sound Level Meters—Part 1: Specifications
- <u>IEC 61672-2</u> Electroacoustics—Sound Level Meters—Part 2: Pattern Evaluation Tests

¹¹ Available from International Organization for Standardization (ISO), 1 rue de Varembé, Case postale 56, CH-1211, Geneva 20, Switzerland, <u>http://www.iso.ch</u>.

3. Terminology

3.1 Definitions of Terms Specific to This Standard:

3.1.1 *A*-weighted sound pressure level (L_{pA}) - the sound pressure level obtained by using standardized A-weighting.

Figure 1. Accessibility Probes This is an architectural diagram for the probe. It is in the shape of a cylinder with a handle on the right. There are two sets of dimensions. Probe A is for children 0-36 months. Probe B is for children 37-96 months. We start with probe A. The handle is (a) and has a spherical radius of 0.110 inches. The length of the handle is (e) and is 1.731 inches. The handle is marked in 3 equal lengths of .577 inches each marked (d). The Thickness of the handle is .220 inches and is (b). The diameter of the cylinder, the main part of the probe is (c) and is 1.020 inches. The bottom of the cylinder, where the handle connects, is called the collar. The overall length of the cylinder plus the handle) is an embedded screw-like device with the label 3/8-16 NC - 2B THD (TYP). The distance from this point to the far end of the cylinder is g and is 18 9/32 inches. For Probe B, the same labels are used but the values are (a) .170 (b) .340 (c) 1.510 (d) .760 (e) 2.280 and (g) 17 25/32. The table of measures has a parameter (f) which is 1

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 70 of 298 for Probe A and 1 1/2 for Probe B, but there is no marking for (f) on the diagram. ~ 24 g d 4 (TYP) d d e c b f EXTENSION 3/8 - 16 NC-2B THD (TYP) (a) SPHERICALRADIUS COLLAR a b c d e f g 2.280 1.731 1 11/2 18 9/32 17 25/32 .577 .760 1.020 1.510 .220 .340 .110 .170 ALL DIMENSIONS IN INCHES PROBE A PROBE B (CHILDREN 0-36 MONTHS INCL) (" 37-96 " ")

FIG. 1 Accessibility Probes

3.1.2 *accessible*— (part or component) describing any area of the toy that can be contacted by any portion forward of the collar of the accessibility probe as described in <u>16 CFR 1500.48</u> and <u>16 CFR 1500.49</u>. (See Fig. 1.)

NOTE 1 - D Dimensions are provided in Fig. 1 for two probes corresponding to two age ranges of children.

3.1.3 *alkaline battery*— a non-rechargeable dry cell battery with an alkaline manganese electrochemistry.

3.1.4 *aquatic toy*— an article, whether inflatable or not, intended to bear the mass of a child and used as an instrument of play in shallow water. This does not include bath toys, beach balls, and United States Coast Guard-approved life saving devices.

3.1.5 *art material*— any substance marketed or represented by the producer or repackager as suitable for use in any phase of the creation of any work of visual or graphic art of any medium. This definition includes items that become a component of the work of art such as paint, canvas, inks, crayons, chalk, solder, brazing rods, flux, paper, clay, stone, thread, cloth, and photographic film. It also includes items that are associated closely with the creation of the final work of art such as brushes, brush cleaners, solvents, ceramic kilns, silk screens, molds, mold making material, and photographic developing chemicals.

3.1.6 *ball*— any spherical, ovoid, or ellipsoidal object that is designed or intended to be thrown, hit, kicked, rolled, dropped, or bounced. The term "ball" includes any spherical, ovoid, or ellipsoidal object that is attached to a toy or article by means of string, elastic cord, or similar tether. The term "ball" also includes any multisided object formed by connecting planes into a generally spherical ovoid, or ellipsoidal shape that is designated or intended to be used as a ball. The term "ball" does not include dice, or balls permanently enclosed inside pinball machines, mazes, or similar outer containers. A ball is permanently enclosed if, when tested in accordance with 16 CFR 1500.53, it is not removed from the outer container.

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 71 of 298 3.1.7 *base material*— material upon which coatings may be formed or deposited.

3.1.8 *battery-operated toy*— toy having at least one function dependent on electricity and powered by batteries.

3.1.9 *burr*— a roughness that may be found at an edge or joint of a toy or component if the material is not severed or finished cleanly.

3.1.10 *button cell battery*— a battery having a diameter greater than its height.

3.1.11 *C*-weighted peak sound pressure level (L_{Cpeak})— the peak sound pressure level obtained when using standardized C-weighting.

3.1.12 *close-to-the-ear toy*— a toy that is intended to be used close to the ear, that is, the sound emitting part of such a toy is normally put against the ear of a child (example—toy telephones that emit sounds from the earpiece).

3.1.13 *coating*— all layers of material formed or deposited on the base material or toy and includes paints, varnishes, lacquers, or other substances of a similar nature, whether they contain metallic particles or not, which can be removed by scraping with a sharp blade as defined under <u>16 CFR 1303</u>, et seq.

3.1.14 *collapse*— sudden or unexpected folding of a structure.

3.1.15 *compression spring*— spring which essentially returns to its initial state after compression.

3.1.16 *constant air inflatables*— structure relying on a continuous supply of air pressure supplied from one or more electrical blowers to maintain its shape, typically made of flexible fabric and designed for children's use that may include but not be limited to the following activities: bounce, climb, slide, or interactive play.

3.1.17 *continuous sound*— any steady-state sound or group of variable sounds greater than one second in duration.

3.1.18 *cord*— a length of slender, flexible material including monofilaments, woven and twisted cord, rope, plastic textile tapes, ribbon, and those fibrous materials commonly called string.

3.1.19 *cosmetics*- any article intended or likely to be rubbed, sprinkled, or

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 72 of 298 sprayed on, introduced onto, or otherwise applied to the human body for cleansing, beautifying, promoting or enhancing attractiveness, or for altering appearance.

3.1.20 *crushing*— injury to part of the body resulting from compression between two rigid surfaces.

3.1.21 *curled edge*— an edge in which the portion of the sheet adjacent to the edge is bent into an arc and forms an angle of less than 90° with the base sheet, as shown in Fig. 2.

Figure 2. Curled Edge A line goes from the right to left. On the left, the line curls up and over to the right, forming a non-closed loop. A dotted line goes from the end of the loop down to the line, thus forming an angle, and it marked "Less than 90 degrees." LESS THAN 90°

FIG. 2 Curled Edge

3.1.22 *detection limit of a method*— three times the standard deviation of the blank value.

3.1.23 *discharge mechanism*— an inanimate system for releasing and propelling a projectile.

3.1.24 *driving mechanism*— assembly of linked parts or components (for example, gears, belts, winding mechanisms), at least one of which moves, powered by a source (for example, electrical or mechanical means) independent of the child.

3.1.25 *edge, hazardous*— an accessible edge that presents an unreasonable risk of injury during the normal use and reasonably foreseeable abuse of a toy. Metal and glass edges on toys intended for children under the age of eight years are defined as potentially hazardous if they fail the sharp edge test described in <u>16 CFR 1500.49</u>. Edges other than metal and glass are defined as potentially hazardous if they are sharp to the touch under casual handling conditions.

3.1.26 *elastic*— material that will recover its former size and shape essentially and instantaneously after being elongated at least 10 % at a testing speed of not less than 20 in. (510 mm)/min.

3.1.27 equivalent sound pressure level (L_{Aeq})— the level of a steady-state sound which, in a stated time period and at a stated location, has the same A-weighted sound energy as the time-varying sound.

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 73 of 298 3.1.28 *explosive action*— the sudden release of energy characterized by the rapid expansion or bursting of a material.

3.1.29 *extension spring*— spring which essentially returns to its initial state after tension.

3.1.30 *fastener*— mechanical device which attaches two or more elements together (for example, screws, rivets, and staples).

3.1.31 *feathering*— the beveling of an edge (or decrease in thickness moving toward the edge) caused during the shearing or cutting of material.

3.1.32 *flash*— excess material that escapes between the mating parts of a mold assembly.

3.1.33 *folding mechanism*— an assembly of hinged, pivoted, folding, or sliding members that can produce a crushing, scissoring, pinching, or shearing action during operation.

3.1.34 *fuzz*— bits of fibrous-type material that can be readily removed from toys with a pile surface.

3.1.35 *hand-held toy*— a toy that is intended to be used or operated while being held in the hand. Examples include toy tools, small electronic games, stuffed animals, dolls, musical toys, and cap-firing toys.

3.1.36 *hazard*— any characteristic of a toy that presents an unreasonable risk of injury or illness during normal use or as a result of reasonably foreseeable abuse.

3.1.37 *hazardous magnet*— a magnet which has a flux index >50 (refer to test method in <u>8.24.1</u>) and which is a small object (refer to <u>4.6</u> and <u>Fig. 3</u>).

Figure 3. Small Parts Cylinder Two perspectives of the hollow cylinder are shown. From the top, there is an inner diameter of 1.25 inches. From the side, there is an angled bottom. On the left side, the open part of cylinder goes down 1 inch. On the right side, it goes down 2.25 inches. 1.00 in25.4 mm 2.25 in57.1 mm 1.25 in31.7 mm A A

FIG. 3 Small Parts Cylinder

3.1.38 hazardous magnet component— any part of a toy that is a small object (refer to <u>4.6</u> and Fig. <u>3</u>) and which contains an attached or imbedded magnet which has a flux index >50 as determined in accordance with the test method in <u>8.24.1</u>.

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3.1.39 *helical spring*— spring in the form of a coil.

3.1.40 *hemmed edge*— an edge in which the portion of the sheet adjacent to the edge is folded back on the sheet itself through an angle of approximately 180° , so that the portion of the sheet adjacent to the edge is approximately parallel to the main sheet, as shown in Fig. 4.

Figure 4. Hemmed Edge A line goes from left to right. On the left side, it curls in half-circle and then heads back a little ways towards the right. It resembles a hook.

FIG. 4 Hemmed Edge

3.1.41 *hinge-line clearance*— the distance between the stationary portion of a toy and the movable portion along, or adjacent to, a line projected through the axis of rotation, shown as Dimension A in Fig. 5.

Figure 5. Changing Clearance at Hinge Line This diagram shows 3 views of a hinge. The first is the back of a toy, which has a width with label 1. The hinge is narrower than 1, connecting the top to the bottom. The two other diagrams are the hinge mechanism closed and open. The top part of the hinge and the part of the toy that is connected to the top part of the toy are all labelled 2. The bottom part of the hinge and the bottom part of the toy are all labelled 3. Key 1 Hinge line2 Lid3 Box l = Hinge-line clearance 1 2 l l 3

FIG. 5 Changing Clearance at Hinge Line

3.1.42 *impulsive sound*— any sound that is characterized by a brief excursion of sound pressure significantly exceeding the ambient noise, typically less than one second in duration.

3.1.43 *juvenile products*— consumer products designed or intended primarily for use by children which are not used primarily for play. These include, but are not limited to, items such as bassinets/cradles, bath seats, infant bath tubs, carriages and strollers, changing tables, full size cribs, gates and enclosures, handheld infant carriers, high chairs, infant bouncers, infant swings, play yards/non-full size cribs, portable bed rails, portable hook-on chairs, soft infant carriers, stationary activity centers, toddler beds and walkers.

3.1.44 *Iap joint*— a joint in which an edge overlaps a parallel surface but is not necessarily attached to it mechanically at all points along the length, as in the examples shown in Fig. 6.

Figure 6. Typical Lap Joints There are four diagrams of typical lap joints. The first is two lines that are parallel and overlap. The second is two lines that

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 75 of 298 are at an angle and overlap at the end. The third is a square with a line and the two overlap a bit at the top. The third is a loop that overlaps at the ends.

FIG. 6 Typical Lap Joints

3.1.45 *large and bulky toy*— toy that has a projected base area of more than 400 in.² (0.26 m^2) or a volume of more than 3 ft³ (0.08 m^3) calculated without regard to minor appendages.

NOTE 2 — The base area for toys having permanently attached legs is measured by calculating the area enclosed by straight lines connecting the outermost edge of each leg of the perimeter.

3.1.46 *latex balloon*— any toy or decorative item consisting of a latex bag that is designed to be inflated by air or gas. The term does not include inflatable children's toys that are used in aquatic activities such as rafts, water wings, swim rings, or other similar items.

3.1.47 *marble*— a sphere made of a hard material, such as glass, agate, marble, or plastic, that is used in various children's games, generally as a playing piece or marker. The term "marble" does not include a marble permanently enclosed in a toy or game. A marble is permanently enclosed if, when tested in accordance with <u>16 CFR 1500.53</u>, it is not removed from the toy or game.

3.1.48 *materials intended to leave a trace*— graphite material in pencils, liquid in pens, and similar substances.

3.1.49 maximum A-weighted sound pressure level (L_{AFmax})— the maximum sound pressure level obtained when using standardized A-weighting and fast detector response (time-weighting).

3.1.50 *non-replaceable battery*— an electrochemical device that will not require user accessibility or user replacement for the expected life of the product or devices it is intended to power. Such batteries will not be accessible when tested in accordance with the normal use and, where appropriate, reasonably foreseeable abuse tests of <u>8.6</u> through <u>8.10</u>.

3.1.51 *normal use*— play modes that conform to the instructions accompanying the toy, that have been established by tradition or custom, or that are evident from an examination of the toy.

3.1.52 *other materials, whether mass colored or not*— materials such as wood, leather, and other porous substances which may absorb coloring matter without forming a coating.

3.1.53 *packaging*— material accompanying the toy when purchased, but having no intended play function.

3.1.54 *peak sound pressure level (L_{Cpk})*— the greatest C-weighted instantaneous sound pressure level within the period of observation.

3.1.55 *pinching*— created when two moving or one moving and one fixed surface come together in such a way that they could entrap and compress flesh, usually resulting in a contusion or laceration.

3.1.56 *point, hazardous*— an accessible point that presents an unreasonable risk of injury during normal use or reasonably foreseeable abuse. Points on toys intended for children under the age of 8 years are potentially hazardous if they fail the sharp point test described in <u>16 CFR 1500.48</u>.

3.1.57 *pompom*— lengths or strands of fiber, yarns, or threads clamped or secured and tied in the center, and brushed up to form a spherical shape. Also included are sphericalshaped attachments made of stuffed material.

6 3.1.58 *principal display panel*— the display panel for a retail package or container, bin, or vending machine that is most likely to be displayed, shown, presented, or examined under normal or customary conditions of display for retail sale.

3.1.59 *projectile*— an object propelled by means of a discharge mechanism capable of storing and releasing energy under the control of the operator.

3.1.60 *projection, hazardous*— a projection that, because of its material or configuration, or both, may present a puncture hazard if a child should fall onto it. Excluded from this definition are puncture hazards to the eyes or mouth, or both, because of the impossibility of eliminating puncture hazards to those areas of the body by product design.

3.1.61 *protective cap or cover*— a component that is attached to a potentially hazardous edge or projection to reduce the possibility of injury.

3.1.62 *protective tip*— a component that is attached to the impacting end of a projectile to minimize injury if it should impact on the body, and also to prevent damage to the projectile upon striking a target, provide a means of attaching the projectile to the target as in the case of suction cups, or prevent damage to inanimate objects.

3.1.63 *rattle*— a toy that is clearly designed to emit sound when shaken

typically intended for children under 18 months. 3.1.64 *reasonably foreseeable abuse*— conditions to which a child may subject

a toy that are not normal use conditions, such as deliberate disassembly, dropping, or using the toy for a purpose for which it was not intended. Simulated use and abuse tests for toys are given in <u>16 CFR 1500.50-16 CFR</u> <u>1500.53</u> (excluding the bite test, Paragraph (c), of each section).

3.1.65 *reference box*— a hypothetical surface which is the smallest rectangular parallelepiped that encloses the toy without regard to minor appendages.

3.1.66 *rigid*— any material having a hardness exceeding 70 Shore A scale durometer, as measured by the latest revision of Test Method D2240.

3.1.67 *rolled edge*— an edge in which the portion of the sheet adjacent to the edge is bent into an arc and forms an angle between 90 and 120° with the main sheet, as shown in Fig. 7.

Figure 7. Rolled Edge A line goes from right to left and at the left curls over to the right and down. A label indicates that the angle is 90 degrees to 120 degrees. 90° - 120°

FIG. 7 Rolled Edge

3.1.68 *scraping*— mechanical removal of coatings down to the base material without damaging the substrate material.

3.1.69 *simulated protective equipment*— toys designed to mimic products that infer some sort of physical protection to the wearer (for example, protective helmets and visors).

3.1.70 *soft-filled toy/stuffed toy*— toy, clothed or unclothed, with soft body surfaces and filled with soft materials, allowing compression of the torso readily with the hand.

3.1.71 *splinter*— sharp pointed fragment.

3.1.72 *spiral spring*— clockwork-type spring.

3.1.73 squeeze toy— a handheld pliable toy, intended for children under the age of 18 months, usually incorporating a noise-making feature activated by forcing air through an opening when flexed or squeezed, and which recovers to its original shape when released.

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3.1.74 *steady-state sound (noise)*— noise in which there are negligibly small fluctuations of sound pressure level within the period of observation.

3.1.75 *strap*— a piece of flexible material in which the width is significantly greater than the thickness.

3.1.76 *substrate material*— all of the accessible materials present in toys, other than paint or similar surface coatings.

3.1.77 *tabletop, floor, and crib toy*— toys intended to be played with while attached to or resting on a table top, floor, or crib. Examples of such toys include, but are not limited to, toy vehicles, stacking toys, large and bulky toys, games, and activity toys that attach to crib rails.

3.1.78 *tangle or form a loop*— loops that are formed by reasonably foreseeable manipulation of the cord/strap/elastic. Loops that are formed by excessive or intricate manipulations, or both, of the cord/strap/elastic shall be considered as exempt.

3.1.79 *teether*— toy designed for oral use and intended primarily for symptomatic relief of teething discomfort.

3.1.80 *tool*— screwdriver, coin, or other object which may be used to operate a screw, clip, or similar fixing device.

3.1.81 *toy*— any object designed, manufactured, or marketed as a plaything for children under 14 years of age.

3.1.82 *toy chest*— toy boxes that are designed and marketed as storage containers for toys. The products subject to the requirements are those with a volume of 1.1 ft³ (0.031 m³) or more.

3.1.83 *toy seat*— a stationary toy product with a seat where the amusement of the child is a primary function of the product and the play pattern intends that the child be in a seated position.

3.1.83.1 *Discussion*— Play features may include, but are not limited to, sliding or rotating features, learning toys, manually actuated music etc. with which the seated child may interact. Children's furniture products without any interactive play features such as stools, chairs, patio sets, rocking chairs, picnic tables, storage units etc. are not considered toy seats. In addition, juvenile products such as bouncers, infant seats, stationary activity centers etc. are not considered toy seats.

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 79 of 298 3.1.84 *yo yo elastic tether toy*— a toy consisting of an elastic tether that usually contains a loop on one end to wear around the finger, and a flexible object on the other end intended to be thrown and returned to the hand.

4. Safety Requirements

4.1 *Material Quality*— Toys may be made from new or reprocessed materials and shall be visually clean and free from infestation. The materials shall be assessed visually by the unaided eye rather than under magnification. If reprocessed materials are used, they must be refined so that the level of hazardous substances conforms to the requirements of <u>4.3.1</u>.

4.2 *Flammability*— Materials other than textiles (excluding paper) used in toys shall not be flammable, as defined under 3 (c) (6) (vi) under the Federal Hazardous Substances Act (FHSA) (see <u>16 CFR 1500</u>). For testing purposes, any textile fabrics used in toys shall comply with <u>16 CFR 1610</u>. A test procedure for testing flammability of toys, which is an interpretation of <u>16 CFR 1500.44</u>, is contained in <u>Annex A5</u>. A procedure for testing the flammability of fabrics is contained in <u>Annex A6</u>.

4.3 Toxicology

4.3.1 *Hazardous Substances*— Toys or materials used in toys shall conform to the FHSA and to the regulations promulgated under that act. Exemptions to this act for certain types of toys are given in <u>16 CFR 1500.85</u>. The regulations define limits for substances that are toxic, corrosive, an irritant, sensitizer or pressure generating, and radioactive, flammable, and combustible materials. Testing references for hazardous substance content are given in <u>8.2</u>. It should be noted that specific states may have hazardous substances regulations that are more restrictive than the Federal regulations.

4.3.2 *Manufacturing and Packaging of Food*— All food products supplied with toys shall be manufactured and packaged in compliance with <u>21 CFR 110</u>, which is concerned with the sanitation practices for the manufacture, processing, packaging, or holding of human food.

4.3.3 *Indirect Food Additives*— Toy components intended to be used in contact with food, such as toy cooking utensils, shall conform to the applicable requirements of the Food, Drug and Cosmetic Act (FDCA), specifically <u>21 CFR 170</u> through <u>189</u>.

4.3.3.1 *Toys in Contact with Food*— Toys comprising components intended to be used in contact with food, such as toy cooking utensils and toy tableware

shall meet the requirements of 6.7 for instructional literature.

4.3.3.2 *Ceramicware, Lead, and Cadmium Contamination*— Ceramic toy components intended or likely to hold food, such as a porcelain tea set, shall conform to the applicable requirements of the FDCA, Section 402 (a) (2) (c), and FDA Compliance Policy Guides.

4.3.4 *Cosmetics*— Cosmetics shall conform to the requirements of the Federal FDCA as codified in 21 CFR. The regulations applicable to cosmetics are stated in <u>21 CFR 700</u> through <u>740</u>. The color additive regulations applicable to cosmetics are found in <u>21 CFR 73</u>, <u>74</u>, <u>81</u>, and <u>82</u>.

4.3.4.1 In addition, cosmetics intended for use by children under 8 years of age shall meet all requirements of this specification and the FHSA regulations, notwithstanding the exclusions of <u>16 CFR 1500.81</u> and <u>16 CFR 1500.3 (b) (4) (ii)</u>.

4.3.4.2 The requirements from the Food and Drug Administration (FDA) will therefore be additive to those existing for children's products.

4.3.5 Heavy Elements:

4.3.5.1 *Paint and Similar Surface-Coating Materials*— Paint and other similar surface-coating materials applied to toys shall comply with the lead content provisions of <u>16 CFR 1303</u>, issued under the Consumer Product Safety Act (CPSA), as amended by the <u>Consumer Product Safety Improvement Act of 2008 (CPSIA)</u>.

- This regulation prohibits the use of paints or similar surface-coating materials that contain lead or lead compounds and in which the lead content (calculated as lead metal [Pb]) is in excess of 0.009 % (90 ppm) of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.
- 2. In addition, surface-coating materials shall not contain compounds of antimony, arsenic, barium, cadmium, chromium. lead, mercury. or selenium, of which the metal content of the soluble material is in excess of the levels by weight of the contained solids (including pigments, film solids, and driers) given in <u>Table 1</u>. The analytical results obtained should be adjusted in accordance with the test method in 8.3.4.3 prior to comparing them to the values in <u>Table 1</u>. To determine conformance, the soluble level shall be determined by dissolving the contained solids (dried film including pigments, film solids, and driers) as specified in 8.3.2.

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4.3.5.2 *Toy Substrate Materials*— These requirements are designed to reduce children's exposure to heavy elements contained in accessible toy substrate materials. (For requirements for surface coating materials, see <u>4.3.5.1</u>.)

- Scope—This section specifies requirements and test methods for total lead and the migration of antimony, arsenic, lead, barium, cadmium, chromium, mercury and selenium in accessible substrate materials. Accessible glass, metal and ceramic toys or parts of toys, that are small parts (that is, that fit into the test fixture specified at <u>16 CFR</u> <u>1501</u> (see Fig. <u>3</u>), are also subject to this requirement.
 - a. Accessibility of parts shall be determined as defined in 3.1.2 before and after use and abuse testing described in 8.4-8.9.
 - b. Toys and parts of toys which, due to their inaccessibility, size, mass, function, or other characteristics, cannot be sucked, mouthed or ingested are not subject to this requirement.

NOTE 3 —For the purposes of this requirement, the following criteria are considered reasonably appropriate for the classification of toys or parts likely to be sucked, mouthed or ingested: (1) All toy parts intended to be mouthed or contact food or drink, components of toys which are cosmetics, and components of writing instruments categorized as toys; (2) Toys intended for children less than 6 years of age, that is, all accessible parts and components where there is a probability that those parts and components may come into contact with the mouth.

- c. Packaging materials are not subject to these requirements unless they are intended to be retained as part of the toy or are intended to provide play value.
- d. This requirement is not intended to apply to children's jewelry, which is addressed by Specification F2923.
- e. In addition, materials now or in future listed in the most current revision of <u>16 CFR 1500.88</u> or <u>16 CFR 1500.91</u> as exempt from testing and certification requirements are excluded from this requirement for the purposes of determining compliance.
- 2. Requirements:

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- a. Accessible component parts of children's products (as defined in 3.1.2 and in 16 CFR 1500.87, before and after use and abuse testing described in 8.4-8.9 and in 16 CFR 1500.50-16 CFR 1500.53 and 16 CFR 1500.87) must not contain lead or lead compounds in which the lead content (calculated as lead metal [Pb]) is in excess of 100 ppm (300 ppm for products manufactured or imported prior to August 14, 2011) of the weight of the component, except as provided under 16 CFR 1500.88 and 16 CFR 1500.91.
- b. The migration of elements from toys and parts of toys as specified in 4.3.5.2(1) shall not exceed the limits specified in Table 1 when tested in accordance with the methods set forth in 8.3. Modeling clays included as part of a toy shall not exceed the limits specified in Table 2 when tested in accordance with the methods set forth in 8.3. Please note that the limits in Table 2 apply only to these materials as a component of a toy; in addition, please also note that if the primary purpose of the material is to create a tangible work of art, it may in addition be subject to the requirements of 16 CFR 1500.14.
- c. In addition, metallic toys or metallic toy components which are small parts may not exhibit extraction of more than 200 μ g of cadmium when tested per 8.3.5.5(3). Compliance with all of the above requirements may be established by a screen of total element content as specified in 8.3.1.

4.3.6 *Cosmetics, Liquids, Pastes, Putties, Gels, and Powders*— The purpose of this requirement is to minimize the risk associated with the lack of cleanliness, shelf life, and contamination of cosmetics, liquids, pastes, putties, gels, and powders used in toys (excluding art materials). It sets standards for cleanliness and the ability to withstand extended shelf life or contamination, or both, during use without microbiological degradation.

4.3.6.1 Water used in the manufacturing and filling of toys shall be prepared according to the bacteriological standards for USP Purified Water. (Warning –The various methods for producing purified water each present different potentials for contaminating the final product. Purified water produced by distillation is sterile, provided that the production equipment is suitable and sterile. On the other hand, ion-exchange columns and reverse osmosis units require special attention in that they afford sites for microorganisms to foul the system and contaminate the effluent. Frequent monitoring may thus be

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 83 of 298 called for, particularly with the use of these units following periods of shutdown of more than a few hours.)

4.3.6.2 The formulations of these products used in toys shall be such that they are not subject to microbial degradation during shelf life or reasonably foreseeable use.

4.3.6.3 The cleanliness of these products used in toys and their ingredients shall be determined in accordance with <u>8.4.1</u>. Formulations used to prevent microbial degradation shall be evaluated in accordance with <u>8.4.2</u>.

4.3.6.4 Formulations of cosmetics shall be evaluated for potential microbiological degradation in accordance with <u>8.4.2</u>.

4.3.7 *Stuffing Materials*— Loose fillers for stuffed toys shall be free of objectionable matter originating from insect, bird, rodent, or other animal infestation and of contaminants, such as splinters and metal chips to the extent possible in good manufacturing practice. The test methods that shall be used to determine objectionable material are in Chapter 16 of *Official*

*Methods of Analysis of the Association of Official Analytical Chemists.*¹² In addition, fiber filling, whether natural or synthetic, should meet the requirements of <u>Title 34</u>, <u>Chapter 47</u>, <u>Section 47.317</u>, "Tolerances of the Commonwealth of Pennsylvania Regulation for Stuffed Toys."

¹²"Extraneous Materials: Isolation," *Official Methods of Analysis of the Association of Official Analytical Chemists*, 15 ed., Chapter 16, 1990.

 TABLE 1 Maximum Soluble Migrated Element in ppm (mg/kg) for Surface Coatings and Substrates Other Than Modeling Clay

 Included as Part of a Toy

| Antimony, | Arsenic, | Barium, | Cadmium, | Chromium, | Lead, | Mercury, | Selenium, |
|-----------|----------|---------|----------|-----------|-------|----------|-----------|
| (Sb) | (As) | (Ba) | (Cd) | (Cr) | (Pb) | (Hg) | (Se) |
| 60 | 25 | 1000 | 75 | 60 | 90 | 60 | |

TABLE 2 Maximum Soluble Migrated Element in ppm (mg/kg) for Modeling Clays Included as Part of a Toy

| Antimony, | Arsenic, | Barium, | Cadmium, | Chromium, | Lead, | Mercury, | Selenium, |
|-----------|----------|---------|----------|-----------|-------|----------|-----------|
| (Sb) | (As) | (Ba) | (Cd) | (Cr) | (Pb) | (Hg) | (Se) |
| 60 | 25 | 250 | 50 | 25 | 90 | 25 | 500 |

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4.3.8 *DEHP (DOP)*— Pacifiers, rattles, and teethers shall not intentionally contain DI (2-ethylhexyl) phthalate (also known as dioctyl phthalate). To prevent trace amounts of DEHP (DOP) from affecting analysis, up to 3 % of total solid content will be accepted in the result, when tested in accordance with Practice D3421.

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 84 of 298 4.4 *Electrical/Thermal Energy*— Toys operating from nominal 120-V branch circuits shall conform to <u>16 CFR 1505</u>, issued under the FHSA.

> 4.5 Sound-Producing Toys- These requirements are intended to minimize the possibility of hearing damage that might be caused by toys that are designed to produce sound. These requirements are applicable before and after testing in accordance with 8.5 through 8.10. These requirements do not apply to: (1) sounds produced by mouth-actuated toys where the sound pressure level is determined by the blowing action of the child; (2) child-actuated sounds such as those produced by xylophones, bells, drums, and squeeze toys where the sound pressure level is determined by the muscular action of the child. The continuous sound pressure requirements do not apply to rattles; however, rattles are covered by impulsive sound pressure requirements; (3) radios, tape players, CD players, and other similar electronic toys and toys where the sound output is dependent on the content of removable media (for example, game cartridge, flash cards, and so forth); (4) toys that are connected to or interfaced with external devices (for example, televisions, computers) where the sound pressure level is determined by the external device; and (5) sound emitted from earphones/headphones.

4.5.1 *Requirements*— When tested in accordance with <u>8.19</u>, toys that are designed to emit sound shall conform to the following requirements:

4.5.1.1 The A-weighted equivalent sound pressure level, L_{Aeq} , of continuous sounds produced by close to the ear toys shall not exceed 65 dB.

4.5.1.2 The A-weighted equivalent sound pressure level, L_{Aeq} , of continuous sounds produced by all other toys except close-to-the-ear toys and push/pull toys shall not exceed 85 dB.

4.5.1.3 The C-weighted peak sound pressure level, L_{Cpeak} , of impulsive sounds produced by close to the ear toys shall not exceed 95 dB.

4.5.1.4 The C-weighted peak sound pressure level, L_{Cpeak} , of impulsive sounds produced by any type of toy excluding toys using explosive action (for example, percussion caps) shall not exceed 115 dB.

4.5.1.5 The C-weighted peak sound pressure level, L_{Cpeak} , of impulsive sounds produced by a toy using percussion caps or other explosive action shall not exceed 125 dB.

4.6 *Small Objects*— These requirements are intended to minimize the hazards from choking, ingestion, or inhalation to children under 36 months of age

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 85 of 298 created by small objects.

4.6.1 Toys that are intended for children under 36 months of age are subject to the requirements of <u>16 CFR 1501</u>. Criteria for determining which toys are subject to these requirements are provided, in part, in <u>16 CFR 1500.50</u> and 1501 and also in <u>Annex A1</u> of this specification. The requirements of <u>16 CFR</u> <u>1501</u> state, in part, that no toy (including removable, liberated components, or fragments of toys) shall be small enough without being compressed to fit entirely within a cylinder of the specified dimensions as shown in <u>Fig. 3</u>. For the purposes of this specification, fragments of toys include, but are not limited to, pieces of flash, slivers of plastics, pieces of foam, or fine bits or shavings. Pieces of paper, fabric, yarn, fuzz, elastic, and string are excluded from this requirement.

4.6.1.1 The requirements are applicable before and after use and abuse testing in accordance with <u>Section 8</u> to determine the accessibility of small objects such as small toys or components of toys including eyes, squeakers, or knobs, or pieces that break off or are removed from toys.

4.6.1.2 The following articles are exempt from the requirements: balloons; books and other paper articles; writing materials (crayons, chalk, pencils, and pens); phonograph records and compact discs (CDs); modeling clay and similar products; and fingerpaints, watercolors, and other paint sets. A listing of exempt articles is provided in <u>16 CFR 1501.3</u>.

4.6.1.3 Toys that are intended to be assembled by an adult and contain potentially hazardous small objects in the unassembled state shall be labeled in accordance with 5.8.

4.6.2 *Mouth-Actuated Toys*— This requirement relates to toys, such as noisemakers, that are intended to be actuated repeatedly by blowing or sucking. Mouth-actuated toys that contain loose objects, such as spheres in a whistle, or inserts, such as reeds in a noisemaker, shall not release an object that will fit within the small parts test cylinder, as shown in Fig. 3, when air is alternately blown and sucked rapidly through the mouthpiece, according to the procedure described in 8.13. The procedure of 8.13 shall also be applied to the outlet if the air outlet is capable of being inserted into or covered by the mouth.

4.6.2.1 Small objects contained in an inflatable toy shall not be liberated during inflation or deflation.

4.6.3 Toys and games that are intended for use by children who are at least

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 86 of 298 three years old (36 months) but less than six years of age (72 months) are subject to the requirements of <u>16 CFR 1500.19</u>. With the exception of products such as paper punch-out games and similar items, any toy or game that is intended for use by children who are at least three years old (36 months) but less than six years of age (72 months) and includes a small part is subject to the labeling requirements in accordance with <u>5.11.2</u>.

4.7 Accessible Edges— Toys shall not have accessible, potentially hazardous sharp edges. Toys that are intended to be assembled by an adult, and may contain unprotected potentially hazardous sharp edges in the unassembled state, shall be labeled in accordance with 5.8.

4.7.1 Potentially hazardous sharp metal and glass edges are defined in <u>16 CFR</u> <u>1500.49</u>. Toys intended for use by children under 8 years of age are subject to this requirement before or after use and abuse testing, or both, as specified in <u>8.5-8.10</u>. An illustration of a sharp edge tester is shown in <u>Fig. 8</u>.

Figure 8. Principle of Sharp Edge Test A rectangular block has a sharp handle (a mandrel) and attached to that is a flat device. The block is labelled "Any suitable device, protable or non-portable to apply known force and rotation to mandrel." During test, the mandrel rotates one full revolution. The test edge has a 90 degree plus or minue 0.5 degree relationship to the mandrel and is affixed with a single wrap of TFE tape. The angle can be varied to seek a worst case situation. 1.35 lbps is the max force applied normally to mandrel axis. 1.35 LBS (6.00 N) MAX FORCEAPPLIED NORMAL TO MANDREL AXIS ANY SUITABLE DEVICE, PORTABLE ORNON-PORTABLE TO APPLY KNOWNFORCE & ROTATION TO MANDREL DURING TEST, MANDREL ROTATESONE FULL REVOLUTION SINGLE WRAP OF TFE TAPE $90^{\circ} \pm 5^{\circ}$ (TEST EDGE RELATIONSHIP TO MANDREL) VARY ANGLE TO SEEK"WORST CASE" SITUATION

FIG. 8 Principle of Sharp Edge Test

4.7.2 Toys containing potentially hazardous edges that are a necessary part of the function of a toy shall carry cautionary labeling as specified in 5.10 if the toy is intended for use by children from 48 to 96 months. Toys intended for children aged less than 48 months shall not have accessible hazardous functional sharp edges.

4.7.3 *Metal Toys*— Accessible metal edges, including holes and slots, shall be free of hazardous burrs and feathering, or shall be hemmed, rolled, or curled, or shall be covered with a permanently affixed device or finish.

NOTE 4 - Regardless of the manner in which edges are finished, they are subject to the sharp edge technical requirements as described in <u>4.7.1</u>. If a device is used to protect an edge, it shall not become

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4.7.4 *Molded Toys*— Accessible edges, corners, or mold parting areas of molded toys should be free of hazardous edges produced by burrs and flash or so protected that hazardous edges are not exposed.

4.7.5 *Exposed Bolts or Threaded Rods*— If the ends of bolts or threaded rods are accessible, the thread shall be free of exposed, hazardous sharp edges and burrs, or the ends shall be covered by smooth finish caps so that hazardous sharp edges and burrs will not be exposed. Any caps that are used shall be subjected to the compression test noted in 8.10, regardless of whether the cap is accessible to flat-surface contact during the appropriate impact test(s) described in 8.7. Protective caps shall also be subjected to the tension test in 8.9 and the torque test in 8.8.

4.8 *Projections*— This requirement relates to potentially hazardous projections in all toys intended for use by children under 8 years of age. This requirement is intended to minimize possible puncture hazards to the skin that might be caused if a child were to fall on a rigid projection, such as unprotected ends of axles, actuating levers, and decorative features. Due to the extremely sensitive nature of the eyes and interior of the mouth, this requirement will not, nor is it intended to, provide protection to those areas of the body. If a projection appears to present a potential skin puncture hazard, the projection shall be protected by suitable means, such as by turning back the end of a wire or by affixing a smoothly finished protective cap or cover, which effectively increases the surface area for potential contact with the skin. Toys shall meet this requirement both before and after testing in accordance with <u>8.5</u>-<u>8.10</u>. Toys intended to be repeatedly assembled and taken apart shall have the individual pieces and fully assembled articles, as shown on packaging graphics, instructions or other advertising, evaluated separately. The requirements for the assembled toy do not apply to toys where the assembling makes up a significant part of the play value of the toy. Since this requirement relates to hazards arising from a child falling onto a toy, only vertical or nearly vertical projections are required to be evaluated. The toy shall be tested in its most onerous position. Corners of structures are excluded from this requirement.

4.8.1 *Bath Toy Projections*— Rigid projections on toys designed primarily for use in the bath tub may pose a specific hazard that can result in serious penetration and impalement injuries. Additional design guidelines specifically for bath toy projections are provided in <u>Annex A4</u> of this specification. As there are no objective means for determining conformance with these

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 88 of 298 guidelines, they are not to be used to judge compliance with this specification.

4.9 Accessible Points— Toys shall not have accessible, potentially hazardous sharp points that may occur because of the following: configuration of the toy; assembly devices such as wires, pins, nails, and staples that are fastened poorly; poorly sheared sheet metal; burrs on screws; and splintered wood. Toys that are intended to be assembled by an adult and may contain potentially hazardous sharp points in the unassembled state shall be labeled in accordance with <u>5.8</u>.

4.9.1 Potentially hazardous sharp points are defined by <u>16 CFR 1500.48</u>. Toys intended for use by children under 8 years of age are subject to this requirement before or after use and abuse testing, or both, as specified in <u>8.5-8.10</u>. An illustration of a sharp-point tester is shown in Fig. 9.

Figure 9. Sharp Point Tester The sharp point tester is a cylinder with a test point at the end. There is a gaging slot of 0.40 x 0.45, a set of micrometer divisions and a sensing head, and the device is powered by a AAA dry cell. The device has a gap that is closed upon insertion of a sufficiently sharp point to pass through the gaging slot and depress the sensing head 0.005 inches, thereby completing an electrical circuit and illuminating the indicator test lamp lights. GAP IS CLOSED UPON INSERTIONOF SUFFICIENTLY SHARP POINT TOPASS THRU GAGING SLOT & DEPRESSENSING HEAD .005. ELECTRICAL CIRCUIT IS THEREBYCOMPLETED & INDICATOR TEST LAMPLIGHTS - SHARP POINT TEST. AAA DRY CELL SECTION A - A AAA DRY CELL TEST POINT GAGINGSLOT(".040x".045) GAGING CAP & MICROMETER LOADING SPRING LOCK RING INDICATOR LAMP ASSYADAPTER-NUT ELECTRICALCONTACTSPRING BARREL CALIBRATION REFERENCE MARK MICROMETER DIVISIONS SENSING HEAD A A

FIG. 9 Sharp Point Tester

4.9.2 Toys in which an accessible, potentially hazardous sharp point is a necessary function of the toy, such as a needle in a sewing kit, shall carry cautionary labeling as specified in 5.10, if the toy is intended for children from 48 to 96 months old. Toys intended for children less than 48 months old shall not have accessible hazardous functional points.

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4.9.3 *Wood*— The accessible surfaces and edges of wood used in toys shall be free of splinters, both before and after being tested in accordance with the appropriate procedures described in 8.5-8.10.

4.10 *Wires or Rods*- Wires or rods used in the interior of toys shall have their

Standard Consumer Safety Specification for Toy Safety Case 1:13-CV-01215-TSC Document 122-1 Filed 12/22/15 Page 89 of 298 ends finished to avoid potentially hazardous points and burrs, shall be turned back, or shall be covered with smoothly finished protective caps or covers, if they can become accessible after use or reasonably foreseeable abuse. Metal wires or other metal materials used for stiffening or for retention of form in toys shall not fracture to produce a hazardous point, edge, or projection hazard when tested in accordance with 8.12, if the component can be bent through a 60° arc by the applicable maximum force. When applied perpendicularly to the major axis of the component at a point 2 ± 0.05 in. (50 ± 1.3 mm) from the intersection of the component is less than 2 in. (50 mm) long, the maximum force shall be as follows (within a tolerance of 60.5 lb (60.02 kg)):

| 10 lbf (45 N) | toys intended for use by children 18 months of age or less |
|---------------|---|
| 15 lbf (67 N) | toys intended for use by children over 18 but not over 96 months of age |

The ends of spokes on toy umbrellas shall be protected. If the protection is removed when tested according to 8.9 (tension test) the ends of the spokes shall be free from sharp edges and sharp points when tested in accordance with 4.7.1 (sharp edge test) and 4.9.1 (sharp point test). Furthermore, if the protective components are removed by the tension test, the spokes shall have a minimum diameter of 0.08 in. (2 mm) and the ends shall be smooth, rounded, and approximately spherical with no burrs.

4.11 *Nails and Fasteners*— Nails and fasteners shall not present a point, edge, ingestion, or projection hazard. Points of nails or fasteners shall not protrude so as to be accessible. Additional requirements for nails and fasteners used as axles are given in 4.17.

4.12 *Plastic Film*— This requirement is intended to minimize the possibility of asphyxiation hazards that might be caused by thin plastic films. Flexible plastic film bags and flexible plastic sheets used as packaging materials for shelf packages or used with or as part of toys shall be at least 0.00150 in. (0.03810 mm) in average thickness, but the actual thickness of any individual measure shall never be less than 0.00125 in. (0.03175 mm). Alternatively, sheeting with an average thickness of less than 0.00150 in. (0.03810 mm) shall be perforated with defined holes so that a minimum of 1 % of the area has been removed over any area of 1.18 1.18 in. (30 30 mm). The thickness shall be determined using the test method in 8.21. This requirement does not apply to the following:

4.12.1 Shrink film in the form of an over wrap that would normally be destroyed when the package is opened by a consumer.

4.12.2 Bags or plastic film with a minor dimension of 3.94 in. (100 mm) or less. Bag dimensions shall be measured while in the form of a bag, not cut open into a single thickness sheet.

4.13 *Folding Mechanisms and Hinges*— These requirements are intended to eliminate possible crushing, laceration, or pinching hazards that might occur in folding mechanisms and hinges. Examples are the sudden collapse or unexpected motion of a folding mechanism or hinge that produces a scissor action; and the changing clearances at the hinge line between two hinged portions, such that the gap will admit fingers at any one position of the hinge but not at all positions. These requirements do not relate to the recognized and familiar hazards associated with the changing clearances around the edges of doors or pivoted or hinged sections in toy truck bodies, toy earth moving machinery, and similar toys. Toys shall meet the requirements specified in 4.13.1 and 4.13.2 after they are tested in accordance with 8.5-8.10. Requirements for toy chests are contained in Consumer Safety Specification F834.

4.13.1 *Folding Mechanisms*— Toy furniture and other toys in which a folding mechanism, arm, or bracing is intended or likely to support the weight of a child in normal use shall have a locking device or other means to prevent unexpected or sudden movement or collapse of the product, or have adequate clearance to provide protection for the fingers, hands, and toes from crushing, laceration or pinching hazards in the event of sudden movement or collapse of the products to which these requirements would apply include, but are not limited to, folding mechanisms in toy strollers a child can sit in, toy chairs a child can sit in, or a child sized ironing board. One way to determine if a child can sit in a product is to verify that the seat width would accommodate the hip breadth of a child in the age range for which the product is intended. Examples of products to which these requirements would not apply include, but are not limited to, a doll house sized chair, a doll house sized bed, or an expandable/ collapsible sphere.

4.13.1.1 Locking devices or other means to prevent unexpected or sudden movement or collapse of the product shall engage automatically when the product is placed in the manufacturer's recommended use position. During and upon completion of the testing in 8.25.1, the unit shall remain in its recommended use position. The test in 8.25.1 shall not apply to locking devices or other means where the direction of force of the occupant load opposes the direction of collapse of the mechanism.

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- Each single action device shall require a minimum force of 10 lbf (45 N) to activate the release mechanism when tested in accordance with <u>8.25.2</u>.
- 2. Each double action locking device shall require two distinct and separate actions to release. There are no force requirements for double action locking devices.

4.13.2 *Hinge-Line Clearance*— Toys having a gap or clearance along the hinge line between a stationary portion and a moveable portion that weighs more than $\frac{1}{2}$ lb (0.2 kg) shall be so constructed that, if the accessible gap at the hinge line will admit a 3/16-in. (5-mm) diameter rod, it will also admit a $\frac{1}{2}$ -in. (13-mm) diameter rod at all positions of the hinge.

4.14 *Cords, Straps, and Elastics*— These requirements are intended to minimize the potential entanglement and strangulation hazards that might be caused by accessible cords, straps, and elastics. These requirements are applicable before and after use and abuse testing in accordance with <u>8.5-8.10</u>.

4.14.1 *Cords, Straps, and Elastics in Toys*— Cords or elastics included with or attached to toys intended for children less than 18 months of age (excluding pull toys, see 4.14.3) shall be less than 12 in. (300 mm) long when measured to the maximum length in a free state and under a load of 5 lb (2.25 kg). If cords/straps/elastics or multiple cords/straps/elastics can tangle or form a loop in connection with any part of the toy, including beads or other attachments on the ends of cords/ straps/elastics, the loop shall not permit the passage of the head probe (Fig. 10) when tested in accordance with 8.22. Specifically, the loop shall not allow the head probe to be inserted so deep that it admits the base of the probe. The configuration of the loop shall be determined by using all components that make up the loop. For example, the configuration of the loop for the product illustrated in Fig. 11 is comprised of Cord 1, Cord 2, and the toy part.

Figure 10. Head Probe for Cords and Elastics This is the end view. The probe is shaped like a stadium oval with an outer edge and an inner edge. The outer edge has a length of 5.0 inches and width of 3.9 inches. The rounded ends of the stadium oval have a radius of 1.95 inches to the outer edge and 1.45 inchdes to the inner edge. The flat part of the inner edge is 1.1 inchdes across. 1.95 in. (49.5mm) radius 0.5 in. (13 mm) 3.9 in. (99 mm) 5.0 in. (130 mm) 1.1 in. (28 mm) 1.45 in. (37 mm) radius

End View

Figure 10b. Head Probe for Cords and Elastics (Side View) The side view has a handle, below which is a rectangle, below which is a trapezoid. Per figure 10a, the over length is 5.0 inches. The length of the bottom part of the trapezois is 4.0 inches. The height of the rectangle is 1.0 inches and the overall hieght from the bottom of the trapezoid to the top of the rectangle is 4.0 inches. 1.0 in. (25 mm) 4.0 in. (100 mm) 4.0 in. (100 mm) Side View

FIG. 10 Head Probe for Cords and Elastics

Figure 11. Loop Example A toy drum has a cord attached to each side. The left cord is Cord 1, the right is Cord 2. The two cords are tied together so the drum may be hung around the child's neck. The width of the drum from one side to the other is labelled Toy Part. Cord 1 Cord 2 Toy Part

FIG. 11 Loop Example

4.14.1.1 *Cords, Straps, and Elastics Containing a Breakaway Feature*— Cords, straps, and elastics on toys that have loops that admit the base of the head probe shall contain a functional breakaway feature that prevents entanglement by releasing at a force less than 5.0 lbf (22.2 N) when tested in accordance with <u>8.22.3</u>. The free length of the individual released cord, strap, or elastic should not exceed a maximum length of 12 in. (300 mm). The breakaway feature shall be capable of being reattached without altering the characteristics of the attachment.

4.14.2 *Self Retracting Pull Cords*— Accessible cords used in cord-activated mechanisms in toys intended for use by children under 18 months of age, except monofilament-type cords 1/16 in. (2 mm) or less in diameter, shall not retract more than ¹/₄ in. (6 mm) when a weight of 2 lb (0.9 kg) is attached to the fully extended cord with the cord held vertical and the toy held firmly in the most favorable position for retraction. Monofilament cords, 1/16 in. (2 mm) or less in diameter, shall not retract under a load of 1 lb (0.45 kg) when tested in the manner described above.

4.14.3 *Pull Toys*— Cords, straps, and elastics greater than 12 in. (300 mm) long for pull toys intended for children under 36 months of age shall not be provided with beads or other attachments that could tangle to form a loop.

4.14.4 Strings and Lines for Flying Devices— Kite strings and handheld lines over 6 ft (1.8 m) long, attached to flying devices intended for use as playthings, shall have an electric resistance of more than 108 V/cm when tested at a relative humidity of not less than 45 % and a temperature of not greater than 75°F (24°C), when measured by a high-voltage, resistance breakdown meter.

4.14.5 Cords on Toy Bags Intended for Children Up to 18 Months— Toy bags made of impermeable material with an opening perimeter greater than 14 in. (360 mm) shall not have a drawstring or cord as a means of closing.

4.15 Stability and Over-Load Requirements

4.15.1 *Stability of Ride-On Toys and Toy Seats*— These requirements are intended to minimize unexpected hazards that could be caused by a toy that can tip easily. They take into account the use of the child's legs as stabilizing means and recognize that a child learns instinctively to compensate for inclined positions. The requirements listed in 4.15.2 and 4.15.3 shall apply to the following classes of toys intended for use by children aged 60 months or less: ride-on toys, with three or more load bearing wheels, such as wagons; ride-on, action-type toys such as hobby horses, rocking toys (for example, horses, cars); and toy seats. Ride-on toys of spherical, cylindrical, or other shape that do not normally have a stable base are not covered by these requirements. The toy shall conform to these requirements after it is tested in accordance with 8.5-8.10.

4.15.2 *Sideways Stability Requirements*— These requirements recognize two types of possible stability hazards: those associated with ride-on toys or toy seats in which the feet can provide stabilization, and those situations in which the feet are restricted by an enclosing structure.

4.15.2.1 Sideways Stability, Feet Available for Stabilization- There shall be no sideways stability test for those ride-on toys or toy seats in which the height of the seat from the ground is one third, or less than one third, of the height indicated in Table 3 at the lowest age of the age range for which the ride-on toy or toy seat is intended, and in which the legs of the child are unrestricted in their sideways motion and thus are available for stabilization. (The values given in <u>Table 3</u> represent the lower of the following two numbers: (1) the fifth percentile group of boys at each age from 1 up to and including 5 years; and (2) the fifth percentile group of girls at each age from 1 up to and including 5 years.) For those ride-on toys, or toy seats in which the height of the seat from the ground is greater than one third of the height indicated in Table 3 at the lowest age of the age range for which the ride-on toy or toy seat is intended, and in which the legs of the child are unrestricted in their sideways motion and thus are available for stabilization, the toy shall not tip when tested in accordance with <u>8.15</u>. When the lowest age of the intended age range falls between two ages listed in **Table 3**, the lower of the two shall be chosen.

4.15.2.2 Sideways Stability, Feet Unavailable for Stabilization— If the sideways motion of the feet or legs, or both, is restricted, such as by the enclosed sides of a toy automobile, the ride-on toy or toy seat shall not tip when tested as specified in <u>8.15</u>, except that the surface shall be inclined 15° to the horizontal.

4.15.3 Fore and Aft Stability— This requirement relates to the stability of ride-on toys or toy seats in the forward direction with respect to the child's position, where the child cannot easily use his/her legs for stabilization, and in the backward direction with respect to the child regardless of whether his/her legs are available for stabilization. All ride-on toys or toy seats falling within the scope of 4.15 shall not tip forward or backward when the toy, which shall be loaded with a simulated child's weight, is tested both facing down and up the slope using the test method of 8.15, except that the surface shall be inclined 15° to the horizontal. The stability of ride-on toys is to be tested not only with the steering wheels in a forward position, but also at an angle of 45° to the left and to the right of the forward position.

| TABLE 3 Height of Fifth Percentile Children (Values Given for Boys or Girls, Whichever is Lower) | | | | | | | |
|---|---------------------|--|--|--|--|--|--|
| Age, years | Height, in. (cm) | | | | | | |
| 1 | 27 (69.8) | | | | | | |
| 2 | 29 (74.4) | | | | | | |
| 3 | 33 (85.1) | | | | | | |
| 4 | 37 (93.8) | | | | | | |
| 5 | 40 (100.5) | | | | | | |

4.15.4 Stability of Stationary Floor Toys— This requirement is intended to minimize hazards that might be caused by a toy that tips when a door, drawer, or other movable portion is extended to its fullest travel. Stationary floor toys of greater than 30 in. (760 mm) in height and weighing more than 10 lb (4.5 kg) shall not tip when placed on a 10° incline with all movable portions extended to their fullest travel and facing in the direction of the downslope side. The toy shall conform to this requirement after it is tested in accordance with 8.5-8.10.

4.15.5 Overload Requirements for Ride-On Toys and Toy Seats— This requirement is intended to minimize unexpected hazards that could be caused by a toy that is not capable of withstanding an overload. All ride-on toys, toys intended for use as seats, or toys designed to support all or part of the weight of the child shall support a load applied to the seat, or to other

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 95 of 298 such intended load-bearing components, without collapsing to produce a hazardous condition when tested in accordance with <u>8.26</u>. Examples of hazardous conditions if collapse occurs would include the following: exposure of hazardous edges, or points, projections, crushing or pinching hazards, and power-driven mechanisms. The toy shall conform to this requirement after being tested in accordance with <u>8.5</u> through <u>8.10</u>.

4.15.6 *Wheeled Ride-on Toys*— Ride-on toys incorporating wheels intended for movement along the ground shall be tested in accordance with the Dynamic Strength Test for Wheeled Ride-ons in <u>8.20</u>. Wheeled ride-on toys shall be tested after being tested in accordance with <u>8.5-8.10</u>.

4.16 *Confined Spaces*— The purpose of these requirements is to minimize the possible entrapment of children in toys that form enclosures, such as toy refrigerators, and to prevent possible suffocation in head-enclosing toys such as space helmets. Toys shall meet the requirements listed in <u>4.16.1-4.16.3</u> after the toys are tested in accordance with <u>8.5-8.10</u>. See Consumer Safety Specification F834 for requirements for toy chests.

4.16.1 *Ventilation*— The purpose of these requirements is to minimize the possible entrapment of children in toys that form enclosures, such as toy refrigerators, and to prevent possible suffocation in head-enclosing toys such as space helmets. Any toy made of impermeable material and having a door or lid, which encloses a continuous volume greater than 1.1 ft³ (0.03 m³) and in which all integral dimensions are 6 in. (150 mm) or more, shall provide one of the following unobstructed ventilation areas:

4.16.1.1 A minimum of two openings each having a total area of at least 1 in.² (650 mm²) placed at least 6 in. (150 mm) apart (see Fig. 12(a)).

Figure 12. Openings Figure A shows two ciruclar holes, each of which is ≥ 1.0 in.² and they are separated by a distance of ≥ 6.0 inches. Diagram 12b is two ovals, also ≥ 1.0 in.² and also separated by a distance of ≥ 6.0 inches. ≥ 1.0 in.2(≥ 650 mm2) ≥ 1.0 in.2(≥ 650 mm2) ≥ 6.0 in.(≥ 150 mm) ≥ 1.0 in.2(≥ 650 mm2) ≥ 6.0 in.(≥ 150 mm) ≥ 1.0 in.2(≥ 650 mm2) ≥ 6.0 in.(≥ 150 mm) (a) (b)

FIG. 12

4.16.1.2 One opening that is the equivalent of the two 1.0-in.² (650-mm²) openings expanded to include the separation area provided this leaves opening areas of 1.0 in.² (650 mm) on either side of a 6-in. (150-mm) spacing (see Fig. 12(b)). The ventilation openings shall be unobstructed when the toy is placed on the floor in any position and adjacent to two vertical plane surfaces meeting at a 90° angle, so as to simulate the corner of a room. If a

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 96 of 298 permanent partition or bars (two or more), which effectively limit the continuous space by making the largest internal dimension less than 6 in. are used to subdivide a continuous space, the ventilation area shall not be required.

4.16.2 *Closures*— Closures (such as lids, covers, and doors) to enclosures falling within the scope of <u>4.16.1</u> shall not be fitted with automatic locking devices. Closures shall be of a type that can be opened with a force of 10 lbf (45 N) or less when treated as follows:

4.16.2.1 With the closure in a closed position, apply the force in an outward direction to the inside of the closure perpendicular to the plane of the closure and anywhere within 1 in. (25 mm) from the geometric center of the closure. The force measurement shall be made by means of a force gauge with a calibrated accuracy within 60.3 lb (0.1 kg) when measuring a force of 10 lb (45 N). The dial of the gauge shall be graduated with its finest division not exceeding 0.2 lb (0.9 N), and the full-scale range shall not exceed 30 lb (130 N).

4.16.3 *Toys that Enclose the Head*— Toys that enclose the head, such as space helmets, which are made of impermeable material, shall provide means for breathing by the incorporation of unobstructed ventilation areas. The ventilation areas shall consist of a minimum of two holes, with a total of at least 2 in.² (1300 mm²) of ventilation and at least 6 in. (150 mm) between holes.

4.17 Wheels, Tires, and Axles— These requirements are intended to eliminate the possibility of ingestion hazards (as described in 4.6) that might be caused by small wheels or tires that separate during normal use or reasonably foreseeable abuse, as well as laceration or puncture hazards from projecting axles, either on the toy or on wheel assemblies that may be removed from the toy during abuse. The requirements shall apply to transportation wheels on both preassembled and knocked-down toys intended for children aged 96 months or less, except for ingestion hazards from small wheels and axles, which apply to toys intended for children under 36 months of age, as covered in 4.6. In the case of knocked-down toys, the toy shall be tested in the form that it would be assembled by the purchaser, using simple household tools or special tools provided by the manufacturer, if any, or both. After being subjected to the use and abuse tests of 8.5-8.11, wheels, tires, or axles shall not present a laceration, puncture, or ingestion hazard as defined in 3.1.60 and 4.6.1, respectively.

4.18 Holes, Clearance, and Accessibility of Mechanisms- These requirements

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 97 of 298 are intended to eliminate possible hazards that may be caused by changing clearances. Toys shall meet these requirements after they are tested in accordance with <u>8.5-8.10</u>. The different pinch clearance requirements listed in <u>4.18.1-4.18.6</u> reflect the different modes of entrapment or pinching that may be encountered.

4.18.1 Accessible Clearances for Moveable Segments— This requirement concerns clearances between movable segments on toys intended for children under 96 months only, where the potential for pinching or crushing fingers or other appendages exists. It includes, but is not limited to, wheels and rigid-wheel wells, fenders, or the radial clearance between the wheels and chassis of ride-on toys, or the driven wheels and other parts of toys powered by electrical, spring, or inertial energy. If such accessible clearances admit a 3/16-in. (5-mm) diameter rod, they shall also admit a ½-in. (13-mm) diameter rod in order to prevent the trapping of fingers.

4.18.2 *Circular Holes in Rigid Materials*— This requirement is intended to prevent finger entrapment (which may cut off blood circulation) in accessible holes in sheet metal and other rigid material in toys intended for children aged 60 months or less. (Noncircular holes are believed to present no significant hazard of cutting off blood circulation in entrapped fingers.) If an accessible, circular hole in any rigid material less than 0.062 in. (1.58 mm) in thickness can admit a ¹/₄-in. (6-mm) diameter rod to a depth of ³/₈ in. (10 mm) or greater, it shall also admit a ¹/₂-in. (13-mm) diameter rod.

4.18.3 *Chains and Belts*— These requirements are to prevent finger crushing through entrapment between links of supporting chains or between chains and sprockets or pulleys and belts.

Figure 13. Clearance for Chain Links A single chain link is shown and the inside of the link is labelled possible entrapment point. A mark indicates that the clearance should not admit a 3/16 inchd diameter rod on unshielded chains. Clearance not admit 3/16 - in. (5 mm)diameter rod on unshielded chains Possible EntrapmentPoint

FIG. 13 Clearance for Chain Links

4.18.3.1 Supporting Chains— Chains in toys that support the weight of a child, such as hanging seats or similar indoor devices, intended for children 36 months or less in age, shall be shielded if the chain is accessible and if a 0.19-in. (5-mm) diameter rod can be inserted between two links, as in Fig. 13, with the chain in slack configuration.

4.18.3.2 Chains or Belts for Ride-On Toys- Power transmission chains and

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 98 of 298 belts in ride-on toys shall be shielded.

4.18.4 *Inaccessibility of Mechanisms*— Clockwork, batteryoperated, inertial, or other power-driven mechanisms in toys intended for children aged 60 months or less shall not have any accessible part of the mechanism present a pinch or laceration hazard. (For circular holes, also see the requirement under 4.18.2.)

4.18.5 *Winding Keys*— This requirement is to prevent the pinching or laceration of fingers by entrapment between the key and body of the toy. It applies to toys intended for children under 36 months of age that use winding keys that rotate as the mechanism unwinds. This requirement applies to keys with flat plates attached to the stem and that protrude from a rigid surface; the requirement does not apply to those circular knobs to which the torque is applied. If the clearance between the flukes of the key and body of the toy will admit a 0.25-in. (6-mm) diameter rod, it shall also admit a 0.5-in. (13-mm) diameter rod at all positions of the key. For keys covered by this requirement, there shall be no opening in the flukes of the key that can admit a 0.19-in. (5-mm) diameter rod.

4.18.6 *Coil Springs*— These requirements are intended to prevent the pinching or crushing of fingers or toes by toys containing springs. Coil springs (either compression or extension) that form part of a component that carries the weight of a child shall be shielded so as to prevent access during use or reasonably foreseeable abuse unless either of the following occurs:

4.18.6.1 A 0.12-in. (3-mm) diameter rod cannot be inserted freely; or

4.18.6.2 A 0.25-in. (6-mm) diameter rod can be inserted freely between the adjacent coils at all points in the action cycle when the spring is subjected first to a weight of 3 lb (1.4 kg) and then to a weight of 70 lb (32 kg).

4.19 Simulated Protective Devices (such as helmets, hats, and goggles)— These requirements are intended to minimize hazards that might be caused, for example, by goggles or space helmets if the material from which they are constructed fails; or by toys that simulate protective devices such as football helmets and pads, if the wearer uses the article as a real protective device rather than as a toy. The toy shall conform to the requirements listed in 4.19.1 and 4.19.2 after testing in accordance with 8.7.4 and 8.8 through 8.10.

4.19.1 *Eye Protection*— All rigid toys that cover the face, such as goggles, space helmets, or face shields, shall be constructed of impact-resistant

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 99 of 298 material that will not have sharp edges, sharp points, or loose parts that could enter the eye before or after being tested in accordance with <u>8.5-8.10</u>. This applies to items with cutout eye holes as well as items that cover the eyes.

4.19.2 Toys that simulate safety protective devices (examples include, but are not limited to, construction helmets and sports helmets) and their packages shall be labeled clearly in accordance with 5.9 to warn the purchaser that they are not safety protective devices.

4.20 *Pacifiers*— Infant pacifiers shall conform to the safety requirements as specified in <u>16 CFR 1511</u>. Illustrations of the pacifier test fixture are shown in <u>Fig. 14.</u>

Figure 14. Pacifier Test Fixture The pacifier test fixture is a flat device through the nipple of the pacifier is inserted. Diagram a is a top view and has a width of 76 mm and a length of 102 mm. The center opening is a trapezoid with the top part being wider and a width of 22.3mm and 45 degree angles . Below the trapezoid is a circle with a diameter of 42.7mm. Below that is another trapezoid, with the narrow part on top. The distance from the top of the opening is 3 inches. 22° 30° 1.68"42.7 mm 4"102 mm 45° 3"76 mm 1.5"38.1 mm 3.0"76.2 mm 2 LBSOR8.6 N A A CenterOpening Material:1/4" Polytetrafluoroethylene SectionA-A PACIFIER FORCE 0.3"76 mm Rod (b) (a)

FIG. 14 Pacifier Test Fixture

4.20.1 Pacifiers with rubber nipples shall conform to the nitrosamine levels as specified in Specification F1313. This specification states that a test sample of nipples, drawn from a standard production lot, shall not contain more than 10 ppb in each of three aliquots of any one nitrosamine. In addition, the total nitrosamines of the sample shall not exceed 20 ppb.

4.20.2 Toy pacifiers attached to, or sold with, toys intended for children under 36 months of age shall comply with the requirements outlined in 4.6.1 of this specification (small objects), and either conform to the requirements of <u>16 CFR 1511</u> or have a nipple length no longer than 0.63 in. (16 mm). This measurement shall be taken from the nipple side of the shield to the end of the nipple.

4.21 *Projectile Toys*— These requirements relate to certain, but not all, potential, unexpected hazards that might be caused by projectile firing toys and by the firing of improvised projectiles from such toys. Certain well-recognized hazards that are inherent in traditional toys such as slingshots and darts are not covered by these requirements. The discharge mechanism as

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 100 of 298 well as the projectile shall conform to the requirements specified in this section after testing in accordance with the appropriate test methods described in <u>8.5-8.10</u> and <u>8.14</u>.

4.21.1 These requirements apply to toys that are intended to launch projectiles into free flight by means of a discharge mechanism in which the kinetic energy of the projectile is determined by the toy and not by the user.

4.21.1.1 No projectile intended to be fired from a toy shall have any sharp edges, sharp points, or small parts that would fit within the cylinder shown in Fig. 3.

4.21.1.2 No rigid projectile fired from a toy shall have a tip radius less than 0.08 in. (2 mm).

4.21.1.3 Any rigid projectile fired from a toy that has a kinetic energy that exceeds 0.08 J (as determined by 8.14.1) shall have an impact surface(s) of a resilient material.

4.21.1.4 Any protective tip shall either (1) not be detached from the projectile when subjected to the torque and tension tests described in <u>8.8</u> and <u>8.9</u>, or (2) if the protective tip does become detached during the test at less than the specified torque or tension, or both, the projectile shall not be able to be launched from the provided launcher. Additionally, the protective tip shall not produce or reveal hazardous points or edges when fired into a solid object, in accordance with the test methods described in <u>8.14.4</u>.

4.21.1.5 The aforementioned requirements shall not apply to any discharge mechanism incapable of storing energy independent of the user, or intended to propel a ground-based vehicular toy along a track or other surface, or when the projectile is inaccessible to a child when it leaves the discharge mechanism, for example, bagatelle or pinball machines.

4.21.2 *Discharge Mechanisms*— Discharge mechanisms shall be unable to discharge potentially hazardous improvised projectiles such as pencils or pebbles without modification by the user.

4.21.3 Any arrow shall have a protective tip that complies with <u>4.21.1.4</u>.

4.22 *Teethers and Teething Toys*— These requirements are intended to address a potential impaction hazard associated with teethers. These requirements are applicable before and after use and abuse testing in accordance with <u>Section 8</u>.

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Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 101 of 298 4.22.1 Teethers and teething toys shall conform to the dimensional requirements for infant rattles as specified in <u>16 CFR 1510</u>. Illustrations of a rattle test fixture are shown in Fig. <u>15</u>. A teether shall meet this requirement when tested under the force only of its own weight and in a noncompressed state.

Figure 15. Rattle Test Fixture The fixture is a rectangular block with a stadium oval cavity centered within the fixture. The stadium oval is 1.968 inchdes by 1.378 inches and the circles have a radius of .689 inches. The rectangle around the oval is 2 9/16 inches by 1.968 inches. From the side, the device is 1.181 inches high and 3 1/8 inches long. CAVITY CENTERED WITHIN FIXTURE .689 in (17.5 mm)RADIUS (REF) 2 9/16 in(65 mm) 1.378 in(35 mm) 1.968 in(50 mm) 1.181 in(30 mm) 3 1/8 in(80 mm)

FIG. 15 Rattle Test Fixture

4.22.2 In addition, teethers and teething toys incorporating nearly spherical, hemispherical, or circular flared ends shall be designed so that such ends are not capable of entering and penetrating to the full depth of the cavity in the supplemental test fixture shown in Fig. 16. A teether shall meet this requirement when tested under the force only of its own weight and in a noncompressed state.

Figure 16. Supplemental Test Fixture for Rattles, Squeeze Toys and Teethers. The top diagram is a square of 2.86 inchdes per side with a circle inside of 1.68 inches in diameter. The side view shows the device is 1.18 inchdes high. 2.86 in(72.6 mm) 2.86 in(72.6 mm) 1.68 in(42.7 mm) 1.18 in(30.0 mm)

FIG. 16 Supplemental Test Fixture for Rattles, Squeeze Toys, and Teethers

4.22.3 *Exclusion*— The requirements of 4.22.1 and 4.22.2 shall not apply to the following:

- 1. Teething toys that are composed of liquid-filled beads that are attached to form a ring or beads that are threaded on a flexible cord or string.
- 2. Soft-filled (stuffed) teething toys or soft-filled parts or parts of fabric.
- 3. Rigid components having a major dimension equal to or less than 1.2 in. (30 mm) contained within soft-filled teething toys.

4.23 *Rattles*— Infant rattles shall conform to the safety requirements as specified in <u>16 CFR 1510</u>. Illustrations of a rattle test fixture are shown in <u>Fig.</u> <u>15.</u>

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 102 of 298 4.23.1 In addition to meeting the requirements of <u>16 CFR 1510</u>, rigid rattles incorporating nearly spherical, hemispherical, or circular flared ends shall be designed so that such ends are not capable of entering and penetrating to the full depth of the cavity in the supplemental test fixture illustrated in Fig. <u>16</u>. A rattle shall meet this requirement when tested under the force only of its own weight and in a noncompressed state. These requirements are applicable before and after use and abuse testing in accordance with <u>Section 8</u>.

4.23.2 *Exclusion*— The requirements of 4.23 and 4.23.1 shall not apply to the following:

- 1. Soft-filled (stuffed) rattles or soft-filled parts or parts of fabric.
- Rigid components having a major dimension equal to or less than 1.2 in. (30 mm) contained within soft-filled rattles.

4.24 *Squeeze Toys*— These requirements are intended to address a potential impaction hazard associated with squeeze toys intended for children under the age of 18 months. These requirements are applicable before and after use and abuse testing in accordance with <u>Section 8</u>.

4.24.1 Squeeze toys shall conform to the dimensional requirements for rattles as specified in <u>16 CFR 1510</u>. Illustrations of a rattle test fixture are presented in <u>Fig. 15</u>. A squeeze toy shall meet these requirements when tested under the force only of its own weight and in a noncompressed state.

4.24.2 In addition, squeeze toys incorporating nearly spherical, hemispherical, or circular flared ends shall be designed so that such ends are not capable of entering and penetrating to the full depth of the cavity in the supplemental test fixture shown in Fig. 16. A squeeze toy shall meet these requirements when tested under the force only of its own weight and in a noncompressed state.

4.24.3 *Exclusion*— The requirements of <u>4.24.1</u> and <u>4.24.2</u> shall not apply to the following:

- 1. Soft-filled (stuffed) squeeze toys or soft-filled parts or parts of fabric.
- Rigid components having a major dimension equal to or less than 1.2 in. (30 mm) contained within soft-filled squeeze toys.

4.25 *Battery-Operated Toys*— These requirements are intended to address potential risks of injury associated with battery usage in toys intended for use by children (for example, battery overheating, leakage, explosion and fire,

Standard Consumer Safety Specification for Toy Safety Case 1:13-cV-01215-TSC Document 122-1 Filed 12/22/15 Page 103 of 298 and choking on or swallowing batteries). Both non-rechargeable and rechargeable batteries are subject to these requirements. Batteryoperated toys shall conform to the requirements specified in this section after testing in accordance with the appropriate test methods described in 8.5-8.12. For purposes of ensuring compliance with these requirements, fresh alkaline batteries that meet the dimensional requirements of the latest revision of ANSI C18.1 or the latest revision of IEC 60086-2 shall be selected for test purposes. If another battery chemistry is specifically required for use in the toy by the manufacturer, testing shall be repeated using that type of battery. When rechargeable batteries are specified by the manufacturer, fully recharged batteries shall be used for testing purposes.

> 4.25.1 The toy shall be marked permanently on the battery compartment or on the area immediately adjacent to the battery compartment to show the correct battery polarity using the polarity symbols "+" and "-". Additional markings located on the toy or in the instructions must indicate the correct battery size and voltage. These markings are not required for nonreplaceable batteries or for rechargeable battery packs that, by design, can only be inserted in the correct orientation. Battery compartments for button cell batteries are not subject to this requirement.

NOTE 5 — The battery compartment door is considered part of the battery compartment.

4.25.1.1 Toys containing non-replaceable batteries shall be labeled in accordance with <u>5.15</u>.

4.25.2 The maximum allowable direct current potential between any two accessible electrical points is 24 V nominal.

4.25.3 Battery-operated toys shall be designed so that it is not possible to charge any non-rechargeable battery. This can be achieved through physical design of the battery compartment or through the use of an appropriate electrical circuit design. This applies to situations in which a battery may be installed incorrectly (reversed) or in which a battery charger may be applied to a toy containing non-rechargeable batteries, or both. This section does not apply to circuits having one or two non-rechargeable batteries as the only source of power.

4.25.3.1 Toys having a circuit powered only by button cell type batteries are not subject to this requirement.

4.25.4 For toys intended for children less than 3 years old, all batteries shall not be accessible before or after testing in accordance with 8.5-8.10, without

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 104 of 298 the use of a coin, screwdriver, or other common household tool. Testing is performed using the recommended batteries installed.

4.25.5 For all toys, batteries that fit completely within the small parts test cylinder shown in Fig. 3 shall not be accessible, before or after testing in accordance with 8.5-8.10, without the use of a coin, screwdriver, or other common household tool. Testing is performed using the recommended batteries installed.

4.25.6 Batteries of different types or capacities shall not be mixed within any single electrical circuit. In applications requiring more than one type or capacity of battery to provide different functions or in applications requiring the combination of alternating current and non-rechargeable batteries, each circuit shall be isolated electrically to prevent current from flowing between the individual circuits.

4.25.7 The surfaces of the batteries shall not achieve temperatures exceeding 71 $^{\circ}\text{C}.$

4.25.7.1 This requirement is applicable for all batteryoperated toys during normal use conditions. In addition, battery-operated toys intended for children 96 months or less shall meet this requirement after reasonably foreseeable abuse.

4.25.7.2 If external moving parts of the toy that are mechanically linked to the motor can be stalled by the user, test for a stalled motor condition according to the procedures of 8.17 to determine conformance with the temperature limits.

4.25.8 No condition shall occur that would cause the toy to fail the temperature requirements of 4.25.7 or present a combustion hazard as described in 4.25.

4.25.9 Battery-operated toys shall meet the requirements of 6.5 for instructions on safe battery usage. Toys which use non-replaceable batteries as the only source of power are not subject to 6.5.

4.25.10 *Battery-Powered Ride-On Toys*— These requirements cover wheeled ride-on toys, not intended for streets or roadways, using a battery power source that is capable of delivering at least 8 amps into any variable resistor load for at least one minute.

4.25.10.1 The maximum temperature measured on the insulation of any conductor shall not exceed the temperature rating of the material (third

4.25.10.2 Battery-powered ride-on toys shall not present a risk of fire when tested in accordance with the stalled motor test of <u>8.18.3</u>.

4.25.10.3 A battery-powered ride-on toy designed with a wiring system that has a user replaceable device (fuse type) for the primary circuit protection or a wiring system with user resetable primary circuit protection (manual reset fuse) shall not actuate (open or trip) when tested in accordance with the nuisance tripping test of <u>8.18.4</u>.

4.25.10.4 Switches used in battery-powered ride-on toys.

- Polymeric materials in switches used in batterypowered ride-on toys that are used to support current-carrying parts shall carry a minimum flame rating of UL-94 V-0 or have a glow wire ignition rating of 750°C. Note: This requirement does not apply to switches used in low-power circuits. A low-power circuit is defined as one using an effective battery power source that is not capable of delivering at least 8 amps into any variable resistor load for at least one minute.
- 2. The switch body shall not result in a short-circuit condition when subjected to the switch endurance test and overload tests of <u>8.18.5</u>.
- 3. The switch shall not fail in a mode that could cause the vehicle to run continuously (switch stuck in the "on" position) when subjected to the endurance test and the overload test in <u>8.18.5</u>.

4.25.10.5 User replaceable circuit protection devices in battery-powered rideon toys.

- 1. User replaceable circuit protection devices used in battery-powered ride-on toys shall be listed, recognized or certified by an independent laboratory.
- 2. All circuit protection devices used in battery-powered ride-on toys intended to be replaced by the user shall be replaceable only with the use of a tool or by a design which does not easily allow tampering such as a design requiring excessive force to open.

4.25.10.6 Batteries, as described in <u>4.25.10</u>, and battery chargers.

1. Battery connectors must be constructed of material with a V-0 flame rating or have a glow wire ignition rating of 750°C.

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- 2. The battery charging system shall not present a risk of fire due to a short-circuit condition applied to any point in the length of a charger/battery interconnecting cable when tested in accordance with <u>8.18.7</u>.
- 3. During charging, battery-charging voltages shall not exceed the recommended charging voltages when tested in accordance with <u>8.18.6</u>.
- 4. Battery chargers must be certified to the appropriate current national standard, for example UL, CSA, or equivalent standards body.
- 4.25.10.7 Wiring connected to the main/motor battery shall be short-circuit protected and shall not present the risk of fire when tested in accordance with <u>8.18.7</u>.

4.25.10.8 Strain relief shall be provided to prevent mechanical stress on wires entering a connector block during routine maintenance such as battery charging, and tested in accordance with 8.18.8.

4.25.10.9 Battery-powered ride-on toys shall comply with the requirements in 5.15.1 for safety labeling, 6.5.3 for additional instructional literature, and 7.2 for required producer's markings.

4.26 *Toys Intended to be Attached to a Crib or Playpen*— These requirements are intended to minimize entanglement or strangulation hazards that might be caused by toys intended to be attached to a crib or playpen (see also <u>4.14</u>).

4.26.1 *Protrusions*— Toys attached to a crib or playpen in the manner prescribed by the manufacturer's instructions shall not have hazardous protrusions that could contribute to entanglement injury. This requirement is applicable before and after use and abuse testing in accordance with <u>8.5</u>-8.10. Design guidelines are provided in <u>Annex A3</u>.

4.26.2 *Crib Mobiles*— Crib mobiles shall comply with the requirements listed in 5.6 for safety labeling and 6.3 for instructional literature.

4.26.3 *Crib Gyms*— Crib gyms, including crib exercisers and similar toys intended to be strung across a crib or playpen, shall comply with the requirements listed in 5.5 for safety labeling and 6.2 for instructional literature.

4.27 *Stuffed and Beanbag-Type Toys*- Stuffed and beanbagtype toys shall

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 107 of 298 meet the applicable requirements of this specification after being tested in accordance with 8.9.1.

4.28 *Stroller and Carriage Toys*— Stroller and carriage toys shall comply with the requirements for safety labeling in <u>5.7</u>.

4.29 *Art Materials*— The purpose of this requirement is to minimize the potential risks associated with the use of art materials that present chronic health hazards.

4.29.1 Toys and components of toys that fall within the definition of art material as found in <u>16 CFR 1500.14 (b) (8)</u> shall meet the requirements for toxicological review by a U.S. board-certified toxicologist. The protocol used to evaluate the art materials must be filed with the Consumer Product Safety Commission (CPSC), and the list of ingredients must also be filed with the commission if the material is or contains a chronically hazardous substance.

4.29.2 Toys and components of toys that are art materials and are determined to contain hazardous materials must have appropriate warnings as defined in the Federal regulations and as noted in 5.13 of this specification. Items that do not contain hazardous materials must also be labeled as to their conformity.

4.29.3 Toys and components of toys that have been determined to pose a chronic health hazard and require warnings are not suitable for use by children who are in pre-kindergarten, or grades one through six.

4.30 *Toy Gun Marking*— This requirement is intended to minimize the potential for a toy gun to be mistaken for a real firearm.

4.30.1 This requirement applies to all toy, look-alike, and imitation firearms which have the general appearance, shape, or configuration, or combination thereof, of a firearm. This includes, but is not limited to, nonfunctional guns, water guns, air soft guns, cap guns, light emitting guns, and guns with an opening to eject any nonmetallic projectile.

4.30.2 This requirement does not apply to the following types of guns:

4.30.2.1 Futuristic toy guns that do not have the general appearance, shape, or configuration, or combination thereof, of any firearm.

4.30.2.2 Nonfiring collector replica antique firearms that look authentic and may be a scale model but are not intended as toys.

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 4.30.2.3 Traditional B-B guns, paint ball guns, or pellet guns that expel a projectile through the force of compressed air, compressed gas, or mechanical spring action, or combination thereof.

4.30.2.4 Decorative, ornamental, and miniature objects having the appearance, shape, or configuration, or combination thereof, of a firearm provided that the objects measure no more than 1.50 in. (38 mm) in height by 2.75 in. (70 mm) in length, with the length measurement excluding any gun stock length measurement. This includes items intended to be displayed on a desk or worn on bracelets, necklaces, key chains, etc.

4.30.3 Items subject to this requirement must be marked or manufactured, or both, in any one of the following ways. The marking must be permanent and must remain in place after being tested in accordance with 8.5-8.10. The word "permanent" excludes the use of ordinary paint or labels for the purposes of this section. The "blaze orange" color referred to in 4.30.3.1 and 4.30.3.2 is Federal Standard 595a, Color 12199.

4.30.3.1 A blaze orange plug, or brighter orange colored plug, affixed into the muzzle end of the barrel as an integral part of the toy. The plug shall not be recessed more than 0.25 in. (6 mm) from the muzzle end of the barrel.

4.30.3.2 A blaze orange band, or brighter orange colored band, covering the circumference of the muzzle end of the barrel for a distance of at least 0.25 in. (6 mm).

4.30.3.3 Coloration of the entire exterior surface of the toy in white, bright red, bright orange, bright yellow, bright green, bright blue, bright pink, or bright purple, either individually or as the predominant color in combination with any other color in any pattern.

4.31 *Balloons*— Packages containing latex balloons and toys or games containing latex balloons shall comply with the labeling requirements of <u>16</u> <u>CFR 1500.19</u>. Labeling statements for balloons are contained in <u>5.11.5</u> of this specification.

4.32 *Certain Toys with Nearly Spherical Ends*— These requirements are intended to address a potential impaction hazard associated with nearly¹³ spherical, hemispherical, circular flared or dome shaped ends on toys or components of toys.

¹³ The term "nearly" is used here, consistent with the long standing and successful squeeze toy requirement.

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 109 of 298 4.32.1 Nearly spherical, hemispherical, circular flared, or dome-shaped ends of toys or components of toys must not be capable of penetrating the full depth of the cavity of the supplemental test fixture shown in Fig. 16 when tested under the force only of their own weight and in a noncompressed state. This requirement applies to toys if they meet all the following criteria:

4.32.1.1 The toy is intended for children up to the age of 18 months.

4.32.1.2 The toy or component containing the nearly spherical end weighs less than 1.1 lb (0.5 kg).

4.32.1.3 The nearly spherical, hemispherical, circular flared or dome shaped end adjoins a shaft, handle or support that has a smaller cross section.¹⁴

1. *Exclusion*—The requirement of <u>4.32.1</u> does not apply to softfilled (stuffed) toys or softfilled parts of toys or parts entirely of fabric.

¹⁴ This sentence attempts to clarify that the requirements only apply to the nearly spherical end and not to nonspherical areas of the toy or component. In addition, the term "adjoins" replaces the term "attached" as the handle and spherical end may be all part of the same molded piece.

4.32.2 Nearly spherical, hemispherical, or dome-shaped ends of toy fasteners (for example, nails, bolts, screws, pegs) (see Fig. 17) must not be capable of penetrating the full depth of the cavity of the supplemental test fixture shown in Fig. 16 when tested under the force only of their own weight and in a noncompressed state. This requirement of 4.32.2 applies to toy fasteners if they meet all the following criteria:

4.32.2.1 They are intended for children aged at least 18 months but less than 48 months of age.

4.32.2.2 They have an overall length of 2.25 in. (57.1 mm) or greater.

Figure 17. Domed Ends 3 Domed ends are shown. One is a rod with a sphere on top. The second is a rod with a semi-sphere on top. The third is a rod with a small ring half-way up the rod and top of that is a cap that has a dome on the end.

Domed ends, with and without small flat in the center.

Figure 17b. Hemispherical Ends. Hemispherical ends are shaped like a nail with a slight curve to the top of the nail.

FIG. 17 Examples of Hemispherical and Domed Ends

4.32.2.3 Their nearly spherical, hemispherical or domed ends have a diameter equal to or greater than 0.6 in. (15 mm).

4.32.2.4 The distance from the apex of the fastener to the undercut is 1.75 in. (44.4 mm) or less as shown in Fig. 18.

- 1. *Exclusions*—The requirement of <u>4.32.2</u> does not apply to the following toy fasteners:
 - a. Softfilled (stuffed) or fabric fasteners,
 - b. Fasteners with nonrigid ends, and
 - c. Fasteners tethered to a toy where the weight of the combined toy/fastener is more than 1.1 lb (0.5 kg) and the length of the tether is less than 12 in. (300 mm).

Figure 18. Undercut and Diameter A rod with with a domed end on top is shown. The domed end is wider than the rod. From one side of the cap (the domed end) is labelled "diameter of spherical or hemispherical or domed end." From the top of the cap to the bottom, where it attaches to the rod, is labelled "distance to undercut section from domed end." Diameter of spherical orhemispherical or domedend Distance to undercut sectionfrom domed end

FIG. 18 Undercut and Diameter

4.32.3 *Preschool Play Figures*— This requirement is intended to address the potential choking/obstruction hazard associated with certain preschool figures intended for children under three years of age. The characteristics that distinguish toy figures falling within the scope of this requirement include: (1) a round, spherical, or hemispherical end with tapered neck attached to a simple cylindrical shape without appendages, and (2) an overall length not exceeding 2.5 in. (64 mm) (see examples in Fig. 19). This includes figures with added or molded features such as hats or hair, which retain the rounded shape of the end.

Figure 19. Examples of Preschool Play Figures The diagram has three examples of playschool figures. One has a baseball cap, one is bald, one has hair.

FIG. 19 Examples of Preschool Play Figures

4.32.3.1 Preschool play figures intended for children under three years of age shall be designed so that their rounded ends are not capable of entering and penetrating to the full depth of the cavity in the supplemental test fixture

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 111 of 298 illustrated in Fig. 16. Test the play figure under the force of its own weight.

4.32.3.2 *Exclusion*— The requirement of 4.32.3.1 shall not apply to soft play figures made of textiles.

4.33 *Marbles*— Marbles shall comply with the labeling requirements of <u>16 CFR</u> <u>1500.19</u>. Labeling statements for marbles are contained in <u>5.11.4</u> of this specification.

4.33.1 Toys and games intended for children at least 3 years of age but less than 8 years of age that contain a marble shall comply with the labeling requirements <u>16 CFR 1500.19</u>. Applicable labeling statements are contained in <u>5.11.4.1</u> of this specification.

4.34 Balls

4.34.1 Balls intended for children under 36 months of age are subject to the requirements of <u>16 CFR 1500.18 (a) (17)</u>. A loose ball in toys intended for children under 36 months of age shall not, under the influence of its own weight and without compression, pass entirely through the template shown in <u>Fig. 20.</u> A ball which does pass through the template is determined to be a "small ball."

Figure 20. Test Fixture for Small Balls The test fixture is a square of 2.86 inchdes per side with a 1.75 inch diameter circle inside. This is the top view. The size view indicates that the device is 0.25 inchdes high. 2.86 in.(72.6 mm) 2.86 in.(72.6 mm) 1.75 in.(44.5 mm)

FIG. 20 Test Fixture for Small Balls

4.34.2 Toys intended for children at least 3 years old but less than 8 years of age that contain a loose small ball are subject to the requirements of <u>16 CFR</u> <u>1500.19</u>. Applicable labeling statements are contained in <u>5.11.3</u> of this specification.

4.35 *Pompoms*— These requirements are intended to address choking hazards associated with pompoms on toys intended for children under three years of age that detach during <u>8.16</u>. Pompoms detached during <u>8.16</u> must not pass entirely through the 1.75-in. (44.5-mm) test fixture (see Fig. 20) under their own weight. Any components, pieces, or individual strands of the pompom that are liberated during the torque and tension tests should not be subject to this test. Test the pompoms by putting the free ends of fiber into the gauge.

4.36 *Hemispheric-Shaped Objects*- These requirements apply to toy cup-,

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 112 of 298 bowl-, or one-half egg-shaped objects having a nearly round, oval, or elliptical opening with the minor and major inner dimensions between 2.5 in. (64 mm) and 4.0 in. (102 mm), a volume of less than 6.0 oz (177 mL), a depth greater than 0.5 in. (13 mm), and intended for children under 3 years of age. The following are exempt from this requirement:

4.36.1 Objects intended for drinking (for example, tea cups).

4.36.2 Objects intended to hold liquids in products appropriate for children at least 2 years old (for example, pots and pans).

4.36.3 Containers that must be airtight so the contents can maintain their functional integrity (for example, modeling clay containers.)

4.36.4 Non-detachable (as determined by testing in accordance with 8.6-8.10 of this specification) components of larger products (for example, bowl-shaped smoke stack that is permanently attached to a toy train or a swimming pool that is molded into a larger toy playscape).

4.36.5 Containers that are part of the retail package intended to be discarded once the toy is removed from the package.

4.36.6 *Performance Requirements*— Cup/bowl/one-half egg-shaped objects must have, as a minimum, one of the following characteristics (*a*, *b*, *c*, *d*, or *e*). For purposes of these requirements, unless otherwise specified, an opening is defined as a hole of any shape with a minor dimension of 0.080 in. (2 mm). These requirements apply before and after testing in accordance with 8.6-8.10 of this specification.

- a. Have at least two openings that are a minimum of 0.5 in. (13 mm) from the rim as measured along the outside contour.
 - If the openings are placed in the base of the object, at least two of the openings must be a minimum of 0.5 in. (13 mm) apart. (See Fig. 21.)
 - If the openings are not placed in the base of the object, at least two of the openings must be placed at least 30° but not more than 150° apart. (See Fig. 22.)
- b. The plane of the open end of the cup shape shall be interrupted at the center by some type of divider that extends to 0.25 in. (6 mm) or less from the plane of the open end of the cup. (See Fig. 23 for an example.)

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- c. Have three openings that are at least 100° apart, located between 0.25 in. (6 mm) and 0.5 in. (13 mm) from the rim as measured along the outside contour.
- d. Have a repeating scalloped edge pattern around the entire rim. The maximum distance between center lines of adjacent peaks shall be 1 in. (25 mm) and the minimum depth shall be 0.25 in. (6 mm). (See Fig. 24 for examples of scalloped edge patterns.)
- e. Have an opening with a minor dimension of at least 0.66 in. (17 mm) located anywhere in the base or in the side wall of the object. If the opening is located in the sidewall of the object, the edge of the opening must be at least 0.5 in. (13 mm) from the rim as measured along the outside contour.

Figure 21. Openings in Base of Bowl On the left, a side view of a bowl shows two holes in the bottom. It is labelled "Section A-A". From the top, a circle is shown with the holes in the the bottom. Each hole is labelled A. There must be a minimum distance of 0.5 inchdes between the holes. SECTION A A 0.5 in. Min. (13 mm) A A

FIG. 21 Openings in Base of Bowl

Figure 22. Opening Placement There are two diagrams. On the left is a cirlce with two small holes. One is on the far right of the bowl near the edge. The other is on the left near the edge but up a bit from the center. Arrows indicate that these wholes are to be 150 degrees maximum and 30 degrees minimum in separation. The right diagram shows a bow and indicates that a hole must be 0.5 incldes minimum from the top. 150° Max. to 30° Min. 0.5 in. Min. (13 mm)

FIG. 22 Opening Placement

Figure 23. Rib Through Cup Center. There are two diagrams. The left is a semi-circle representing a cup with a rib protruding from the botom. The rib must be 0.25 includes maximum from the top of the cup. The widest distance from one side to the other is labelled Section A-A. SECTION A - A 0 . 25 in. Max.(6 mm) A A

FIG. 23 Rib Through Cup Center

Figure 24. Scalloped Edge Pattern Three examples of half-spheres with scalloped edges are shown. One is gently undulating edges. The other is a sharp set of scallops. The third is a set of notches.

FIG. 24 Scalloped Edge Pattern

4.37 Yo Yo Elastic Tether Toys- These requirements are intended to address

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 114 of 298 potential strangulation hazards associated with yo yo elastic tether toys intended for children 36 months and over.

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4.37.1 Toys with an end mass greater than 0.02 kg (0.044 lb) shall have a tether length less than 50 cm (20 in.) measured when the toy is rotating at any speed up to a maximum speed of 80 r/min. Testing shall be conducted in accordance with 8.23.

4.37.2 Exemptions:

- 1. Paddle balls.
- 2. Sports balls with wrist or ankle straps longer than 70 cm (27.6 in.) intended to be kicked or thrown and returned to the user. The length of the strap shall be measured when the product is placed on a horizontal surface with no load.

4.38 *Magnets*— This requirement is intended to address ingestion hazards associated with toys intended for children up to 14 years of age that contain a hazardous magnet. This requirement does not apply to magnets used in motors, relays, speakers, electrical components, and similar devices where the magnetic properties are not part of the play pattern of the toy.

4.38.1 Toys must not contain a loose as-received hazardous magnet or a loose as-received hazardous magnetic component.

4.38.2 Toys shall not liberate a hazardous magnet or a hazardous magnetic component after being tested in accordance with <u>8.8</u> and <u>8.9</u> and magnet use and abuse testing as specified in <u>8.24</u>.

4.38.3 Hobby, craft, and science kit-type items intended for children over 8 years of age, where the finished product is primarily of play value, that contain a loose as-received hazardous magnet or a loose as-received hazardous magnetic component, or both, are exempt from the requirements of 4.38.1 and 4.38.2 provided they comply with the requirements for safety labeling described in 5.17.

4.39 Jaw Entrapment in Handles and Steering Wheels

4.39.1 These requirements are intended to address potential jaw entrapment in handles and steering wheels that are located such that they are accessible for teething in the following categories of toys intended for children under 18 months of age: activity tables intended to be played with by a standing child, large bulky toys, stationary floor toys, push toys intended to be pushed by a child walking upright, and ride-on toys.

4.39.2 Handles that are connected to the toy with a hinge and handles made from a pliable material (for example, straps and ropes) are exempt from this requirement.

4.39.3 Openings in handles and steering wheels that allow a 0.75 by 0.75 by 1 in. (1.9 by 1.9 cm by 2.5 cm) test fixture to pass completely through must also allow a 1.5 by 2.5 by 1 in. (3.8 by 6.35 by 2.5 cm) test fixture to pass completely through (see Fig. 25). Test fixtures can be made of any rigid material. The test fixture shall be oriented such that the 0.75-in. (1.9-cm) dimension and the 2.5-in. (6.35-cm) dimension is parallel with the major dimension of the handle or steering wheel opening.

Figure 25. Jaw Entrapment A rectangular block with a an arch connected to the top is shown in two views. On the left view, a block that is 2.5×1.5 inches and 1 inch deep is being inserted through the arch. On the second diagram, the block is 0.75×0.75 inches and one inch deep.

FIG. 25 Jaw Entrapment

5. Labeling Requirements

5.1 Federal Government Requirements— All toys that fall within the definitions and requirements of the U.S. FHSA shall conform to the labeling requirement of that act. For specific requirements, reference <u>16 CFR 1500.3</u>, 1500.14, 1500.19, 1500.82, 1500.83, 1500.86, 1500.121, 1500.122, 1500.123, 1500.125, 1500.126, 1500.127, 1500.128, 1500.130, 1505.3, and 1511.7. In addition, state labeling requirements may exist.

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5.2 Age Grading Labeling— Toys that are subject to any of the requirements of this specification should be labeled to indicate the minimum age for intended use or have such labeling on any retail packaging. If the toy or toy package is not age labeled in a clear and conspicuous manner or, based on such factors as marketing practices and the customary patterns of usage of the toy by children, is inappropriately age labeled, the toy shall be subjected to the most stringent applicable requirements within this specification. (Examples: (1) a tensile force of 15 lbf (67 N) shall be required instead of 10 lbf (45 N) when testing in accordance with 8.9 if no limiting age range is specified; (2) the "highest age of the age range" in 4.15 would be 14 years, the maximum age addressed in the scope of this specification.)

5.2.1 For certain toys, such as costumes and riding toys, it may also be appropriate to label the toy or its package, or both, in terms of height or

5.2.2 Guidelines for determining the appropriate age grade for toys are provided in <u>Annex A1</u> of this specification.

5.3 *Safety Labeling Requirements*— Certain toys, and in some cases their packages, are required to carry safety labeling to comply with this specification.

5.3.1 Required safety labeling shall consist of an alert symbol (an exclamation mark within an equilateral triangle), a signal word (CAUTION or WARNING), and text that describes the hazard that is present. Additionally, safety labeling may contain text about what to do or not to do to avoid injury (for example, "Keep out of baby's reach"). The signal word shall be in all upper case sans serif letters not less than 1/8 in. (3.2 mm) in height and shall be center or left aligned. The alert symbol shall directly precede the signal word. The height of the triangle shall be at least the same height as the signal word. The height of the exclamation point shall be at least half the height of the triangle and be centered vertically in the triangle. Text describing the hazard(s) and hazard avoidance behavior(s) shall appear in sans serif lettering and shall be either left aligned or center justified. Capital letters shall be no less than 1/16 in. (1.6 mm). Recognizing space constraints, it is recommended, that where possible, such text begin on the next line below the signal word, and that a new line be used for each subsequent statement or separate thought.

5.3.2 Sections 5.4, 5.5, 5.6, 5.7, 5.11, and 5.15 require the signal word WARNING. When no signal word is specified for safety labeling in accordance with 5.3, it is recommended that the signal word CAUTION be used to indicate a potentially hazardous situation which could result in minor or moderate injury, and that the signal word WARNING be used to indicate a potentially hazardous situation which could result in death or serious injury.

5.3.3 Sections 5.11 and 5.15 specify required text describing the hazard(s) and hazard avoidance behavior(s). When no required text is specified for safety labeling in accordance with 5.3, the text is left to the discretion of the manufacturer. Sections 5.4, 5.5, 5.6, 5.7, and 5.15.1.1 provide recommended text to describe the hazard(s) and hazard avoidance behavior(s).

5.3.4 The required safety labeling described throughout <u>Section 5</u> shall be on the principal display panel.

5.3.5 For toy items packed as premiums in or on a package containing other

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 117 of 298 items, safety labeling shall be on the toy package, and similar labeling shall appear on the larger package.

5.3.6 All safety labeling shall be conspicuous and legible, shall be separated distinctively from any other wording or designs, and shall appear in the English language at a minimum. Such labeling shall be clearly visible to the intended audience and shall be in a color contrasting with the background on which it appears.

5.3.7 When safety labeling is printed onto the toy itself using a decoration process such as hot stamping, silk screening, or a similar process, it shall remain legible after normal use and reasonably foreseeable abuse when tested in accordance with 8.5-8.10.

5.3.8 When safety labeling is affixed to a toy in the form of an applied label, the label shall be applied so that it adheres firmly to the toy and none of its edges is lifted off the surface of the toy. Such label shall remain legible after normal use and reasonably foreseeable abuse when tested in accordance with 8.5-8.10.

5.4 Aquatic Toys— Aquatic toys and their packages shall carry safety labeling in accordance with 5.3, consisting of the signal word "WARNING" and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: *This is not a lifesaving device. Do not leave child unattended while device is in use.* In addition, no advertising copy or graphics shall state or imply that the child will be safe with such a toy if left unsupervised.

5.5 *Crib and Playpen Toys*— This requirement is applicable to toys intended to be strung across a crib or playpen by means of string, cord, elastic, or straps (including, but not limited to, crib exercisers, crib gyms, and activity toys).

5.5.1 *Age Grading*— Crib and playpen toys, as well as their packages, shall be labeled with the following text or equivalent information (text or graphic), which clearly conveys the age grade: *from birth to 5 months*.

5.5.2 Safety Labeling— Crib and playpen toys shall carry safety labeling, in accordance with 5.3, consisting of the signal word "WARNING" and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: *Possible entanglement or strangulation. Remove toy when baby begins to push up on hands and knees.*

5.6 *Mobiles*— This section addresses all mobiles intended to be attached to a crib, playpen, wall, or ceiling.

5.6.1 *Age Grading*— Mobiles intended to be attached to a crib or playpen, as well as their packages, shall be labeled with the following text or equivalent information (text or graphic), which clearly conveys the age grade: *from birth to 5 months*.

5.6.2 Safety Labeling:

5.6.2.1 Mobiles intended to be attached to a crib or playpen, and mobiles intended to be attached to a crib or playpen and later moved to a wall or ceiling, as well as their packages, shall carry safety labeling in accordance with 5.3. The labeling shall consist of the signal word "WARNING" and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: *Possible entanglement injury. Keep out of baby's reach. Remove mobile from crib or playpen when baby begins to push up on hands and knees.*

5.6.2.2 Mobiles intended to be attached only to a wall or ceiling, as well as their packages, shall carry safety labeling in accordance with 5.3. The labeling shall consist of the signal word "WARNING" and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: *Possible entanglement injury. Keep toy out of baby's reach.*

5.7 Stroller and Carriage Toys— Toys intended exclusively to be strung across strollers or carriages by means of string, cords, elastic, or straps shall carry safety labeling in accordance with 5.3. The labeling shall consist of the signal word "WARNING" and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: *Possible entanglement or strangulation injury when attached to crib or playpen. Do not attach to crib or playpen.*

5.8 *Toys Intended to be Assembled By an Adult*— Packages of toys that are intended to be assembled by an adult and that in their unassembled state contain potentially hazardous sharp edges or points, or small parts if the toy is intended for children under 3 years of age, shall carry safety labeling in accordance with 5.3 stating that the toy is to be assembled by an adult.

5.9 *Simulated Protective Devices*— Toys that simulate safety protective devices (examples include, but are not limited to, construction helmets and sports helmets), as well as their packages, shall carry safety labeling as defined in 5.3, stating that these toys are not safety protective devices.

5.10 Toys with Functional Sharp Edges or Points- Toys that are intended for

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 119 of 298 use by children between the ages of 48 and 96 months, which contain accessible potentially hazardous sharp edges or sharp points that are a necessary part of the function of the toy, shall carry safety labeling on their packages as defined in 5.3, stating that a sharp edge or sharp point, or both, exists.

5.11 Small Objects, Small Balls, Marbles, and Balloons

5.11.1 The packages of small balls, marbles, balloons, and certain toys and games, any descriptive material that accompanies them, and, if unpackaged and unlabeled, any retail display container provided by manufacturers or importers shall carry safety labeling in accordance with <u>16 CFR 1500.19(b)</u>.

5.11.1.1 In accordance with <u>16 CFR 1500.19(d)</u>, all labeling statements required by <u>5.11</u> shall appear at least in the English language on the principal display panel (except under <u>5.11.7</u>) and shall be blocked together within a square or rectangular area, with or without a border. The label design, the use of vignettes, or the proximity of other labeling or lettering shall not obscure or render inconspicuous any labeling statement.

5.11.1.2 The statements required by 5.11 must appear on at least two lines and appear on a solid background and be separated from all other graphic material by a space no smaller than the minimum allowable height of the type size for "other cautionary material" (for example the phrase "Not for children under 3 yrs."). If not separated by that distance, the labeling statements must be surrounded by a border line.

5.11.1.3 All labeling statements required by 5.11 shall comply with the following type size requirements based on the computed area of the principal display panel. For these purposes, Signal Word means the word "Warning" and the words "Safety Warning"; Statement of Hazard means "Choking Hazard"; Other Material means all other remaining statements.

| Area, in. ² | 0-2 | +2-5 | +5- 10 | +10- 15 | +15- 30 | +30- 100 | +100- 400 | +400 |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|-------------|
| Type Size— Signal Word | 3/64 in. | 1/16 in. | 3/32 in. | 7/64 in. | 1/8 in. | 5/32 in. | 1/4 in. | 1/2 in. |
| Type Size— Statement of Hazard | 3/64 in. | 3/64 in. | 1/16 in. | 3/32 in. | 3/32 in. | 7/64 in. | 5/32 in. | 1/4 in. |
| Type Size— Other Material | 1/32 in. | 3/64 in. | 1/16 in. | 1/16 in. | 5/64 in. | 3/32 in. | 7/64 in. | 5/32 in. |

5.11.1.4 An equilateral triangle with an exclamation point (shown in 5.11.2)

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 120 of 298 shall precede the signal word. The height of the triangle shall be equal to or exceed the height of the letters of the signal word "WARNING" and separated from it by a distance at least equal to the space occupied by the first letter of the signal word. The height of the exclamation point shall be at least half the height of the triangle, and be centered vertically in the triangle.

5.11.2 For toys and games intended for children at least 3 years old but less than 6 years of age, and which contain as-received small part(s), the labeling shall read:

WARNING: CHOKING HAZARD–Small parts. Not for children under 3 yrs.

5.11.3 For any small ball intended for children 3 years of age or older the labeling shall read:

WARNING: CHOKING HAZARD—Toy contains a small ball. Not for children under 3 yrs.

5.11.3.1 For any toy or game intended for children who are at least 3 years old but less than 8 years of age that contains a small ball the labeling shall read:

WARNING: CHOKING HAZARD—Toy contains a small ball. Not for children under 3 yrs.

5.11.4 For any marble intended for children 3 years of age or older the labeling shall read:

WARNING: CHOKING HAZARD—This toy is a marble. Not for children under 3 yrs.

5.11.4.1 For any toy or game intended for children who are at least 3 years of age but less than 8 years of age that contains a marble the labeling shall read:

WARNING: CHOKING HAZARD—Toy contains a marble. Not for children under 3 yrs.

5.11.5 For any latex balloon or any toy or game that contains a latex balloon, the labeling shall read:

WARNING: CHOKING HAZARD—Children under 8 yrs. can choke or suffocate on uninflated or broken balloons. Adult supervision required.

Keep uninflated balloons from children. Discard broken balloons at once.

5.11.6 *Combination of Labeling Statements*— The labels of products that contain more than one item subject to the requirements of <u>5.11</u> may combine information, if the condensed statement contains all of the information necessary to describe the potential hazard associated with each product. For products that contain a balloon *and* a small ball, small object, or marble, only the signal word and statement of hazard may be combined.

5.11.7 Alternative Labeling Statements for Items Subject to the Requirements of <u>5.11</u>— Labeling statements on small packages of toys or balloons that have a principal display panel of 15 in.² or less and that display cautionary statements in three or more languages may appear on a display panel other than the principal display panel if the principal display panel bears the appropriate statement below and bears an arrow or other indicator pointing toward or directing the purchaser's attention to the display panel on the package where the full labeling statement appears.

5.11.7.1 For a toy or game that is or contains a small object, small ball, or marble:

SAFETY WARNING

5.11.7.2 For a balloon or a toy or game that contains a balloon:

WARNING-Choking Hazard

5.12 Toy Caps- Refer to 16 CFR 1500.86 for required labeling.

5.13 *Art Materials*— Toys and components of toys that fall within the definition of art material as found in <u>16 CFR 1500.14 (b) (8)</u> shall be labeled in accordance with the provisions of that section and Practice D4236.

5.14 *Electric Toys*- Refer to <u>16 CFR 1505.3</u> for required labeling.

5.15 *Battery-Operated Toys*— Toys with non-replaceable batteries that are accessible with the use of a coin, screwdriver, or other common household tool shall bear a statement that the battery is not replaceable. If the manufacturer determines that it is impractical to label the product, this

information shall be placed on the packaging or in the instructions.

5.15.1 Battery-Powered Ride-on Toys:

5.15.1.1 Battery powered ride-on toys shall carry safety labeling in accordance with 5.3, consisting of the signal word "WARNING" and contain, at a minimum, text which clearly conveys the following:

- a. To reduce the risk of injury, adult supervision is required. Never use in roadways, near motor vehicles, on or near steep inclines or steps, swimming pools or other bodies of water; always wear shoes, and never allow more than _____ rider(s)
- b. RISK OF FIRE. Do not bypass. Replace only with _____. (Note: This warning must be placed at the location of any user replaceable fuse or circuit protection device. Manufacturer should state the part number or equivalent.

5.15.1.2 The packaging or point-of-sale literature of batterypowered ride-on toys shall state the manufacturer's recommended user age or weight limitations for use of the toy, or both.

5.15.1.3 The packaging or point-of-sale literature of batterypowered ride-on toys shall bear the warnings as specified in <u>5.15.1</u>.

5.16 *Promotional Materials*— Packaging, literature accompanying toys, and point-of-sale presentations shall not use words, statements, or graphics that are inconsistent in any way with the safety labeling instructions for use or assembly or age grading of the toy.

5.17 *Magnets*— The packaging and instructions of hobby and crafts items and science kit-type items for children over 8 years of age which contain a loose as-received hazardous magnet or a loose as-received hazardous magnetic component shall carry safety labeling in accordance with 5.3. The labeling shall consist of the signal word "WARNING" and contain, at a minimum, the following text or equivalent text which clearly conveys the same warning: *"This product contains (a) small magnets(s). Swallowed magnets can stick together across intestines causing serious infections and death. Seek immediate medical attention if magnet(s) are swallowed or inhaled."*

6. Instructional Literature

6.1 Definition and Description- Information and instructions that are provided

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 123 of 298 for the safe use or assembly, or both, of a toy, whether on the package or in leaflet form, shall be easy to read and understand by persons of the age level for whom the instructions and information are intended, including, if appropriate, children for whom the toy is intended. All such literature shall be shown in the English language at a minimum.

6.2 *Crib and Playpen Toys*— Toys intended to be strung across a crib or playpen by means of string, cords, elastic, or straps (including, but not limited to, crib exercisers, crib gyms, and activity toys) shall be provided with instructions for proper assembly, installation, and use to insure that the product does not present an entanglement or strangulation hazard. The instructions shall include at least the following information:

6.2.1 This toy is not intended to be "mouthed" by the baby and should be positioned clearly out of reach of the baby's face and mouth.

6.2.2 On cribs with adjustable mattress levels, the highest position may allow the toy to be too close to the baby. The second or lower position is more appropriate.

6.2.3 The drop side of the crib should never be lowered with the toy in place and the baby left unattended.

6.2.4 Always attach all provided fasteners (strings, straps, clamps, etc.) tightly to a crib or playpen according to the instructions. Check frequently.

6.2.5 Do not add additional strings or straps to attach to a crib or playpen.

6.3 *Mobiles*— Mobiles intended to be mounted on a crib, playpen, or wall or ceiling nearby shall be provided with instructions for proper assembly, installation, and use to insure that the product does not present an entanglement hazard. The instructions shall include at least the following information:

6.3.1 A crib mobile is intended for visual stimulation and is not intended to be grasped by the child.

6.3.2 If attached to the crib or playpen, remove when baby begins to push up on hands and knees. If so designed, mount on wall or ceiling clearly out of a standing baby's reach.

6.3.3 If mounted on a wall or ceiling, install the mobile clearly out of a standing baby's reach.

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6.3.4 Always attach all provided fasteners (strings, straps, clamps, etc.) tightly to a crib or playpen according to the instructions. Check frequently.

6.3.5 Do not add additional strings or straps to attach to a crib or playpen.

6.4 *Toys Intended to be Assembled By an Adult*— Assembly instructions that accompany toys that are intended to be assembled by an adult and that in their unassembled state contain potentially hazardous sharp edges or sharp points, or small parts if the toy is intended for children under 3 years of age, shall carry safety labeling as defined in <u>5.3</u> and also state that the toy is to be assembled by an adult.

6.5 *Battery-Operated Toys*— For toys that use more than one battery in one circuit, the instructions or the toy shall be marked with the following (or equivalent) information.

6.5.1 Do not mix old and new batteries.

6.5.2 Do not mix alkaline, standard (carbon-zinc), or rechargeable (nickelcadmium) batteries.

6.5.3 Instructions supplied with battery-powered ride-on toys shall contain guidance for safe use and maintenance of the toy. The instructions shall include at least the following:

6.5.3.1 Maximum weight or age limitations, or both, for safe use of the toy,

6.5.3.2 The kinds of surfaces which are appropriate for safe use of the toy,

6.5.3.3 The warning statements contained in 5.15.1.1,

6.5.3.4 Only use the battery(ies) specified by the manufacturer, and

6.5.3.5 Only use the charger(s) specified by the manufacturer.

6.6 *Toys in Contact with Food*— The packages or instructions, or both, for toys and their components intended to be used in contact with food shall be labeled to alert caregivers to wash the product thoroughly before use.

7. Producer's Markings

7.1 Either a principal component of a toy or the package of a toy shall be marked with the name and address of the producer or the distributor. In the case of toys sold in bulk, such as jacks or marbles, only the container need be

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Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 125 of 298 marked. All of these markings shall be legible and so positioned as to be seen easily by the customer and shall resist normal use conditions. Toys may carry a code that will enable the producer to identify model changes except for toys comprising many loose components, in which case the container may be so coded.

7.2 *Battery-Powered Ride-on Toys*— Battery-powered ride-on toys shall bear a permanent label or marking identifying the manufacturer or distributor, place of business, the model numbers, and a date of manufacture or date code that will allow determination of, at a minimum, the month and year of manufacture.

8. Test Methods

8.1 General- The inspection and test procedures contained herein are to be used to determine the conformance of products to the requirements of this specification. All types of toys covered by this specification must undergo the normal use and abuse tests in accordance with <u>8.5-8.10</u>. The remaining tests in this section apply to types of toys as specified within the requirements of <u>Section 4</u>. The relevant tests for a type of toy can be performed in any order except where specified. Each test may be conducted on a different toy unless otherwise specified. The tests can be considered as gualification tests and not necessarily as quality control tests. These tests shall also be conducted when there is a design or material change in the toy. Each producer or distributor who represents his products as conforming to this specification may use statistically based sampling plans that are appropriate, but he shall keep such essential records as are necessary to document with a high degree of assurance his claim that all of the requirements of this specification have been met. Any test methods that are made mandatory by the CPSC shall supersede any applicable test methods in this section.

8.2 *Testing for Hazardous Substance Content*— The applicable sections of 16 CFR, issued under the FHSA to be used for determining the presence of hazardous substances, are given in <u>Table 4</u>. The references in <u>Table 4</u> refer to the regulations issued on Sept. 27, 1973.

NOTE 6 — The latest issue of the regulation shall be used to determine compliance of the toy with the requirements of this specification. The requirements of the FHSA are mandatory by law.

TABLE 4 Determination of Hazardous Substance Content

| Hazardous Substance | Regulation (Title 16 CFR) |
|---------------------|---------------------------|
| | |

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| Toxic substance | <u>1500.3(b)5</u> , <u>1500.3(c)2</u> , and <u>1500.40</u> |
|-------------------------------|---|
| Corrosive substance | <u>1500.3(b)7</u> , <u>1500.3(c)3</u> , and <u>1500.41</u> |
| Irritant substance | <u>1500.3(b)8</u> , <u>1500.3(c)4</u> , <u>1500.41</u> , and <u>1500.42</u> |
| Strong sensitizer | <u>1500.3(b)9</u> , <u>1500.3(c)5</u> , and <u>1500.13</u> |
| Pressure-generating substance | <u>1500.3(c)7</u> |
| Radioactive substance | <u>1500.3(b)11</u> and <u>1500.3(c)8</u> |
| Flammability | <u>1500.3(b)10</u> , <u>1500.3(c)6</u> , <u>1500.43</u> , and <u>1610</u> . |

8.3 Test Methods for Determination of Heavy Element Content in Toys, Toy Components and Materials

8.3.1 Total Element Content Screening:

8.3.1.1 Toy material under test is to be digested per the appropriate CPSC Method:

- 1. CPSC-CH-E1001-08.1 (metal substrates)
- 2. CPSC-CH-E1002-08.1 (non-metal substrates)
- 3. <u>CPSC-CH-E1003-09</u> (paint and similar surface-coating materials)

8.3.1.2 With the following modification: Concentrated HNO digestant is to be replaced with aqua regia (three parts concentrated HCl to one part concentrated HNO). Glass and ceramic components shall be digested using three parts HF to one part HNO . Certain polymeric materials such as PVC and CPVC may require use of three parts concentrated HNO to one part 30 % H O for complete digestion; in all cases, knowledge-based adjustments to the above digestant mixtures on a case-by-case basis may be necessary for products made from certain materials, and are allowable so long as complete digestion is achieved and avoidance of formation of insoluble metal salts is taken into consideration. In all cases, the use of concentrated H SO₄ is to be avoided to reduce the possibility of the formation of insoluble metal sulfates.

8.3.1.3 Resulting digested material is to be filtered and diluted as prescribed, then analyzed by atomic spectroscopy or other appropriate validated method for total content of all eight elements listed in <u>Table 1</u> and <u>Table 2</u>; if results are below soluble limits for each element as prescribed in the appropriate table, the material can be considered to conform to requirements of <u>4.3.5</u> or <u>4.3.5.2</u>, or both, without further testing. If soluble limits in the appropriate table are exceeded, additional testing per <u>8.3.2</u> (for paint and similar surface-coating materials) or <u>8.3.5</u> (substrate materials) will be required to confirm compliance. In addition, if the toy or toy component is a metallic small part, it is to be tested per <u>8.3.5.3</u>). Composite samples of up to three

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 127 of 298 like materials (for example, three colors of polystyrene plastic) are acceptable (if performed in accordance with Annex A7) for total element screening, but not for soluble element testing if such is required.

NOTE 7 — With the exception of required total lead content testing (see 4.3.5.1), it may be elected to omit total element screening and perform only soluble element testing per 8.3.2-8.3.6.

8.3.2 *Method to Dissolve Soluble Matter for Surface Coatings*— Soluble elements are extracted from toys under conditions that simulate the situation in which the materials stay 4 h in the alimentary tract after swallowing. The content of soluble elements in the extract is determined.

8.3.2.1 *Apparatus*- Normal laboratory apparatus and the following:

- Metal Sieve, plain weave wire mesh stainless steel metal sieve with a nominal opening of 0.5 mm and the following specifications: (a) Nominal wire diameter: 0.315 μm; (b) Maximum size deviation for an individual opening: ±0.090 μm; (c) Tolerance for average opening: ±0.018 mm; and (d) 6 % or fewer of the openings to exceed the nominal plus 0.054 mm.
- 2. *pH*, a means of measuring pH with a minimum accuracy of 0.2 pH units.
- 3. *Membrane Filter*, with a pore size of 0.45 µm.
- 4. *Centrifuge*, capable of centrifuging at 5000 \pm 500 x *g* RCF (*g* = 9.80665 m/s²)
- 5. A means to constantly agitate the mixture at a temperature of 37 \pm 2°C.
- 6. Container, of gross volume between 1.6 and 5.0 times that of the volume of HCL extractant.

8.3.2.2 *Reagents*— Use only reagents of recognized analytical grade during the analysis.

- 1. Hydrochloric acid (HCl) solution; concentration = (0.07 ± 0.005) mol/l.
- 2. Hydrochloric acid (HCl) solution; concentration = (0.14 ± 0.010) mol/l.
- Hydrochloric acid (HCl) solution; concentration = approximately 1 mol/l.

- 4. Hydrochloric acid (HCl) solution; concentration = 2 mol/l.
- Hydrochloric acid (HCl) solution; concentration = approximately 6 mol/l.
- 6. n-heptane, (C H₁₆); 99 %.
- 7. Water, of at least grade 3 purity in accordance with Specification <u>D1193</u> or ISO 3696.

8.3.3 *Preparation of Test Samples*— A laboratory sample for testing shall consist of a toy in the form in which it is marketed, excluding the package and packaging components.

8.3.3.1 The test sample shall be taken from the accessible portions of a single toy sample.

8.3.3.2 Identical materials in the sample may be combined and treated as a single sample. A single sample may not consist of more than one material or color (that is, composite testing is not allowed).

8.3.3.3 The test sample can alternatively be taken from materials in a form such that they are representative of the relevant material specified above.

8.3.3.4 When a toy is intended to be taken apart or can be taken apart without the use of tools, each piece shall be considered separately.

8.3.3.5 For reference purposes, the sample may be taken from the raw material rather than scraped from the sample.

8.3.3.6 Scrape the coating off the test sample, and grind it through the sieve. Obtain a portion of not less than 100 mg of the resulting material.

- Where there is only between 10 and 100 mg of uniformly ground material available, test that quantity and calculate the results as if 100 mg of the sample had been available. The report should note this procedure and the actual sample amount.
- 2. If there is less than 10 mg of sample available, the test is not performed.
- 3. In the case of coatings that by their nature cannot be ground (for example, elastic, rubber, or plastic paint), test the sample as it was removed from the toy.

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 NOTE 8 — The methods and exclusions given in 8.3.3.1 do not apply to surface coatings being tested for total lead content as required by 16
 CFR 1303. Total lead determination under CPSC requirements at 16 CFR
 1303 applies to any coating that can be scraped off, regardless of the amount, with results calculated based on the actual sample weight.

8.3.4 Test Procedures:

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8.3.4.1 Prepare a test portion in accordance with 8.3.3.

8.3.4.2 Mix the test portion so prepared with 50 times its mass of an aqueous solution of 0.07 mol/L hydrochloric acid at $37 \pm 2^{\circ}$ C. In the case of a test portion of less than 100 mg, mix the test portion with 5.0 mL of this solution at the given temperature. Shake for 1 min.

- 1. Check the acidity of the mixture. If the pH is greater than 1.5, add dropwise while shaking an aqueous solution of 2 mol/L (7.3 % m/m) hydrochloric acid until the pH is between 1.0 and 1.5. Protect the mixture from light. Shake the mixture efficiently for 1 h continuously, and then allow the mixture to stand for 1 h at 37 ± 2°C.
- 2. Without delay, separate the solids from the mixture by filtration through a membrane filter with a pore size of $0.45 \ \mu\text{m}$. If necessary, centrifuge at 5000 g for no longer than 10 min. Analyze the solution by atomic spectroscopy or other appropriate validated method to determine the concentration of the elements identified in 4.3.5.1. If it is not possible to examine the sample within one working day, stabilize by the addition of hydrochloric acid so that the resulting solution HCl concentration is approximately 1 mol/L.

NOTE 9 — It has been shown that the extraction of soluble cadmium can reveal a two-fold to five-fold increase when extraction is conducted in the light rather than the dark.

8.3.4.3 The analytical results as determined in <u>8.3.4.2</u> shall be adjusted by subtracting the analytical correction factor in the following table using the following method. This is necessary to make statistical correction for interlaboratory error.

Analytical Correction

| Element | Sb | As | Ba | Cd | Cr | Pb | Hg | Se |
|--------------------------|----|----|----|----|----|----|----|----|
| Analytical correction, % | 60 | 60 | 30 | 30 | 30 | 30 | 50 | 60 |

1. Example of Calculations Using the Table:

Example 1—The analytical result for lead is 120 mg/kg; the correction factor from the table is 30 % (0.30). Adjusted analytical results = 120 - (120 0.30) = 120 - 36 = 84 mg/kg.

The result does not exceed the allowed value for lead in the table and is therefore acceptable.

Example 2—The analytical result for chromium is 90 ug/kg: the correction factor from the table is 30 % (0.30). Adjusted analytical results = 90 - (90 0.30) = 90 - 27 = 63 mg/kg.

The result exceeds the allowed value for chromium in the table and is therefore not acceptable.

8.3.5 Soluble Element Test Method for Substrate Materials— Soluble elements are extracted from toy materials under conditions which simulate the material remaining in contact with stomach acid for a period of time after swallowing. The concentrations of the soluble elements are determined quantitatively.

NOTE 10 - 0 Optional, alternate test methods are permitted, as described in <u>8.3.6</u>.

- 8.3.5.1 Apparatus—As described in 8.3.2.1.
- 8.3.5.2 *Reagents* As described in <u>8.3.2.2</u>.

8.3.5.3 Selection of Test Portions:

- 1. A laboratory sample for testing shall consist of a toy either in the form in which it is marketed, or in the form in which it is intended to be marketed. Test portions shall be taken from accessible parts of a single toy sample, that is, identical materials in the toy may be combined and treated as a single test portion but additional toy samples shall not be used. Test portions are only permitted to be composed of more than one material or color where physical separation (for example, dot printing), patterned textiles or mass limitation reasons, precludes the formation of discrete specimens.
- 2. Test portions where less than 10 mg of material available are not tested.

NOTE 11 - The requirement does not preclude that test portions can be taken from materials in a form such that they are representative of the

8.3.5.4 Polymeric and similar materials including laminates, whether reinforced textile or not, but excluding other textiles.

1. Sample Removal/Preparation Procedure:

deposited.

- a. Obtain a test portion of not less than 100 mg of the polymeric or similar materials, avoiding heating of the materials, according to the following directions.
- b. Cut out test portions from the areas having the thinnest material cross section in order to ensure a surface area of the test pieces as large as possible in proportion to their mass. Each test piece shall in the uncompressed condition have no dimension greater than 6 mm.
- c. If the laboratory sample is not uniform in its material, a test portion shall be obtained from each different material present in a mass greater than 10 mg. In the case where there is between 10 and 100 mg of uniform material the mass of the test portion shall be reported in the test report and the quantity of the appropriate elements shall be calculated and reported as if 100 mg of the test portion had been used.
- 2. *Test Procedure*—As described in <u>8.3.4.2</u> and <u>8.3.4.3</u>.

8.3.5.5 Glass/Ceramic/Metallic Materials:

 Sample Removal/Preparation Procedure—Toys and components shall be first subjected to the relevant tests in accordance with Section 8. If any accessible glass, ceramic or metallic materials of the toy fits entirely within the small parts cylinder (see Fig. 3) before or after use and abuse testing, it shall be tested in accordance with 8.3.5.5(2) after removal of any coating in accordance with CPSC method CPSC-CH-E1003-09 ; metallic materials are also to be tested in accordance with 8.3.5.5(3) after removal of any coating in accordance with CPSC method CPSC-CH-E1003-09.

NOTE 12 - Toys and components that have no accessible glass, ceramic or metallic materials are not tested according to <u>8.3.5.5</u>. If a toy or component that is subject to testing per <u>8.3.5.5</u> consists of a combination of metallic and non-metallic materials (for example, a steel nut with a nylon locking insert), the non-

metallic material is to be mechanically separated from the metallic material prior to the test, and only the metallic component is subjected to testing per <u>8.3.5.5</u>; the non-metallic component is to be tested per the section of this standard applicable to the material type.

- 2. Test Procedure Standard Soluble Elements:
 - a. Place the toy or component in a 50 mL glass container with nominal dimensions: height 60 mm, diameter 40 mm. Add a sufficient volume of an aqueous solution of 0.07 M HCl at 37 \pm 2°C to just cover the toy or component. Cover the container, protect the contents from light and allow the contents to stand for 2 h at 37 \pm 2°C.

NOTE 13 - This type of container will accommodate all components/ toys that fit inside the small parts cylinder.

- b. Without delay, efficiently separate the solids from the solution, firstly by decantation followed by filtration using a membrane filter, and if necessary, by centrifuging at up to 5000 g.
- c. Separation shall be completed as soon as possible after the completion of the standing time; centrifuging shall take no longer than 10 min and shall be reported in the test report. If the resulting solutions are to kept for more than 24 h prior to analysis they shall be stabilized by addition of hydrochloric acid so that the HCl concentration of the stored solution is approximately 1.0 M.
- d. Analyze the solution for element content using atomic spectroscopy or other validated test methods.
- 3. Test Procedure-Special Soluble Cadmium (apply to metallic small parts only):
 - a. Metal toys and toy components which, either before or after use-and-abuse testing per Section 8, fit entirely within the small parts cylinder (see Fig. 3) shall be tested per CPSC test method CPSC-CH-E1004-11. At the conclusion of the prescribed 24-h extraction test, efficiently separate, without delay, the solids from the solution, firstly by decantation followed by filtration using a membrane filter, and if necessary, by centrifuging at up to 5000 g. Separation shall be

completed as soon as possible after the completion of the extraction time; centrifuging shall take no longer than 10 min and shall be reported in the test report. If the resulting solutions are to be kept for more than 24 h prior to analysis they shall be stabilized by addition of hydrochloric acid so that the HCl concentration of the stored solution is approximately 1.0 M. Stored solutions shall be protected from light to the extent practicable.

b. Analyze the solution for cadmium content using atomic spectroscopy or other validated test methods.

8.3.5.6 Other Materials, Whether Mass Colored or Not:

- 1. Sample Removal/Preparation Procedures:
 - a. Obtain a test portion of not less than 100 mg of the material according to <u>8.3.5.3</u> or <u>8.3.5.4</u>, whichever is more appropriate.
 - b. If the laboratory sample is not uniform in its material, a test portion shall be obtained from each different material present in a mass greater than 10 mg. Where there is between 10 and 100 mg of uniform material, the mass of the test portion shall be reported in the test report, and the quantity of the appropriate elements shall be calculated and reported as if 100 mg of the test portion had been used.
 - c. If the material to be tested is coated with paint, varnish, lacquer, printing ink or similar material, remove this material per in accordance with CPSC method <u>CPSC-CH-E1003-09</u> prior to testing per <u>8.3.5.6(2)</u>.
- 2. *Test Procedures*—The materials shall be tested by the most appropriate method under <u>8.3</u>. The method used shall be reported in the test report.

8.3.5.7 Materials Intended to Leave a Trace:

- 1. Sample Removal/Preparation Procedure for Materials in Solid Form:
 - a. Obtain a test portion of not less than 100 mg of the material by cutting into test pieces, which in the uncompressed condition shall have no dimensions greater than 6 mm.
 - b. A test portion shall be obtained from each different material

intended to leave a trace, present in the laboratory sample in a mass greater than 10 mg. Where there is between 10 and 100 mg of material, the mass of the test portion shall be reported in the test report and the quantity of the appropriate elements shall be calculated and reported as if 100 mg of the test portion had been used. If the material contains any grease, oil, wax or similar material, the test portion shall be enclosed in hardened filter-paper and these ingredients shall be removed with n-heptane using solvent extraction.

- 2. Sample Removal/Preparation Procedure for Materials in Liquid Form:
 - a. Obtain a test portion of not less than 100 mg of the material from the laboratory sample. The use of an appropriate solvent to facilitate the obtaining of a test portion is permitted.
 - b. A test portion shall be obtained from each different material intended to leave a trace, present in the laboratory sample in a mass greater than 10 mg. Where there is between 10 and 100 mg of material, the mass of the test portion shall be reported in the test report and the quantity of the appropriate elements shall be calculated and reported as if 100 mg of the test portion had been used. If the material is intended to solidify in normal use and contains grease, oil, wax or similar material, the test portion shall be allowed to solidify under normal use conditions and the resulting material shall be enclosed in hardened filter-paper and the grease, oil, wax or similar material shall be removed with n-heptane by using solvent extraction.
- 3. Test Procedure for Samples not Containing Grease, Oil, Wax or Similar Material:
 - a. Using the appropriately sized container, mix the test portion so prepared with 50 times its mass of an aqueous solution at $37 \pm 2^{\circ}$ C of 0.07 M HCl (see 8.3.2.2). For a test portion mass of between 10 and 100 mg, mix the test portion with 5.0 mL of this solution at $37 \pm 2^{\circ}$ C. Shake for 1 min. Check the acidity of the mixture.
 - b. If the ph of the resulting solution is greater than 1.5, adjust the pH to between 1.0 and 1.5. If the pH is 2.5 or less, add dropwise, while shaking the mixture, 2 M HCl until the pH is between 1.0 and 1.5; if the pH is greater than 2.5, add dropwise, while shaking the mixture, 6M HCl until the pH is

USCA Case #22-7063 Document #1982413 Filed: 01/20/2023 Page 123 of 395 Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 135 of 298 between 2.50 and 1.5, then add dropwise, while shaking the mixture, 2 M HCl until the pH is between 1.0 and 1.5. The amount of hydrochloric acid used in relation to the amount of

solution shall be reported in the test report.

- c. Protect the mixture from light. Agitate the mixture at $37 \pm 2^{\circ}C$ (see 8.3.4.2) for 1 h continuously and then allow to stand for 1 h at $37 \pm 2^{\circ}C$.
- d. Without delay, efficiently separate the solids from the solution, firstly by filtration using a membrane filter and, if necessary, by centrifuging at up to 5000 g. Separation shall be completed as soon as possible after the completion of the standing time; centrifuging shall take no longer than 10 min and shall be noted in the test report.
- e. If the resulting solutions are to be kept for more than the working day prior to analysis they shall be stabilized by addition of hydrochloric acid so that the concentration of the stored solution is approximately 1.0M HCl.
- f. Analyze the solution for element content using atomic spectroscopy or other validated test methods.
- 4. Test Procedure for Samples Containing Grease, Oil, Waxor Similar Material:
 - a. With the test portion remaining in the hardened filterpaper, macerate the test portion so prepared with 25 times the mass of the original material with water at $37 \pm 2^{\circ}$ C so that the resulting mixture is homogeneous. Quantitatively transfer the mixture to the appropriate sized container. Add to the mixture an aqueous solution of 0.14 M HCl at $37 \pm 2^{\circ}$ C in the proportion of 25 times the mass of the original test portion. In the case of a test portion mass between 10 and 100 mg macerate the test portion with 2.5 mL of water. Quantitatively transfer the mixture to the appropriate sized container. Add 2.5 ml of 0.14 M HCl at $37 \pm 2^{\circ}$ C to the mixture. Shake for 1 min.
 - b. Check the acidity of the mixture. The amount of hydrochloric acid used in relation to the amount of solution shall be reported in the test report. Protect the mixture from light. Agitate the mixture at $37 \pm 2^{\circ}$ C for 1 h continuously and then allow to stand for 1 h at $37 \pm 2^{\circ}$ C.

- c. Without delay, efficiently separate the solids from the solution, firstly by filtration using a membrane filter and, if necessary, by centrifuging at up to 5000 g. Separation shall be completed as soon as possible after the completion of the standing time; centrifuging shall take no longer than 10 min and shall be noted in the test report.
- d. If the resulting solutions are to be kept for more than the working day prior to analysis they shall be stabilized by addition of hydrochloric acid so that the concentration of the stored solution is approximately 1.0 M HCl.
- e. Analyze the solution for element content using atomic spectroscopy or other validated test methods.

8.3.6 Alternative Methods— For purposes of determining compliance with the requirements contained in 4.3.5, "reasonable and representative tests" shall be used. Reasonable and representative tests could be either the tests contained in 8.3.1, 8.3.2, or 8.3.3, or alternate tests which utilize apparatus or procedures, or both, other than those in 8.3. The following paragraphs set forth the conditions under which alternate tests with apparatus or procedures other than those described in 8.3, inclusive, will be considered reasonable and representative.

8.3.6.1 Persons and firms determining the compliance of materials subject to the requirements contained in 4.3.5 may base those determinations on any alternate test utilizing apparatus or procedures other than those in 8.3, inclusive, if such alternate test is as stringent as, or more stringent than, the tests in 8.3, inclusive. An alternate test is considered to be "as stringent as, or more stringent than" a test in 8.3 if, when testing identical specimens, the alternate test yields failing results as often as, or more often than, the test in 8.3, inclusive. Any person using such an alternate test must have data or information to demonstrate that the alternate test is as stringent as, or more stringent than, the test in 8.3, inclusive. For example XRF screening in accordance with Test Method F2853 protocol could be used if determined to be a more stringent test method to the extent applicable for the material tested.

8.3.6.2 The data or information required by paragraph 8.3.6.1 to demonstrate

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 137 of 298 equivalent or greater stringency of any alternate test using apparatus or procedures other than those in 8.3, inclusive, must be in the possession of the person or firm desiring to use such alternate test before the alternate test may be used to support a determination of compliance against the requirements contained in 4.3.5.

8.3.6.3 The data or information required by paragraph <u>8.3.6.1</u> to demonstrate equivalent or greater stringency of any alternate test using apparatus or procedures other than those in <u>8.3</u>, inclusive, must be retained for as long as that alternate test is used to support determinations of compliance against the requirements contained in <u>4.3.5</u>, and for one year thereafter.

1. Alternate method acceptability requires rigorous statistical analysis of limits of acceptability to show consistency of results of alternate methods to prescribed method results. This analysis must be performed separately for each substrate type and heavy element (for example, results for cadmium in metal may not be automatically assumed to apply to barium in plastic, etc.). Alternate methods, once validated, should be submitted to ASTM for inclusion in the standard to avoid inconsistency of results.

8.4 Tests for Cleanliness and Preservative Effectiveness

8.4.1 *Cleanliness of Materials*— The cleanliness of cosmetics, liquids, pastes, putties, gels, and powders used in toys (excluding art materials) shall be determined using the methods in USP 24 <61> Microbial Limits Tests or the most current edition of the U.S. Pharmacopeia.¹⁵ Another method may be substituted provided it has been properly validated as giving equivalent or better results, as specified in USP 24 <61> or the most current edition of the U.S. Pharmacopeia. In conjunction with the chosen test method, the limits for determining the cleanliness of materials will consist of the most current guidelines for cosmetics set forth by the Cosmetic, Toiletry, and Fragrance Association (CTFA).

¹⁵ Reagent Chemicals, American Chemical Society Specifications, American Chemical Society, Washington, DC. For Suggestions on the testing of reagents not listed by the American Chemical Society, see Analar Standards for Laboratory Chemicals, BDH Ltd., Poole, Dorset, U.K., and the United States Pharmacopeia and National Formulary, U.S. Pharmacopeial Convention, Inc. (USPC), Rockville, MD.

8.4.2 *Preservative Effectiveness*— The formulations of cosmetics used in toys shall be evaluated for the potential microbiological degradation, or they shall be tested for microbial control and preservative effectiveness using the

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 138 of 298 methods and limits in USP 24 <51> Antimicrobial Effectiveness Testing or the most current edition of the U.S. Pharmacopeia.

> 8.5 Normal Use Testing— These tests are intended to simulate normal use conditions so as to ensure that hazards are not generated through normal wear and deterioration. The object of these tests shall be to simulate the normal play mode of the toy, and the tests are therefore unrelated to the reasonably foreseeable abuse tests of <u>8.6-8.13</u>. The tests are intended to uncover hazards rather than to demonstrate the reliability of the toy. The fact that a mechanism or material of a toy fails during testing is relevant only if the failure creates a potential hazard. Toys shall be subject to appropriate tests to simulate the expected mode of use of the particular toy. For example, levers, wheels, catches, triggers, strings, wires, chains, and so on, that are intended to be actuated by a child shall be operated repeatedly. Spring or power-operated devices shall be tested similarly. The tests shall be conducted in an expected use environment. For example, toys intended for use in the bathtub shall be tested in soapy water, and toys intended for use in the sandbox shall be exposed to sand during testing. It is recognized that no specific requirements are defined here; it would not be possible in view of the wide range of toys covered by this specification. However, the manufacturer or distributor must do enough testing to satisfy himself that normal use during the estimated lifetime of the toy is being simulated. The toy shall be inspected after such tests, and hazards such as points, sharp edges, and release of small parts shall be evaluated in accordance with the relevant requirements listed in Section 4.

8.5.1 *Washable Toys*— Toys described as machine washable on the toy, package, or instructions shall be subjected to six machine washing and tumble drying cycles, as described in <u>8.5.1.1</u>, unless a different drying method is specified by the toy manufacturer by means of a permanent label. They shall then be inspected for compliance with this specification.

8.5.1.1 Conditions for Machine Washing and Tumble Drying— Any commercially available top-loading washer, dryer, or laundry detergent intended for use in the home may be used for this test. The weight of each toy is determined prior to the beginning of the test. The toys, plus a dummy load of clothes sufficient to bring the total dry weight to a minimum 4 lb (1.8 kg), are washed in an automatic washing machine using the warm water setting and a 12-min wash cycle at the normal setting. The toys and dummy load shall then be tumble dried in an automatic clothes dryer using the warm setting, or air dried, until the load is dried. The toy shall be deemed dry when the final weight does not exceed the original dry weight by more than 10 %.

8.6 Abuse Testing- The tests described in 8.7-8.13 are to simulate the exposure of a toy to mechanical damage through dropping, throwing, and other actions likely to be performed by a child, which are characterized as reasonably foreseeable abuse. After testing, the toy shall be examined for mechanical hazards, such as hazardous sharp edges and points, and ingestion hazards, such as small liberated components, chips, or fragments. The severity of the abuse tests described in <u>8.7</u>, <u>8.8</u>, <u>8.9</u>, <u>8.10</u>, and <u>8.12</u> shall be determined according to the age group for which the toy is intended. If the toy is intended for an age group that spans more than one age group according to <u>Table 5</u>, the toy shall be subjected to the most severe test. Unless otherwise specified, none of the abuse testing described in 8.7-8.12 applies to toys intended for children over 96 months of age. Toys reasonably intended to be assembled by an adult, and not intended to be taken apart by a child, shall be tested only in the assembled state if the shelf package and assembly instructions indicate prominently that the article is to be assembled by an adult. Individual parts of toys that are intended to be assembled by children shall be tested as well as the fully assembled toy; however, the assembled toy shall be made of components that have not been subjected to the abuse testing.

8.7 *Impact Tests*— These tests are intended to simulate situations in which possible damage can occur to a toy by reason of its falling from a crib, table, or counter top, or other impact situations that may occur as a result of reasonably foreseeable abuse. After undergoing the appropriate test, the toy shall be examined for possible hazards, such as points, edges, or ingestible objects, in accordance with the relevant requirement of <u>Section 4</u>.

8.7.1 *Drop Test*— Except for toys covered in 8.7.2, toys falling below the weight limit given below shall be dropped onto a specified impact area. The number of times the toy will be dropped, and the height from which it is dropped, is to be determined from Table 5. The toy shall be dropped in random orientation. The test sample shall be allowed to come to rest after each drop and shall be examined and evaluated before continuing. The impact medium shall consist of a $\frac{1}{8}$ -in. (3-mm) nominal thickness of Type IV vinyl composition tile, composition 1-asbestos free, as specified in Federal Specification <u>SS-T-312B</u> over at least a 2.5-in. (64-mm) thickness of concrete. The impact area shall be at least 3 ft² (0.3 m²). The recommended batteries shall be in place during the drop test for battery-operated toys. If no specific type of battery is recommended, the heaviest battery that is generally available shall be used.

| Age Group | Weight Criteria, lb (kg) |
|-----------|-----------------------------|
| | |

| 18 months or less | less than 3 ± 0.01 (1.4) | | |
|------------------------------------|------------------------------|--|--|
| over 18 months, not over 36 months | less than 4 ± 0.01 (1.8) | | |
| over 36 months, not over 96 months | less than 10 ± 0.01 (4.5) | | |

8.7.2 *Tipover Test for Large, Bulky Toys*— Large, bulky toys shall not be subjected to the drop test of 8.7.1, but they shall be tipped over according to the following procedure:

| | | Numerical Value | | |
|---------------------|--|-------------------------------------|--------------------------------------|--|
| Test | Age Category of Intended User, months | Stated by the Voluntary Standard | Recommended for Toy Manufacturers | |
| Drop test | 0 to 18 | 10 | 4 ft, 6.5 in. (1.38 m) | |
| | over 18 to 36 | 4 3.0 ft ± 0.5 in. (91 cm) | 3 ft, 0.5 in. (0.93 m) | |
| | over 36 to 96 | 4 3.0 ft ± 0.5 in. (91 cm) | 3 ft, 0.5 in. (0.93 m) | |
| Torque test | 0 to 18 | 2 ± 0.2 in.·lbf (0.23 N·m) | 2.2 in.·lbf (0.25 N·m) | |
| | over 18 to 36 | 3 ± 0.2 in.·lbf (0.34 N·m) | 3.2 in.·lbf (0.36 N·m) | |
| | over 36 to 96 | 4 ± 0.2 in. · lbf (0.45 N·m) | 4.2 in.·lbf (0.47 N·m) | |
| Tension test | 0 to 18 | 10 ± 0.5 lbf (44.5 N) | 10.5 lbf (46.7 N) | |
| | over 18 to 36 | 15 ± 0.5 lbf (66.8 N) | 15.5 lbf (69.0 N) | |
| | over 36 to 96 | 15 ± 0.5 lbf (66.8 N) | 15.5 lbf (69.0 N) | |
| Compression test | 0 to 18 | 20 ± 0.5 lbf (89.0 N) | 20.5 lbf (91.2 N) | |
| | over 18 to 36 | 25 ± 0.5 lbf (111.3 N) | 25.5 lbf (113.5 N) | |
| | over 36 to 96 | 30 ± 0.5 lbf (133.5 N) | 30.5 lbf (135.7 N) | |
| Flexure test | 0 to 18 | 10 ± 0.5 lbf (44.5 N) | 10.5 lbf (46.7 N) | |
| | over 18 to 36 | 15 ± 0.5 lbf (66.8 N) | 15.5 lbf (69.0 N) | |
| | over 36 to 96 | 15 ± 0.5 lbf (66.8 N) | 15.5 lbf (69.0 N) | |

TABLE 5 Test Parameters for Use and Abuse Tests

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8.7.2.1 *Tipover Test for Large, Bulky Toys*— Large, bulky toys shall be tested for impact by tipping over three times, one of which is in the worst attitude by pushing the sample slowly past its center of balance onto the impact medium described in 8.7.1.

8.7.3 *Tumble Test for Wheeled Toys*— Wheeled toys weighing more than 3 lb (1.4 kg) but not more than 10 lb (4.5 kg) shall be tumbled down a flight of six steps with risers not less than 7 in. (180 mm) high (see Fig. 26). The treads may be wood, cement, or metal. The toy, including accessories, where applicable, shall be caused to fall down the steps two times in each of four attitudes: tumbling forwardly end-over-end and tumbling rearwardly end-over-end from each side. The toy shall be pushed slowly over the edge of the top step in the appropriate attitude and released as soon as it begins to fall

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of its own weight. The test shall be considered complete for an attitude even if the toy does not reach the bottom of the flight of steps.

Figure 26. Illustration of Step Construction. This is a diagram of a set of steps. The width of the steps is A and shall be not less than 3 feet. The riser, the elevation of the step, is B and shall be not less than 7 inchdes. The step itself is C and shall be not more than 9 inches. A PLATFORM C B RISER

Dimensions "A" shall be not less than 3 ft (914 mm) "B" shall be not less than 7 in. (180 mm) "C" shall be not more than 9 in. (230 mm)

FIG. 26 Illustration of Step Construction

8.7.4 Impact Test for Toys that Cover the Face— The toy shall be held firmly in a suitable clamp with that portion that covers or surrounds the eyes (in the case of cutout eye holes) in a horizontal plane. Drop a $\frac{5}{8}$ -in. (16-mm) diameter steel ball weighing 0.56 oz. (15.8 g) (with a tolerance of +0.03 (0.8 g, -0 oz) from a height of 50 in. (1.3 m) upon the horizontal upper surface of the toy in the area that would cover the eyes in normal use. In the case of toys with cutout eye holes, impact the area that would be directly adjacent to the eyes in normal use. The ball may be guided, but not restricted, in its fall by being dropped through a perforated tube extending to within approximately 4 in. (100 mm) of the toy.

8.8 *Torque Tests for Removal of Components*— Any toy with a projection, part, or assembly that a child can grasp with at least the thumb and forefinger or the teeth shall be subject to this test. The amount of torque shall be determined from <u>Table 5</u>, according to the age group for which the toy is intended. The loading device used in the test shall be a torgue gauge, torque wrench, or other appropriate device having an accuracy of 60.2 in. lbf (60.02 N·m). A clamp capable of holding the test component firmly and transmitting a torsional force shall be used. The clamp is fastened to the test object or component with the toy fastened rigidly in any reasonable test position. The torgue shall be applied evenly within a period of 5 s in a clockwise direction until either (1) a rotation of 180° from the original position has been attained, or (2) the required torque is exceeded. The maximum rotation or required torgue shall be maintained for an additional 10 s. The torque shall then be removed and the test component permitted to return to a relaxed condition. This procedure shall then be repeated in a counterclockwise direction. Projections, parts, or assemblies that are mounted rigidly on an accessible rod or shaft designed to rotate along with the projections, parts, or assemblies shall be tested with the rod or shaft

Standard Consumer Safety Specification for Toy Safety. Case 1:13-CV-01215-TSC Document 122-1 Filed 12/22/15 Page 142 of 298 clamped to prevent rotation. If a component that is attached by a screw thread that has been assembled by the manufacturer, or that has been assembled to the manufacturer's instructions, becomes loosened during application of the required torque, continue to apply the torque until either (1) the required torque is exceeded, or (2) the part disassembles. The test should be terminated if it becomes obvious that the part under test will continue to rotate at less than the required torque limit and will not disassemble.

8.8.1 If the part disassembles, evaluate it for compliance with the appropriate requirements. If the disassembly exposes an accessible component that can be grasped as noted above, repeat the torque test on that component.

8.9 Tension Test for Removal of Components – Any projection of a toy that a child can grasp with at least the thumb and forefinger or the teeth shall be subjected to this test. The tension test shall be performed on the same components of the toy subjected to the torque test described in <u>8.8</u>. The amount of force used shall be determined from <u>Table 5</u>, according to the age group for which the toy is intended. A clamp capable of applying a tension load to the test component shall be applied in a manner that will not affect the structural integrity of the attachment between the component and the toy. The loading device shall be a self-indicating gauge or other appropriate means having an accuracy of 60.5 lb (62 N). With the test sample fastened in a convenient position, an appropriate clamp shall be attached to the test object or component. The required tensile force shall be applied evenly, within a period of 5 s, parallel to the major axis of the test component, and maintained for an additional 10 s. The tension clamp shall then be removed, and a second clamp suitable for applying a tension load perpendicularly to the major axis of the test component shall be attached to the test object component. The required tensile force shall be applied evenly, within a period of 5 s, perpendicularly to the major axis of the test component and maintained for an additional 10 s.

8.9.1 Tension Test for Seams in Stuffed Toys and Beanbag-Type Toys— A stuffed toy or beanbag constructed of pliable material having seams (including, but not limited to, seams that are stitched, glued, heat sealed, or ultrasonic welded) shall have the seams subjected to a separate tension test in any direction using the forces specified in 8.9 and determined from Table 5 according to the age group for which the toy is intended.

8.9.1.1 The clamps used to grip the material on either side of the seam to be tested shall have jaws to which are attached ³/₄-in. (19-mm) diameter washers (see Fig. 27). The clamps shall be attached to the cover material of a

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Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 143 of 298 completely assembled stuffed toy in a manner such that the outside diameter of the ³/₄-in. (19-mm) washers at a point nearest the seam shall be close to, but no closer than, ¹/₂ in. (13 mm) from the edge of the seam stitching thread. This seam test shall not be performed if the material adjacent to the seam cannot be grasped between the thumb and forefinger of the test personnel sufficient for full clamping by the ³/₄-in. (19-mm) diameter washer jaws. If such is the case, a torque and tension test shall be performed on an arm, leg, or other appendage of the toy instead of the seam test.

Figure 27. Seam Clamp The diagram shows a set of pliers. The pliers are labelled Lever Wrench, Mod L-B Leverage Tools, Inc., Glenvil, Nebraska, 66941. To the inside jaws of the pliers at the tips are attached Braze 3/4 inch diameter plain steel washers. BRAZE 3/4 Dia PLAIN S11 WASHERTO JAW TIPS LEVER WRENCH Mod L-8LEVERAGE TOOLS, Inc.GLENVIL, NEB - 66941

FIG. 27 Seam Clamp

8.9.1.2 In performing a seam test, the force appropriate for the age category into which the toy falls (see <u>Table 5</u>) shall be applied evenly within 5 s and maintained for an additional 10 s.

8.10 *Compression Test*— Any area on the surface of a toy that is accessible to a child and inaccessible to flat surface contact during the impact test shall be subject to this test. The compression force shall be determined from <u>Table 5</u> according to the age group for which the toy is intended.

8.10.1 The loading device shall be a rigid metal disk 1.125 ± 0.015 in. (0.380 mm) in diameter and 0.375 in. (9.52 mm) in thickness. The perimeter of the disk shall be rounded to a radius of 1/32 in. (0.8 mm) to eliminate irregular edge. The disk shall be attached to an appropriate compression scale having an accuracy of 60.5 lb (2 N). The disk shall be positioned so that the flat contact surface is parallel to the surface under test. The required force shall be applied evenly within 5 s through the disk. This load shall be maintained for an additional 10 s. The toy is to rest on a flat, hard surface in any convenient position during the test.

8.11 *Tests for Tire Removal and Snap-in Wheel and Axle Assembly Removal*—These tests relate to the requirements of <u>4.17</u>.

8.11.1 *Removal of Tires*— The toy shall be clamped so that the wheel axle is vertical. A wire hook shaped as shown in Fig. 28 shall be positioned on the lower tire and attached to a dead weight of 10 ± 0.5 lb (4.5 kg) if the tire is on a toy intended for children aged 18 months or less, or to a dead weight of 15 ± 0.5 lb (6.8 kg) if the tire is on a toy intended for children 18

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 144 of 298 months but not over 36 months. The load shall be applied gradually over a period of 5 s and maintained for 10 s.

Figure 28. Hook for Tire Removal A hook with a wire diameter of 1/16 inches (10-pound lead) or 1/18 inches (15-pound lead) and a 75 degree included angle is laying on top of a tire, which is in turn connected to a hube and axle. INCLUDED ANGLE 75° WIRE DIAMETER 1/16 in. [10-pound load]1/8 in. [15-pound load] TO LOAD TIRE HUB LENGTH TO BE ADJUSTED TO TIRE SIZE

FIG. 28 Hook for Tire Removal

8.11.2 Toys Assembled With Snap-in Axles— A15 \pm 0.5-lb (6.8-kg) dead weight shall be applied perpendicularly to the axle and in the least favorable direction, adjacent to a bearing (but between the two bearings), for 10 s, using a hook and string for attachment to the toy. The toy shall be held horizontally in a test-convenient fixture, and the load shall be applied gradually over a 5-s period and then shall be maintained for 10 s. The toy shall be held horizontally if the axle cannot be hooked as described above, and a 10 \pm 0.5-lb (4.5-kg) dead weight shall be attached to one wheel by means of a hook or clamp that acts perpendicular to the axle in the least favorable direction. The load shall be applied gradually over a 5-s period and then be maintained for 10 s.

8.11.3 Compression Test for Snap-in Wheel and Axle Assemblies— This test is for determining compliance with 4.17 if the axle and wheel are removed by the procedure described in 8.11.2. The wheel and axle assembly shall be positioned with the axle vertical over a hole in a rigid plate, as shown in Fig. 29. The hole shall be large enough in diameter to permit the axle to pass through. A load of 20 \pm 0.5 lb (89 N) is applied to the upper wheel, using a suitable circular adaptor to prevent interference with the axle. The load shall be applied gradually over a 5-s period and then shall be maintained for 10 s. When applying the load, the upper wheel shall be guided, if necessary, in order to maintain the axle in a vertical position, but it shall not be restrained from moving downward. The axle shall not form a hazardous point or projection in those cases in which it is forced through either wheel.

Figure 29. Compression Test for Wheel Assemblies A board with a gap is shown. A wheel and axle assembly is lying on the board, with the wheel straddling the gap of the board and the end of the axle in the gap. A load is applied to a circular adaptor placed on the top wheel with the force pointing down. LOAD APPLIED TO ACIRCULAR ADAPTOR WHEEL AND AXLEASSEMBLY RIGID PLATE

FIG. 29 Compression Test for Wheel Assemblies

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Standard Consumer Safety Specification for Toy Safety Case 1:13-CV-01215-TSC Document 122-1 Filed 12/22/15 Page 145 of 298 8.12 *Flexure Test*— This test is for determining compliance with 4.10, for wires or rods used as flexible skeletons. The toy shall be secured in a vise equipped with vise shields that are fabricated from 13-gauge thick cold-rolled steel or other similar material and that have a 0.375-in. (9.5-mm) inside radius as shown in Fig. 30. The component shall then be bent through a 60° arc by a force applied perpendicularly to the major axis of the component at a point 2 ± 0.05 in. (50 mm) from the intersection of the component with the main body of the toy or applied at the end of the component if the component is less than 2 in. (50 mm) long. The force shall be determined from Table 5. The component shall then be bent in the reverse direction through a 120° arc. This process shall be repeated for 30 cycles at a rate of 1 cycle/2 s, with a 60-s rest period occurring after each 10 cycles. Two 120° arc bends shall constitute one cycle.

Figure 30. Fixture Tester The diagram is a set of jaws, which are constructed of 12 gauage 0.0897 CR steel and each jaw is 60 degrees off from vertical, making the total angle 120 degrees. The rounded ends of the jaws have a radius of 0.375 inches. 120° 60° JAWS 13 Gauge 0.0897 in.(2.278 mm) C.R. Steel 0.375 in. Rad(9.52 mm)

FIG. 30 Flexure Tester

8.13 Test for Mouth-Actuated Toys— A piston pump capable of discharging and taking in more than 18 in³ (295 cm³) of air in less than 3 s shall be connected to the mouthpiece of the toy. A relief valve shall be so arranged that the pump will not generate a positive or negative pressure of more than 2 psig. The toy shall be subjected to 10 alternating blowing-andsucking cycles of at least 18 in³ (295 cm³) of air, including that volume that may be discharged through the relief valve. Any objects released as a result of this test shall be inspected for conformance with 4.6. The above procedure shall also be applied to the outlet if the air outlet of the toy is accessible as described in 4.6.2.

8.14 Projectiles

8.14.1 *Kinetic Energy Determination*— The kinetic energy of a projectile as defined in 3.1.51 shall be determined from the following equation:

kinetic energy = $1/2 \text{ mv}^2$

(1)

where:

m = mass of projectile, kg, and

v = velocity of the projectile, m/s.

8.14.2 The mass of a projectile, *m*, shall be determined by weighing a sample on a laboratory balance. The velocity of a projectile, *v*, shall be determined by firing a sample from the discharge mechanism of the toy across ballistic screens placed a known distance apart (*s*, metres) and recording the time (*t*, seconds) to travel that distance. The velocity of the projectile shall be calculated from the expression v = s/t m/s.

8.14.3 When performing the test to measure the velocity of a projectile, the second screen shall be placed a distance no more than 1 ft (300 mm) plus one projectile length from the point at which the entire projectile enters free flight (see Fig. 31). Due to the flight characteristics of certain projectiles and other factors that may influence the accuracy of the measurement of projectile velocity, the value of v in the equation for kinetic energy shall be the average of five measurements.

Figure 31. Diagram of Layout to Determine Projectile Velocity A launcher on the left has a projectile connected to it on the right edge. The projectile has a label that says Length of Projectile. From the end of the projectile going right towards a vertical line is an indicator of 12 inchdes. The line on the right is labelled 2nd ballistic screen. 2nd Ballistic Screen 12" Length ofProjectile Projectile Launcher End ofLauncher

NOTE 1 - First ballistic screen to be located between end of launcher and second screen.

FIG. 31 Diagram of Layout to Determine Projectile Velocity

8.14.4 *Impact Test for Projectiles*— Projectiles, as defined in <u>3.1.59</u>, shall be propelled by their discharge mechanism three times into a concrete block wall (or equivalent surface) located at a distance 1 ft (300 mm) plus the length of the projectile from the front end of the launcher. The discharge mechanism shall be aimed perpendicular to the wall.

8.15 *Test for Stability of Ride-On Toys or Toy Seats*— These tests relate to the requirements of <u>4.15</u>.

8.15.1 Place the ride-on toy or toy seat across the slope of a smooth surface inclined 10° to the horizontal plane. (Some tests require a 15° slope; refer to <u>4.15.2.2</u> and <u>4.15.3</u>.)

8.15.2 Turn the steering mechanism, if any, to a position at which the ride-on toy or toy seat is most likely to tip.

8.15.3 Chock any wheels to restrict rolling, but allow casters to assume their natural position before chocks are applied.

8.15.4 Apply to the seat a static load equal to the weight indicated in Table 6 at the highest age of the age range for which the ride-on toy or toy seat is intended, but not exceeding 60 months. When the highest age of the intended age range falls between two ages listed in Table 6, the higher of the two shall be chosen.

8.15.5 The load shall be applied so that the major axis is perpendicular to the true horizontal while the ride-on toy or toy seat is on the incline specified.

8.15.6 The load shall be designed so that the height of its center of gravity is 8.7 ± 0.5 in. (220 ± 13 mm).

8.15.7 The center of gravity of the load for the sideways stability test shall be secured to the geometric center of the designated seating area.

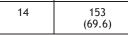
NOTE 15 – Separate tests for each side.

8.15.8 If there is no designated seating area or if there is no designated sideways orientation, the load shall be placed 1.7 in. (43 mm) inward towards the geometric center of the ride-on toy or toy seat from the least favorable position that it is reasonable to anticipate that the child will choose to sit (note separate tests for each side).

TABLE 6 Weight of 95th Percentile Children (Values Given for Boys or Girls, Whichever is Higher)

| Age, years | Weight, lb (kg) |
|---------------|--------------------|
| 1 | 28 (12.6) |
| 2 | 29 (13.2) |
| 3 | 42 (18.9) |
| 4 | 43 (19.7) |
| 5 | 50 (22.6) |
| 6 | 59 (26.6) |
| 7 | 69 (31.2) |
| 8 | 81 (37.0) |
| 9 | 89 (40.4) |
| 10 | 105 (47.9) |
| 11 | 121 (55.0) |
| 12 | 120 (54.7) |
| 13 | 140 (63.6) |

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NOTE 16 — Separate tests for each side.

8.15.9 The center of gravity of the load for the fore and aft stability test shall be secured both 1.7 in. (43 mm) rearward of the front-most portion of the designated seating area and 1.7 in. (43 mm) forward of the rear-most portion of the designated seating area.

NOTE 17 — Two separate tests.

8.15.10 If there is no designated seating area or if there is no designated fore and aft orientation, the load shall be placed 1.7 in. (43 mm) inward towards the geometric center of the ride-on toy or toy seat from the least favorable position that it is reasonable to anticipate that the child will choose to sit.

NOTE 18 — Two separate tests.

8.16 Pompoms are subjected to the torque test as described in 8.8 and 8.8.1 and the tension test as described herein. The clamps used to grip the material to be tested shall have jaws to which $\frac{3}{4}$ -in. (19-mm) diameter washers are attached (see Fig. 27). One clamp shall be attached to the pompom and a second clamp used to grip the base material. A force of 15 lbf (67 N) shall be applied evenly within 5 s and maintained for an additional 10 s.

8.17 Stalled Motor Test for Battery-Operated Toys

8.17.1 The test shall be conducted using a new toy. Each motor shall be tested separately using fresh alkaline batteries. If another battery chemistry is specifically recommended for use in the toy by the manufacturer, repeat the test using the batteries specified by the manufacturer. If the toy will not operate using alkaline batteries, test with the type of battery recommended by the manufacturer at the specified voltage. The test is to be carried out in a draft-free location at an ambient temperature of $20 \pm 5^{\circ}$ C.

8.17.2 Operate the toy with moving parts that are mechanically linked to a motor locked in a fixed position. Only lock moving parts which can be stalled external to the toy. Do not disable any mechanical or electrical protective device such as clutches or fuses. Monitor the temperatures with the toy fully assembled. If normal use allows the motor to run unattended or if the toy has a non-recessed switch allowing it to be kept in the "on" position, operate the toy continuously and record the maximum temperatures. The test may be discontinued 60 min after the peak temperature of each component being

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 149 of 298 tested is recorded. If the toy shuts off automatically or must be kept "on" by hand or foot, monitor temperatures for 30 s, resetting the toy as many times as necessary to complete the 30 s of operation. If the toy shuts off automatically after an operating time of greater than 30 s, continue the test until the toy shuts off. At the conclusion of the test, the stalled motor condition shall not cause temperatures to exceed the limits of <u>4.25.7</u>, or cause battery leakage, an explosion, or a fire.

8.18 Tests for Battery-Powered Ride-on Toys

8.18.1 Components tested in accordance with the following sections are to be installed and operated in the toy, as they would be during normal use unless otherwise specified. Testing is to be conducted using fully charged batteries.¹⁶

¹⁶ Testing is to be conducted while the vehicle is operated on a hard level surface covered with 3M #610 General Purpose Safety Walk tape or equivalent surface with a coefficient of friction between 1.27 and 1.32 when measured in accordance with MIL-D-17951. Cheesecloth referenced in the following tests is #60 cotton gauze with a thread count of 32 by 28 threads per inch.

8.18.2 Maximum Temperature Test:

8.18.2.1 Mechanically precondition all electrical pressure connections used for charging or discharging the battery(ies). If a main harness connector is provided, the main harness connection must be connected and disconnected 600 times before the Maximum Temperature Test is performed. If a user replaceable fuse is provided, remove and insert the fuse 25 times before the Maximum Temperature test is performed.

8.18.2.2 Power the test sample using a fully charged battery as specified by the manufacturer. Operate the vehicle in the mode that results in the maximum continuous current draw. Determine the maximum continuous current draw by testing the vehicle on any intended surface as specified by the manufacturer, and by adjusting the weight, up to the manufacturer specified maximum. Several trials on different surfaces and with different weights may be necessary to determine the maximum continuous current draw.

8.18.2.3 Physically load the vehicle in any way necessary to obtain the maximum continuous current draw. Operate the vehicle continuously until the battery is exhausted or until thermal equilibrium is reached. If thermal

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 150 of 298 equilibrium is not reached, replace the battery with a fully charged battery and continue the test.

8.18.3 *Stalled Motor Test for Battery-Powered Ride-on Toys*— Mechanically lock any accessible motor driven parts. For toys having more than one motor, each motor shall be tested individually. For toys having more than one operating mode, a different toy shall be tested in each mode. The toy shall be entirely draped with a double layer of cheesecloth during the test. For motors or other electrical components that are accessible, the cheesecloth shall also be draped over the component.

8.18.3.1 Operate the toy, under the stalled condition, until a circuit protection device interrupts the current or until the battery is depleted.

8.18.3.2 If the circuit protection device interrupts the circuit, immediately reset the circuit protection device or replace it in the case of a fuse and repeat the test three more times. If the circuit protection device automatically resets, continue the stalled motor test until the battery is exhausted.

8.18.3.3 The test shall not result in ignition of the cheesecloth.

8.18.4 *Nuisance Tripping Test*— Conduct the tests on a level surface as specified in <u>8.18.1</u>, loading the vehicle with the maximum weight specified by the manufacturer.

8.18.4.1 *Start/Stop Condition*— Start and stop the toy in 1-s cycles for 30 repetitions (0.5 s start followed by 0.5 s stop) in the mode that draws the greatest current.

8.18.4.2 *Forward/Reverse*— If the toy has a reverse direction feature, cycle the toy in the forward and reverse directions in 1-s cycles for 30 repetitions (0.5 s forward followed by 0.5 s reverse) in the mode that draws the greatest current.

8.18.5 *Switch Endurance and Overload Tests*— Precondition switches at 95 % relative humidity between 20°C and 32°C for 48 h. Conduct the Switch Endurance and Overload Tests at 40°C. A switch is to be operated by means of its actuating member either manually or by mechanical means making and breaking the test current. If a fuse or protective device operates (opens or trips) the device must be replaced or reset as many times as necessary to complete the required number of cycles. The test may be concluded at less than the prescribed number of cycles if the switch fails safe (switch stuck in the "off" position and no short-circuit condition results). Test 3 samples. All

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 151 of 298 samples must pass.

8.18.5.1 *Switch Endurance Test*— If a switch is relied upon for starting and stopping of the vehicle, conduct the endurance test for 100 000 cycles. Cycle (minimum 1 s on time and at least 6 cycles per minute) a switch in the toy using the maximum continuous current load as determined in the Maximum Temperature Test or in an equivalent simulated motor load circuit including the inrush and inductive characteristics. All other switches are to be subjected to 6000 cycles of endurance testing. Cycle (minimum 1 s on time and at least 6 cycles per minute) a switch in the toy using the maximum continuous current load as determined in the Maximum 1 s on time and at least 6 cycles per minute) a switch in the toy using the maximum continuous current load as determined in the Maximum Temperature Test or in an equivalent simulated motor load circuit including the inrush and inductive characteristics.

8.18.5.2 *Switch Overload Test*— The overload test is to be conducted on a switch that is relied upon for starting and stopping of the vehicle. Stall the motor(s) of the toy. Operate the switch for 50 cycles of operation at a rate of 6 cycles per minute with 1 s on and 9 s off.

8.18.6 *Battery Overcharge Test*— Each battery shall be charged with its intended charger continuously for 336 h. The test shall not result in the release of electrolyte, or cause explosion or fire.

8.18.6.1 If the battery can be charged in the vehicle, place the battery in the vehicle and connect it to the charging circuit. Drape the charger, cable, and battery with a double layer of cheesecloth. The test shall not result in ignition of the cheesecloth or in the release of electrolyte.

8.18.7 *Short-Circuit Protection Test*— Entirely drape the toy with a double layer of cheesecloth. Short-circuit parts of opposite polarity. Any possible short-circuit condition shall not result in ignition of the cheesecloth.

8.18.8 *Strain Relief Test*— The electrical connections of the cord or harness are to be disconnected. Apply a 20 lbf (90 N) to the cord so that the strain relief will be stressed from any angle permitted by the construction of the toy. Maintain the specified force for 1 min. There shall be no movement of the cord to indicate stress on the connections.

8.19 Tests for Toys Which Produce Noise

8.19.1 Installation and Mounting Conditions:

8.19.1.1 *General*- Carry out the measurements on a new toy not already

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 152 of 298 subjected to testing. Test battery toys using new primary batteries or fully charged secondary batteries. External power supplies should not be used as they will, in many cases, affect the performance of the toy.

8.19.1.2 *Test Environment*— Any environment that meets the qualification requirements of ISO 3746, Annex A.

NOTE 19 - In practice, this means that most normally furnished rooms with a volume exceeding 30 m^3 will qualify at measurement distances of 50 cm provided that the largest dimension of the toy does not exceed 50 cm.

8.19.1.3 *Mounting*— Test rigs used for the mounting of toys and/or the operator of the toy shall not affect the sound emission of the toy under test nor cause sound reflections which will increase the sound pressure levels at the measuring points.

- 1. Mount close to the ear toys and hand-held toys in a proper test rig at least 100 cm above the reflecting plane or have them operated by an adult operator with the arm outstretched.
- 2. Place stationary table top, floor, and crib toys on a standard test table as described in ISO 11202. A table with a wooden top with a thickness of 4 cm or larger and leg construction providing a stable test surface is considered sufficient. The table top should be large enough such that, with the toy resting on and fully over the table top, the side of the measurement box from which the measurement is being made is also above the table top (see 8.19.2.3(5)).
- 3. Mount self propelled table top and floor toys on the standard test table described above in a test rig so that they can be operated with full power, but preventing them from moving around.
- 4. Place pull and push toys on the reflecting plane (for example, concrete, tile, or other hard surface) and fix them in a test rig which enables them to be moved with varying speed along a direct line which passes the measuring microphones ("passing by" test). Make sure that the friction of the reflecting plane prevents wheels from skidding.
- 5. Place hand-actuated wind-up toys, with the wind-up spring fully loaded, on the reflecting plane (for example, concrete, tile, or other hard surface) so that the front of the toy is 40 ± 1 cm along the *x*-axis from the microphones of the "passing by" test (see Fig. 32).

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6. Mount other types of toys in the most appropriate way using the principles described in previous paragraphs.

Figure 32. Microphone Positions for Measurements of Pull and Push Toys and for Hand-Actuated Spring-Propelled Toys ("Pass-by" Test) A square platform is shown. The toy is on the top of the platform. Going forward is direction x, going sideways is direction y, going up is direction z. The microphone begins at 40 (no units are mentioned in the diagram, but they are centimeters) in direction x, and then 40 plus width of toy (w) divided by 2 to the left of direction y. It has a height of 30. The microphone moves 20 in direction x away from the toy. z y 1 1 2 x 40+w/2 40+w/2 40 30 30 20 NOTE— Key: 2—End of measurement 1—Microphone w—width of toy

NOTE — Key: 1—Microphone 2—End of measurement *w*—width of toy

FIG. 32 Microphone Positions for Measurements of Pull and Push Toys and for Hand-Actuated Spring-Propelled Toys ("Pass-by" Test)

8.19.1.4 *Operating Conditions*— Operate the toy under test in that mode of its intended or foreseeable use that produces the highest sound pressure level to the microphone position, where the maximum noise level is observed. In particular:

- 1. Operate a hand-actuated toy manually, excluding pull and push toys, by applying the force at the point and direction of its intended or foreseeable use giving the maximum sound pressure level. For a toy intended to be shaken, shake at a rate of three times per second. One cycle shall consist of an initial 15 cm stroke followed by a return to the starting point.
- 2. Operate a rattle by grasping it where it is meant to be held or, if in doubt, where the longest lever between the hand and the sound emitting part of the rattle can be obtained. Make sure that the radiated sound is not affected by the grip of the hand. Strike downwards ten times with hard lashes in a slow tempo. Use the wrist and keep the forearm essentially horizontal. Endeavour to achieve the highest possible sound level. Stand side-face with the microphone and keep the rattle at the same height as the microphone at a distance of 50 cm.
- 3. Operate a pull and push toy at a speed that yields the maximum sound

4. Operate a cap-firing toy using percussion caps recommended by the manufacturer and which are available on the market.

8.19.2 Measurement Procedure:

8.19.2.1 *Basic International Standards to be Used*— The minimum requirement is to determine sound pressure levels at the specified positions around the toy in accordance with ISO 11202 or ISO 11204.

Figure 33. Microphone Positions for Measurement of Sound Pressure Levels of Cap Firing Toys A toy is suspended in space inside of two circles, each at a 90 degree angle from the other. There are thus two points of intersection. The microphone positions are two points of intersection, plus the points 90 degrees away from those points on each circle. In other words, there are four points marked on each circle, and since the circles intersect, two of those points are in common, so there are 6 microphone positions. Each microphone is 50 cm from the center of the toy. z y x 1 1 1 1 1 1 50 50 50 50 50 50 NOTE—Key: 1–Microphone

FIG. 33 Microphone Positions for Measurement of Sound Pressure Levels of Cap Firing Toys

8.19.2.2 *Instrumentation*— The instrumentation system, including the microphone and cable, shall meet the requirements of a class 1 or class 2 instrument specified in <u>IEC 61672-1</u> and <u>IEC 61672-2</u>. When measuring high peak sound pressure levels, for example, from toys using percussion caps, the microphone and the entire instrumentation system shall have the capability of handling linear peak levels exceeding the C-weighted peak levels by at least 10 dB.

8.19.2.3 *Microphone Positions*— *General*—Several microphone positions shall be used. In practice, this often means that one microphone is moved from position to position. Whenever it is practicable, it is always an alternative to rotate the test object instead. Attention must be paid to maintaining the correct measuring distance.

1. Close-to-the-Ear Toys—To measure continuous sounds, face the earpiece of the toy at the microphone with the microphone 50 ± 0.5 cm from the earpiece. To measure continuous sounds on toys without earpieces, locate the microphone 50 ± 0.5 cm from the surface of the toy where the main sound source exists such that the sound pressure level at the microphone is maximized. To measure impulsive sounds, locate the microphone 50 ± 0.5 cm from the surface of the toy where

the main sound source exists such that the sound pressure level at the microphone is maximized.

- 2. *Cap-Firing Toys*—Use six microphone positions around the toy. Place the main sound emitting part of the toy at the origin of the measuring coordinate system in its normal operating orientation in such a way that the main axes of the toy coincide with the axes of the measuring coordinate system (see Fig. 33). If the length of the toy exceeds 50 cm, rotate the toy in the *xy*-plane 45° around the *z*-axis without changing the microphone positions. Select two microphone positions along each axis at a distance of 50 ± 1 cm to both directions from the origin as shown in Fig. 33.
- 3. *Rattles*—Mount the microphone 1.2 m above the floor and at a distance of 0.5 m from the sound source.
- 4. Other Hand-Held Toys—Select six microphone positions on a boxshaped measurement surface at the measuring distance of 50 cm from the reference box of the toy, as defined in ISO 3746, as specified in Fig. 34. The positions are at the centers of the sides of the measurement surface at the distance 50 cm from the reference box.
- 5. Stationary and Self-Propelled Table-Top, Floor, and Crib Toys—Select five, or if the length or width of the toy is larger than 100 cm, nine microphone positions on a box-shaped measurement surface at the measuring distance of 50 cm from the reference box of the toy as specified in Fig. 35. The sides of the measurement box with height *H* are always 50 cm from the sides of the reference box, except for the bottom of the boxes, which lie in the same plane. All microphone positions are on the measurement box.
- 6. Pull and Push Toys and Hand-Activated Spring-Propelled Toys—For toys with a width (w) of 25 cm or less, use two microphones at distances (d) 50 cm from the x-axis of the measuring coordinate system as shown in Fig. 32. For toys with a width (w) of more than 25 cm, use two microphone at distances (d) 40 cm plus half the width of the toy from the x-axis (40 + w/2) as shown in Fig. 32. Place the toy on a test rig or on the reflecting plane in its normal operating orientation in such a way that movement of the toy is possible along the x-axis passing the microphone positions.

Figure 34. Microphone Positions for All Other Hand-Held Toys A toy in the shape of a cube (the reference box) is inside a large cube, the measurement box. The clearance between the edges of the boxes is 50 centimeters. One

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 156 of 298 microphone is placed on a point in the center of each of the facets of the measurement box, so there are six points of measurement. 50 cm 1 2 NOTE– Key: 1–Measurement box 2–Reference box

FIG. 34 Microphone Positions for All Other Hand-Held Toys

Figure 35. Microphone Positions for Measurement of Stationary and Self-Propelled Table-Top, Floor, and Crib Toys This diagram is identical to Figure 34, however, in this case the inner box is labelled H/2 and the outer measurement box is labelled H. 1 2 H/2 H NOTE— Key: 1—Measurement box 2 —Reference box

FIG. 35 Microphone Positions for Measurement of Stationary and Self-Propelled Table-Top, Floor, and Crib Toys

8.19.2.4 Measurements:

- 1. *General*—Normal operating mode(s) shall be reached before the tests are performed.
- 2. *Measurements of Continuous Sounds*—If the toy under test has a clearly defined operating cycle, measure the equivalent sound pressure level in each microphone position during at least one whole cycle. Quiet periods longer than 15 s shall be excluded from the measurement period. Perform a total of three measurements. If the toy under test does not have a clearly defined operating cycle, measure the equivalent sound pressure level in each microphone position for at least 15 s during the operational mode where the noise level is highest. Perform a total of three measurements.
- 3. *Measurements of Impulsive Sounds*—Measure the C-weighted peak sound pressure level, *L_{Cpeak}*, of impulsive sounds in each microphone position. Perform a total of three measurements. For pass-by tests, measure the C-weighted peak sound pressure level. Measure twice on each side.
- 4. *Measurement for Rattles* Measure the C-weighted peak sound pressure level, *L_{Cpeak}*, for ten cycles. Perform a total of three measurements.
- Measurement Results—Sound measurement results shall be given as:
 (a) A-weighted equivalent sound pressure level at the specified position, L_{Aeq}, in decibels; (b) C-weighted peak sound pressure level at the specified position, L_{Cpeak}, in decibels.

6. The highest value of the applicable measurements (L_{Aeq} and L_{Cpeak}) at any of the microphone positions is the measurement result.

8.20 Dynamic Strength Test for Wheeled Ride-on Toys— Load the toy for 5 min in the most onerous position with the appropriate mass in accordance with Table 6 on its standing or sitting surface. Secure the load to the toy in a position corresponding to the normal use of the toy. Drive the toy three times at a speed of 6.6 ft/s $(2 \text{ m/s}) \pm 0.7 \text{ ft/s} (0.2 \text{ m/s})$ into a nonresilient step with a height of 2 in. (50 mm). If the toy is intended to bear the mass of more than one child at a time, test each sitting or standing area simultaneously. Determine whether the toy continues to conform to the relevant requirements of this specification.

8.21 *Plastic Film Thickness*— Use a measuring device (dialtype thickness gauge or equivalent) capable of measuring thickness to an accuracy of 4 μ m. Measurements shall be taken at 10 equidistant points across the diagonal of any 3.94 by 3.94-in. (100 by 100-mm) area. For plastic bags, prepare by cutting the sides, without stretching, into two single sheets.

8.22 Test for Loops and Cords

8.22.1 Anchor or secure the toy. Place the head probe (Fig. 10) in the loop/opening formed by the cord/s, tapered end first, with the plane of its base parallel to the plane of the opening. Rotate the probe to any orientation about its own axis while keeping its base parallel to the plane of the opening; apply 10 lbf (45 N) while attempting to push the probe through the opening.

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8.22.2 Elastic materials or loops that are smaller than the tapered diameter of the head probe shall be stretched before applying the head probe test fixture using the hook test fixture illustrated in Fig. 36. To begin the evaluation, the elastic material is first looped around the left bottom hook, then hooking the elastic material with the hook attachment of the force gauge, pull the elastic material to the right bottom hook without exceeding a force of 5.0 lbf (22.2 N). The elastic material is then pulled to the left upper hook without exceeding a force of 5.0 lbf (22.2 N). Pull the elastic material to the right side so that the hook of the force gauge is adjacent to the left upper hook and parallel to the right bottom hook without exceeding a force of 5.0 lbf (22.2 N). The hook of the force gauge should remain in this position during testing. If the elastic material cannot be stretched and held in this position or if the force needed to stretch the elastic material exceeds 5.0 lbf (22.2 N), the elastic material complies with this requirement. The testing sequence is illustrated in Fig. 36 (a) through (e). If the body of the toy forms part of the loop, position the body of the toy so that it is on the open, right-hand side of

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 158 of 298 the hook test fixture. Apply the head probe in accordance with <u>8.22.1</u>.

> Figure 36. Hook Test Fixture for Cords and Loops There are 3 views, labeled top, front, and side. The scale is 1/1 inch and tere is a notation that the base is any suitable material and the height of all hooks shall be equal. From the top view, a rectangle with rounded corders is shown, there is a hook embeded with the base on the left of the rectangle and the hook protruding in. From the side view, there is a rounded rectangle with a hook screwed into the bottom. From the front view, two blocks form a 90 degree angle, with the vertical block on the left. There is one hook protruding out of that block a distance x. There are two hooks on the bottom block. The left-hook is at a distance of X from the left edge. The distance from the top of that hook to the hook embedded in the vertical block is 3. The distance between the two bottom hooks is 4.3. The hooks are not labelled but are used in subsequent diagrams, so we assign A as the hook on the vertical part, B as the leftmost bottom hook and C as the rightmost bottom hook. SCALE: 1/1 in. HEIGHT OF ALL HOOKS SHALL BE EQUAL BASE - ANY SUITABLE MATERIAL TOP VIEW FRONT VIEW SIDE VIEW 3.0 4.3 X X

FIG. 36 Hook Test Fixture for Cords and Loops

Figure 36a. Test Procedure for Cords and Loops, Step 1 (continued) A force gauge is connected to elastic material in the form of a loop. The loop is attached to the bottom hook on the left (B) of the fixture. FORCEGAUGE FRONT VIEW ELASTIC MATERIAL FORCE GAUGE KEY

FIG. 36 (a) Test Procedure for Cords and Loops, Step 1 (continued)

Figure 36b Test Procedure for Cords and Loops, Step 2 (continued) A force gauge is connected to elastic material in the form of a loop. The loop is hooked to both of the bottom hooks (B and C). The force gauge is pulling towards the right, away from C. FORCEGAUGE FRONT VIEW ELASTIC MATERIAL FORCE GAUGE KEY

FIG. 36 (b) Test Procedure for Cords and Loops, Step 2 (continued)

Figure 36c. Test Procedure for Cords and Loops, Step 3 (continued) A force gauge is connected to elastic material in the form of a loop. The loop is hooked to both of the bottom hooks (B and C) as well as the top hook (A). The force gauge is positioned above hook A, pulling up. FORCEGAUGE FRONT VIEW ELASTIC MATERIAL FORCE GAUGE KEY

FIG. 36 (c) Test Procedure for Cords and Loops, Step 3 (continued)

Figure 36d. Test Procedure for Cords and Loops, Step 4 (continued) A force gauge is connected to elastic material in the form of a loop. The loop is hooked to both of the bottom hooks (B and C) as well as the top hook (A). The force gauge is positioned to the right of hook A and directly above Hook

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 159 of 298 C, forming a rectangle, and the gauge is pulling the rectangle out. FORCEGAUGE FRONT VIEW ELASTIC MATERIAL FORCE GAUGE KEY

FIG. 36 (d) Test Procedure for Cords and Loops, Step 4 (continued)

Figure 36e. Test Procedure for Cords and Loops, Step 5 (continued) This diagram is identical to Figure 36d, with the elastic material in the form of rectangle. Inside this rectangle is a notation that says Insert Probe Here. FORCEGAUGE FRONT VIEW ELASTIC MATERIAL FORCE GAUGE KEY INSERT PROBEHERE

FIG. 36 (e) Test Procedure for Cords and Loops, Step 5 (continued)

8.22.3 For cords, straps, and elastics that form loops and have a perimeter larger than the base diameter of the head probe and contain a breakaway feature, the following test is applied to determine release force. With the cord secured in a vertical fashion so that the breakaway feature is essentially in the center of the two clamping devices, apply a downward force and determine if the breakaway feature releases at a force less than 5.0 lbf (22.2 N).

8.23 Yo Yo Elastic Tether Toy Test Methods

8.23.1 The yo yo elastic tether toy is tested in its most onerous foreseeable use configuration. Hold the yo yo elastic tether toy by whatever holding means is supplied, typically a small loop. Rotate the toy in a horizontal or near-horizontal plane using any convenient means to achieve a constant rotational speed of 80 r/min or the maximum achievable speed up to 80 r/min.

NOTE 20 — The plane of rotation may not be horizontal given the physical characteristics of the toy, for example the size and mass of the object at the end of the tether.

NOTE 21 - Where a tether has no distinct holding means, such as a finger loop, the unloaded length of the tether that is held should be the minimal length required to prevent release of the tether during rotation.

8.23.1.1 A variable speed drill is one method of achieving a constant rotational speed. If such a drill is used, attach the holding means to a rigid cam as shown in Fig. 37. Use a cam of 3 cm (1.18 in.) in length as measured from the center of rotation to the edge of the clamping mechanism furthest from the center of rotation (see Fig. 38). If necessary, manually start the product rotating. A typical test set up is shown in Fig. 37.

Figure 37. Example of a Typical Setup This figure is two photographs. On the

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left is a device that resembles a power drill affixed to a test set-up. To the right is a cluttered scene of a workshop with no labels or descriptions.

FIG. 37 Example of Typical Test Set-Up

Figure 38. Close-Up of Clamp This photograph shows the end of what is presumably a power drill. At the end is a notation that says Center of Rotation. Connected to this end is a verticalbar that has a clamping mechanism affixed to it. A label says Edge of Clamping Mechanism.

FIG. 38 Close-Up of Clamp

8.23.2 Measure the length of the tether when the tether is fully extended during rotation. There is no requirement to measure the exact length of a tether if its fully extended length during rotation is well below or well beyond 50 cm (20 in.) (for example, less than 40 cm (16 in.) or greater than 60 cm (24 in.)). The tether length does not include the length of the mass at the end, the holding means (if present), or the cam (if used).

8.23.2.1 To facilitate length measurement of the tether during rotation, if helpful, mark two points along its length when it is under no load: (1) the point where it joins the mass at the end and (2) the point where it joins the holding means, as shown in Fig. 39.

Figure 39. Marking Unloaded Tether A ball is connected to a chord. At the other end of the cord is a circle with a hole in it. The point where the ball meets the cord is labelled 2.

FIG. 39 Marking Unloaded Tether

8.24 Magnet Test Methods

8.24.1 Flux Density Measurement.:

8.24.1.1 *Test Equipment*— dc field gauss meter with a resolution of 5 gauss (G) and an axial type probe.

- 1. An active area diameter of 0.76 \pm 0.13 mm.
- 2. A distance between the active area and probe tip of 0.38 \pm 0.13 mm.

8.24.1.2 Test Method:

1. Place the probe's tip in contact with the pole surface of the magnet. For a magnetic component (where the magnet is fully or partially imbedded in part of the toy), place the probe's tip in contact with the surface of the component.

- 2. Keep the gauss meter's probe perpendicular to the surface.
- 3. Move the probe across the surface to locate the maximum absolute flux density.
- 4. Record the maximum absolute flux density measurement.

8.24.2 Area Measurement of the Pole Surface:

8.24.2.1 Test Equipment-

Calipers or similar device with a resolution of 0.1 mm.

8.24.2.2 *Test Method*— If the magnet is imbedded/attached as part of a magnetic component, extract the magnet from the component. If the pole surface of the magnet is flat, calculate the area using the appropriate geometric formula. If the pole is not flat (for example, hemispherical), the pole surface area is the maximum cross section of the magnet perpendicular to an axis through the magnet poles (see Fig. 40).

NOTE 22 — On multi-pole magnets use the area of the largest single pole, which can be determined using magnetic field viewing film or equivalent.

Figure 40. Illustration of Pole Surface on a Magnet with Rounded Ends A cylinder with rounded ends is shown. A circle indicates the maximum cross-section perpendicular to axis. A line that is perpendicular through the center of that cross section is labelled axis through magnet poles. Maximumcross-sectionperpendicular to axis Axis throughmagnet poles

FIG. 40 Illustration of Pole Surface on a Magnet with Rounded Ends

8.24.3 *Calculation*— The flux index $(kG^2 mm^2)$ is calculated by multiplying the area of the pole surface (mm^2) of the magnet by the square of the maximum flux density (kG^2) .

8.24.4 *Magnet Use and Abuse Testing*— Each unique component shall be tested per this section. A new toy shall be used that has not been subjected to other use and abuse testing. All the testing in this section must be performed in series on each unique component (that is, testing must follow 8.24.4.1-8.24.4.5 in sequential order).

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8.24.4.1 *Cycling as Received*— One thousand (1000) cycles of intended use shall be performed on the as-received magnetic parts or magnetic

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 162 of 298 assemblies. The magnetic parts shall be brought together to a distance that initiates magnetic attraction, released, and then pulled apart to the distance where magnetic attraction ceases. Each attachment and detachment shall count as 1 cycle. If no other magnets or magnetic parts are provided with the toy, then the mating metal part or surface, according to the toy's intended play pattern, should be used for cycling purposes. The testing may be automated or performed manually.

8.24.4.2 *Impact Test*— Place the magnetic part or magnetic component in an orientation that is most likely to result in breakage on a plane horizontal steel surface and drop a metallic weight with a mass of 2.2 lb (1.0 kg) distributed over an area with a diameter of 3.1 in. (78.7 mm) through a distance of 4.0 in. (101.6 mm) on to it. Determine if a hazardous magnet or a hazardous magnetic component is generated.

8.24.4.3 *Torque Test* – Test according to <u>8.8</u>.

8.24.4.4 *Tension Test* – Test according to <u>8.9</u>.

8.24.4.5 Cycling - After Abuse Test- Repeat the testing described in 8.24.4.1.

8.25 Test Methods for Locking Mechanisms or Other Means

8.25.1 Locking Mechanisms or Other Means:

8.25.1.1 Erect the product in accordance with the manufacturer's instructions.

8.25.1.2 Secure the product so that the normal folding motion is not impeded.

8.25.1.3 Apply a force of 45 lbf (200 N) to the product, but not to the mechanism itself, in the direction normally associated with folding. Apply the force gradually over a 5 s period and maintain for an additional 10 s before releasing the force.

8.25.1.4 Perform this procedure five times within a 2 min period.

8.25.2 *Locking Test Method*— With the product in the manufacturer's recommended use position, gradually apply a force of 10 lbf (45 N) to the locking mechanism in the direction tending to unlock it. The locking mechanism shall not unlock until a minimum force of 10 lbf (45 N) has been achieved.

8.26 Test for Overload of Ride-On Toys and Toy Seats

8.26.1 Place the toy on a horizontal plane.

8.26.2 The test load(s) shall be three times the weight indicated in Table 6 at the highest age of the age range for which the toy is intended. The test for overload requirements shall be conducted so that it will be consistent with the advertised weight capacity if that figure is higher than the minimum weight capacity in accordance with Table 6. When the highest age of the intended age range falls between two ages listed in Table 6, the higher of the two shall be chosen.

8.26.3 Where the toy is intended to bear the weight of more than one child at a time, test each sitting or standing area (33 the weight tested separately in each location).

8.26.4 Apply a static load(s) that is equal to the weight as determined by the criteria above. The load(s) shall be applied so that it is as close as possible to the geometric center of the designated seating or standing area(s). If there is no designated seating or standing area(s), the load shall be placed at the least favorable position that it is reasonable to anticipate that the child will choose to sit or stand.

8.26.5 Observe whether the toy collapses within 1 min after application of the static load(s).

9. Identification

9.1 So that purchasers may identify products conforming to all of the requirements of this specification on toy safety, producers, importers, and distributors may include a statement of compliance in conjunction with their name and address on product labels, invoices, and sales literature.

9.1.1 The following statements are suggested:

- 1. Conforms to the requirements of ASTM Standard Consumer Safety Specification on Toy Safety, F963 (name and address of producer, importer, or distributor).
- 2. Conforms to the safety requirements of Specification F963 (name and address of producer, importer, or distributor).

10. Keywords

battery-operated toys; children; safety labeling; safety testing; toy safety

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ANNEXES (Mandatory Information)

A1. AGE GRADING GUIDELINES +

A1.1 Purpose and Scope

A1.1.1 Good age-grading practices are important to ensure that a toy is appropriate and safe at particular stages of physical and mental development.

A1.1.2 Age labeling is intended to provide point-of-sale guidance to consumers for the selection of appropriate toys for children with respect to average abilities, interests of various age groups, and safety aspects of the toys themselves.

A1.1.3 This guideline is intended to provide thoughts and considerations necessary to establish meaningful age recommendations for toy products.

A1.1.4 <u>"Guidelines for Relating Children's Ages to Toy Characteristics (1985)</u>" is available from the Consumer Product Safety Commission, Washington, DC 20207.

A1.2 Criteria for Establishing Age Grades

A1.2.1 The following criteria should be considered when establishing age grading for a toy. While all of these should be considered in total, each one may be weighted individually to arrive at the appropriate age grading.

A1.2.1.1 The physical ability of a child to manipulate and play with the specific features of a toy. This necessitates an understanding of the physical coordination, fine and gross motor capabilities, size, and strength generally available at a given age.

A1.2.1.2 The mental ability of a child to understand how to use the toy (that is, understand instructions, sequences of operations, objective of the toy). Consideration of the mental skills at a given age is important in order to provide a concept that will challenge abilities and stimulate further development, yet not frustrate. Accomplishment should be neither too easy nor too difficult to be satisfying to the child.

A1.2.1.3 The toy must meet play needs and interests at different levels of development. Understanding developmental levels and identifying play

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Standard Consumer Safety Specification for Toy Safety Case 1:13-CV-01215-TSC Document 122-1 Filed 12/22/15 Page 165 of 298 materials and play environments to enhance each developmental stage is important for assigning appropriate age grades. Play interests and toy preferences change rapidly; there should be careful attention to a child's preference or aversion to specific toy subjects at certain stages. In order for a toy to enhance play, it obviously must be appealing to its user. In short, it must be fun.

A1.3 Tools

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A1.3.1 Use of the following tools can help guide the establishment of meaningful age grading for a toy. These tools are not arranged in a particular order of importance; all of them should be considered during the age grading process.

A1.3.1.1 Prior experience with the toy or a similar toy in the marketplace indicating suitability for a specific age group.

A1.3.1.2 Reference materials on comparative body measurements and human factors elements.

A1.3.1.3 Reference resources on child development norms to establish developmental mileposts.

A1.3.1.4 Identification of developmental features to be enhanced/stimulated within certain age spans.

A1.3.1.5 Expertise of outside consultants, child development specialists, physicians, and psychologists.

A1.3.1.6 Testing of models or prototypes with children.

A1.3.1.7 Observing skill levels in children at play.

A1.3.1.8 Seeking opinions of parents.

A1.3.1.9 Interacting with children and asking questions.

A1.4 Safety Considerations of Age Grading

A1.4.1 The toy must be safe for the intended user. Once the skill level has been determined, the design must be tailored to satisfy the requirements of this specification associated with that age level.

A1.4.2 Age grades are indicators of average development, which does not

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 166 of 298 necessarily reflect suitability for the exceptional child. A parent remains the best judge of whether the child is at the appropriate development stage for safe play with a particular toy.

A1.4.3 A primary consideration should be potential choking and aspiration hazards associated with small parts. Children under the age of three are more prone to placing objects in their mouths. However, the propensity to put nonfood objects in the mouth does not disappear at the chronological age of three years. The following toys are appropriate for children under three years of age and are cited specifically as subject to the safety requirements of <u>16</u> <u>CFR 1501</u> for small parts regulations:

A1.4.3.1 Squeeze toys, teethers, crib exercisers, crib gyms, crib mobiles, toys intended to be affixed to a crib, stroller, playpen, or baby carriage, pull and push toys, pounding toys, blocks and stacking sets, bathtub, wading pool and sand toys, rocking, spring, and stick horses and other figures, chime and musical balls and carousels, jack-in-the-boxes, stuffed, plush, and flocked animals and other figures, and those preschool toys, games and puzzles, riding toys, dolls and animal figures, cars, trucks, and other vehicles that are intended for use by children under the age of three years.

A1.4.4 Some of the characteristics of toys that describe those preschool toys that are appropriate for children under the age of three years are listed below by class of toy:

A1.4.4.1 *Dolls*— Soft-bodied baby dolls or character dolls that are for holding or cuddling, stuffed or "bean bag" dolls, rag or cloth dolls with simple features (including accessories), and lightweight plastic dolls with simple features and limited articulation at the limb joints.

A1.4.4.2 *Infant Toys*— Toys intended to be used in a crib or playpen, to be held easily by small hands, shaken, grasped, rattled, or cuddled.

A1.4.4.3 *Toy Vehicles*— Cars, trucks, boats, and trains of simple chunky shape, decorated in primary colors without extensive descriptive detail or representation of a particular make or model of vehicle and that require simple actions such as rolling, dumping, pushing, and releasing.

A1.4.4.4 *Action Toys*— Simple action toys for the identification of sounds or pictures and surprise action toys.

A1.4.4.5 *Early Learning Toys*— Toys, books, and puzzles for learning basics such as letters or numbers or shapes, and simple physical motions such as turning wheels or knobs, pulling and letting go, or sorting by size, etc.

A1.4.4.6 *Blocks and Stacking Toys*— Toys that do not require finger dexterity or fitting together of small intricate pieces.

A1.4.4.7 *Soft Balls and Similar Items*— Soft, lightweight balls or other shapes for squeezing, shaking, rolling, or tossing.

A1.4.5 Toys that should not be considered appropriate for very young children, and therefore not be age labeled as such, have the following characteristics:

A1.4.5.1 Toys that require intricate finger movements or controlled adjustments, fitting intricate pieces together.

A1.4.5.2 Toys, for example, games that require or incorporate elements of reading ability beyond the ABCs or 123s.

A1.4.5.3 Toys that simulate adult figures or characters and their associated accessories.

A1.4.5.4 Collecting sets (for example, figures and vehicles).

A1.4.5.5 Projectile-type toys, launched vehicles, planes, etc.

A1.4.5.6 Makeup sets.

A1.4.6 Another major development cutoff has been cited at approximately eight years of age, at which time reading ability has progressed so that a child can, on his own, read, understand, and heed instructions, caution statements, etc. Because the instructions and caution statements are necessary for the safe use of the product in some cases, those products should be labeled for use by children over the age of eight. Products that fall into this category include the following:

A1.4.6.1 Science and environmental kits or sets containing breakable glass components and complex instructions.

A1.4.6.2 Complex model and craft sets requiring precision assembly and finger dexterity or incorporating sharp tools or components.

A1.4.6.3 Electrically operated toys incorporating heating elements.

A1.4.6.4 Certain chemistry sets, fueled model vehicles, and rockets, etc. that contain chemicals that may be hazardous, cannot generally be handled safely by children unable to read and understand instructions and cautionary

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 168 of 298 statements. The minimum age for which any such product should be recommended is eight years and then *only* with adult supervision.

A1.5 Descriptive Age Labeling

A1.5.1 Manufacturers can assist parents and other purchasers in the appropriate selection of toys by incorporating descriptive labeling to identify potential safety concerns if the toy is accessible to children outside the recommended age group.

A1.5.2 For example, if a toy contains small play pieces and is labeled for older children, such as an action figure set, the manufacturer should consider including a statement on the retail packaging that the toy contains small pieces.

A1.5.3 Factors to consider would include the appeal of the toy to young children, market experience, the design or construction of the toy, and whether the packaging provides visual indication of any small play pieces. In addition, a manufacturer should consider the probability that a purchaser may overestimate a child's physical or mental abilities and the child's understanding of a potential hazard related to the toy.

A2. PACKAGING AND SHIPPING

A2.1 Packaging

A2.1.1 Packages that are intended to be opened by adult purchasers should be constructed as to avoid hazards during the opening process from metal fasteners, particularly staples, and should not contain common pins used to position the toy within the package.

A2.2 Shipping

A2.2.1 Packaged and unpackaged toys can be subjected to a wide variety of tests designed to test the ability of toys to withstand the destructive forces encountered in the distribution cycle. The tests used most widely include drop, vibration, compression, and incline impact. Limited testing may be sufficient for many toys, especially those that are of light weight and constructed of resilient materials, such as dolls and stuffed toys. Others, however, such as large plastic or heavy metal toys, may be damaged during shipment and should be subjected to appropriate tests. Guidance for useful tests can be obtained from the following ASTM sources: Test Methods D642, D5276, D880, and D999.

A3. DESIGN GUIDELINES FOR TOYS ATTACHED TO CRIBS OR PLAYPENS

A3.1 Purpose and Scope

A3.1.1 This annex provides guidance for design practices intended to encourage the careful examination of product characteristics and configurations with respect to safety. As there are no objective means for determining conformance with these design guidelines, they are not to be used to judge compliance with this specification.

A3.2 Guidelines

A3.2.1 Designs for all products intended to be attached to cribs or playpens should be accomplished in a manner that minimizes the potential for strings, ribbons, elastic, or parts of clothing to become caught on the product, such that an infant is placed in a dangerous predicament in which possible strangulation could occur.

A3.2.2 Examples of the implementation of good design practices for crib and playpen environments include the following:

- 1. Rounded corners with the use of generous radii wherever possible.
- 2. Smooth contours that minimize abrupt changes in shape that could easily become a catch point for strings, ribbons, elastic, or loose clothing.
- 3. Isolation of fastening hardware using recesses, counterbores, or other similar methods.
- 4. Reduction of the potential for any mismatch of surfaces where a catch point could develop.

A4. DESIGN GUIDELINES FOR BATH TOY PROJECTIONS

A4.1 Purpose and Scope

A4.1.1 This annex provides guidance for design practices intended to result in bath toy projection characteristics and configurations that will minimize the risk of injury to the genital and anorectal area if a child were to sit or fall onto the bath toy projection while in an unclothed or minimally clothed state. Some examples of these potentially hazardous projections include but are not limited to rigid fins of fish, rigid hulls, funnels, and masts of boats. Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 170 of 298

A4.2 Guidelines

A4.2.1 It is important that the design of a bath toy be developed with consideration of the shapes, dimensions and materials of any projections on the toy such that penetration and impalement hazards are minimized.

A4.2.2 Examples of good design practices include:

A4.2.2.1 *Non-Vertical Projections*— It is preferable to have projections designed such that they are always non-vertical when the toy is evaluated in all stable positions including consideration of the potential positions the toy can rest on the bottom of a bath tub, with or without water present in the bath tub, to produce a vertical or nearly vertical projection.

A4.2.2.2 *Stability*— If a toy topples over when force is applied to the end of the vertical projection, both when the bath toy is empty and filled with water, then the vertical projection is unlikely to be hazardous.

A4.2.2.3 *Accessibility*— Vertical projections can be protected by suitable means to minimize possible injury. A protected projection is one that has adequate adjacent structure (ribs, housings, or other permanent components) to render the projection unlikely to cause penetration or impalement hazards.

A4.2.2.4 *Flexibility*— Vertical projections can be designed to be flexible to minimize possible injury. This can be done through the choice of materials, a design which bends or compresses or the dimensions of the projection.

A4.2.2.5 *Diameter*— The diameter (or cross-sectional projected area) of a vertical projection can be sized large enough to minimize possible injury.

A5. FLAMMABILITY TESTING PROCEDURE FOR SOLIDS AND SOFT TOYS

A5.1 Purpose

A5.1.1 This annex establishes the protocol and general criteria for flammability testing of solids, and soft toys in conformance with the requirements of 16 CFR 1500.3(c)(6)(vi).

A5.2 Definitions

A5.2.1 *major axis*— a straight line through the longest dimension of the product connecting the most distant parts or ends of the product. A product

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 171 of 298 can have more than one major axis (see Fig. A5.1), but they must be equal in length. For toys that pose or transform, position the product so that its major axis is the longest possible dimension.

Figure A5.1. Illustration for Determining Major Axis Two diagrams are shown. Each has 3 lines that intersect. Two of the lines are long and intersect at an angle. A vertical line which is shorter intersects at the same point. In one diagram the point of intersection is in the middle of the lines, in another, it is much higher up. Lines A-A and B-B are the long ones, C-C is the shorter one. A A C C B B A A C C B B

NOTE — Lines A-A and B-B are both major axes. Line C-C is *not* a major axis.

FIG. A5.1 Illustration for Determining Major Axis

A5.2.2 *soft toy*— any stuffed or plush toy, that may or may not be parts or components of other toys.

A5.2.3 *solids*— toys or toy parts constructed of rigid, flexible, or pliable solids.

A5.2.4 *accessories*— an item intended to be removed to enhance the play pattern.

A5.2.5 *strings*— long slender flexible material usually consisting of several strands (as of thread or yarn) woven or twisted together, usually used to bind, fasten, tether, or tie. This does not include string when used, for example, for hair on a doll.

A5.2.6 *paper*— a thin, flat, single layer of material produced by the compression of fibers. The fibers are usually composed of cellulose. Examples of paper products are traditional playing cards, newspaper, magazines, and construction paper. Examples of products that are not paper are cardboard, and paperboard (multiple layers of paper bonded together).

A5.3 Exemptions

A5.3.1 Strings, paper, and ping-pong balls. A5.3.2 Accessible components having a major dimension of 1 in. (25 mm) or less.

A5.3.3 Textile fabrics intended to be removed shall be tested separately and meet the requirements of <u>A6.1</u>. Fabrics not intended to be removed shall become subject to the test to the extent that it becomes a part of the test surface.

A5.3.5 Packaging materials intended to be discarded by the consumer. Components of packaging that are likely to be incorporated into the play pattern of the toy are not exempt.

A5.4 Sample Preparation for Solids and Soft Toys

A5.4.1 Test product completely assembled as per manufacturer's instructions. If disassembly is required for storage purposes only, test when fully assembled as per manufacturer's instructions. If assembly or disassembly, or both, is part of the play pattern (that is, accessories, puzzles, construction toys, etc.) test each component separately.

A5.4.2 Remove all string or paper from the product as deemed necessary.

A5.5 Procedure for Solids and Soft Toys

A5.5.1 Place the prepared sample in a draft-free area that can be ventilated and cleared after each test. The temperature of the sample at the time of testing shall be between 68 and 86°F (20 and 30°C) at a relative humidity of 20 to 70 %.

A5.5.2 The test fixture shall be corrected to a clean condition prior to the start of each test.

A5.5.3 Measure the dimensions of the sample, and support it by means of the test fixture (see Fig. A5.2) or equivalent, so that the ends of the major axis are oriented horizontally. Placing a scale along the major axis is a sufficient means for gauging the burn distance.

Figure A5.2. Suggested Flammability Test Fixture This is a square board which is 10 inches on each side. Nails are 1.25 inches apart in a grid, with the nails on the outside perimeter 0.62 inches in with the edge, thus 64 places. Number 10-32 tap screws are placed 0.31 inchdes in from each corner and in the middle of the board (thus 4.69 inches between the outer screws and the one in the middle of each edge. The nails protrude 2.4 inchdes out. The screws are item 1, the nailes are item 2, the board is item 3 and is made of stainless steel, the board underneath it is labelled 4 and is also stainles steel. .13 4.69 TYP .31 TYP .10 REF. 2.40 REF. .25 4.69 TYP .31 1.25 TYP .62 TYP 10.00 # 10-32 TAPTYP. 18) PLCS. Ø . 109 REF ...002 S.F.FOR NAILS TYP (64) PLCS. .62 TYP 1.25 TYP .10.00 2 3 4 1

NOTE 1 — Tolerances (unless otherwise specified): 3 Place DIMS \pm 0.005

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 173 of 298 2 Place DIMS ± 0.015

Angles ± 1°

NOTE 2 — Break all sharp edges and screw to suit unless otherwise specified.

FIG. A5.2 Suggested Flammability Test Fixture

A5.5.3.1 Orientation and Locations for Ignition of Specimens— When orienting specimens, provide support over the entire length of the major axis without sagging, making sure the supporting device does not retard the spread of flame materially. Optional: for samples with long hair, it may be necessary to add fine wire (24 AWG or higher) between some nails to provide sufficient support for the hair. The addition of support for hair is not necessary unless the hair hangs down vertically while lying on the test fixture.

NOTE A5.1— The CPSC does not test hair separately but rather tests hair as a normal part of the toy. The toy might be tested in a face-down position, with the hair in a horizontal position on top of the toy. The toy could also be tested lying on its back, with the hair lying beneath the toy. Hair that hangs vertically would not be used to calculate the burn rate.

- 1. A sample that is so large that it becomes impractical to support its entire length must be arranged in such a manner that support at the end of a major axis is provided by the test fixture.
- 2. One or more specimens shall be ignited at one end of the major axis, and when practical, one or more specimens shall be ignited at the opposite end of the major axis. Specimens shall be positioned in the worst case position, as dictated by experience.

A5.5.4 Trim the candle and wick as necessary to maintain a flame height of $\frac{5}{10}$ to 1 in. (16 to 25 mm).

A5.5.4.1 Hold a burning paraffin candle whose diameter is at least 1 in. (25 mm) so that the flame is a minimum of $\frac{5}{8}$ in. (16 mm) high, with the tip of the inner cone of the flame in contact with the surface of the sample at the end of the major axis for 5 s. Maintain contact of the candle with the sample for 5 s or until ignition occurs. If the sample melts away from the flame, move the candle and maintain contact for the full 5 s or until the sample ignites. If the ignition occurs immediately, hold the candle steady and allow the ignited flame to move away.

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| ltem | Required | Description | Material |
|------|----------|-------------------------|--------------------|
| 1 | 9 | # 10-32 0.38 LG. | S.H.C.S. |
| 2 | 64 | # 8d 2.50 LG. | Common Nail |
| 3 | 1 | 0.13 10.00 10.00 LG. | Stainless Steel |
| 4 | 1 | 0.25 10.00 10.00 LG. | Stainless Steel |

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A5.5.5 Remove the candle and allow the sample to burn for an additional 55 s (total burn time including ignition time is 60 s) or until the flames reach the opposite end of the major axis. Determine the time of combustion by means of a stop watch. Do not allow the total test time to exceed 60 s with a self-sustaining flame.

A5.5.6 Extinguish the flame with a CO or similar nondestructive extinguisher, if necessary, after the 60 s. The experienced application of water is an acceptable method for extinguishing the flame.

NOTE A5.2— Extinguishing the flame must be accomplished in a manner that preserves the accuracy of the burned distance.

A5.5.7 Measure the length of the burned area, and calculate the rate of burning along the major axis of the sample.

A5.5.8 Products that do not ignite are considered acceptable. No burn rate is calculated for these samples. The burn rate for products that self-extinguish in less than 60 s shall be computed by using the actual burning time as the denominator when calculating the burn rate. For example, ignited product burns 3 in. (76 mm) in 20 s and self-extinguishes. The burn rate is calculated as follows:

 $\frac{3in.}{20s} = 0.15in./s$ (A5.1)

A5.5.8.1 Burn-rate calculations for a product that selfextinguishes must be approached cautiously to avoid the introduction of measurement error since small measurement errors can become a significant portion of final calculations when the burn distance is short.

NOTE A5.3— It is unlikely that the CPSC would pursue an enforcement action that includes a burn rate calculation higher than 0.10 in. per second and yet consistently self-extinguishes during the test. However, the CPSC reserves the right to proceed with an action if such a burn rate may result in the product's causing substantial personal injury or substantial illness.

1. When the product does not self-extinguish, the flame shall be allowed to continue for a total time of 60 s. Calculate the rate of burning using the actual distance of flame spread during the full 60 s. For example, the product ignites and burns 9 in. (229 mm) in 60 s. The burn rate is calculated as follows:

 $\frac{9in.}{60s.} = 0.15in./s(a \text{ flammable solid})$ (A5.2)

NOTE A5.4— While testing, samples shall not be extinguished prematurely if such action will affect the burn rate. For example, if a stuffed rabbit is ignited at the tip of one ear and the flame is extinguished when the flame reaches the base of the ear, this may produce an inflated burn rate if the ear material burns at a faster rate than the rest of the product. Therefore, allow the sample to burn the full 60 s taking into account both the ear and the rest of the product.

2. There may be scenarios where the flame may need to be extinguished prematurely prior to reaching the full 60 s. For example, the major axis of a product is 6 in. in length. The product ignites and burns the total length of the major axis (6 in.) in 40 s but continues to flame. Once the flame travels the full length of the major axis, extinguish the flame immediately regardless of whether or not the full 60 s has been reached. The burn rate is calculated as follows:

$$\frac{6in.}{40s.} = 0.15in./s$$
 (A5.3)

A5.6 Requirements

A5.6.1 A toy shall be considered a flammable solid if it ignites and burns with a self-sustaining flame at a rate greater than 0.1 in./s (2.5 mm/s) along its major axis.

A5.6.2 If the burn rate of a composite product (that is, solid/fabric combined) exceeds 0.10 in./s in part due to the presence of a permanently attached fabric, then a secondary test shall be performed to determine compliance. The secondary test shall consist of removing the permanently attached fabric from the solid and retesting the solid component separately. When sold as part of a toy such that the permanently attached fabric (that is, fabric covered without causing damage to the toy and the fabric (that is, fabric covered book, stuffed dolls/animals, etc.) or if the toy is an enclosure that a child can enter, the fabric shall become subject to the solids test to the extent that it becomes a part of the major axis.

A5.6.3 Criteria for Acceptance:

A5.6.3.1 Sample size = four, whenever practical.

A5.6.3.2 A burn rate is not calculated for samples that do not ignite.

A5.6.3.3 Calculate the burn rate to two significant figures (to the nearest hundredth using conventional rounding rules, that is, for 5 or higher, round up).

A5.6.3.4 Round the burn rate to the nearest tenth (that is, round 0.15 up to 0.2).

A5.6.3.5 Level of acceptance = 0.1 in./s (2.5 mm/s), maximum, along the major axis.

A5.6.3.6 Additional Guidance for Manufacturers— Manufacturers' decisions on the performance of an item should be based on a minimum of four samples. This provides a reasonable opportunity for detecting undesirable variations in the product. Proceed as follows:

- 1. If the burn rate of all samples is less than 0.1 in./s (2.5 mm/s), accept.
- 2. If the burn rate of all samples is greater than 0.1 in./s (2.5 mm/s) but less than 0.15 in./s (3.75 mm/s), accept and consider further investigation for action to improve performance.
- 3. If the burn rate of one of the samples is 0.15 in./s (3.75 mm/s) or greater, reject and repeat the test with four additional samples (one time only). If the burn rate of any of the retested samples is 0.15 in./s. or greater, reject.
- If the burn rate of more than one of the initial 4 samples is 0.15 in./s (3.75 mm/s) or greater, reject.

NOTE A5.6— CPSC makes its decision on whether a product is a flammable solid based on the burn rate of each individual sample. It then determines whether the product may cause substantial personal injury or substantial illness during or as a proximate result of any customary or

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 177 of 298 reasonably foreseeable handling or use. CPSC has no objection to other laboratories rounding off to the nearest 0.1 in./s. It will calculate burn rates to two decimal places but does not envision enforcement action where the burn rate is greater than 0.10 in./s and less than 0.15 in./s. However, CPSC reserves the right to proceed if such burn rate may result in the product's causing substantial personal injury or substantial illness.

A6. FLAMMABILITY TESTING PROCEDURE FOR FABRICS

A6.1 Purpose

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A6.1.1 This annex establishes the protocol and general criteria for flammability testing of fabrics in conformance with the requirements of $\underline{16}$ <u>CFR 1500.3(c)(6)(vi)</u>.

A6.2 Definitions

A6.2.1 *fabric*— any coated or uncoated material (except film and fabrics having a nitro-cellulose fiber, finish or coating) that is woven, knitted, felted, or otherwise produced from any natural or manmade fiber, or substitute therefore, or combination thereof.

A6.2.2 *plain surface fabric*— any textile fabric which does not have an intentionally raised fiber or yarn surface such as pile, nap, or tuft, but shall include those fabrics having fancy woven, knitted or flock printed surfaces.

A6.2.3 *raised surface fabric*— any textile fabric which has an intentionally raised fiber or yarn surface such as a pile, nap or tufting.

A6.3 Exemptions

A6.3.1 Fabrics where a contiguous 2 by 6 in. piece cannot be extracted.

NOTE A6.1— If a contiguous 2 by 6 in. piece of fabric cannot be obtained, but due to the existence of other fabrics adjacent to it a composite 2 by 6 in. sample can be obtained, and the fabrics in question are permanently attached to a common substrate, then it shall be tested. An example of this would be a doll's hula skirt made of thin strips of fabric 6 in. in length. Each individual strip is joined at the top by a common substrate (that is, plastic waistband) and when combined with the other strips immediately adjacent to it, a 2 by 6 in. sample can be extracted.

A6.3.2 Fabrics that are permanently attached to a solid must initially be

A6.4 Sample Preparation

A6.4.1 Precondition all fabrics in a horizontal position for a minimum of 30 min at a temperature of 221 \pm 10°F.

A6.4.2 Fabrics intended to be washed shall be subjected to AATCC <u>Home</u> <u>Laundering Fabrics Prior to Flammability Testing to Differentiate Between</u> <u>Durable and Non-Durable Finishes</u> - 2007.

A6.4.3 A total of 5 samples, whenever practical, shall be cut for each location. Samples may be obtained from more than one toy.

A6.4.4 Samples shall be tested in the manner in which they appear on the toy (that is, exposed side face-up).

A6.4.5 Use the most onerous orientation (for example, warp or fill).

A6.4.6 If it is necessary to use a sample that consists of more than one type of fabric, then take the sample from the most onerous location.

A6.4.7 If fabric is layered and the layers are permanently secured to one another (for example, stitched together) at any point, cut through as many materials necessary to obtain the sample and include all layers in a single sample. Orient layers in the sample holder in the same manner they appear on the toy. (See Fig. A6.1.)

Figure A6.1. Layered Fabric Sample This is a poor drawing of a doll with lots of hair and dress consisting of several layers.

FIG. A6.1 Layered Fabric Sample

A6.4.8 For fabrics with finished ends made of a different material (that is, lace, ribbons, etc.) test the finished ends separately.

A6.4.9 If the finished ends consist of the same material as the sample being tested (that is, hemmed, folded, etc.) then attempt to exclude this from the 2 by 6 sample. In addition, if the fabric contains any seams or stitching, attempt to exclude them from the sample. If a sample cannot be extracted by excluding the finished ends or seams/stitching, then include them in the sample during testing, however, orient the sample in the fixture so that the finished ends or seams/stitching are at the top or side of the fixture to minimize any effect it may have on the burn rate.

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 179 of 298 A6.4.10 If the fabric requires support in order to be held in the fixture, then the use of thin gauge wire (24 AWG or higher) strung across the plate opening at equidistant points from each other is acceptable. (See Fig. A6.2.)

Figure A6.2. Fabric Requiring Support A rectangle is shown with a weave pattern and a set of diagonal lines that are thicker, which are presumably the support.

FIG. A6.2 Fabric Requiring Support

A6.4.11 Regardless of sample size, if the fabric has nonfabric components permanently attached to it (that is, buttons, sequins, beads, etc.) remove these components only if removal will not cause permanent damage to the fabric or to the non-fabric component. Then test each component separately as applicable. If permanent damage cannot be avoided during removal, then test with non-fabric components attached.

A6.5 Test Procedure

A6.5.1 Test fabrics per the test method specified in <u>16 CFR 1610.4(g)</u>.

A6.5.2 Use the equipment as specified in <u>16 CFR 1610.4(b)</u>.

A6.6 Requirements

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A6.6.1 Plain Surface Fabrics:

A6.6.1.1 Specimens are acceptable if:

- 1. All specimens either did not ignite, ignited but selfextinguished, or any combination thereof.
- 2. Average burn time is 3.5 s or greater.

A6.6.1.2 If only 1 of 5 specimens ignites and burns the stop cord with a time of 3.5 s or more, samples are acceptable.

A6.6.1.3 If only 1 of 5 specimens ignites and burns the stop cord in less than 3.5 seconds, test another set of 5 specimens. Compute the average time of flame spread for all 10 specimens. If 2 or more of these specimens ignite and burn the stop cord, average the results from those specimens. If only 1 of the 10 specimens ignites and burns the stop cord, samples are acceptable.

A6.6.2 Raised Surface Fabrics:

- 1. All specimens either did not ignite, ignited but selfextinguished, or any combination thereof.
- 2. Average burn time is 4 s or greater.
- 3. Average burn time is less than 4 s and all specimens burn with a surface flash where the intensity of the surface flame is insufficient to ignite, char, or melt the base fabric.
- 4. Only 1 of 5 specimens ignites and burns in less than 4 s and the base fabric does not ignite or fuse, the sample is acceptable.
- 5. Only 1 of 5 specimens ignites or burns in more than 4 s, regardless of whether the base fabric ignites or fuses, the sample is acceptable.

A6.6.2.2 To compute the average time of flame spread for each set of 5 specimens, at least 2 of the specimens must ignite and burn the stop cord.

A6.6.2.3 If only 1 of 5 specimens ignites and burns in less than 4 s where the base fabric ignites or fuses, test another set of 5 specimens. Compute the average time of flame spread for all 10 specimens. If 2 or more of the 10 specimens ignite and burn the stop cord, average the results from those specimens. If only 1 of the 10 specimens ignites and burns the stop cord, samples are acceptable.

A7. COMPOSITING PROCEDURE FOR TOTAL HEAVY METAL ANALYSIS

A7.1 Purpose

A7.1.1 Composite testing for a total digestion analysis may be conducted to potentially reduce the number of tests conducted. Combining different but like materials into a composite analysis must be done with adequate care and understanding of the limitations and potential propagations of error in measurement or the test may fail to detect excessive metals in one of the individual materials.

A7.2 Definitions

A7.2.1 *Composite Testing - Different Materials*— Combining different but similar materials to reduce the number of digestions and instrumental metal analyses performed.

A7.2.2 *Similar or Like Materials*— Materials that have similar characteristics

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 181 of 298 may be combined into one composite sample. Glass may be composited together; and plastics composited together; however glass and plastic may not be composited together as they require different digestant mixtures to achieve complete digestion. Coatings on metal substrates should not be composited with coatings on non-metal substrates.

A7.3 Exclusions

A7.3.1 Metal substrates with different compositions should not be composited together as one may interfere in the digestion process and cause reprecipitation or incomplete digestion, therefore affecting the actual result.

A7.4 Sample Preparation

A7.4.1 Each individual component must be weighed individually with sufficient precision and sufficient safety factors to assure that no false negatives are reported.

A7.4.2 Sufficient materials must be used for each of the components giving proper consideration for the weighing capabilities of the balance used and the detection limits and necessary dilution for the subsequent instrumental analysis.

A7.4.3 The combined materials are digested according to the appropriate procedure, depending on the material, before analysis by atomic spectroscopy or other appropriate validated method.

A7.4.4 Appropriate weights of each of the individual materials composited depend on final dilution volumes, weighing accuracy, and detection limits.

A7.4.5 Equal weights (to the extent achievable by good laboratory practice) of each of the similar or like materials must be used in the composite sample.

A7.5 Calculation

A7.5.1 As an example, results for the Arsenic (As) content are calculated and reported as follows:

Total As concentration: %As
$$(wt./wt.) = 0.10 \ cd/w$$
 (A7.1)

where:

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c = concentration of arsenic detected (µg/ml)

d = dilution volume (mL)

w = weight of aliquot digested (mg)

A7.5.1.1 One example of composite testing of different plastics would be as follows, and considers the case of weighing to the nearest 0.01 mg, digesting in acid, diluting to a final volume of 10 or 20 mL, and testing on an ICP-OES with an MDL of 0.04 μ g/mL. A sample comprising red, green, and orange plastics is tested as a composite using 15.0 mg of red plastic, 16.0 mg of green plastic, and 17.0 mg of orange plastic. The resulting 48.0 mg of composite plastic from this example is digested in acid and diluted to 10 ml, and then the diluted digest is found to contain 0.0008 % arsenic. The combined 3 aliquots of plastic would have contributed to a total of 0.40 μ g of arsenic for the composite sample. Although the average concentration in this case would be 8 ppm, the individual contributions are not known, and one must calculate the arsenic concentration of each plastic as if all of the arsenic originated from it. Thus, the red plastic could contain up to 0.4 μ g / 0.0015 g = 27 ppm (μ g/g), with similarly calculated results of 25 ppm and 24 ppm for the green and orange plastics. See Table A7.1.

A7.5.2 As another similar example, results for the arsenic (As) content are calculated and reported in <u>Table A7.2</u>. All of individual plastics (11 ppm, 11 ppm, 12 ppm) in the above composite do not exceed 0.0020 % (20 ppm) for arsenic (80 % of 0.0025 % arsenic limit). The composite passes and so do the individual plastics. Therefore the plastics do not need to be tested individually.

A7.5.3 Composite analysis by ICP-MS or another validated method of equivalent sensitivity or the use of a larger sample weight may be necessary when an element has a low regulatory limit and high detection limit (reporting limit), such as with arsenic.

A7.6 Rationale

A7.6.1 Composite heavy element testing of several samples of slightly differing but essentially similar materials (for example, several colors of polyethylene plastic) is desirable to reduce testing cost if this can be accomplished without compromising in any way the achievement of the same attribute (that is, pass/fail) result which would have been reached had the samples been tested individually. Annex A7 outlines detailed procedures for accomplishing this end by specifying the conditions under which compositing is allowable, when a composite result may be relied upon without further testing, and when testing of individual samples must subsequently be performed. Composite testing has been limited to total digestion (vis-a-vis soluble) analyses primarily in order to align with the European Union

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Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 183 of 298 harmonized standard <u>EN 71-3</u>, which specifically forbids compositing for its required (soluble) analyses.

| ltem | (c) Analytical Results As (μg/ml) | (d) Dilution Volume (ml) | Total As (μg) | (w) Sample wt (mg) | Potential As (%) per Component | As (%) Composite |
|--------------------|---|-----------------------------------|---------------------|-----------------------------|--------------------------------------|---------------------|
| Red Plastic | 0.04A | 10 | 0.4A | 15.0 | 0.0027 | |
| Green Plastic | 0.04A | 10 | 0.4A | 16.0 | 0.0025 | |
| Orange Plastic | 0.04A | 10 | 0.4A | 17.0 | 0.0024 | |
| Total Composite | 0.04A | 10 | 0.4A | 48.0 | | 0.0008B |

TABLE A7.1 Total Arsenic (As) Analysis - Composite Testing

^A In a composite of different plastics, the analytical result for the total composite would be applied to each component part as if all the arsenic was in that component plastic.

^B In this example, the arsenic concentration of the combined plastics is 0.0008 %, which is below the 0.002 % arsenic acceptable limit (80 % of the 0.0025 % arsenic limit), however any individual component having a result based on it's sample weight that is greater than 80 % of the heavy metal limit should be retested individually. For example, all of individual plastics in the above composite exceed 0.0020 % for arsenic (80 % of 0.0025 % arsenic limit) so all of the plastics should be tested individually. This calculation and data interpretation would be applied to the remaining heavy metals.

A8. RATIONALE FOR 2007 REVISIONS

A8.1 Definitions¹⁷

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¹⁷ This rationale pertains only to those changes made in the 2007 edition of Consumer Safety Specification F963. Rationales for previous editions may be obtained from ASTM International Headquarters by requesting Research Report RR:F15-1000.

A8.1.1 <u>Section 3</u>— New definitions for terms used in this version of Consumer Safety Specification F963:

- hazardous magnet
- hazardous magnetic component

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- impulsive sound
- maximum A-weighted sound pressure level
- rattle
- reference
- strap
- tangle or form a loop
- yo-yo elastic tether toy

A8.2 Sound Producing Toys

A8.2.1 *Sections* <u>4.5</u> and <u>8.19</u>— These sections have been totally replace by a new set of requirements and a new test procedure.

A8.2.1.1 These requirements have been developed after extensive review of known research on noise-related injury to hearing and existing published recommendations for noise limits. They are intended to reduce the risk of damage to hearing due to high continuous and impulse noise levels. They apply only to toys that are designed to emit sound, i.e., toys that have sound producing features such as electric or electronic devices, percussion caps, rattling components, etc.

A8.2.1.2 The requirements in 4.5.1.1 and 4.5.1.2 are intended to address those hazards presented by continuous sounds (e.g., speech, music). These hazards are chronic and typically manifest themselves after years of exposure. The Occupational Safety and Health Administration (OSHA) has set acceptable limits at 85 dB(A) for 8 h of exposure. An independent audiologist consulted by the ASTM work group recommended a similar exposure level. His recommendations for an 8 h exposure level, Leq, 8h, were 85 dB(A) for continuous sound, and 82 dB(A) for the continuous sound emitted from toys that produce both continuous and impulsive sound.

A8.2.1.3 Exposure to noise from toys is intermittent and integrated with other daily noises. It is unlikely that a toy would present 8 h continuous exposure to sound. These assumptions are consistent with the findings of European research conducted by ISVR Consultancy Services in Southampton U.K. and published as <u>"Noise from Toys and its Effect on Hearing."</u> Based on that study, the probable duration of play with a sound producing toy was determined by the ISVR to be 1.5 h per day.

A8.2.1.4 Using the recommended exposure levels from the audiologist, the

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 185 of 298 ISVR study's conclusion on the duration of play, and a 3 dB exchange rate, the equivalent recommended values are 92.3 dB(A) and 89.3 dB(A), respectively. Rounding each value to the nearest 5 dB(A) yields 90 dB(A) for both. The ISVR study referenced above also concluded that 25 cm was an average use distance for toys. However, a 50 cm distance is superior for measurement purposes. Therefore, the 25 cm, 90 dB(A) requirement was converted to its 50 cm equivalent. The 50 cm free-field equivalent of 90 dB(A) at 25 cm is 84 dB(A). This was rounded to 85 dB(A) to arrive at the final requirement.

A8.2.1.5 The ISVR study uses a distance for close-to-theear toys of 2.5 cm. Using the same reasoning applied above, the 50 cm free-field equivalent of 2.5 cm, 90 dB(A) is 64 dB(A). This was rounded to 65 dB(A) to arrive at the final close-to-the-ear-toy requirement.

A8.2.1.6 The requirements in <u>4.5.1.3-4.5.1.5</u> are intended to address those hazards presented by impulsive sounds (e.g., percussion caps), which can be especially hazardous. Permanent damage to hearing may occur after only one exposure to high impulsive sound levels.

A8.2.1.7 A technically accurate impulsive sound requirement would involve a combination of decibel levels and number of repetitions per day of the sound and also determining the potential for misuse (actuating close to the ear). This alternative would result in some subjective determinations regarding repetitions/day and the likelihood for actuating close to the ear. Therefore, a conservative approach was adopted that limits impulsive sounds to 120 dB (C-weighted peak). This requirement protects against misuse and allows up to 10 000 repetitions per day according to OHSA guidelines. The 50 cm free-field equivalent of 25 cm, 120 dB(C) is 114 dB(C). This was rounded to 115 dB(C) to arrive at the final requirement. This requirement only applies to impulsive sounds created by non-explosive means (e.g., two masses colliding).

A8.2.1.8 Impulsive sound level requirements for toys that produce sound from explosion (e.g., caps) have been treated separately. A higher decibel level (125 dB(C)) is allowed for these types of toys because of the human ear's inability to respond to waveforms with such rapid rise-times such as these.

| ltem | (c) Analytical Results As (μg/ml) | (d) Dilution Volume (ml) | Total As (µg) | (w) Sample wt (mg) | Potential As (%) per Component | As (%) Composite |
|----------------|---|-----------------------------------|---------------------|-----------------------------|--------------------------------------|---------------------|
| Red Plastic | 0.04 | 20 | 0.8 | 72.0 | 0.0011 | |

TABLE A7.2 Total Arsenic (As) Analysis - Composite Testing

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| Green Plastic | 0.04 | 20 | 0.8 | 70.0 | 0.0011 | |
|--------------------|------|----|-----|-------|--------|--------|
| Orange Plastic | 0.04 | 20 | 0.8 | 66.0 | 0.0012 | |
| Total Composite | 0.04 | 20 | 0.8 | 208.0 | | 0.0004 |

A8.3 Yo Yo Elastic Tether Toys

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A8.3.1 Sections <u>4.37</u> and <u>8.23</u>— The task group concluded that the mass on the end of the tether was significant in creating the strangulation potential of a yo yo elastic tether toy. That is why these yo yo products have been associated with near strangulations, and similar products with little mass on the end such as a "sticky" hand have no similar data. The mass was determined by weighing product known to be associated with wrapping around neck. Yo yo elastic tether samples evaluated weighed 0.1 kg (0.2 lb), 0.07 kg (.15 lb), and 0.07 kg (0.15 lb). Estimated weight of sticky hand (hand portion only) is 0.0045 kg (0.01 lb). The appropriate value for the mass at the end of the tether was chosen to be between these two values, 0.02 kg (0.04 lb).

A8.3.1.1 The cord length is based on two times the neck circumference of a 5th-percentile 3-year-old from Childata, or 2 24.0 cm = 48 cm (18.9 in.). The age of 3 years was chosen based on the age of children involved in the incident data.

A8.3.1.2 The rotational speed of 80 RPM was determined by testing adults and determining the maximum RPM they can achieve rotating a product above their heads. The range of adult speed was 80 - 108 RPM, the average was 90 RPM and the standard deviation was 7 based on a sample size of 14. This was reduced to 80 RPM as an estimate for the speed children 3 to 6 years old can achieve. The incident data indicated that children 3 to 6 years old are most often involved in yo yo elastic tether incidents.

A8.4 Magnets in Toys

A8.4.1 Section <u>4.38</u>— These requirements address the recent incidents of magnet ingestion resulting in serious injury or death by identifying magnets or magnetic components that can be readily swallowed. It requires these hazardous magnets and hazardous magnetic components to be reliably contained in a product, or carry a warning. Hazardous magnets and hazardous magnetic strength of concern, along with a size and shape that can be swallowed.

A8.4.1.1 The following areas were considered:

- a. Data indicate that powerful magnets have been involved in all known ingestion incidents to date. The data also suggest that magnet ingestion was not a problem in toys until powerful magnets (such as NIB magnets) became cost effective and commonplace several years ago. Ceramic, rubberized, and ferrite magnets have substantially lower attractive forces and therefore must be made larger to provide sufficient magnetism, which makes them less likely to be swallowed.
- b. The magnets/magnetic components involved in the ingestion incidents were small objects (see <u>4.6</u> and <u>Fig. 3</u>). Therefore, the requirements have indicated that hazardous magnets or hazardous magnetic components must not be small objects.
- c. The exemptions represent magnets which are used in applications that are not obvious to the consumer. These are very common magnet uses and there are no data associated with these magnets.
- d. Products intended for children under three are already subject to the small parts requirement which would include these magnets or magnetic components.

A8.4.2 Section <u>5.17</u>— The warning specifically explains the hazard as "sticking across intestines." Studies of warnings show that when the audience can "picture it," even when there is no picture, then compliance with the warning increases. In the final analysis, the "intestines" statement makes this warning more effective than it would be without it.

A8.4.3 Section <u>8.24</u>— If the play pattern of the toy includes repeated attaching and detaching of the magnet(s), the magnet(s) shall be subjected to repeated attachment and detachment that is expected over the life of the toy. Furthermore, if it is likely that other components included in the toy can attach to the magnet(s), then the magnet(s) and the other components shall be dropped/impacted together during use/abuse testing.

A8.5 Hemispheric Shaped Objects

A8.5.1 Section <u>4.36</u>— Data analysis of the "cupped" shaped objects involved in the fatal and non-fatal incidents, indicated that the wall thickness of the objects involved in the incidents ranged from approximately 0.04 in. (1 mm) to 0.12 in. (3 mm). Based on this data, it was believed that wall thickness was not a concern. It is also important to note that, wall thickness is not a relevant factor for objects with diameters at the upper end of the requirements as these sized objects may fit around/under the chin.

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 188 of 298 A8.5.1.1 However, since publication of this requirement, questions have been raised in the United States and Europe regarding objects with "thick" walls or rims—what is the appropriate measurement for these objects, inner or outer diameter? The work group has discussed the intent of the requirement and has concluded that the inner diameter measurement is the critical element in determining whether or not a "cupped" shaped object has the potential to fit a child's face and create a vacuum. Therefore, a change from outer diameter to inner diameter is recommended.

A8.5.2 Section <u>4.36.6(e)</u>— The new option for a single large opening in the base includes the area that is defined by the original two small opening minimum dimensions (0.080 in./2 mm) and the minimum space in between these openings (0.5 in./13 mm). The 0.66 in./17 mm dimension is calculated as 0.080/2 mm + 0.080/2 mm + 0.5/13 mm. This approach is consistent with the option for ventilation in <u>4.16.1.1</u>. Similarly, placement of this opening at least 0.5 in. (13 mm) from the rim of the object should ensure that facial features such as the nose or chin, or flesh, will not completely block the opening.

A8.6 Miscellaneous Technical Issues

A8.6.1 Section <u>4.12</u>— The purpose of this section is to minimize the potential of asphyxiation hazards that may be caused by thin packaging film, including sheets and bags. Plastic sheeting/bags may adhere to a child's mouth and nose making it impossible to breathe. Since the most frequent pattern of death is the covering of the face, the exemption is based on the size of the face and not whether the plastic is a bag or a sheet. CPSC anthropometry data for the face of a 4 to 6-month-old indicates a minimum head height of 125 mm (4.9 in.) and minimum face width of 85 mm (3.3 in.). This is the basis for the exemption, which is a minor dimension of <3.9 in. (100 mm). Plastic sheets or bags with a minor dimension less than 3.9 in. (100 mm) will not entirely cover the face of a 4 to 6-month-old infant.

A8.6.1.1 Both ISO 8124 and $\underline{EN 71}$ allow for perforations of the sheeting if it does not meet the thickness requirements. There is no injury data from the EU to indicate that perforated film presents a hazard. The 1 % area for perforations is considered to be sufficient to sustain an air flow and prevent the adhering of the film to the face.

A8.6.2 Section <u>4.14</u>:

A8.6.2.1 Section <u>3.1.75</u>— Definition of strap added to clarify and expound test method verbiage in <u>4.14</u>. Children under the age of 18 months have

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 189 of 298 developed certain gross motor skills (e.g., can grasp and pick up objects). However, they lack fine motor skills such as those required to insert the end of cords/straps/elastics though a small opening or to wrap a cord/elastic multiple times around a wheel.

A8.6.2.2 *Section* <u>4.14.1.1</u>— Details requirements for breakaway features on cords, straps, and elastics.

A8.6.2.3 *Section* <u>4.14.2</u>—Clarifies scope of test method by adding "strap" as an additional type of cord/elastic covered by the requirement.

A8.6.2.4 Section <u>8.22.2</u>— This section provides an additional testing method and supplemental diagrams (with details for additional equipment) that should be used for materials that have a loop perimeter smaller than the tapered end of the head probe.

A8.6.2.5 *Section* <u>8.22.3</u>— Details testing method for determining the release force required for breakaway features on cords, straps, and elastics.

A8.7 Miscellaneous Editorial Changes

A8.7.1 Section <u>4.6</u>— The word "choking" has been added to the test to be consistent with the language of <u>16 CFR 1501</u>.

A8.7.2 Section <u>4.15.6</u>— This section references the dynamic strength test in <u>8.20</u>. This reference had been omitted in the previous version of Consumer Safety Specification F963.

A8.7.3 Section <u>4.17</u>— Reference to the wrong definition has been corrected to <u>3.1.60</u>.

A8.7.4 Section <u>4.25</u>— Abuse testing in <u>8.6-8.10</u> of the standard is not applied to toys intended for children over 96 months (this is laid out in <u>Table 5</u>). Therefore, it is redundant and unnecessary to break down the age group in this way in the requirement section.

A8.7.4.1 *Section <u>4.25.10.6(2)</u>* – Corrected reference to test procedure to <u>8.18.7</u>.

A8.7.5 Section <u>8.6</u>— Explicitly states the age requirements as they pertain to abuse testing (for clarification). Also, the word "test" has been corrected to "toy" in the third sentence.

A8.7.6 Section <u>8.18.6.1</u>— The text has been changed to correct errors in the

Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 190 of 298 procedure contained in the previous version of this section.

A9. RATIONALE FOR 2008 REVISIONS

A9.1 Jaw Entrapment

A9.1.1 Section 4.39— There have been product recalls in past years to address incidents of jaw entrapment. There have been additional incidents of jaw entrapment in toy products that did not rise to the level of a recall. All but one incident involved entrapment in a handle or steering wheel. When a child's jaw becomes entrapped in a product, there is potential for damage to teeth and gums, long term orthodontic consequences and impairment of normal speech development. Most cases of jaw entrapment involve children less than 18 months of age. (See Fig. A9.1 and Table A9.1, and Table A9.2.) There is no incident data indicating handles that are connected to the toy with a hinge and handles made from a pliable material (for example, straps and ropes) pose a risk of jaw entrapment.

Figure A9.1. Facial Measurements (Figure 1) A man's face is shown from the side profile. Distances A, H, G, F, E, and R are marked. A is from eyebrow to back of head. E is nasion to base of nose. R is the depth of the nose. F is nasion to samion. G is nasion to depression in chin. H is nasion to bottom of chin. A H G F E R

Figure 1 (of A9.1). Locations of head and face measurements established by anatomical landmarks (side view).

Figure A9.1b. Facial Measurements (Figure 2) Distances B, I, J, K, L, M, N, D, and C are shown on this front view of a male head.B is the length across of the head (not counting ears). I is from the inner points of each eye. J and K are unmarked but are points on each side of the nose. L is the length across from the nose and is longer than J and K. M is the normal lip length, N is the extended lip length. D is not labelled but appears to be the length from the outside of each eye. C is the distance from the edge of the face where the ear is across to the other inner part of the ear. D C B I J K L M N Figure 1 (of A9.1). Locations of head and face measurements established by anatomical landmarks (front view).

NOTE -

F. Nasion-Stomion Distance: The distance between the nasal root depression and the point of upper and lower lip intersection.H: Nasion-Menton: This measurement, taken from the nasal root depression to the lower point on the chin, defines total face height.M: Lip length, normal: A bilateral measurement (bichelion diameter) of distance between the external corners of the mouth. This measurement

is taken with all facial muscles relaxed.

N: Lip length, extended: A bilateral measurement (bichelion diameter) of maximum distance between the corners of the mouth in a condition of voluntary extension using muscles of facial expression.

FIG. A9.1 Facial Measurements

A9.1.2 *Anthropometric Data*— The April 1966 study titled "Selected Facial Measurements of Children for Oxygen-Mask Design"¹⁸ provides very useful anthropometric data.

¹⁸ Young, J. W., <u>"Selected facial measurements of children for oxygen-mask design,"</u> AM 66-9, AM Rep., 1966, Apr: 1-11.

A9.1.2.1 To provide protection for children up to the age of 18 months:

Width—Using the maximum estimated stomion-menton dimension and rounding up, indicates the gauge should be 3.8 cm (1.5 inches) in width.

Length—The 95th percentile mouth breadth for 2 to 3.5 year olds (the youngest age available) is 3.8 cm (1.5 inches) from Childata (see <u>Table A9.3</u> and <u>Table A9.4</u>). One inch was added resulting in the 2.5 inch length. A safety factor of 2.54 cm (1 inch) was used for mouth breath since the anthropometric data is based on a mouth at rest, and a mouth can be expected to stretch significantly from this position. Alternately, the lip length dimensions above can be used to arrive at the same estimate, rounding up, of 6.35 cm (2.5 inches).

A9.1.2.2 To provide protection against the youngest user becoming entrapped:

Width—A gauge width of 1.9 cm (0.75 inches) was chosen based on the minimum stomion menton distance for a 1 month old.

Length—The small jaw breadth of 1.9 cm (0.75 inches) is based on the 5th percentile 2 year old mouth breadth which is 2.54 cm (1.0 inch), so to be conservative 75 % of that was used.

A9.1.2.3 The task group considered adding a requirement as suggested at the meeting that the scope only cover handles and steering wheels that are able to be placed in the mouth, or would be teethable. The task group considered this suggestion and determined that this modification would not be made since incident data demonstrated that some products created jaw entrapment without the need for the child to place the product in his/her mouth (for example, the child's jaw was entrapped without the need for the

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child to introduce the handle end of the push toy into the mouth).

| 6 | 1 | |
|---|---|--|
| | | |

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TABLE A9.1 Facial Measurements (in Inches)

| Age | # children ^A | Mean Nasion- menton distance ^B | Range Nasion- menton distance | Mean Nasion- stomion istance ^C | Range Nasion- stomion distance | Estimated mean stomion- menton distance | Estimated minimum stomion- menton distance | Estimated maximum stomion- menton distance |
|------|-------------------------|--|--|--|---|---|--|--|
| 1 mo | 20 | 2.36 | 2.28-2.72 | 1.58 | 1.46-1.69 | 0.78 | 0.82 | 1.03 |
| 6 mo | 20 | 2.77 | 2.56-2.95 | 1.61 | 1.54-1.73 | 1.16 | 1.02 | 1.22 |
| 1 yr | 20 | 2.85 | 2.68-3.03 | 1.76 | 1.69-2.13 | 1.09 | 0.99 | 0.90 |
| 2 yr | 20 | 3.14 | 3.03-3.27 | 1.98 | 1.81-2.17 | 1.16 | 1.22 | 1.10 |
| 3 yr | 20 | 3.37 | 3.15-3.66 | 2.05 | 1.89-2.20 | 1.32 | 1.26 | 1.46 |
| 4 yr | 20 | 3.41 | 3.19-3.58 | 2.08 | 1.57-2.20 | 1.33 | 1.62 | 1.38 |
| 5 yr | 31 | 3.49 | 3.23-3.78 | 2.16 | 2.05-2.40 | 1.33 | 1.18 | 1.38 |
| 6 yr | 91 | 3.6 | 3.11-3.98 | 2.23 | 2.01-2.56 | 1.37 | 1.10 | 1.42 |

^A Per the author, sex distribution was reasonably constant across age groups; no sex distinction was made in groups 1 month through 4 years.

^B From nasal root depression to the lower point on the chin (a measure of face height).

^C From nasal root depression to the intersection of the lips.

A9.1.2.4 The task group considered adding simulated teeth to the gauge. The task group concluded that the addition of teeth was not advisable because the incidents being addressed involved entrapment of the child's jaw. The teeth of the child may have influenced the resulting entrapment, however, the proposed requirement accounts for the presence of the teeth. Also, for a very young child the dimensions of the teeth are variable, since the teeth are just erupting.

A9.1.2.5 The task group added a depth of greater than 1.3 cm ($\frac{1}{2}$ inch) to both gauges to clarify that this is a three dimensional test. The depth of 1.3 cm ($\frac{1}{2}$ inch) was chosen based on dimensions of products known to be associated with jaw entrapment and the need for only a small portion of the child's jaw to be introduced into the space of the incident products.

| | | | | • |
|------|-----------------------|--------------------|---------------|---|
| | # | Lip Length, Normal | | Lip Length, Extended, extrapolated base on percentage increase in lip length for older children, or 50 % increase over largest normal lip length |
| Age | children ^A | Mean | Range | Maximum |
| 1 mo | 20 | 1.08 | 0.98- 1.26 | 1.89 |

TABLE A9.2 Lip Length, in Inches

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|---------|---------------|--------|---------------|--------------------------------|
| 6 mo | 20 | 1.09 | 0.95- 1.34 | 2.01 |
| 1 yr | 20 | 1.28 | 1.14-1.5 | 2.25 |
| 2 yr | 20 | 1.18 | 0.98-1.5 | 2.25 |
| 3 yr | 20 | 1.38 | 1.22- 1.57 | 2.35 |
| 4 yr | 20 | 1.49 | 1.26- 1.69 | 2.54 |

^A Per the author, sex distribution was reasonably constant across age groups; no sex distinction was made in groups 1 month through 4 years.

TABLE A9.3 Mouth Breadth^A

| Age | Sex | N | Mean (cm) | Sd | 5th%ile cm (inch) | 95th%ile cm (inch) |
|---------|-----|----|--------------|-----|-------------------|--------------------|
| 2-3.5 | Mf | 75 | 3.30 | .40 | 2.70 (1.0) | 3.80 (1.5) |
| 3.5-4.5 | | 71 | 3.40 | .40 | 2.80 (1.1) | 3.90 (1.5) |

^A From Appendix B, Childata, The Handbook of Child Measurements and Capabilities Data for Design Safety Department of Trade and Industry.

TABLE A9.4 Mouth Opening^A

| Age | Sex | N | Mean (mm) | Sd | Min | max |
|-----|-----|----|-----------|------|-----|-----|
| 3 | Μ | 49 | 36.0 | 5.39 | 22 | 47 |
| 4 | Μ | 67 | 37.3 | 5.47 | 22 | 52 |
| 5 | Μ | 56 | 39.9 | 4.02 | 27 | 47 |

^A From Appendix B, Childata, The Handbook of Child Measurements and Capabilities Data for Design Safety Department of Trade and Industry.

A9.2 Folding Mechanisms and Hinges

A9.2.1 Section <u>4.13</u>— The scope of this section has been modified such that the requirement is not limited to toys intended to support the weight of a child. Hinges can present potential pinch hazards regardless of whether the toy is intended to support the weight of a child. Examples and exclusions were reinstated from the previous version of this standard.

A9.3 Locking Mechanisms

A9.3.1 Sections <u>8.25.1</u> and <u>8.25.2</u>— The requirements for single- or doubleaction locking mechanisms are based on Consumer Safety Specification <u>F406</u>. This requirement is intended to ensure that children will not be able to unlock a locking device on their own—a caregiver will be required to unlock Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 194 of 298 the locking device. The requirement for a 45-lbf test on the locking mechanism is based on Consumer Safety Specification F404. An exemption for the 45-lbf test was added for products where the direction of the sitting load works against the direction of collapse of the folding mechanism. The requirement has also been modified to require that locking mechanisms or other means engage automatically to protect children who set up the product on their own. Reference to safety stops has been deleted because safety stop was not defined.

A9.4 Yo Yo Elastic Tether Toys

A9.4.1 Section <u>4.37.2</u>— Sports balls are exempt from the Yo Yo Ball requirements, since these requirements were not intended to address this type of product. The work group agreed it will clarify the standard if we specifically exempt them.

A9.5 Impaction Hazards

A9.5.1 Section <u>4.32.2</u>:

A9.5.1.1 This section has been developed to address products intended for children under 48 months of age that meet specific dimension criteria such that they produce a fall-on impaction hazard. This revision is based on incident data provided by the CPSC involving objects that are long enough to be pushed into the mouth, probably past the uvula in a fall-on incident, and large enough to prevent or inhibit removal, even by an adult caregiver. Products less than 2.25 in. (the length of the small parts cylinder) in length are excluded as are products less than 15 mm in diameter. These exemptions are based on the dimensions of products in the incident data. Flexible items are exempt because the flexible end assures they will not create a fall-on impaction hazard.

A9.5.1.2 The impaction hazard addressed by <u>4.32.2</u> is different from the hazard associated with preschool play figures addressed in <u>4.32.3</u>. The preschool play figures were associated with seven deaths by choking and one incident resulting in serious injury. The incidents involved children under the age of 2 with one exception which involved a developmentally delayed child. In addition there were other choking incidents with the preschool play figures that did not result in significant injury.

A9.5.1.3 The distance to the undercut is based on the dimensions of the small ball test fixture.

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 195 of 298 A9.5.1.4 The age grade of the product associated with the 2 most recent fatalities was 3+, so this requirement applies to products intended for children under 48 months of age to address the known incident data (ages of victims: 7 mo., 9 mo., 13 mo., 13 mo., 19 mo., 22 mo., 2 yr., 2 yr., 4 yr with severe developmental delay).

A9.5.1.5 There is no force associated with this test because the test is not intended to simulate an actual impaction incident. Rather, it is designed to identify the size and shape of products associated with these incidents.

A9.5.1.6 The supplemental gauge is used to identify the size and shape of objects associated with incident data and is not related to the size of the child for these incidents. Similarly, the 1.1 lb exemption is related to the weight of objects associated with this type of hazard, not the strength capabilities of children.

A9.6 Sound Producing Toys

A9.6.1 Section <u>4.5.1.2</u>— This section contains acoustic requirements that are being interpreted by some laboratories is such a way to fail safe push/pull toys. The requirement needs to be changed for the following reasons:

- 1. The standard states in 4.5 that the requirements apply to "toys that are designed to produce sound." Further to this, the intent of the section is to apply the sound pressure level requirements to those features of the toy designed to produce sound. During the pass-by test for push/pull toys, the contact between the wheels of the product and the test surface will produce a continuous sound that will significantly contribute to the overall sound pressure measurement. The tester will be unable to distinguish between the contributions to the overall sound level made by the wheels versus those made by the mechanism designed to produce sound. Therefore, a true measurement of the intended continuous sound producing mechanism cannot be achieved by the methodology given in the standard.
- 2. Among other factors, the levels in the standard are based a use distance of 25 cm (do not confuse this with the measurement distances specified in the standard). The distance from the noise producing mechanism to the ear of the child on the push/pull toys discussed here would be much greater than 25 cm. Because the relationship between sound pressure level and distance follows the inverse square law, an increase in the distance from the sound mechanism to the ear of the child would reduce the sound pressure

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 196 of 298 level at the ear of the child dramatically. The risk of hearing loss would be reduced to such an extent as to make it insignificant.

> 3. It is implausible that a child could sustain the maximum speed at which the push/pull toy is tested (2 m/s). The speed represents a "worst-case" condition that would only be achievable momentarily at best. This supports regulating against immediate, acute hazards such as impulsive sounds versus chronic hazards that are presented by exposure to long-term, excessively loud continuous sounds.

A9.6.2 In addition, the proposed change would further harmonization between this standard and the European toy standard EN 71-1.

A9.7 Magnets

A9.7.1 Sections <u>4.38</u>, <u>5.17</u>, and <u>8.24</u>— These sections were revised to account for the incidents (ingestions) due to magnetic components that were small parts and to reflect the age of the children involved with the incidents. It also introduces the special use and abuse requirements to avoid magnets from detaching from magnetic components during play.

A9.8 Toy Chests

A9.8.1 *Deletion of Sections 4.27, 6.2, 7.2, and 8.14*— Toy chests are considered as children's furniture and have their own set of safety requirements that are already covered in Consumer Safety Specification F834.

NOTE A9.1— The section numbers above refer to the previous version of the standard; the subsequent sections have been renumbered in the current version.

A10. RATIONALE FOR 2011 REVISIONS

A10.1 Certain Toys with Nearly Spherical Ends

A10.1.1 Section <u>4.32</u>:

A10.1.1.1 The requirements of 4.32.2 do not apply to tethered components as specified in the exclusions because it is highly unlikely a child will have an impaction injury associated with such a tethered component given the weight of the product and the length of the tether. Also, there is no incident data associated with the tethered components being excluded.

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Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 197 of 298 A10.1.1.2 Following are examples provided and suggested interpretation as to whether these shapes fall within the scope of <u>4.32.2</u> of Consumer Safety Specification F963. These interpretations assume that the dimensions of the part and age grade of the product are such that it falls within the scope of <u>4.32.2</u>.

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Figure p65a. Domed Pegs This is a photograph of domed pegs, some in a pile and some in a peg board.

Requirements of 4.32.2 apply to this domed peg, even if the very center of the head is flat or has a through hole.

Figure p65b. Drum This is a photograph of a a mallet is hitting a drum.

Requirements of <u>4.32.2</u> do not apply to this mallet since it is not a nail, screw, peg, or bolt.

Figure p65c. A peg. A photograph of a peg with a domed cap.

The requirements of 4.32.2 do apply to this item because the end is domed.

Figure p65d Three photographs of plastic screws. One is apparently a torx, one has a slotted end, the third is perhaps a Phillips.

Requirements of 4.32.2 do not apply to these toy fasteners because the end is not spherical, hemispherical or domed. The end is flat across the top.

Figure p66 This is a diagram of two toy bolts with domed caps.

The requirements of 4.32.2 do apply. These are toy bolts with domed tops.

A10.2 Test for Stability of Ride-On Toys or Toy Seats

A10.2.1 *Subsection* <u>8.15.4</u>— To distinguish between the load placement for fore and aft stability and sideways stability. With the current test methodology, some laboratories and auditors have mistakenly taken the requirements in this subsection to mean both fore and aft stability and also sideways stability. Subsection <u>8.15.4</u> states, "The center of gravity of the load for all ride-ons shall be secured both 1.7 in. (43 mm) rearward of the front-most portion of the designated seating area and 1.7 in. (43 mm) forward of the rearmost portion of the designated seating area, the load shall be placed at the least favorable position that it is reasonable to anticipate that the child will choose to sit."

A10.2.1.1 As you can see, <u>8.15.4</u> only addresses fore and aft stability. Additional rationale can be found in the original test methods from the Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 198 of 298 Voluntary Product Standard <u>PS 72-76</u>. In Section 4.15.1.1 (d) it states, "The load shall be applied so that its center of gravity lies in a true vertical 6 inches above the center of the seat." In Section <u>4.15.2</u> it states, "The load shall be applied in the least favorable position on the seat for each direction."

A10.3 Abuse Testing

A10.3.1 <u>Table 5</u>— <u>Table 5</u> is specifically written to address the drop test, which is a subsection of impact testing. <u>Table 5</u> is written to address the drop test. This is a technical correction to the table.

A10.4 Test for Overload of Ride-On Toys and Toy Seats

A10.4.1 *Section <u>8.26</u>*— There is no test method currently specified for overload therefore this test method is being proposed and it is consistent with the way independent test labs have been performing the test.

A10.5 Stability and Over-Load Requirements

A10.5.1 Section <u>4.15</u>—Wherever "seat" appears in this section, it has been changed to "toy seat" and a definition for toy seats has been developed. The issue is that furniture is exempt from Consumer Safety Specification F963, however, toys that are their counterparts are covered. It can be difficult to discern between a toy seat and a piece of children's furniture. Therefore, these changes are proposed to clarify that the scope of this standard only applies to toy counterparts of furniture and juvenile products.

A10.6 Plastic Film

A10.6.1 Section <u>4.12</u>— This section applies to "flexible plastic film bags and flexible plastic sheets used as packaging materials for shelf packages or used with toys." The title refers to packaging film but the requirement refers to plastic film used with toys. The wording was changed to clarify the scope of the requirement. Also deleted part of the test method section, which is already covered by the requirement section.

A10.7 Teethers and Teething Toys, Rattles, and Squeeze Toys

A10.7.1 Sections <u>4.22</u>, <u>4.23</u>, and <u>4.24</u>— The change to exempt soft-filled (stuffed) toys from the rattles, squeeze toys and teethers sections is being made to be consistent with exemptions found in: <u>16 CFR 1510</u>, Rattles; <u>EN-71</u>, <u>Clause 5.8</u>, Shape and Size of Certain Toys; and with Consumer Safety Specification F963, Section <u>4.32</u>, Certain Toys with Nearly Spherical Ends.

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 199 of 298 However, if a stuffed toy contains an internal rigid component (rigid is defined in Consumer Safety Specification F963 as material with a hardness >70 Shore A scale durometer) then the gauges would be applied. If the rigid internal component does not penetrate the full depth of the gauge(s), the toy would PASS. If the rigid internal component does penetrate the full depth of the gauge(s) the toy would FAIL if the major dimension of the rigid component is >1.2 in. (30 mm) or would PASS if the major dimension of the rigid component is <1.2 in. (30 mm). The rigid internal component requirements harmonize with the requirements of <u>EN-71, Clause 5.8</u>.

A10.8 Jaw Entrapment in Handles and Steering Wheels

A10.8.1 Section 4.39— There have been product recalls in past years to address incidents of jaw entrapment. There have been additional incidents of jaw entrapment in toy products that did not rise to the level of a recall. All but one incident involved entrapment in a handle or steering wheel. When a child's jaw becomes entrapped in a product, there is potential for damage to teeth and gums, long term orthodontic consequences and impairment of normal speech development. Most cases of jaw entrapment involve children less than 18 months of age. (See Fig. A9.1, Table A9.1, and Table A9.2.) There is no incident data indicating handles that are connected to the toy with a hinge and handles made from a pliable material (for example, straps and ropes) pose a risk of jaw entrapment.

A10.8.2 *Anthropometric Data*— The April 1966 study titled <u>"Selected Facial</u> <u>Measurements of Children for Oxygen-Mask Design</u>"¹⁸ provides very useful anthropometric data.

A10.8.2.1 To provide protection for children up to the age of 18 months:

Width—Using the maximum estimated stomion-menton dimension and rounding up, indicates the gauge should be 3.8 cm (1.5 in.) in width.

Length—The 95th percentile mouth breadth for 2 to 3.5 year olds (the youngest age available) is 3.8 cm (1.5 in.) from Childata (see <u>Table A9.3</u> and <u>Table A9.4</u>). One inch was added resulting in the 2.5 in. length. A safety factor of 2.54 cm (1 in.) was used for mouth breath since the anthropometric data is based on a mouth at rest, and a mouth can be expected to stretch significantly from this position. Alternately, the lip length dimensions above can be used to arrive at the same estimate, rounding up, of 6.35 cm (2.5 in.).

A10.8.2.2 To provide protection against the youngest user becoming entrapped:

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 200 of 298 *Width*—A gauge width of 1.9 cm (0.75 in.) was chosen based on the minimum stomion menton distance for a 1 month old.

Length—The small jaw breadth of 1.9 cm (0.75 in.) is based on the 5th percentile 2 year old mouth breadth which is 2.54 cm (1.0 in.), so to be conservative 75 % of that was used.

A10.8.2.3 The task group considered adding a requirement as suggested at the meeting that the scope only cover handles and steering wheels that are able to be placed in the mouth, or would be teethable. The task group considered this suggestion and determined that this modification would not be made since incident data demonstrated that some products created jaw entrapment without the need for the child to place the product in his/her mouth (for example, the child's jaw was entrapped without the need for the child to introduce the handle end of the push toy into the mouth).

A10.8.2.4 The task group considered adding simulated teeth to the gauge. The task group concluded that the addition of teeth was not advisable because the incidents being addressed involved entrapment of the child's jaw. The teeth of the child may have influenced the resulting entrapment, however, the proposed requirement accounts for the presence of the teeth. Also, for a very young child the dimensions of the teeth are variable, since the teeth are just erupting.

A10.8.2.5 The requirement was modified to clarify the gauges must pass completely through the opening. The gauge depth was modified from the original requirement of greater than $\frac{1}{2}$ in. to the present requirement of 1 in. When passing the gauge through the opening, a depth must be specified to assure the test results are consistent.

A10.9 Strings and Lines for Flying Devices

A10.9.1 Subsection <u>4.14.4</u>— EN 71-1 (Clause 4.13) and ISO 8124-1 (Clause

4.11.7) both use "resistance" instead of "resistivity." Resistance = resistivity length/area, therefore, this change is being made for consistency. Also, the units have been corrected to ohms per centimetre (V/cm).

A10.10 Heavy Elements

A10.10.1 Subsections 4.3.5 and 8.3:

A10.10.1.1 The soluble approach for determination of heavy elements in toys and toy components has been selected over total element limits as this has been demonstrated to be more closely correlated with the amount of Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 201 of 298 element which is bioavailable, and therefore with risk of toxicity. These requirements (and test methods) and this rationale have been based on requirements from European toy safety requirements found in <u>EN 71-3</u> (and <u>ISO 8124-3</u>).

A10.10.1.2 The scope is intended to indicate an approach to the decision of what toys, or toy components are excluded from the standard because of characteristics that render them unlikely to present a risk of injury by the ingestion of materials containing the toxic elements.

A10.10.1.3 Toys and toy components that are accessible to the child during play are subject to these requirements unless otherwise indicated. Some materials such as metal, glass, and ceramic are exempted if they are not small parts.

A10.10.1.4 Unless included in a toy, modeling clays, which are covered in the EN 71-3 requirements for heavy metals are not covered in these heavy metals requirements because they are already exempt from Consumer Safety Specification F963 as indicated in 1.4 and subject to the federal requirements of LHAMA.

A10.10.1.5 The list of excluded materials is based on the regulatory exclusions provided by the U.S. Consumer Product Safety Commission (CPSC), specified at <u>16 CFR 1500.91</u>, in implementation of the requirements for lead and lead paint under Section 101 of the <u>Consumer Product Safety Improvement Act</u> (CPSIA) of 2008. While <u>EN 71-3</u> includes test methods for Paper and paperboard and Textiles (natural and synthetic), given the exemption for these products test methods for them have not been included here.

A10.10.1.6 Sections <u>8.3.2</u>-<u>8.3.6</u> provide a test procedure and manner of interpretation of results for solubility testing.

A10.10.1.7 As in <u>EN 71</u>, solubility testing is called for in the proposed ASTM standard. However, note that as described in <u>8.3.6</u>, an alternative approach may be used if validated per specified requirements.

A10.10.1.8 Component parts and materials may be separately tested and certified.

A10.11 Yo Yo Elastic Tether Toys

A10.11.1 Sections <u>4.37</u> and <u>8.23</u>— The task group concluded that the mass on the end of the tether was significant in creating the strangulation potential of a yo yo elastic tether toy. The risk of strangulation appears much lower for

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Standard Consumer Safety Specification for Toy Safety Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 202 of 298 products with very light ends compared to the yo-yo type balls as seen on the market in 2003 with end weights of 65 to 85 g (0.14 to 0.19 lb). The lightweight end results in very slow rotational speed when swung overhead and there is much less recoil capacity of the tether due to significantly lower loading during rotation. Additionally, the lightweight "sticky hand" variety of yo-yo elastic tether toy had market presence, prior to 2003, with no reports of near-miss strangulation or other similar incident. The mass was determined by weighing product known to be associated with wrapping around the neck incidents. Yo yo elastic tether toy samples evaluated weighed 0.10 kg (0.2 lb), 0.07 kg (0.15 lb), and 0.07 kg (0.15 lb). The weight of four "sticky hand" variety of yo-yo elastic tether toys (hand portion only) was 0.005 kg (0.01 lb) 0.008 kg (0.02 lb), 0.009 kg (0.02 lb) and 0.012 kg (0.03 lb). The appropriate value for the mass at the end of the tether was chosen to be between these values, 0.02 kg (0.04 lb).

> A10.11.1.1 The cord length is based on two times the neck circumference of a 5th-percentile 3-year-old from Childata, or 2 24.0 cm = 48 cm (18.9 in.). The age of 36 months and over was chosen based on the age of children involved in the incident data.

A10.11.1.2 The rotational speed of 80 RPM was determined by testing adults and determining the maximum RPM they can achieve rotating a product above their heads. The range of adult speed was 80 - 108 RPM, the average was 90 RPM and the standard deviation was 7 based on a sample size of 14. This was reduced to 80 RPM as an estimate for the speed children 36 months and over but under 72 months of age can achieve. The incident data indicated that children 36 months and over but under 72 months of age are most often involved in yo yo elastic tether toy incidents.

A10.11.1.3 The use of a cam with a variable speed drill assists in spinning the toy in the air. Specification of a cam length is required in order to achieve consistent results across laboratories, given that the length affects the load on the tether during rotation. The objective was to employ as short a length as possible, but one that would facilitate clamping and rotation of the toy. A 3 cm (1.18 in.) cam length was identified as one that adequately met both objectives.

A10.12 Miscellaneous

A10.12.1 Sections <u>1.4</u> and <u>3</u>—For clarification, juvenile products, constant air inflatables, powered and no-powered scooters have been added to the list of products which are not covered by the toy standard. Definitions for juvenile products and constant air inflatables have been added to the terminology

Standard Consumer Safety Specification for Toy Safety. Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 203 of 298 section.

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EXHIBIT 4 (FILED UNDER SEAL)

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EXHIBIT 5

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| 1 | IN THE UNITED STATES DISTRICT COURT |
|----|-------------------------------------|
| 2 | FOR THE DISTRICT OF COLUMBIA |
| 3 | |
| 4 | AMERICAN SOCIETY FOR TESTING |
| 5 | AND MATERIALS d/b/a ASTM |
| 6 | INTERNATIONAL; NATIONAL FIRE |
| 7 | PROTECTION ASSOCIATION, INC.,; |
| 8 | and AMERICAN SOCIETY OF HEATING, |
| 9 | REFRIGERATING, AND AIR-CONDITIONING |
| 10 | ENGINEERS, INC. |
| 11 | Plaintiffs, CIVIL ACTION FILE |
| 12 | vs. NO. 1:13-CV-01215-EGS |
| 13 | PUBLIC.RESOURCE.ORG, INC., |
| 14 | Defendant. |
| 15 | |
| 16 | 30(b)(6) VIDEOTAPED DEPOSITION OF |
| 17 | STEVEN COMSTOCK |
| 18 | March 5, 2015 |
| 19 | 10:20 a.m. |
| 20 | 1075 Peachtree Street |
| 21 | Suite 3625 |
| 22 | Atlanta, Georgia 30309 |
| 23 | Lee Ann Barnes, CCR-1852, RPR, CRR |
| 24 | |
| 25 | PAGES 1 - 199 |
| | |
| | Page 1 |

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| 4 | Q. How did ASHRAE select what standards to | 4 | RealRead. |
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| 5 | make available? | 5 | Q. Do you recall any statistics regarding the |
| | | | number of accesses of various standards? |
| 6 | A. These are our our most popular | 6 | |
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| | there's a relationship between sales or licenses of a | 1 | stondard before the muisice has been on the modile of |
|---|--|--|---|
| | * | | standard before the revision has been on the reading |
| | standard and incorporation of that standard into | | room strike that. |
| 3 4 | law MR. LEWIS: Objection. | 3 | Is "reading room" a term that you use at |
| | Q. (By Mr. Bridges) or regulation? | | ASHRAE? |
| 5 | | 5 | A. We do not. |
| 6 | A. No. We don't that's that's not a | 6 | Q. What do you use what term do you use for |
| | metric that we use at all. I mean, I imagine, you | | the facility by which the public can view ASHRAE |
| | know, perhaps you you look at where sales are | | |
| | from, but we don't do that. That's not part of our | 9 | A. I believe we call it free viewing. |
| | business. | 10 | e b |
| 11 | And I would think that the there's | 11 | A. Free viewing. |
| | people who do work in our industry do work across | 12 | Q. When ASHRAE revises a standard and the |
| | states, across municipalities, but that's not a | | standard before that revision has been available for |
| | metric that we we keep as part of our business | | free viewing, does ASHRAE replace the older version |
| | operation. | | of the standard with the newer version of the |
| 16 | Q. Apart from keeping a metric, do you have | 16 | standard for free viewing as soon as ASHRAE issues |
| | any, let's say, anecdotal experience observing that | | the standard? |
| | incorporation of a particular ASHRAE standard leads | 18 | A. Yes, we do. |
| 19 | to a jump in sales of that standard? | 19 | Q. And does ASHRAE then take the older version |
| 20 | MR. LEWIS: Objection. | 20 | of the standard out of the free viewing facility when |
| 21 | THE WITNESS: Really, no. I have I | 21 | that happens? |
| 22 | mean, there'll be times when somebody will say | 22 | A. Yes, we do. |
| 23 | to me, "Steve, how do I find an older version of | 23 | Q. Is there a reason why ASHRAE removes the |
| 24 | a standard in our bookstore," because we're | 24 | older standard from the free viewing? |
| 25 | we we have to put on education, training | 25 | A. That's been our process going back to when |
| | Page 18 | | Page 20 |
| 1 | related to that standard. | | we first started the free viewing, which is the 15 |
| 2 | So I have anecdotal questions that are | | years ago or so. |
| 3 | asked or comments that are made to me along | 3 | And the the the reason for that is |
| 4 | those lines, but nothing that's that that | | is we always wish to have the most current |
| 5 | would, you know, trigger that back to specific | | application of the technology used. So the the |
| 6 | sales totals. | | the notion is that as a standard is revised, it's |
| 7 | Q. (By Mr. Bridges) Is there anything that | 7 | |
| | | | a it's a better application of the technology |
| 8 | can tie it to a general trend of sales, in your view? | | that's current at the time. |
| 8 9 | can tie it to a general trend of sales, in your view? MR. LEWIS: Objection. | | ••• |
| | | 8 9 | that's current at the time. |
| 9 10 11 | MR. LEWIS: Objection. THE WITNESS: I don't believe so. I mean, I we sell when a new standard a a | 8 9 10 11 | that's current at the time. So we it it's always been our our preference to to have to to move the market towards the more current version of the |
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| | W7 1 ' / | | |
|----------|--|-------------|---|
| | Washington. | 1 | MR. LEWIS: Objection. |
| 2 | Q. Who is ASHRAE's principal contact there? | 2 | THE WITNESS: Yes. |
| 3 | A. Riaz Ahmed. | 3 | Q. (By Mr. Bridges) And what would the |
| 4 | Q. R-I-A-Z A-H-M-E-D? | | earlier versions be? |
| 5 | A. Yes. That's the first name and last name. | 5 | A. PDFs. |
| 6 | Q. Who at ASHRAE supervises the relationship | 6 | MR. LEWIS: Objection. |
| | with iENGINEERING? | 7 | Q. (By Mr. Bridges) PDF. |
| 8 | A. Well, at the approving the payment of | 8 | And if one wanted to trace the evolution |
| | invoices and approving the initiation of work, it is me, and and then there's a a gentleman in my | | across four versions to produce one document with |
| | group who actually then works on a day-to-day basis | | annotations showing, for example, when each provision |
| | with vendor relationships. David Soltis is his name. | | entered into the standard and when various provisions |
| 12 | Q. How do you spell Soltis? | | disappeared from the standard, would the person need |
| 13 | A. S-O-L-T-I-S. | | to get permissions to reuse each of the four |
| 14 | Q. If a member of the public wanted to write | | versions, according to ASHRAE's practices? A. If they were doing this for their personal |
| | an article about the evolution of the 90.1 standard | 15 | |
| | over the last 20 years by showing a comparison | | use, then no, because that would be allowed for in heir purchase of the standards. |
| | through, let's say, a redline, an electronic | 17 t 18 | The permission would require would be |
| | comparison let me back up. | | required for the extent to which that person would |
| 19 20 | Do you understand what a redline is? | | want to make information available more widely other |
| 20 | A. I do. | | han for personal use, and then there would be |
| 21 | Q. If a member of the public wanted to write | | considerations that would be given for amount of |
| | an article about the evolution of the 90.1 standard | | considerations that would be given for amount of |
| | over the last 20 years by providing a redline of the | 23 C | Q. Well, what what if somebody wanted to |
| | various changes from version to version, is there | | write an article criticizing the evolution and saying |
| | Page 42 | 25 | Page 44 |
| 1 | a what would the I'm going to start the | 1 1 | that it had gotten off track and wanting to |
| 2 | question again. Let me strike that. | | illustrate the arguments by quoting substantial bits, |
| 3 | If a member of the public wanted to write | | let's say two pages at a time for five different |
| | an article about the evolution of the 90.1 standard | 4 i | instances. |
| | over the last 20 years by providing a redline of | 5 | According to ASHRAE's practices, what would |
| | various changes from version to version, what steps | | be required for the person for that person to be |
| | would that person need to go through in order to | | able to do this? |
| | generate a comparison document? | 8 | MR. LEWIS: Objection. |
| 9 | MR. LEWIS: Objection. | 9 | THE WITNESS: Whether the article is |
| 10 | THE WITNESS: We currently offer for the | 10 | critical or not isn't part of our process of |
| 11 | current version of Standard 90.11 a redline | 11 | granting permission for use of content. |
| 12 | version that's available for sale. That's | 12 | Q. (By Mr. Bridges) Leaving that part aside, |
| 13 | something we only initiated a year ago, year and | | then, what would the person need to do, according to |
| 14 | a half. So we would not be able to provide that | | ASHRAE's practices, to get permission to provide, |
| 15 | document, if that's a if that's if that's | | let's say, four two-page excerpts showing the |
| 16 | the question. | | changes? |
| 17 | If they wish to reuse our content, then we | 17 | MR. LEWIS: Objection. |
| 18 | have a process that we follow for reprint | 18 | THE WITNESS: They would need to specify |
| 19 | permission or request for for for use. | 19 | what content from the standard they wished to |
| 20 | Q. (By Mr. Bridges) Leaving aside the | 20 | use, what how much content, what type of |
| | permissions process, how, from a technical | 21 | content, and what the use would be, say an |
| | standpoint, would one be able to generate that | 22 | article. |
| | redline? Would one have access to earlier versions | 23 | We do not ask what that article is going to |
| | in an electronic format that would be suitable for applying a comparison tool to? | 24 | say, nor do we review that article before it is |
| | applying a comparison tool to? | 25 | used libers not part of our process |
| 25 | Page 43 | 25 | used. That's not part of our process. Page 45 |

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| 1 | 5 1 5 | 1 | the proceedings.) |
|----------------------------|---|----------------------|--|
| 2 | 5 | 2 | VIDEOGRAPHER: This is the beginning of |
| 3 | | 3 | Video 2. We are going on the record at |
| 4 | | 4 | 11:46 a.m. |
| 5 | | 5 | Q. (By Mr. Bridges) Do you know roughly what |
| 6 | 5 | | percentage of publications income comes from |
| | we approach reprint requests. | | government sources for ASHRAE? |
| 8 | 6 6 | 8 | A. I do not. |
| | negative impact on the sales of of a standard, | 9 | Q. Do you know what government support ASHRAE |
| | typically I will grant reprint permission use, | | gets in the development or revision of standard |
| | because I think it also promotes awareness of a | 11 | standards? |
| | standard. | 12 | A. I am not aware of any funding received by |
| 13 | | | ASHRAE for development or the revision of of |
| | system that we use, as well, RightsLink. You can go | 14 | standards. |
| | to our website and you can see that. But that hasn't | 15 | Q. You're aware that government employees |
| | worked very well. That was my attempt at trying to | 16 | participate in the standard development process? |
| | remove a little bit of the care and hand well, | 17 | A. I do. And well, I what I am aware of |
| | the time that has to go in with processing requests. | | is that there there may be individuals with the |
| 19 | 5 | | government who purchase copies of of standards. |
| | cutter, a certain amount of money for a certain | | I'm not exactly sure of their role on project |
| | for a certain number of figures and so on. But | 21 | committees, but but they are would be included |
| | that's really not a very practical system and it's | 22 | in the the customer base for standards. |
| | just about we I think we still have the link | 23 | Q. And you're aware that does the U.S. |
| | there, but it's really doesn't have very good | | government enter into any contracts with ASHRAE for |
| 25 | functionality. | 25 | the sale or availability of standards? |
| | Page 46 | | Page 48 |
| 1 | Q. And it sounds to me as though the reason | 1 | A. We have had in in recent this is |
| | for that is that it wasn't flexible enough to | | in recent years, we've had three contracts I've been |
| 3 | accommodate different use cases? | 1 | engaged with related to the distribution of |
| 4 | A. That that's correct. And and it's | 4 | standards, specifically 90.1. |
| 5 | hard to keep it up to date. We publish many | 5 | Q. What were the contracts for? |
| 6 | articles, we publish many standards, and so to try to | 6 | 8 |
| | keep that database of permission so when somebody | | 90.1 and I believe that was the 2010 version of |
| | goes in and they identify the the source of the | | the standard available to ASHRAE members for |
| 9 | content, it was as much work for us to keep the | | well, I available from the ASHRAE website for fre |
| 10 | database up to date as it was to handle the | | download. |
| 11 | permissions personally. | 11 | And then there were two subsequent |
| 12 | | 1 | contracts that were done in conjunction with the |
| 13 | 5 | | International Code Council where actually they did |
| 14 | point for permissions. | | the the distribution, but inclu which which |
| 15 | | | the distribution included one of their documents, |
| 16 | | 16 | the what is called the IECC, International Energy |
| 17 | MR. BRIDGES: If it's all right with you, I | 17 | |
| 18 | 0 3 | 18 | |
| 10 | 5 | 19 | 1 2 |
| 19 | | 20 | package ASHRAE Standard 90.1 2010. |
| 19 20 | go longer, but I'm working on sleep deprivation. | | |
| | | 21 | And then the third contract added 90.1 2007 |
| 20 21 22 | I'll try and keep the breaks short, but I may need them every hour. | 21 22 | distribution, and that was to a distribution list |
| 20 21 | I'll try and keep the breaks short, but I may need them every hour. VIDEOGRAPHER: This is the end of Video 1. | 21 22 23 | distribution, and that was to a distribution list provided to ICC from, in this case, Pacific Northwest |
| 20 21 22 23 24 | I'll try and keep the breaks short, but I may need them every hour. VIDEOGRAPHER: This is the end of Video 1. We're going off the record at 11:26 a.m. | 21 22 23 24 | distribution, and that was to a distribution list provided to ICC from, in this case, Pacific Northwest Laboratories, which was a a laboratory under |
| 20 21 22 23 | I'll try and keep the breaks short, but I may need them every hour. VIDEOGRAPHER: This is the end of Video 1. We're going off the record at 11:26 a.m. | 21 22 23 24 | distribution, and that was to a distribution list provided to ICC from, in this case, Pacific Northwest |

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| 1 | Q. I'd like to go back to the beginning of your answer, because I I didn't quite understand | $\begin{vmatrix} 1 \\ 2 \end{vmatrix}$ | A. So that was how we did the knew when it ended. |
|--|---|---|---|
| | it. | | |
| 4 | The first contract was for making the 2010 | 3 | Q. How could you distinguish, let's say, between a download and a simple view of the document |
| | version of the standard available in some fashion and | | from ASHRAE's website? |
| | I think first you said available to ASHRAE members | 6 | A. There was no viewing associated with this |
| | and then I think you said available from the ASHRAE | | particular functionality. You just clicked on a box |
| | website for free download. | | that said "Download." |
| 9 | Is did you mean available not | 9 | O. Got it. |
| | specifically to ASHRAE members, but available from | | With what government agency was the |
| 10 | | | contract? |
| 12 | MR. LEWIS: Objection. | 12 | A. Our contract was with PNL, Pacific |
| 13 | THE WITNESS: I meant to say was available | | Northwest Laboratory, which is a laboratory of the |
| 14 | for free download from the ASHRAE website. | | U.S. Department of Energy. |
| 15 | Q. (By Mr. Bridges) Who and under that | 15 | Q. Did ASHRAE ever come to have an |
| | contract, who had access to the free downloads? | | understanding as to why Pacific Northwest Laboratory |
| 17 | A. Anyone who logged into our website and | | wished to have that facility available? |
| | clicked on the option to complete that download. | 18 | A. This was part of the the time frame is |
| 19 | Q. Oh, any person | | 2011, and I believe this was part of the the |
| 20 | A. Anybody could | | Recovery Acts, the National Recovery Acts that were |
| 20 | Q any person, country? | | in place at that time. |
| 22 | A. That's correct. Actually, in the world. | 21 | And I was approached by somebody from PNL |
| 22 | Q. In the world. | | as a to do that. I do not know what their |
| 24 | A. That's my as I say that, that's my | | their motivations were except to make the standard |
| | recollection, is it was not rest I know it was | | available. |
| 25 | Page 50 | 25 | Page 52 |
| 1 | not restricted to members I misspoke at first | 1 | Q. Do you know how many downloads occurred |
| 2 | and I think it was open to to anyone. | 2 | under that contract? |
| 3 | Q. And that's what I was trying to figure out. | 3 | A. I do not, but if if it was the 15 per |
| 4 | A. Yeah. | 4 | download and the contract was \$322,000, it would b |
| 5 | Q. Okay. So the first contract just to | 5 | that division. |
| 6 | summarize again, the first contract was for ASHRAE to | 6 | (Defendant's Exhibit 1077 was marked for |
| 7 | make 90.1 available for free to the public by | 7 | identification.) |
| 8 | download; correct? | 8 | Q. (By Mr. Bridges) My brain is sitting next |
| 9 | A. That is correct. | 9 | to me and my brain hands me important things from |
| 0 | Q. Was that contract for a limited period of | 10 | time to time. |
| 10 | | | |
| | time or was it for what were the terms of that | 11 | Mr. Comstock, I ask you to look at |
| 1 | time or was it for what were the terms of that contract? | | Mr. Comstock, I ask you to look at Exhibit 1077. |
| 11 12 | | | |
| 11 12 13 | contract? | 12 | Exhibit 1077. |
| 11 12 13 14 | contract? A. There was a contract that had a a dollar | 12 13 14 | Exhibit 1077. Could you identify it, please? |
| 11 12 13 14 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee | 12 13 14 15 | Exhibit 1077.Could you identify it, please?A. This appears to be the the proposal that |
| 11 12 13 14 15 16 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee | 12 13 14 15 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says |
| 11 12 13 14 15 16 17 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total | 12 13 14 15 16 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that |
| 111 12 13 14 15 16 17 18 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total contract amount was met, then the downloads stopped. | 12 13 14 15 16 17 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says |
| 111 12 13 14 15 16 17 18 19 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total contract amount was met, then the downloads stopped. Q. Do you recall what the per-download fee | 12 13 14 15 16 17 18 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says MR. LEWIS: I'll just note for the record |
| 111 12 13 14 15 16 17 18 19 20 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total contract amount was met, then the downloads stopped. Q. Do you recall what the per-download fee was? | 12 13 14 15 16 17 18 19 20 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says MR. LEWIS: I'll just note for the record that the document is two sided. Q. (By Mr. Bridges) Yes, always. I think all |
| 11 12 13 14 15 16 17 18 19 20 21 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total contract amount was met, then the downloads stopped. Q. Do you recall what the per-download fee was? A. I believe it was \$15 a a document. | 12 13 14 15 16 17 18 19 20 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says MR. LEWIS: I'll just note for the record that the document is two sided. Q. (By Mr. Bridges) Yes, always. I think all |
| 11 12 13 14 15 16 17 18 19 20 21 22 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total contract amount was met, then the downloads stopped. Q. Do you recall what the per-download fee was? A. I believe it was \$15 a a document. Q. Do you know how ASHRAE knew when a download and a stopped. | 12 13 14 15 16 17 18 19 20 121 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says MR. LEWIS: I'll just note for the record that the document is two sided. Q. (By Mr. Bridges) Yes, always. I think all of our documents will be. |
| 12 13 14 15 16 17 18 19 20 21 22 23 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total contract amount was met, then the downloads stopped. Q. Do you recall what the per-download fee was? A. I believe it was \$15 a a document. Q. Do you know how ASHRAE knew when a download occurred? | 12 13 14 15 16 17 18 19 20 20 121 22 23 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says MR. LEWIS: I'll just note for the record that the document is two sided. Q. (By Mr. Bridges) Yes, always. I think all of our documents will be. A. So it's the 2007 version, yes. |
| 11 12 13 14 15 16 17 18 19 20 21 22 23 | contract? A. There was a contract that had a a dollar amount associated with it, and so there was a fee that every every time a download was made, a fee for that unit was charged. So once that total contract amount was met, then the downloads stopped. Q. Do you recall what the per-download fee was? A. I believe it was \$15 a a document. Q. Do you know how ASHRAE knew when a download occurred? A. Yes, because we had a a system that | 12 13 14 15 16 17 18 19 20 20 121 22 23 | Exhibit 1077. Could you identify it, please? A. This appears to be the the proposal that I just I just spoke of. I think I did say 2010. This document says 2000 2007 version of that oh, no, I'm sorry. Yeah, it says MR. LEWIS: I'll just note for the record that the document is two sided. Q. (By Mr. Bridges) Yes, always. I think all of our documents will be. A. So it's the 2007 version, yes. Q. Okay. Was this free download facility |

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| 1 | PNL, to my to my knowledge. | 1 | Now, the first agreement I believe was |
|---|--|---|--|
| 2 | Q. The just the format, it's in response to | | \$188,000, in that neighborhood. The second agreement |
| | an RFP or request for proposals. | | was \$230,000. The the but the second agreement |
| 4 | Do you know what the RFP No. 140008 | | agreement, I think so the first one, it would be |
| | specified? | | - |
| | | | dividing the 45,000 into that \$45 into that total |
| 6 | A. I I do not. | | amount. The second agreement actually included two |
| 7 | Q. The proposal envisioned that ASHRAE would | | versions of 90.1, if I recall, and two different |
| | promote the free download program through targeted | | versions of the IECC, so it could have been that cost |
| | e-mails to members of ASHRAE; correct? I'm looking | | was \$90 total in \$90 per unit into that \$230,000 |
| | rough just above the midpoint in that exhibit. | | number. |
| 11 | A. Correct. | 11 | Q. And just to clarify one thing. |
| 12 | Q. Do you know to what extent ASHRAE promoted | 12 | In the last couple of answers, you referred |
| | the free download program to the broader public, | | to the first contract and the second contract. If we |
| 4 | apart from members of ASHRAE? | | put them in the context of the other contract, that |
| 15 | A. I we put notices on our website to is | 15 | would make these the second and third contracts? |
| 6 | my recollection. I believe we did news releases, but | 16 | A. That's correct. |
| 7 | I am that's an assumption on my part. | 17 | Q. Okay. In your answer just now, when you |
| 8 | Q. And then you said there were two other | | were saying first and second, in the broader scope, |
| 9 | contracts; is that correct? | 19 | you were referring to the second and third contracts; |
| 20 | A. That's correct. Both of those also | 20 | is that correct? |
| 1 | involved versions of Standard 90.1 and then also | 21 | A. That is correct. |
| 22 | included a document, the the IECC that I | 22 | Q. As a result of these contracts, did ASHRAE |
| 23 | referenced. | 23 | observe any effect on its other sales or licenses of |
| 24 | Q. Were they on roughly the same terms as the | 24 | the 90.1 standard? |
| 25 | terms in Exhibit 1077? | 25 | A. These these three contracts all involve |
| | Page 54 | | Page 56 |
| 1 | A. No. That that was a a different | 1 | distribution of not the current version of the ASHRAE |
| 2 | arrangement. For that process, the documents were | | |
| | | 2 | standard, but the previous version. |
| | sent in hard copy form to recipients who were | 2 3 | Standard, but the previous version. Did we see any noticeable change in the |
| 3 | | 3 | |
| 3 4 | sent in hard copy form to recipients who were | 3 4 | Did we see any noticeable change in the |
| 3 4 5 | sent in hard copy form to recipients who were provided to us from the from PNL. And the | 3 4 | Did we see any noticeable change in the distribution or the sales of the the current |
| 3 4 5 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher | 3 4 5 6 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. |
| 3 4 5 6 7 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. | 3 4 5 6 7 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on |
| 3 4 5 6 7 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts | 3 4 5 6 7 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart |
| 3 4 5 6 7 8 9 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between | 3 4 5 6 7 8 9 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? |
| 3 4 5 6 7 8 9 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? | 3 4 5 6 7 8 9 10 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have |
| 3 4 5 6 7 8 9 0 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill | 3 4 5 6 7 8 9 10 11 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't |
| 3 4 5 6 7 8 9 0 1 2 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. | 3 4 5 6 7 8 9 10 11 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. |
| 3 4 5 6 7 8 9 .0 .1 .2 .3 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, | 3 4 5 6 7 8 9 10 11 12 13 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. Q. So you don't know one way or the other |
| 3 4 5 6 7 8 9 10 11 2 13 14 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, recipients, of the hard-copy publications in the second and third contracts? | 3 4 5 6 7 8 9 10 11 12 13 14 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. |
| 3 4 5 6 7 8 9 10 12 3 4 5 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, recipients, of the hard-copy publications in the second and third contracts? A. I believe the targeted audience for that | 3 4 5 6 7 8 9 10 11 12 13 14 15 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. Q. So you don't know one way or the other whether these contracts cannibalized other types of sales of the same versions? |
| 3 4 5 6 7 8 9 0 1 2 3 4 5 6 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, recipients, of the hard-copy publications in the second and third contracts? A. I believe the targeted audience for that was code officials at state and municipalities. | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. Q. So you don't know one way or the other whether these contracts cannibalized other types of sales of the same versions? A. Yeah, I have no no evidence one way or |
| 3 4 5 6 7 8 9 0 1 1 2 3 4 5 6 7 8 9 0 1 1 2 3 4 5 6 7 8 9 0 1 1 2 5 6 7 8 9 10 11 2 5 6 7 8 9 10 10 10 10 10 10 10 10 10 10 10 10 10 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, recipients, of the hard-copy publications in the second and third contracts? A. I believe the targeted audience for that was code officials at state and municipalities. Q. Do you recall quantities and financial | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. Q. So you don't know one way or the other whether these contracts cannibalized other types of sales of the same versions? A. Yeah, I have no no evidence one way or the other. |
| 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 6 7 8 9 0 1 2 3 4 5 7 8 9 0 1 2 8 9 0 1 1 2 8 9 10 10 10 10 10 10 10 10 10 10 10 10 10 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, recipients, of the hard-copy publications in the second and third contracts? A. I believe the targeted audience for that was code officials at state and municipalities. Q. Do you recall quantities and financial terms for the second and third contracts? | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. Q. So you don't know one way or the other whether these contracts cannibalized other types of sales of the same versions? A. Yeah, I have no no evidence one way or the other. Q. Has ASHRAE entered into any other |
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| 3 4 5 6 7 8 9 10 12 13 14 15 16 17 18 9 20 21 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, recipients, of the hard-copy publications in the second and third contracts? A. I believe the targeted audience for that was code officials at state and municipalities. Q. Do you recall quantities and financial terms for the second and third contracts? A. The the the purchase price for the 90.1 inclusion was the same as this, \$15, if I recall, and then there was a I believe ICC charge | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. Q. So you don't know one way or the other whether these contracts cannibalized other types of sales of the same versions? A. Yeah, I have no no evidence one way or the other. Q. Has ASHRAE entered into any other agreements for public access or distribu public access to or distribution of its strike that. Has ASHRAE en entered into any other |
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| 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | sent in hard copy form to recipients who were provided to us from the from PNL. And the distribution was made by ICC, which is the publisher of the IECC. ICC is International Code Council. Q. Were the second and third contracts contracts between PNL and ICC? A. No. I believe they were contracts between PNL and ASHRAE and then ICC was engaged to fulfill the agreement. Q. Do you recall the expected audience, recipients, of the hard-copy publications in the second and third contracts? A. I believe the targeted audience for that was code officials at state and municipalities. Q. Do you recall quantities and financial terms for the second and third contracts? A. The the the purchase price for the 90.1 inclusion was the same as this, \$15, if I recall, and then there was a I believe ICC charge for distribution of the IECC was also \$15 and then | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | Did we see any noticeable change in the distribution or the sales of the the current version? Nothing seemed to jump out. Q. Did ASHRAE observe any noticeable effect on the distribution, even of the earlier versions, apart from from these contracts? A. Intuitively, I would think there would have been some impact, but I can't say we didn't monitor that, so I have no evidence one way or the other. Q. So you don't know one way or the other whether these contracts cannibalized other types of sales of the same versions? A. Yeah, I have no no evidence one way or the other. Q. Has ASHRAE entered into any other agreements for public access or distribu public access to or distribution of its strike that. Has ASHRAE en entered into any other agreements for broad public access to or distribution |

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| 1 | THE WITNESS: Was your question by | | there would be books. And I believe that that |
|----|---|----|---|
| 2 | repeat the question, please? | | that covers it. |
| 3 | Q. (By Mr. Bridges) Sure. | 3 | Q. Roughly what percentage of ASHRAE's |
| 4 | Has ASHRAE entered into any other | | expenses pertain to the organization and supervision |
| 5 | | | of the standards development process and the costs of |
| | distribution of its standards either for free or for | | publication and the costs of administering the |
| | a reduced price? | 7 | permissions and distributions and the like? |
| 8 | A. At at times over the past not for | 8 | MR. LEWIS: Objection. |
| | 90.1, but for some other standards, a company may pay | 9 | THE WITNESS: I can speak to the side of |
| | a license fee to make a standard available if it | 10 | that process that deals with the the the |
| | relates specifically to their products. That would | 11 | publications part. I do not know what the |
| | be a license agreement. | 12 | the costs would be to support the development of |
| 13 | And that's very rare. I mean, it's | 13 | the product. My role begins when we push that |
| | it's perhaps one standard every three to five | 14 | standard out to the to to the marketplace. |
| | years would would be the case. But nothing with | 15 | What would be I I'd probably say |
| | government like was done here. | 16 | there are staff salaries that would be |
| 17 | | 17 | attributable to standards activities from the |
| | revenues comes from the monetization of its | 18 | publication side of things, production, so on. |
| 19 | publications? Do you understand that term? | 19 | If you add portions of people's time together, |
| 20 | | 20 | we're probably speaking of four people from the |
| | periodicals? | 21 | publications side. |
| 22 | | 22 | And then the the cost of the |
| | question. | 23 | infrastructure for the book for the |
| 24 | But I just want to make sure I think you | 24 | bookstore, the on-line process, and warehousing, |
| 25 | understand my my word "monetization" in this Page 58 | 25 | and finally the the the work that may be Page 60 |
| | 1 age 30 | | |
| | context. You nodded, but the court reporter can't | 1 | involved in in in managing that on-line |
| | take nods down. | 2 | bookstore. |
| 3 | Do you understand, broadly speaking, | 3 | Q. (By Mr. Bridges) Are you able to estimate |
| | monetization of publications through revenue sources | | a percentage of ASHRAE's expenses involved in wha |
| | like purchasing and licensing and the like? | | you've just described? |
| 6 | A. Yes. | 6 | A. Boy, and I and I I left the |
| 7 | Q. And royalties? | | easiest numbers, the printing costs, I just left out. |
| 8 | A. Yes. | 8 | Q. Right. |
| 9 | Q. What proportion of ASHRAE's yearly revenues | 9 | A. The cost to print |
| | comes from the monetization of its standards as | 10 | Q. Right. |
| | publications? | 11 | A a unit would be included. |
| 12 | | 12 | You know, if if we have a hundred I'm |
| 13 | | | just guessing now. If you have a I said those |
| 14 | 5 | | those individuals, you know, we have a hundred |
| | attributable to standards would be approximately | | employees, so with various activities. |
| | 10 percent. | 16 | So I'd say 5 percent of labor and then you |
| 17 | | | figure the the cost of that infrastructure, |
| | than through the monetization of its standards? | | standards amounts to a large portion of it. And |
| 19 | | | permissions, a lot of that is attributed to |
| | advertising, subscription sales, educational course | | standards. That's maybe that part, \$200,000. |
| | registrations, certification, exposition income. | 21 | Q. 200,000 to the |
| 22 | And when you said "publications," if so | 22 | A. For the just the expenses of doing those |
| | in addition to publications, we have books. So | | things. The bookstore, I mean, you know, processing |
| 24 | books, if if if that's if you | | orders, apart from the the the labor. |
| | distinguish between standards in your questions, then | 25 | Q. So you're saying 5 5 percent of the |
| 25 | Page 59 | 25 | Q. So you're suying 5 - 5 percent of the Page 61 |

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| A. That's correct, for the portion of the ndards work that is involved in what we do, which the distribution of those to the to the arketplace. I probably in terms of context, our obstore is actually we do that in partnership th an outside group, so that is a we pay fees sociated with any time orders are taken through r bookstore. So there are are costs that we we through the through the vendor for operation our bookstore. Q. And just to be clear, I think you either d this or started to say it. I think I didn't ar it completely. The expenses you just described were from at point in the process where your part of the ganization takes over and pushes the standards out | 4 5 6 7 8 9 10 11 12 13 14 | Corporation. Q. Carrier UTC? A. Yes. Yeah, yeah. Q. Does the name David Hollman ring a bell to you? A. I I think so. Q. Do you know whether he's an ASHRAE member? |
|--|--|--|
| the distribution of those to the to the urketplace. I probably in terms of context, our obstore is actually we do that in partnership th an outside group, so that is a we pay fees sociated with any time orders are taken through th bookstore. So there are are costs that we we through the through the vendor for operation our bookstore. Q. And just to be clear, I think you either d this or started to say it. I think I didn't ar it completely. The expenses you just described were from tt point in the process where your part of the | 4 5 6 7 8 9 10 11 12 13 14 15 | Q. Carrier UTC? A. Yes. Yeah, yeah. Q. Does the name David Hollman ring a bell to you? A. I I think so. Q. Do you know whether he's an ASHRAE member? A. I do not know. Carrier's there are many employees with with from of Carrier who are members of ASHRAE. Q. Do you recall any other information ASHRAE has regarding any potential monetary loss as a |
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| ve through the through the vendor for operation our bookstore. Q. And just to be clear, I think you either d this or started to say it. I think I didn't ar it completely. The expenses you just described were from it point in the process where your part of the | 11 12 13 14 15 | employees with with from of Carrier who are members of ASHRAE. Q. Do you recall any other information ASHRAE has regarding any potential monetary loss as a |
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| Q. And just to be clear, I think you either d this or started to say it. I think I didn't ar it completely. The expenses you just described were from at point in the process where your part of the | 13 14 15 | Q. Do you recall any other information ASHRAE has regarding any potential monetary loss as a |
| d this or started to say it. I think I didn't ar it completely. The expenses you just described were from at point in the process where your part of the | 14 15 | has regarding any potential monetary loss as a |
| ar it completely. The expenses you just described were from at point in the process where your part of the | 15 | |
| The expenses you just described were from at point in the process where your part of the | | |
| t point in the process where your part of the | 10 | - |
| | 17 | that. |
| | | |
| | 18 | |
| the public. These numbers did not include the | | might have acquired secondhand? |
| sts and expenses and staffing that ASHRAE invest | | 5 |
| the creation and revision of the standards | 21 | Q. Monetary losses. |
| emselves; correct? | 22 | |
| MR. LEWIS: Objection. | 23 | |
| THE WITNESS: That is correct. | 24 | 5 5 |
| Q. (By Mr. Bridges) Has do you understand Page 62 | | knowledge of that. Page 64 |
| at a subvention is of a publication? | 1 | Q. Are you aware of any persons being misled |
| A. I do not. | 2 | as to a relationship between the defendants and |
| Q. Has ASHRAE ever received any grants to | 3 | ASHRAE? |
| pport the publication of any particular standards? | 4 | A. I'm not aware of that. |
| A. I have no knowledge of ASHRAE receiving | 5 | Q. Are you aware of anybody being confused in |
| nds for that. | 6 | any way as a consequence strike that. |
| Q. Is ASHRAE aware of any monetary losses th | at 7 | Are you aware of anyone being deceived in |
| has suffered as a consequence of the defendant's | 8 | any way by defendant? |
| nduct in this case? | 9 | A. I am not aware |
| A. I can't speak to any any tracking of | 10 | MR. LEWIS: Objection. |
| losses. And anecdotally, people say if they've | 11 | THE WITNESS: of that. |
| ked me if a standard is available on the Internet, | 12 | |
| is a me manufactor is a analytic on the internet. | | being confused in any way by any conduct of the |
| | | defendant? |
| that is that allowed, is that permissible, so | 15 | |
| that is that allowed, is that permissible, so in those cases, we will seek to remove them. | 1.20 | • |
| that is that allowed, is that permissible, so in those cases, we will seek to remove them. But we don't we I don't have any | 16 | * |
| that is that allowed, is that permissible, so e in those cases, we will seek to remove them. But we don't we I don't have any cord of tracking such loss of of revenue. | 16 | in a sub renow from currer was asking life a |
| that is that allowed, is that permissible, so in those cases, we will seek to remove them. But we don't we I don't have any cord of tracking such loss of of revenue. Q. Apart from tracking it, does ASHRAE have | 17 | question of whether that was an authorized use |
| that is that allowed, is that permissible, so in those cases, we will seek to remove them. But we don't we I don't have any cord of tracking such loss of of revenue. Q. Apart from tracking it, does ASHRAE have y information regarding monetary losses it has | 17 18 | • |
| that is that allowed, is that permissible, so in those cases, we will seek to remove them. But we don't we I don't have any cord of tracking such loss of of revenue. Q. Apart from tracking it, does ASHRAE have y information regarding monetary losses it has Effered as a consequence of defendant's conduct? | 17 18 19 | perhaps. I can't remember the exact wording, |
| that is that allowed, is that permissible, so e in those cases, we will seek to remove them. But we don't we I don't have any cord of tracking such loss of of revenue. Q. Apart from tracking it, does ASHRAE have y information regarding monetary losses it has ffered as a consequence of defendant's conduct? A. I I do recall there was one message we | 17 18 19 20 | perhaps. I can't remember the exact wording, but there was a a question that I was asked |
| that is that allowed, is that permissible, so e in those cases, we will seek to remove them. But we don't we I don't have any cord of tracking such loss of of revenue. Q. Apart from tracking it, does ASHRAE have y information regarding monetary losses it has a consequence of defendant's conduct? A. I I do recall there was one message we t from somebody who refer I think it was | 17 18 19 20 21 | perhaps. I can't remember the exact wording, but there was a a question that I was asked of that of that person. |
| that is that allowed, is that permissible, so e in those cases, we will seek to remove them. But we don't we I don't have any cord of tracking such loss of of revenue. Q. Apart from tracking it, does ASHRAE have y information regarding monetary losses it has a consequence of defendant's conduct? A. I I do recall there was one message we t from somebody who refer I think it was mebody with Carrier Corporation, if I recall, who | 17 18 19 20 21 22 | perhaps. I can't remember the exact wording,but there was a a question that I was asked of that of that person.Q. (By Mr. Bridges) Are you aware of any |
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| :h :- | - | 2. Apart from tracking it, does ASHRAE have 17 |

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| 2 Q. What newspaper were you working for? 2 a an intensive HVAC design training program, at 3 3 A. Bergen Courty, New Jersey, yes. 3 a content, Standard 62.1 content. 5 A. A Bergen Courty, New Jersey, yes. 6 does ASHRAF lengage in, part from the publication of rains you mentioned you graduated from a 7 A. Lediph University in Bethlehem, 5 Q. What one was that? 9 A. Lediph University in Bethlehem, 5 A. Do you mean with a direct or indirect tie 10 Q. So you had come to - you came to ASHRAE 7 A. The - the magazine with in a size and licensing and the education offerings you 13 with a familiarity, to some degree, of 15 a. The - the magazine with in a - a trade 14 A. With a familiarity, to some degree, of 15 so that - that is always - when we have 16 background. 13 with a that ASIRAF reverse directly from the sade 10 revenues that ASIRAF reverses directly from the sade 14 top you recall that? 2 Do you recall that? 23 24 Q. What tother activities ASIRAF engage in partage 11 MR. LEWIS: Objection. 2 Q. What there seore of the apps? 2 | | | | |
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| 3 A. Bergen News. 3 much of that content deals with Standard 90.1 4 Q. Bergen County, New Jersey, yes. 6 Q. And you mentioned you graduated from a 5 A. Bergen County, New Jersey, yes. 6 Q. What other revence-generating activities 6 Q. And you mentioned you graduated from a 7 sales and licensing and the education offering you 8 Which one was tha? 9 A. Lehigh University in Bethlehem, 10 10 Pensylvania. 11 Q. Yes. 11 Q. Yes. 12 for ma publishing and - from a publishing backgroud 11 Q. Yes. 12 A. The - the magazine will - our - our 13 awith a technology stan in the publication? 14 about ASHRAE standards, for example? 11 Q. Yes. 14 A. With a familiarity, to some degree, of 15 about ASHRAE standards, there. 17 So that - that is always - when we have 18 rearising programs where a copy of a standard would be 14 apulications, such as 23 does ASHRAE standards, there. 17 So that - that is always - when we have 25 Do you recail tha? Page 70 Ne erreating treinsting approad at ASHRAE | 1 | | | five a total of five days of training, which is |
| 4 Q. Bergen County, New Jersey? 4 content, Standard 62.1 content. 5 Q. And you mentioned you graduated from a 6 Q. Mat other revenue-generating activities 7 School that had a very strong engineering program. 8 Which one was that? 9 A. Lohigh University in Bethlehem, 7 School that had a very strong engineering program. 9 A. Do you mean with a direct or indirect tie 10 Porsnylvania. 11 Q. Yes. 12 A. The the magazine will our our 13 with a familiarity, to some degree, of 14 publication, ASHRAE journal 14 A. With a familiarity, to some degree, of 15 with a familiarity, to some degree, of 16 background. 15 with a testing about 13 with a testing about 19 revenues that ASHRAE receives directly from the sale 16 about ASHRAE standards there. 17 Or to what extent strike that. 21 Q. What other revenue-generating activities 23 training programs where a copy of a standard would be 21 Q. What other revenue-generating activities 23 training programs where a copy of a standard would be 22 Q standards? | 2 | | | |
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| 6 Q. And you mentioned you graduated from a 7 school that had a very strong engineering program. 6 does ASHRAE engage in, apart from the publication 7 sales and licensing and the education offerings you 8 just mentioned? 9 A. Lehigh University in Bethlehem, 10 Pennsylvania. 7 sales and licensing and the education offerings you 8 just mentioned? 9 A. Lehigh University in Bethlehem, 10 Q. Soy ou had come to you came to ASHRAE 12 from a publishing and from a publishing background 13 with a technology slant in the publishing background 14 a. With a familiarity, to some degree, of 15 background. 1 Q. Yes. 17 Q. To what extent strike that. 10 5 will will have will be quite often articles 16 about ASHRAE standards there. 18 Earlier today when we were takling about 19 revenues, Ithink you were disinguishing between 20 revenues that ASHRAF receives directly from the sale 21 or licensing of publications, and adher revenues that 23 training programs where a coy of a standards. 1 Q. What other activities does strike that. 23 Do you recall that? 22 What other activities does strike that. 24 furnished. 23 Q. Why Br Jidges) 1 di like to explore for a 1 A. We have 24 furnished. 23 Q. What are some electronic products, for 2 example, that are based on ASHRAE standards that 3 that appt shat are based on conotent and ASHRAE 4 standards specifically. So we offer those type | 4 | | 4 | |
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| Page 70Page 701MR. LEWIS: Objection.1A. We have some electronic products, for2THE WITNESS: Yes, I do.3Q. (By Mr. Bridges) I'd like to explore for a1A. We have some electronic products, for4little bit what activities ASHRAE engages in that may5 touch upon standards, apart from the sale or6 licensing of standards.6 Q. What are based on content and ASHRAE7So education is one; right?7A. For related to 62.1, there would be a8A. Correct.8 a ventilation rate effectiveness app that we have9Q. What types of education offerings does10 database. However, that probably relates more to ou10ASHRAE provide?10 database. However, that probably relates more to ou11A. We we offer a a varied program. We11 hand that relates more to our handbook than to12really take seriously trying to help with the1313application of the standard, ensure the standards are1314application fees, and we also will have web-based1616training that we will provide, either typically,1717three-hour or six-hour courses for which there are1818Q. How are they organized? In other words, is19learning programs that are available, which would2021And many of those courses deal with22applications of of standards, and specifically23there's there's quite a few courses that would24deal with topics related to 90.1.24 | | | | |
| Page 70Page 701MR. LEWIS: Objection.1A. We have some electronic products, for2THE WITNESS: Yes, I do.3Q. (By Mr. Bridges) I'd like to explore for a1A. We have some electronic products, for4little bit what activities ASHRAE engages in that may5 touch upon standards, apart from the sale or6 licensing of standards.6 Q. What are based on content and ASHRAE7So education is one; right?7A. For related to 62.1, there would be a8A. Correct.8 a ventilation rate effectiveness app that we have9Q. What types of education offerings does10 database. However, that probably relates more to ou10ASHRAE provide?10 database. However, that probably relates more to ou11A. We we offer a a varied program. We11 hand that relates more to our handbook than to12really take seriously trying to help with the1313application of the standard, ensure the standards are1314application fees, and we also will have web-based1616training that we will provide, either typically,1717three-hour or six-hour courses for which there are1818Q. How are they organized? In other words, is19learning programs that are available, which would2021And many of those courses deal with22applications of of standards, and specifically23there's there's quite a few courses that would24deal with topics related to 90.1.24 | 25 | Do you recall that? | 25 | O standards? |
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19 (Pages 70 - 73)

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| 1 | Q. What other rev revenue-generating | | that are are are deemed by peers to have been |
|----|---|----|---|
| 2 | activities does ASHRAE engage in pertaining to | | successful. They're developed by people who are |
| 3 | standards? | | recognized by their peer peers as being |
| 4 | A. We've covered royalties. We've covered the | 4 | knowledgeable in their respective fields. |
| | sales of the documents. We've covered the articles | 5 | So it provides standards. And especially |
| | that would impact the advertising, the courses, the | | the the ASHRAE handbook really provide they |
| 7 | ancillary support documents. | | provide solutions. They they they incorporate |
| 8 | I could imagine at one at some | | new technology that's available in products and |
| 9 | extension of that could be either sessions that are | 9 | equipment and assist designers as to what new design |
| | presented at our conferences that would deal with | | options may be available because of new products in |
| | 90.1, for which for which there would be | 11 | the marketplace. |
| 12 | attendance interests that would be generated for | 12 | Q. You use terminology that I hear frequently. |
| 13 | that. | | I often push back at it a little bit wherever I hear |
| 14 | I believe that I believe that would | 14 | it, so don't take this personally. |
| 15 | cover the the the potential for for revenue. | 15 | But I've never quite understood what |
| 16 | Q. Does the sale of strike that. | | "solutions" means, because it's often a very vague |
| 17 | Does the sale and licensing of standards | | term. Sometimes it's a liquid in a bottle; okay? |
| | subsidize other ASHRAE activities apart from | | That's not what you meant here. |
| | standards development | 19 | How else would you describe what you're |
| 20 | MR. LEWIS: Objection. | | referring to as solutions here? |
| 21 | Q. (By Mr. Bridges) and publication? | 21 | MR. LEWIS: Objection. |
| 22 | A. All of the revenue flows into a single | 22 | THE WITNESS: One of the things that I've |
| | single source. There's some standards that are | 23 | noticed in the industry as an editorial person |
| | are very low-selling standards, so there are so it | 24 | is that there's so many different technologies |
| 25 | would be fair to say that some if a standard | 25 | that can be provided that are available to |
| | Page 74 | | Page 76 |
| | generates more revenue, that helps support those | 1 | maintain air in a building, whether it be |
| 2 | activities that don't have revenue streams that would | 2 | conditioned air at a particular temperature or |
| 3 | cover them. | 3 | air that's free of contaminants. There's many, |
| 4 | Q. There's no requirement that each activity | 4 | many different methods of applying technology, |
| 5 | fully self-support itself? | 5 | different types of technology, to provide a |
| 6 | MR. LEWIS: Objection. | 6 | an air-conditioning HVAC system in a building |
| 7 | THE WITNESS: Our our obligation's to | 7 | or a refrigeration system. |
| 8 | advance the technology. We we there are | 8 | And so designers have more choices |
| 9 | some items that are needed, but they have a | 9 | available to them than ever before, so part of |
| 10 | difficult time finding the financial support to | 10 | the role that ASHRAE provides in offering |
| 11 | carry them forward. | 11 | solutions is to help guide those engineers to |
| 12 | Q. (By Mr. Bridges) And in your last | 12 | to provide the appropriate the the |
| | statement, you said, "Our obligation is to advance | 13 | appropriate application of technology which best |
| | the technology." | 14 | solves the design problem that they face. |
| 15 | Is that a summary or a reference to | 15 | Q. (By Mr. Bridges) Thank you for that |
| | ASHRAE's mission? | | explanation. |
| 17 | A. In our bylaws, ASHRAE's organized to | 17 | I spoke with ASHRAE counsel during a break |
| | advance the arts and sciences of heating, | | about your testimony earlier today about the reading |
| | refrigeration, air-conditioning, ventilation, and | | room. |
| | their allied arts and sciences. | 20 | Did you have any clarifications that you |
| 21 | Q. How does ASHRAE's development and | | wanted to make about the functionality of the reading |
| | publication of its standards advance the technology? | | room? I'm sorry, about the functionality of the free |
| 23 | A. Because it sets a a standard for | | viewing facility. |
| | practice. It incorporates through user experiences | 24 | A. Yes. I in in checking that |
| 25 | those solutions to technical applications that are Page 75 | 25 | point, I understand now that there's search Page 77 |
| 1 | rage 75 | | rage // |

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| 1 | CERTIFICATE | |
|--|--|--|
| 23 | | |
| | STATE OF GEORGIA: | |
| 4 | | |
| 5 | COUNTY OF FULTON: | |
| 6 | | |
| | I hereby certify that the foregoing transcript was | |
| 7 | taken down, as stated in the caption, and the | |
| 8 | questions and answers thereto were reduced to typewriting under my direction; that the foregoing | |
| 0 | pages represent a true, complete, and correct | |
| 9 | transcript of the evidence given upon said hearing, | |
| | and I further certify that I am not of kin or counsel | |
| 10 | to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I | |
| 11 | in anywise interested in the result of said case. | |
| 12 | | |
| 13 | | |
| 14 | Lee Que Baines | |
| | LEE ANIN DAKINES, CCR B-1852, RPR, CRR | |
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| 18 19 | | |
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| | Page 198 | |
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| 1 | DEPOSITION ERRATA SHEET | |
| 2 | | |
| 2 | DEPOSITION ERRATA SHEET Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING | |
| 2 3 | Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a ASTM INTERNATIONAL, et al. vs. | |
| 2 3 4 | Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING | |
| 2 3 4 5 | Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a ASTM INTERNATIONAL, et al. vs. PUBLIC.RESOURCE.ORG, INC. DECLARATION UNDER PENALTY OF PERJURY | |
| 2 3 4 | Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a ASTM INTERNATIONAL, et al. vs. PUBLIC.RESOURCE.ORG, INC. DECLARATION UNDER PENALTY OF PERJURY I declare under penalty of perjury | |
| 2 3 4 5 6 | Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a ASTM INTERNATIONAL, et al. vs. PUBLIC.RESOURCE.ORG, INC. DECLARATION UNDER PENALTY OF PERJURY | |
| 2 3 4 5 6 7 | Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a ASTM INTERNATIONAL, et al. vs. PUBLIC.RESOURCE.ORG, INC. DECLARATION UNDER PENALTY OF PERJURY I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and | |
| 2 3 4 5 6 | Our Assignment No. 2023730 Case Caption: AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a ASTM INTERNATIONAL, et al. vs. PUBLIC.RESOURCE.ORG, INC. DECLARATION UNDER PENALTY OF PERJURY I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and | |
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EXHIBIT 6

JA01488

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| 1 | UNITED STATES DISTRICT COURT |
|----|--|
| 2 | FOR THE DISTRICT OF COLUMBIA |
| 3 | |
| | AMERICAN SOCIETY FOR) |
| 4 | TESTING AND MATERIALS,) |
| 5 | d/b/a ASTM INTERNATIONAL;) Civil Action No. |
| 6 | NATIONAL FIRE PROTECTION) 1:13-cv-01215-TSC |
| 7 | ASSOCIATION, INC.; and) |
| | AMERICAN SOCIETY OF) |
| 8 | HEATING, REFRIGERATION AND) |
| 9 | AIR CONDITIONING ENGINEERS,) |
| | Plaintiffs and) |
| 10 | Counter-Defendants,) |
| 11 | vs.) |
| 12 | <pre>PUBLIC.RESOURCE.ORG,INC.,)</pre> |
| 13 | Defendant and) |
| 14 | Counter-Plaintiff. |
| 15 | |
| 16 | VIDEOTAPED 30(b)(6) DEPOSITION OF NATIONAL |
| 17 | FIRE PROTECTION ASSOCIATION, INC., BY |
| 18 | CHRISTIAN DUBAY, before Jeanette N. Maracas, |
| 19 | Registered Professional Reporter and Notary |
| 20 | Public in and for the Commonwealth of |
| 21 | Massachusetts, at 42 Chauncy Street, Boston, |
| 22 | Massachusetts, on Wednesday, April 1, 2015, |
| 23 | commencing at 10:00 a.m. |
| 24 | |
| 25 | PAGES 1 - 250 |
| | |
| | Page 1 |

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| 1 | Q. In what forums do you speak as NFPA's primary 10:09:00 | 1 | committee volunteers. 10:13:04 |
|--|---|--|--|
| 2 | technical spokesman? 10:09:12 | 2 | Q. Is it the technical committee of volunteers 10:13:15 |
| 3 | A. One example is media interviews. 10:09:15 | 3 | who determine what constitutes the best 10:13:22 |
| 4 | Q. How else? 10:09:25 | 4 | minimum level of safety? 10:13:24 |
| 5 | A. Another example is public forums around our 10:09:26 | 5 | MR. REHN: Objection as to form. 10:13:26 |
| 6 | technical topics of expertise, our standards. 10:09:32 | 6 | A. It's a combination of our technical 10:13:29 |
| 7 | Q. What type of public forums do you mean? 10:09:36 | 7 | committee members determine the final 10:13:32 |
| 8 | A. One example is speaking at the conferences 10:09:40 | 8 | technical requirements, however, that's 10:13:34 |
| 9 | and training seminars and such. 10:09:47 | 9 | balanced with extensive public review and 10:13:37 |
| 10 | Q. What types of conferences do you speak at 10:09:49 | 10 | comment. 10:13:39 |
| 11 | for NFPA? 10:09:52 | 11 | Q. I'll come back to that in a minute. How else 10:13:49 |
| 12 | A. In my current role primarily, I guess that's 10:09:52 | 12 | do you in what other forums do you speak 10:14:14 |
| 13 | a standards role, technically it could 10:09:57 | 13 | as primary technical spokesman for NFPA? You 10:14:17 |
| 14 | involve the topic at hand. It could be a 10:09:59 | 14 | mentioned media interviews, certain public 10:14:24 |
| 15 | trade event or an association of, say, an 10:10:01 | 15 | forums. You mentioned conferences and 10:14:27 |
| 16 | association of manufacturers or constituents 10:10:08 | 16 | training seminars. Are there any other ways 10:14:29 |
| 17 | or government, like fire marshals. 10:10:11 | 17 | in which you serve as the primary technical 10:14:32 |
| 18 | Q. On what topics do you typically speak at 10:10:18 | 18 | spokesman for NFPA? 10:14:34 |
| 19 | those conferences? 10:10:23 | 19 | A. I often give presentations relating to 10:14:35 |
| 20 | A. As broad as our scope of NFPA. 10:10:25 | 20 | awareness of our process and awareness of how 10:14:39 |
| 21 | Q. And how broad is that scope? 10:10:34 | 21 | to get involved and how to be part of this 10:14:42 |
| 22 | A. We our mission is based upon safety and 10:10:36 | 22 | public codes and standards process. 10:14:46 |
| 23 | improving safety and reducing loss. And that 10:10:42 | 23 | Q. To whom do you make those presentations? 10:14:51 |
| 24 | covers approximately 300 codes and standards 10:10:44 | 24 | A. Various affected parties. Again, really 10:14:55 |
| 25 | on a multitude of topics. 10:10:49 Page 14 | 25 | depends on the breadth of topics. So it 10:14:59 Page 16 |
| | 1 ago 14 | | |
| 1 | Q. How do codes and standards improve safety 10:11:01 | 1 | varies. 10:15:04 |
| 2 | and reduce loss? 10:11:03 | 2 | Q. What are some examples of groups to which you 10:15:04 |
| 3 | A. Codes and standards are designed part of 10:11:05 | 3 | make these presentations? 10:15:08 |
| 4 | them is to learn from losses, learn from 10:11:13 | 4 | A. For example, if there's an emerging technical 10:15:09 |
| 5 | incidents as such to ensure what protection 10:11:17 | 5 | topic of safety or concern to the 10:15:13 |
| 6 | needs to be in place to account for that. 10:11:20 | 6 | association, I may meet with fire marshals or 10:15:16 |
| 7 | That's one of the ways. 10:11:23 | 7 | local safety officials in a given 10:15:19 |
| 8 | Q. How else do codes and standards improve 10:11:27 | 8 | jurisdiction or state to present what we know 10:15:22 |
| 9 | safety and reduce losses? 10:11:30 | 9 | at that time. 10:15:26 |
| 10 | MR. REHN: I'll just object that 10:11:35 | 10 | Q. To your knowledge, what use do they make of 10:15:30 |
| 11 | these questions are outside the scope of the 10:11:36 | 11 | the information that you present to them? 10:15:42 |
| 12 | | 10 | |
| | topics for which this witness was designated, 10:11:38 | 12 | MR. REHN: Objection as to form. 10:15:45 |
| 13 | topics for which this witness was designated,10:11:38but you can answer.10:11:41 | 12 | Calls for speculation. 10:15:47 |
| 13 14 | but you can answer. 10:11:41 MR. BRIDGES: I disagree, but we 10:11:42 | 13 14 | Calls for speculation.10:15:47A. It would really depend on the group.10:15:49 |
| 13 | but you can answer.10:11:41MR. BRIDGES: I disagree, but we10:11:42don't need to argue it.10:11:44 | 13 14 15 | Calls for speculation.10:15:47A. It would really depend on the group.10:15:49Q. Let's say fire marshals.10:15:56 |
| 13 14 15 16 | but you can answer.10:11:41MR. BRIDGES: I disagree, but we10:11:42don't need to argue it.10:11:44A. Codes and standards, at least the NFPA10:11:46 | 13 14 | Calls for speculation.10:15:47A. It would really depend on the group.10:15:49 |
| 13 14 15 16 17 | but you can answer.10:11:41MR. BRIDGES: I disagree, but we10:11:42don't need to argue it.10:11:44A. Codes and standards, at least the NFPA10:11:46process, brings together a multitude of10:11:48 | 13 14 15 16 17 | Calls for speculation.10:15:47A. It would really depend on the group.10:15:49Q. Let's say fire marshals.10:15:56 |
| 13 14 15 16 17 18 | but you can answer. 10:11:41 MR. BRIDGES: I disagree, but we 10:11:42 don't need to argue it. 10:11:44 A. Codes and standards, at least the NFPA 10:11:46 process, brings together a multitude of 10:11:48 interested parties which can determine, 10:11:51 | 13 14 15 16 | Calls for speculation.10:15:47A. It would really depend on the group.10:15:49Q. Let's say fire marshals.10:15:56MR. REHN: Same objection.10:15:58A. They often utilize that information as10:16:01information to make safety decisions within10:16:05 |
| 13 14 15 16 17 | but you can answer.10:11:41MR. BRIDGES: I disagree, but we10:11:42don't need to argue it.10:11:44A. Codes and standards, at least the NFPA10:11:46process, brings together a multitude of10:11:48 | 13 14 15 16 17 | Calls for speculation.10:15:47A. It would really depend on the group.10:15:49Q. Let's say fire marshals.10:15:56MR. REHN: Same objection.10:15:58A. They often utilize that information as10:16:01 |
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| 13 14 15 16 17 18 19 20 21 22 | but you can answer. 10:11:41 MR. BRIDGES: I disagree, but we 10:11:42 don't need to argue it. 10:11:44 A. Codes and standards, at least the NFPA 10:11:46 process, brings together a multitude of 10:11:48 interested parties which can determine, 10:11:51 through the consensus process, a best minimum 10:11:53 level of safety. 10:11:58 | 13 14 15 16 17 18 19 20 | Calls for speculation.10:15:47A. It would really depend on the group.10:15:49Q. Let's say fire marshals.10:15:56MR. REHN: Same objection.10:15:58A. They often utilize that information as10:16:01information to make safety decisions within10:16:05their various jurisdictions or with the10:16:07situations that they're facing.10:16:11 |
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| 1meetings are open to anyone who wishes to10:30:441portion of their job is to attend the10:33:332attend.10:30:462technical committee meetings.10:33:363Q. Anything else?10:30:463Q. What do the liaisons do at those meetings10:33:454A. No. I think that covers it.10:30:494when they attend them?10:33:455Q. What do you mean by call the meeting, NFPA10:30:555MR. REHN: Object to the form.10:33:456calls the meeting?10:31:066A. Their primary responsibility is to capture10:33:518the meeting, including on our website, social10:31:128committee is making to the document they're10:339media announcements to the committee members10:31:2010Q. What do you mean by technical changes in that1011aware of the next meeting date, location,10:31:2211context?10:34:24 | 5 46 |
|---|--------------------------|
| 3Q. Anything else?10:30:463Q. What do the liaisons do at those meetings10:334A. No. I think that covers it.10:30:494when they attend them?10:33:455Q. What do you mean by call the meeting, NFPA10:30:555MR. REHN: Object to the form.10:33:456calls the meeting?10:31:066A. Their primary responsibility is to capture10:33:457A. We provide advance public notice when we call10:31:1087all of the technical changes that the10:33:518the meeting, including on our website, social10:31:128committee is making to the document they're10:339media announcements to the committee members10:31:169working on or standard they're working on.10:33:1010to make not only the committee but the public10:31:2010Q. What do you mean by technical changes in that10 | 5 46 |
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| 7A. We provide advance public notice when we call 10:31:087all of the technical changes that the10:33:518the meeting, including on our website, social 10:31:128committee is making to the document they're10:339media announcements to the committee members 10:31:169working on or standard they're working on.10:3310to make not only the committee but the public 10:31:2010Q. What do you mean by technical changes in that 10 | |
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| 9media announcements to the committee members10:31:169working on or standard they're working on.10:33:1010to make not only the committee but the public10:31:2010Q. What do you mean by technical changes in that10 | 3:54 |
| 10 to make not only the committee but the public 10:31:20 10 Q. What do you mean by technical changes in that 10 | |
| | :57 |
| 11 aware of the next meeting date, location, 10:31:22 11 context? 10:34:24 | :34:02 |
| | |
| 12 et cetera. 10:31:26 12 A. Our technical committees are responsible for 10:3 | 4:27 |
| 13 Q. How does NFPA book the meeting? 10:31:29 13 developing changes to our codes and 10:34:3 | 1 |
| 14 A. We have a meetings department whose 10:31:34 14 standards. And one of the primary 10:34:34 | |
| 15 responsibility is to book all of our 10:31:38 15 responsibilities of the technical staff 10:34:37 | |
| 16meetings.10:31:4116liaison is to capture those changes.10:34:39 | |
| 17 Q. Does that mean to arrange the logistics, like 10:31:42 17 Q. In what respect are those changes technical 10:34 | 4:46 |
| 18the hotels and conferences rooms and things10:31:4718changes?10:34:50 | |
| 19 like that? 10:31:50 19 A. Those changes are specific, technical being 10:34 | 4:53 |
| 20 A. The meetings department is responsible 10:31:52 20 scientific or wording changes to our codes 10:34: | 57 |
| 21 MR. REHN: Objection to form. 10:31:51 21 and standards which are technical documents. 10:33 | 5:01 |
| 22 A. The meetings department is responsible for 10:31:56 22 Q. How do you distinguish between scientific 10:33 | 5:08 |
| 23 taking care of finding a proper hotel, large 10:32:02 23 changes and wording changes to the technical 10:32 | 5:11 |
| 24 enough meeting rooms, things like that. 10:32:04 24 documents? 10:35:17 | |
| 25 Whatever the size of the logistics, they 10:32:07 25 MR. REHN: Object to the form. 10:35:18 | 3 |
| Page 26 | Page 28 |
| 1 handle all the logistics around that meeting 10:32:09 1 Lacks foundation. Mischaracterizes the 10:35:1 | 9 |
| 2 space and any required hotels. 10:32:12 2 testimony. 10:35:22 | |
| 3 Q. How does NFPA host the meeting? 10:32:14 3 A. A technical change, in my view, would be 10:32 | 5:22 |
| 4 MR. REHN: Object to the form. 10:32:20 4 changing a specific requirement. A wording 10:35 | 5:28 |
| 5 Q. I should say how does NFPA host the meetings? 10:32:24 5 change may be a change the committee could do 10 | :35:32 |
| 6 MR. REHN: Same objection. 10:32:28 6 if they have determined that the requirement 10:35: | :34 |
| 7 A. I think the best approach is that because 10:32:29 7 is confusing or not clear what the specific 10:35:36 | 6 |
| 8 it's an NFPA meeting, so it's we're 10:32:31 8 requirement is, so they may adjust the 10:35:40 |) |
| 9 calling when I say we're calling the 10:32:36 9 wording to make it easier to interpret or 10:35:41 | |
| 10 meeting, so it's our committee meeting as an 10:32:37 10 understand what that actual technical 10:35:45 | |
| 11 example. 10:32:41 11 requirement is. 10:35:46 | |
| 12 So NFPA staff is there, technical 10:32:41 12 Q. Who determines what wording changes are 10: | :35:48 |
| 13staff is there facilitating and running the10:32:4613appropriate in the technical committees?10:35:57 | 52 |
| 14 meeting along with the actual volunteer 10:32:48 14 MR. REHN: Object to the form. 10:35:55 | i |
| 15technical committee chair. So I think that10:32:5015Ambiguous.10:35:56 | |
| 16 should clarify what I'm implying by 10:32:54 16 A. It's a combination of extensive public review 10:35 | 5:58 |
| 10 A. It's a combination of extensive public review 10.5. | 6:02 |
| 10 should clarify what in impring by 10:32:54 10 A: it's a combination of extensive public review 10:32 17 "hosting." 10:32:56 17 and comment, the committee's review of that 10:32 | |
| |)5 |
| 17"hosting."10:32:5617and comment, the committee's review of that10:30 | |
| 17"hosting."10:32:5617and comment, the committee's review of that10:3018Q. How does the NFPA staff facilitate and run10:32:5718and their expertise and with the help of our10:36:0 | 9 |
| 17"hosting."10:32:5617and comment, the committee's review of that10:3618Q. How does the NFPA staff facilitate and run10:32:5718and their expertise and with the help of our10:36:019the meetings along with the technical10:33:1519technical staff to land on the final wording,10:36:0 | 9 |
| 17"hosting."10:32:5617and comment, the committee's review of that10:3618Q. How does the NFPA staff facilitate and run10:32:5718and their expertise and with the help of our10:36:019the meetings along with the technical10:33:1519technical staff to land on the final wording,10:36:020committee chairs?10:33:1720which is ultimately decided by the technical10:36:0 | 9 13 |
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| 17"hosting."10:32:5617and comment, the committee's review of that10:3618Q. How does the NFPA staff facilitate and run10:32:5718and their expertise and with the help of our10:36:019the meetings along with the technical10:33:1519technical staff to land on the final wording,10:36:020committee chairs?10:33:1720which is ultimately decided by the technical10:36:021A. Again, just to clarify, just focusing on10:33:2021committee.10:36:1522technical committee meetings?10:33:2322Q. What criteria do the members of the technical10:3623Q. Yes.10:33:2423committee use in choosing the wording of a10:36 | 9 13 36:23 5:32 |

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| 1 0. bit here anything about the development of 11:16:19 1 A. There are, Ibelieve, size interest 11:20:27 2 standards that be regulations on or cover, 11:16:37 3 respectra, which includes 11:20:41 3 A. Our regulations cover the specific accedited 11:16:27 3 research and testing is an example. Another 11:20:37 4 rules and heres, instrugations. We also 11:16:36 6 government officials, bodi, socialized scient 11:20:42 6 provide guidance to our technical committee 11:16:37 6 but state and local jurisdictions, as well as 11:20:48 7 members an well as or chains and and manual 11:16:46 8 escample. 11:20:56 9 Q. What other documents govern or egulate the 11:17:47 10 and that's all can think of 11:10:30 12:12:31 12 arrything, the cite standard within MPA2 11:17:37 11 and that's all can think of 11:12:13 13 off the top of my head 1 can't think of 11:18:20 15 is blace's another solut 11:21:32 14 Who are the members, generally 11:18:27 14 specific sloc. O, fm sory on one firsdi 11:12:13 15 specific sloc. O, fm sory on one firsdi 11:12:13 11:22:26< | 1 | | | |
|--|--|---|--|---|
| 3A. Our regulations cover the specific accredind11:16:373research and testing is an example. Another11:20:374rules and hence, its regulations. We also11:16:354example is enforcer, which includes11:20:405have correstine officers guide which11:16:477special expert, which is consultants and11:20:487members as well as our chairs and our manual11:16:407special expert, which is consultants and11:20:509Q. What other documents govern or regulate the11:7410uers, installer maintainers which11:20:5011A. Off the top of my head I can't think of11:7511are those who install the systems, consumers, 11:21:0212anything else.11:17.5912if if sind it, but consumer is another ore11:21:3113Q. Who participats in -strik that.11:18:2015is labor; is another sol.11:22:3214Who are the members, generally11:18:3714specific slot. On, for sorry, one other sol 11:21:3115speaking, the category of NFPA's technical11:18:2919A. NFPA employees are not - cannot be members11:22:3216catagories we have interest categories of11:18:3919A. NFPA employees are not - cannot be members11:22:3220our committee members.11:18:4320of our technical committees.11:22:3221Q. Who avita participation strik We have11:18:4323anioporta technical 11:22:3722Who avita | 1 | Q. Is there anything about the development of 11:16:19 | 1 | A. There are, I believe, nine interest 11:20:27 |
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| |
| 24 will canture those changes from the technical 11:25:41 24 which may have been edited to comply with our 11:28: |
| 2. An expanse above enables from the dominant 11.25.11 24 which may have been called to comply with our 11.25. |
| 25 committee, correct? 11:25:44 25 manual style, get the wording right. That is 11:28:07 |
| Page 54 |
| 1 MR. REHN: Object to the form. 11:25:48 1 connected directly to the work of the 11:28 |
| 2 A. The NFPA technical staff that serves as, the 11:25:50 2 committee. The second is a revision that's 11:2 |
| 3 term we use is a staff liaison to a technical 11:25:54 3 tied to a pure editorial change. 11:28:15 |
| 4 committee, they do more than just capture the 11:25:56 4 Q. Do either of these sets of revisions get 11:28 |
| 5 specific wordings. 11:26:00 5 identified to technical committee members so 1 |
| 6 What they do is they are each 11:26:01 6 that they can understand what input or 11:26 |
| 7 technical experts in their field and they not 11:26:03 7 changes, if any, the technical committee 11:2 |
| 8 only capture or record those changes, but 11:26:06 8 staff contributed? 11:28:35 |
| 9 they provide their expertise to the 11:26:09 9 MR. REHN: Objection as to form. 11:2 |
| 10 committee, their field experience, what they 11:26:11 10 A. Yes, they all do. All changes are indicated 11: |
| 11 have, the information that they're bringing 11:26:14 11 to the technical committees for balloting. 11:2 |
| 12 in through questions on the standards and 11:26:16 12 And if there is, in the sense of an editorial 11:28 |
| 13such.11:26:1813revision, it's indicated that this was11:28:54 |
| 14And they provide that technical11:26:1914identified by staff as a potential editorial11:28: |
| 15 expertise to the committee so the committee 11:26:21 15 revision. The committee can then, in their 11:26 |
| 16 can utilize that, a complete combination with 11:26:24 16 voting, decide whether that change moves 11 |
| 17all the public input or comments, to land on11:26:2717forward or not.11:29:10 |
| 18 a final set of proposed language. In 11:26:32 18 Q. Where in the records of the development of 1 |
| |
| 19 summary, it's more than just recording. 11:26:37 19 each standard does one find the indications 11: |
| 19summary, it's more than just recording.11:26:3719each standard does one find the indications11:20They're not really recording secretaries, per11:26:3920of those changes?11:29:17 |
| |
| 20They're not really recording secretaries, per 11:26:3920of those changes?11:29:17 |
| 20They're not really recording secretaries, per 11:26:3920of those changes?11:29:1721se.11:26:4321MR. REHN: Objection to the form.11:2 |
| 20They're not really recording secretaries, per 11:26:3920of those changes?11:29:1721se.11:26:4321MR. REHN: Objection to the form.11:222Q. But who ultimately determines the language of 11:26:4322A. They are part of the first draft report or,11:29 |
| 20They're not really recording secretaries, per 11:26:3920of those changes?11:29:1721se.11:26:4321MR. REHN: Objection to the form.11:222Q. But who ultimately determines the language of 11:26:4322A. They are part of the first draft report or,11:2923the technical committee's proposed changes to 11:26:4723and/or, depending, the second draft report.11:29 |

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| 1 | go strike that. 11:40:50 | 1 | that the text of the technical committee is 11:43:16 |
|---|---|--|--|
| 2 | If you needed to identify the 11:40:53 | 2 | balloted? 11:43:19 |
| 3 | language that NFPA employees contributed to 11:40:55 | 3 | MR. REHN: Objection as to form. 11:43:20 |
| 4 | NFPA codes and standards, how would you 11:41:05 | 4 | Ambiguous. Compound. 11:43:22 |
| 5 | determine that language? 11:41:07 | 5 | A. The text can evolve and by evolve, you mean 11:43:25 |
| 6 | MR. REHN: Objection as to form. 11:41:10 | 6 | created and included? Is that what you're 11:43:28 |
| 7 | It's vague and compound. 11:41:11 | 7 | saying? 11:43:31 |
| 8 | A. What we could determine is the language the 11:41:15 | 8 | Q. I think so. 11:43:32 |
| 9 | technical committee at the end of the day 11:41:19 | 9 | A. So in a few ways. One is it can be submitted 11:43:33 |
| 10 | approved. Into each individual word and 11:41:21 | 10 | through a proposal form or public input form 11:43:37 |
| 11 | such would be difficult, if not impossible, 11:41:25 | 11 | or a public comment form. The language can 11:43:45 |
| 12 | because of ultimately the technical staff 11:41:30 | 12 | come from that. It can come from the 11:43:49 |
| 13 | provides that content to the committee which 11:41:33 | 13 | expertise of the technical committee members 11:43:53 |
| 14 | then approves those words. 11:41:35 | 14 | who are sitting on the committee, or it can 11:43:55 |
| 15 | Q. You said the technical staff provides the 11:41:37 | 15 | come from technical staff providing that to 11:43:58 |
| 16 | content to the committee? The technical 11:41:44 | 16 | the committee as their work progresses along. 11:44:01 |
| 17 | staff doesn't draft the standards, correct? 11:41:47 | 17 | Ultimately that evolution is the 11:44:06 |
| 18 | MR. REHN: Objection as to form. 11:41:51 | 18 | staff liaison synthesizes all that with the 11:44:08 |
| 19 | Mischaracterizes. 11:41:53 | 19 | direction of the committee to land on the 11:44:13 |
| 20 | A. In many cases the technical staff in the room 11:41:59 | 20 | final technical language that is balloted. 11:44:15 |
| 21 | is drafting the text. 11:42:02 | 21 | Q. With the direction of the committee, meaning 11:44:18 |
| 22 | Q. Is proposing new text? 11:42:04 | 22 | with the approval of the committee members? 11:44:29 |
| 23 | A. In some cases yes, to accomplish what the 11:42:10 | 23 | MR. REHN: Objection as to form. 11:44:31 |
| 24 | committee is trying to accomplish. The 11:42:13 | 24 | Mischaracterizes the testimony. 11:44:34 |
| 25 | technical staff of NFPA are experts in their 11:42:15 | 25 | Q. What do you mean by with the direction of the 11:44:36 |
| | Page 66 | | Page 68 |
| 1 | field, and the committee may want to 11:42:20 | 1 | committee? 11:44:38 |
| 2 | establish a requirement for X and the 11:42:23 | 2 | A. So a committee could want to establish a 11:44:40 |
| 3 | technical staff is there saying, well, we can 11:42:24 | 3 | requirement again for X for something and 11:44:45 |
| 4 | word it this way and that way, does this meet 11:42:27 | 4 | they may say, we want the requirement to read 11:44:4 |
| 5 | your intent, how about we do this, I can 11:42:29 | 5 | 12 and the staff liaison would have to put 11:44:51 |
| 6 | research some information, get back to you at 11:42:30 | 6 | text around that to get it to read in context 11:44:55 |
| 7 | the next meeting. 11:42:32 | 7 | of the document. Or they may say we want to 11:44:5 |
| 8 | The technical staff provides a vital 11:42:33 | 8 | have a draft chapter on something, technical 11:45:00 |
| 9 | role in helping the technical committee 11:42:35 | 9 | |
| 10 | | 1 | staff can you do research, pull together 11:45:03 |
| 10 | accomplish their mission of developing those 11:42:38 | 10 | staff can you do research, pull together11:45:03drafting of documents to present to the11:45:12 |
| 10 11 | · - | | |
| | accomplish their mission of developing those 11:42:38 | 10 | drafting of documents to present to the 11:45:12 |
| 11 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 | 10 11 | drafting of documents to present to the 11:45:12 committee to consider. 11:45:14 |
| 11 12 | accomplish their mission of developing those11:42:38words that become ultimately the final words11:42:40of the standard.11:42:43 | 10 11 12 | drafting of documents to present to the 11:45:12 committee to consider. 11:45:14 In the end the committee will agree 11:45:16 |
| 11 12 13 | accomplish their mission of developing those11:42:38words that become ultimately the final words11:42:40of the standard.11:42:43Q. Who makes the decision about the words in a11:42:44 | 10 11 12 13 | drafting of documents to present to the 11:45:12 committee to consider. 11:45:14 In the end the committee will agree 11:45:16 through a meeting vote what text is going to 11:45:19 |
| 11 12 13 14 | accomplish their mission of developing those11:42:38words that become ultimately the final words11:42:40of the standard.11:42:43Q. Who makes the decision about the words in a11:42:44standard?11:42:46 | 10 11 12 13 14 | drafting of documents to present to the 11:45:12 committee to consider. 11:45:14 In the end the committee will agree 11:45:16 through a meeting vote what text is going to 11:45:19 move forward towards ballot. Then the 11:45:21 |
| 11 12 13 14 15 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 | 10 11 12 13 14 15 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot.Then the11:45:21staff's job is to turn that into a ballot and11:45:24 |
| 11 12 13 14 15 16 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 Ambiguous. 11:42:48 | 10 11 12 13 14 15 16 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot. Then the11:45:21staff's job is to turn that into a ballot and11:45:24make sure it fits to our manual style and11:45:28ballot with the technical committee on the11:45:28final language.11:45:31 |
| 11 12 13 14 15 16 17 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 Ambiguous. 11:42:48 A. The final decision is and to summarize, 11:42:49 | 10 11 12 13 14 15 16 17 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot.Then the11:45:21staff's job is to turn that into a ballot and11:45:24make sure it fits to our manual style and11:45:28ballot with the technical committee on the11:45:28 |
| 11 12 13 14 15 16 17 18 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 Ambiguous. 11:42:48 A. The final decision is and to summarize, 11:42:49 it's a two-part decision. A committee 11:42:54 | 10 11 12 13 14 15 16 17 18 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot. Then the11:45:21staff's job is to turn that into a ballot and11:45:24make sure it fits to our manual style and11:45:28ballot with the technical committee on the11:45:28final language.11:45:31 |
| 11 12 13 14 15 16 17 18 19 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 Ambiguous. 11:42:48 A. The final decision is and to summarize, 11:42:49 it's a two-part decision. A committee 11:42:54 ballots on it, the ballot's on the final 11:42:55 | 10 11 12 13 14 15 16 17 18 19 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot. Then the11:45:21staff's job is to turn that into a ballot and11:45:24make sure it fits to our manual style and11:45:28ballot with the technical committee on the11:45:28final language.11:45:31Q. What criteria do technical committees use11:45:31 |
| 11 12 13 14 15 16 17 18 19 20 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 Ambiguous. 11:42:48 A. The final decision is and to summarize, 11:42:49 it's a two-part decision. A committee 11:42:54 ballots on it, the ballot's on the final 11:42:55 word, the committee approves it. At the 11:42:58 | 10 11 12 13 14 15 16 17 18 19 20 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot. Then the11:45:21staff's job is to turn that into a ballot and11:45:24make sure it fits to our manual style and11:45:28ballot with the technical committee on the11:45:28final language.11:45:31Q. What criteria do technical committees use11:45:31to determine what text moves forward to a11:45:34 |
| 11 12 13 14 15 16 17 18 19 20 21 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 Ambiguous. 11:42:48 A. The final decision is and to summarize, 11:42:49 it's a two-part decision. A committee 11:42:54 ballots on it, the ballot's on the final 11:42:55 word, the committee approves it. At the 11:42:58 end of the day our standards council issues 11:43:00 | 10 11 12 13 14 15 16 17 18 19 20 21 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot. Then the11:45:21staff's job is to turn that into a ballot and11:45:28ballot with the technical committee on the11:45:28final language.11:45:31Q. What criteria do technical committees use11:45:31to determine what text moves forward to a11:45:34ballot?11:45:37 |
| 11 12 13 14 15 16 17 18 19 20 21 22 | accomplish their mission of developing those11:42:38words that become ultimately the final words11:42:40of the standard.11:42:43Q. Who makes the decision about the words in a11:42:44standard?11:42:46MR. REHN: Objection as to form.11:42:46Ambiguous.11:42:48A. The final decision is and to summarize,11:42:54ballots on it, the ballot's on the final11:42:55word, the committee approves it. At the11:42:58end of the day our standards council issues11:43:03 | 10 11 12 13 14 15 16 17 18 19 20 21 22 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot. Then the11:45:21staff's job is to turn that into a ballot and11:45:24make sure it fits to our manual style and11:45:28ballot with the technical committee on the11:45:28final language.11:45:31Q. What criteria do technical committees use11:45:31to determine what text moves forward to a11:45:34ballot?11:45:37MR. REHN: Objection as to form.11:45:38 |
| 111 12 13 14 15 16 17 18 19 20 21 22 23 | accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40 of the standard. 11:42:43 Q. Who makes the decision about the words in a 11:42:44 standard? 11:42:46 MR. REHN: Objection as to form. 11:42:46 Ambiguous. 11:42:48 A. The final decision is and to summarize, 11:42:49 it's a two-part decision. A committee 11:42:54 ballots on it, the ballot's on the final 11:42:55 word, the committee approves it. At the 11:42:58 end of the day our standards council issues 11:43:00 that document, but the committee ballot 11:43:03 establishes the position of the type of 11:43:03 | 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | drafting of documents to present to the11:45:12committee to consider.11:45:14In the end the committee will agree11:45:16through a meeting vote what text is going to11:45:19move forward towards ballot. Then the11:45:21staff's job is to turn that into a ballot and11:45:24make sure it fits to our manual style and11:45:28ballot with the technical committee on the11:45:28final language.11:45:31Q. What criteria do technical committees use11:45:31to determine what text moves forward to a11:45:34ballot?11:45:37MR. REHN: Objection as to form.11:45:38A. It's their expertise. It's their11:45:42 |

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| 1 | | | |
|--|--|--|--|
| 1 | will move forward. There's motions we 11:45:50 | 1 | cheaper, easier to accomplish things, 11:48:04 |
| 2 | follow, Robert's Rules of Order, and when 11:45:53 | 2 | accomplishes a higher level of safety. Those 11:48:07 |
| 3 | there's a motion and it carries by a meeting 11:45:55 | 3 | are a few examples. 11:48:10 |
| 4 | vote, which is 50 percent plus one, that 11:45:57 | 4 | Q. Please give me more examples of criteria that 11:48:12 |
| 5 | proposed change is then approved to move 11:46:00 | 5 | technical committee members would use in 11:48:16 |
| 6 | forward to ballot, to letter ballot, excuse 11:46:02 | 6 | deciding what text to move forward to ballot. 11:48:18 |
| 7 | me. 11:46:08 | 7 | MR. REHN: Same objection. 11:48:20 |
| 8 | Q. Your answer focused on the process. I'm 11:46:08 | 8 | A. Other the examples could include research, 11:48:23 |
| 9 | asking what criteria the technical committee 11:46:10 | 9 | data. Such things another example could 11:48:30 |
| 10 | members use to decide what text to move 11:46:15 | 10 | be loss reports. For example, there's been a 11:48:37 |
| 11 | forward to a ballot. 11:46:18 | 11 | large fire somewhere, a large chemical hazard 11:48:41 |
| 12 | MR. REHN: Objection as to form. 11:46:20 | 12 | or something. There's often an investigative 11:48:43 |
| 13 | A. I would think the criteria would depend on 11:46:24 | 13 | report that NTSB or CSB or local fire marshal 11:48:45 |
| 14 | each individual member of the technical 11:46:26 | 14 | has done. And the committee would look at 11:48:50 |
| 15 | committee and their expertise and what bar 11:46:28 | 15 | that and say we may have a safety issue that 11:48:52 |
| 16 | they believe needs to be crossed or what 11:46:31 | 16 | needs to be addressed. 11:48:54 |
| 17 | things they need to have answered 11:46:32 | 17 | Q. So you've mentioned information that they 11:48:56 |
| 18 | professionally to make a decision to modify 11:46:34 | 18 | may that may motivate them, but I think 11:48:59 |
| 19 | the standard. 11:46:36 | 19 | your answers are focusing less on what 11:49:06 |
| 20 | Q. What criteria in your role as the person in 11:46:36 | 20 | criteria they apply to determining what text 11:49:09 |
| 21 | charge of standards development at NFPA 11:46:42 | 21 | would move forward. 11:49:11 |
| 22 | strike that. 11:46:46 | 22 | I'd like for you to tell me the 11:49:12 |
| 23 | In your role as the person in charge 11:46:46 | 23 | different criteria that technical committee 11:49:14 |
| 24 | of standards development at NFPA, what do you 11:46:49 | 24 | members apply, to your knowledge, in deciding 11:49:17 |
| 25 | understand the most typical criteria to be by 11:46:52 | 25 | what text to move forward to a ballot. 11:49:20 |
| | Page 70 | | Page 72 |
| 1 | which technical committees determine what 11:46:59 | 1 | MR. REHN: Same objection. 11:49:23 |
| 2 | text to move forward to a ballot? 11:47:02 | 2 | A. Again, I think it would be difficult, without 11:49:25 |
| 3 | MR. REHN: Objection as to form. 11:47:04 | 2 | |
| 5 | | 3 | speculating, I'm not sure what each person 11:49:29 |
| 4 | It's vague. 11:47:06 | 4 | speculating, I'm not sure what each person 11:49:29 would use for criteria, and that's why my 11:49:31 |
| | It's vague. 11:47:06 A. I don't think there's a single answer to 11:47:09 | | |
| 4 | - | 4 | would use for criteria, and that's why my 11:49:31 |
| 4 5 | A. I don't think there's a single answer to 11:47:09 | 4 5 | would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34 |
| 4 5 6 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 | 4 5 6 | would use for criteria, and that's why my11:49:31answer previously focused on having a11:49:34balanced committee of different experts,11:49:36 |
| 4 5 6 7 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 ballot that requires two-thirds of our 11:47:15 | 4 5 6 7 | would use for criteria, and that's why my11:49:31answer previously focused on having a11:49:34balanced committee of different experts,11:49:36topical experts in that area, will each bring11:49:39 |
| 4 5 6 7 8 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 ballot that requires two-thirds of our 11:47:15 technical committee to move anything forward. 11:47:16 | 4 5 6 7 8 | would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34 balanced committee of different experts, 11:49:36 topical experts in that area, will each bring 11:49:39 a different set of personal criteria, 11:49:39 |
| 4 5 6 7 8 9 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 ballot that requires two-thirds of our 11:47:15 technical committee to move anything forward. 11:47:16 That's part of the open consensus process in 11:47:20 | 4 5 6 7 8 9 | would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34 balanced committee of different experts, 11:49:36 topical experts in that area, will each bring 11:49:39 a different set of personal criteria, 11:49:39 personal decisionmaking that will decide 11:49:43 |
| 4 5 6 7 8 9 10 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 ballot that requires two-thirds of our 11:47:15 technical committee to move anything forward. 11:47:16 That's part of the open consensus process in 11:47:20 that you need two-thirds of a balanced 11:47:22 | 4 5 6 7 8 9 10 | would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34 balanced committee of different experts, 11:49:36 topical experts in that area, will each bring 11:49:39 a different set of personal criteria, 11:49:39 personal decisionmaking that will decide 11:49:43 what's going to move forward. 11:49:45 |
| 4 5 6 7 8 9 10 11 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 ballot that requires two-thirds of our 11:47:15 technical committee to move anything forward. 11:47:16 That's part of the open consensus process in 11:47:20 that you need two-thirds of a balanced 11:47:22 committee to agree on a technical change to 11:47:26 | 4 5 6 7 8 9 10 11 | would use for criteria, and that's why my11:49:31answer previously focused on having a11:49:34balanced committee of different experts,11:49:36topical experts in that area, will each bring11:49:39a different set of personal criteria,11:49:39personal decisionmaking that will decide11:49:43what's going to move forward.11:49:45Q. I'd like for you to tell me what some of11:49:47 |
| 4 5 6 7 8 9 10 11 12 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 ballot that requires two-thirds of our 11:47:15 technical committee to move anything forward. 11:47:16 That's part of the open consensus process in 11:47:20 that you need two-thirds of a balanced 11:47:22 committee to agree on a technical change to 11:47:26 move it forward. 11:47:28 | 4 5 6 7 8 9 10 11 12 | would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34 balanced committee of different experts, 11:49:36 topical experts in that area, will each bring 11:49:39 a different set of personal criteria, 11:49:39 personal decisionmaking that will decide 11:49:43 what's going to move forward. 11:49:45 Q. I'd like for you to tell me what some of 11:49:47 those personal criteria are that you were 11:49:49 |
| 4 5 6 7 8 9 10 11 12 13 | A. I don't think there's a single answer to 11:47:09 that, and that's why we rely on a consensus 11:47:11 ballot that requires two-thirds of our 11:47:15 technical committee to move anything forward. 11:47:16 That's part of the open consensus process in 11:47:20 that you need two-thirds of a balanced 11:47:22 committee to agree on a technical change to 11:47:26 move it forward. 11:47:28 Each party is going to have a 11:47:29 | 4 5 6 7 8 9 10 11 12 13 | would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34 balanced committee of different experts, 11:49:36 topical experts in that area, will each bring 11:49:39 a different set of personal criteria, 11:49:39 personal decisionmaking that will decide 11:49:43 what's going to move forward. 11:49:45 Q. I'd like for you to tell me what some of 11:49:47 those personal criteria are that you were 11:49:49 aware of, based on your interactions with 11:49:52 |
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| | Q. Let me rephrase it differently because I'm 11:50:27 | 1 | we call them enforcers, to attend our 11:53:46 |
|--|---|---|--|
| 2 | not sure you're responding to my question 11:50:29 | 2 | committee meetings. 11:53:48 |
| 3 | about criteria. What are the different 11:50:31 | 3 | Q. Do any does NFPA pay any persons for their 11:53:50 |
| 4 | reasons, not what background information are 11:50:34 | 4 | time in participation in the technical 11:53:57 |
| 5 | they acting on, but what are the different 11:50:38 | 5 | committee work? 11:54:02 |
| 6 | goals that, to your knowledge, technical 11:50:40 | 6 | A. NFPA does not pay for time, but what we do 11:54:06 |
| 7 | committee members have in deciding whether to 11:50:45 | 7 | for public sector officials who we classify 11:54:09 |
| 8 | progress certain text to a ballot? 11:50:49 | 8 | as enforcers, we have an enforcer fund which 11:54:12 |
| 9 | MR. REHN: Objection as to form. 11:50:54 | 9 | we pay 80 percent of their associated travel 11:54:15 |
| 10 | A. I think the biggest overarching goal is the 11:50:55 | 10 | to a committee meeting, including hotel, 11:54:15 |
| 11 | accomplishment of the NFPA mission. They 11:51:03 | 11 | airfare, et cetera. 11:54:20 |
| 12 | want to ultimately reduce life loss, injury, 11:51:04 | 12 | Q. What is the motivation of persons, as you 11:54:20 |
| 13 | property loss, economic loss due to fire and 11:51:09 | 13 | understand it, to participate in technical 11:54:23 |
| 14 | other related hazards. 11:51:11 | 14 | committees? 11:54:28 |
| 15 | Q. How do decisions regarding progressing 11:51:13 | 15 | MR. REHN: Object to the form. 11:54:29 |
| 16 | certain text to a ballot touch upon that 11:51:17 | 16 | A. I think there's lots of motivations. I think 11:54:32 |
| 17 | mission? 11:51:24 | 17 | |
| | | 17 | overwhelmingly the number one motivation, in 11:54:35 my opinion and my years of service, is the 11:54:37 |
| 18 | | | 5 F |
| 19 20 | A. Fundamentally does it progress towards 11:51:30 | 19 | overarching mission of NFPA. Our mission of 11:54:40 |
| 20 | accomplishing that mission? Does the 11:51:33 | 20 | safety is very attractive to many people. 11:54:44 |
| 21 | institution of a new technology or a new 11:51:37 | 21 | Many of our volunteers not only 11:54:47 |
| 22 | requirement or modifying an existing 11:51:39 | 22 | volunteer to participate in the NFPA process 11:54:49 |
| 23 | requirement lead to better life safety, 11:51:42 | 23 | but also volunteer their time to do so, and 11:54:51 |
| 24 | better fire protection, better electrical 11:51:46 | 24 | that's a strong indication to me that that's 11:54:54 |
| 25 | safety, better protection of our nation's 11:51:48 Page 74 | 25 | the primary motivation. 11:54:56 Page 76 |
| 1 | first responders? Does it accomplish the 11:51:51 | 1 | Q. Are you aware of any person whose primary 11:55:02 |
| 2 | mission? So that's the best way. 11:51:53 | 2 | motivation is to receive some financial 11:55:05 |
| | | - 1 | |
| 3 | Q. Does it would you say that a general 11:51:59 | 3 | reward for participation in the technical 11:55:10 |
| 3 4 | Q. Does it would you say that a general 11:51:59 question that technical committees address in 11:52:05 | | reward for participation in the technical 11:55:10 committee process? 11:55:13 |
| | | 3 | |
| 4 | question that technical committees address in 11:52:05 | 3 4 | committee process? 11:55:13 |
| 4 5 | question that technical committees address in 11:52:05 deciding whether to progress certain text to 11:52:18 | 3 4 5 | committee process? 11:55:13 A. I'm not aware of an individual, per se, but I 11:55:21 |
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| 4 5 6 7 8 9 10 11 12 13 14 15 16 | question that technical committees address in 11:52:05 deciding whether to progress certain text to 11:52:18 a ballot is whether the proposed change will 11:52:22 improve outcomes? 11:52:29 MR. REHN: Object to the form of the 11:52:34 question. 11:52:37 A. I would speculate that each decision would be 11:52:41 in guidance or in alignment with improving 11:52:47 safety. And those would be the outcomes, 11:52:53 improving safety, reducing loss, preventing 11:52:53 incidents from happening again that resulted 11:52:57 in life loss injuries, property loss, 11:52:59 et cetera. 11:53:04 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 | committee process? 11:55:13 A. I'm not aware of an individual, per se, but I 11:55:21 would speculate that these people are experts 11:55:26 in their fields, and there's professional 11:55:28 recognition and acknowledgment for being on 11:55:32 an NFPA technical committee. 11:55:36 MR. BRIDGES: Why don't we take a 11:55:46 break. We've been going for a while. What 11:55:47 time is it? 11:55:51 VIDEOGRAPHER: 11:55. 11:55:51 MR. BRIDGES: We'll keep going. 11:55:52 VIDEOGRAPHER: There's another 11:55:54 15 minutes on the tape. 11:55:55 |
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| 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | question that technical committees address in 11:52:05deciding whether to progress certain text to11:52:18a ballot is whether the proposed change will11:52:22improve outcomes?11:52:29MR. REHN: Object to the form of the11:52:37A. I would speculate that each decision would be11:52:41in guidance or in alignment with improving11:52:47safety. And those would be the outcomes,11:52:53incidents from happening again that resulted11:52:59et cetera.11:53:04Q. Who pays for members of the technical11:53:15 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | committee process? 11:55:13 A. I'm not aware of an individual, per se, but I 11:55:21 would speculate that these people are experts 11:55:26 in their fields, and there's professional 11:55:28 recognition and acknowledgment for being on 11:55:32 an NFPA technical committee. 11:55:36 MR. BRIDGES: Why don't we take a 11:55:46 break. We've been going for a while. What 11:55:47 time is it? 11:55:51 VIDEOGRAPHER: 11:55. 11:55:51 MR. BRIDGES: We'll keep going. 11:55:52 VIDEOGRAPHER: There's another 11:55:54 15 minutes on the tape. 11:55:55 MR. BRIDGES: We'll keep going 11:55:56 another 15 minutes. 11:55:58 |
| 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 | question that technical committees address in 11:52:05 deciding whether to progress certain text to 11:52:18 a ballot is whether the proposed change will 11:52:22 improve outcomes? 11:52:29 MR. REHN: Object to the form of the 11:52:34 question. 11:52:37 A. I would speculate that each decision would be 11:52:41 in guidance or in alignment with improving 11:52:47 safety. And those would be the outcomes, 11:52:53 improving safety, reducing loss, preventing 11:52:53 incidents from happening again that resulted 11:52:57 in life loss injuries, property loss, 11:53:04 Q. Who pays for members of the technical 11:53:11 committees to participate in their work? 11:53:15 A. Again, a lot of my answers are it depends. 11:53:23 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 | committee process?11:55:13A. I'm not aware of an individual, per se, but I11:55:21would speculate that these people are experts11:55:26in their fields, and there's professional11:55:28recognition and acknowledgment for being on11:55:32an NFPA technical committee.11:55:36MR. BRIDGES:Why don't we take a11:55:5111:55:51VIDEOGRAPHER:11:55:52VIDEOGRAPHER:11:55:55MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:Will keep going11:55:56another 15 minutes.11:55:58Q. How can the public gain access without11:56:15 |
| 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 | question that technical committees address in 11:52:05deciding whether to progress certain text to 11:52:18a ballot is whether the proposed change will 11:52:22improve outcomes?11:52:29MR. REHN: Object to the form of the 11:52:34question.11:52:37A. I would speculate that each decision would be 11:52:41in guidance or in alignment with improving 11:52:47safety. And those would be the outcomes, 11:52:53incidents from happening again that resulted 11:52:57in life loss injuries, property loss, 11:52:59et cetera.11:53:04Q. Who pays for members of the technical 11:53:11committees to participate in their work?11:53:23In this case, you have everything from 11:53:26 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 | committee process?11:55:13A. I'm not aware of an individual, per se, but I11:55:21would speculate that these people are experts11:55:26in their fields, and there's professional11:55:28recognition and acknowledgment for being on11:55:32an NFPA technical committee.11:55:36MR. BRIDGES:Why don't we take abreak.We've been going for a while.What11:55:51VIDEOGRAPHER:11:55:51MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:WiDEOGRAPHER:11:55:55MR. BRIDGES:11:55:55MR. BRIDGES:11:55:55MR. BRIDGES:11:55:55MR. BRIDGES:11:55:55MR. BRIDGES:11:55:56another 15 minutes.11:55:58Q. How can the public gain access without11:56:15payment to NFPA's codes and standards?11:56:33 |
| 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | question that technical committees address in 11:52:05 deciding whether to progress certain text to 11:52:18 a ballot is whether the proposed change will 11:52:22 improve outcomes? 11:52:29 MR. REHN: Object to the form of the 11:52:34 question. 11:52:37 A. I would speculate that each decision would be 11:52:41 in guidance or in alignment with improving 11:52:47 safety. And those would be the outcomes, 11:52:53 improving safety, reducing loss, preventing 11:52:53 incidents from happening again that resulted 11:52:57 in life loss injuries, property loss, 11:52:59 et cetera. 11:53:04 Q. Who pays for members of the technical 11:53:11 committees to participate in their work? 11:53:15 A. Again, a lot of my answers are it depends. 11:53:26 companies to people's own time, people taking 11:53:30 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | committee process?11:55:13A. I'm not aware of an individual, per se, but I11:55:21would speculate that these people are experts11:55:26in their fields, and there's professional11:55:28recognition and acknowledgment for being on11:55:32an NFPA technical committee.11:55:36MR. BRIDGES: Why don't we take a11:55:46break. We've been going for a while. What11:55:47time is it?11:55:51VIDEOGRAPHER:11:55:51MR. BRIDGES: We'll keep going.11:55:5415 minutes on the tape.11:55:55MR. BRIDGES: We'll keep going11:55:56another 15 minutes.11:55:55Q. How can the public gain access without11:56:33A. NFPA provides free read-only access to all of11:56:37 |
| 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | question that technical committees address in 11:52:05 deciding whether to progress certain text to 11:52:18 a ballot is whether the proposed change will 11:52:22 improve outcomes? 11:52:29 MR. REHN: Object to the form of the 11:52:34 question. 11:52:37 A. I would speculate that each decision would be 11:52:41 in guidance or in alignment with improving 11:52:47 safety. And those would be the outcomes, 11:52:53 improving safety, reducing loss, preventing 11:52:57 in life loss injuries, property loss, 11:52:59 et cetera. 11:53:04 Q. Who pays for members of the technical 11:53:11 committees to participate in their work? 11:53:23 In this case, you have everything from 11:53:26 companies to people's own time, people taking 11:53:30 vacation time and in some cases, NFPA 11:53:34 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | committee process?11:55:13A. I'm not aware of an individual, per se, but I11:55:21would speculate that these people are experts11:55:26in their fields, and there's professional11:55:28recognition and acknowledgment for being on11:55:32an NFPA technical committee.11:55:36MR. BRIDGES:Why don't we take abreak.We've been going for a while.What11:55:51VIDEOGRAPHER:11:55:51MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:WIDEOGRAPHER:11:55:55MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:WIDEOGRAPHER:11:55:55MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:Will keep going.11:55:56another 15 minutes.11:55:58Q. How can the public gain access without11:56:15payment to NFPA's codes and standards?11:56:33A. NFPA provides free read-only access to all of11:56:37our codes and standards to ensure that11:56:42 |
| 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | question that technical committees address in 11:52:05 deciding whether to progress certain text to 11:52:18 a ballot is whether the proposed change will 11:52:22 improve outcomes? 11:52:29 MR. REHN: Object to the form of the 11:52:34 question. 11:52:37 A. I would speculate that each decision would be 11:52:41 in guidance or in alignment with improving 11:52:47 safety. And those would be the outcomes, 11:52:53 improving safety, reducing loss, preventing 11:52:57 in life loss injuries, property loss, 11:52:59 et cetera. 11:53:04 Q. Who pays for members of the technical 11:53:11 committees to participate in their work? 11:53:23 In this case, you have everything from 11:53:26 companies to people's own time, people taking 11:53:34 reimburses participation through our enforcer 11:53:37 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | committee process?11:55:13A. I'm not aware of an individual, per se, but I11:55:21would speculate that these people are experts11:55:26in their fields, and there's professional11:55:28recognition and acknowledgment for being on11:55:32an NFPA technical committee.11:55:36MR. BRIDGES:Why don't we take abreak.We've been going for a while.What11:55:51VIDEOGRAPHER:11:55:51MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:WIDEOGRAPHER:11:55:55MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:WIDEOGRAPHER:11:55:55MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:We'll keep going.11:55:56another 15 minutes.11:55:58Q. How can the public gain access without11:56:15payment to NFPA's codes and standards?11:56:33A. NFPA provides free read-only access to all of11:56:37our codes and standards to ensure that11:56:46 |
| 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | question that technical committees address in 11:52:05 deciding whether to progress certain text to 11:52:18 a ballot is whether the proposed change will 11:52:22 improve outcomes? 11:52:29 MR. REHN: Object to the form of the 11:52:34 question. 11:52:37 A. I would speculate that each decision would be 11:52:41 in guidance or in alignment with improving 11:52:47 safety. And those would be the outcomes, 11:52:53 improving safety, reducing loss, preventing 11:52:57 in life loss injuries, property loss, 11:52:59 et cetera. 11:53:04 Q. Who pays for members of the technical 11:53:11 committees to participate in their work? 11:53:23 In this case, you have everything from 11:53:26 companies to people's own time, people taking 11:53:30 vacation time and in some cases, NFPA 11:53:34 | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | committee process?11:55:13A. I'm not aware of an individual, per se, but I11:55:21would speculate that these people are experts11:55:26in their fields, and there's professional11:55:28recognition and acknowledgment for being on11:55:32an NFPA technical committee.11:55:36MR. BRIDGES:Why don't we take abreak.We've been going for a while.What11:55:51VIDEOGRAPHER:11:55:51MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:WIDEOGRAPHER:11:55:55MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:WIDEOGRAPHER:11:55:55MR. BRIDGES:We'll keep going.11:55:55MR. BRIDGES:Will keep going.11:55:56another 15 minutes.11:55:58Q. How can the public gain access without11:56:15payment to NFPA's codes and standards?11:56:33A. NFPA provides free read-only access to all of11:56:37our codes and standards to ensure that11:56:42 |

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| 4 5 6 | electrical style manual, which applies to our 02:50:24 electrical documents. 02:50:27 Q. Do the terms "annex" and "appendix" coexist 02:50:37 in NFPA's forms today? 02:50:45 MR. REHN: Object to the form. 02:50:48 | 1 2 3 4 | Q. Another example is changing the word appendix 02:53:17 to annex, correct? 02:53:20 A. To the best of my recollection, that's an 02:53:22 example that I could think of why we shifted 02:53:25 |
|--|--|------------------|--|
| 3 (4 5 6 7 <i>A</i> 8 9 | Q. Do the terms "annex" and "appendix" coexist02:50:37in NFPA's forms today?02:50:45 | 3 | A. To the best of my recollection, that's an 02:53:22 |
| 4 5 6 7 A 8 9 | in NFPA's forms today? 02:50:45 | | |
| 5 6 7 A 8 9 | | 4 | |
| 6 7 A 8 9 | MR. REHN: Object to the form. 02:50:48 | - 1 | |
| 7 A 8 9 | X 1 C 1 C | 5 | there, but the best example I can give you is 02:53:28 |
| 8 9 | Lacks foundation. 02:50:54 | 6 | a single chapter where all the definitions 02:53:30 |
| 9 | A. We updated our manual style in, I believe it 02:50:56 | 7 | are included. 02:53:33 |
| | was year 2000, and we changed the term 02:51:02 | 8 | Q. Then you mentioned that there were updates to 02:53:36 |
| 10 | "appendix" to "annex" at that time to be 02:51:05 | 9 | disclaimers and copyright releases; is that 02:53:40 |
| | consistent with other standards developers 02:51:09 | 10 | correct? 02:53:47 |
| 11 | terminology. 02:51:12 | 11 | A. That is correct. Over my 20 years, I'm aware 02:53:48 |
| 12 | And so it's my opinion that most, if 02:51:14 | 12 | that updates were added to the forms or just 02:53:51 |
| 13 | not all, of our documents, many of our 02:51:17 | 13 | to the forms on a not on a specific basis, 02:53:57 |
| 14 | documents have gone through the process of a 02:51:21 | 14 | but as needed. 02:54:00 |
| 15 | full revision where that is changed from 02:51:23 | 15 | Q. What updates were needed to the disclaimers 02:54:02 |
| 16 | appendix to annex. 02:51:26 | 16 | and copyright releases? 02:54:06 |
| 17 Q | Q. You said NFPA made the change to be 02:51:29 | 17 | MR. REHN: Object to the form. May 02:54:08 |
| 18 | consistent with other standards development 02:51:33 | 18 | call for a legal opinion. Ambiguous with 02:54:10 |
| 19 | organizations' terminology; is that correct? 02:51:35 | 19 | respect to the terms used in the question. 02:54:14 |
| 20 A | A. That's correct. 02:51:39 | 20 | A. From my perspective, my team's perspective, 02:54:17 |
| 21 0 | Q. Is there a general style manual for standards 02:51:41 | 21 | we never got into the details of those. It 02:54:22 |
| 22 | developers terminology? 02:51:46 | 22 | was often our legal team would ask us to 02:54:24 |
| 23 A | A. Not that I'm aware of. 02:51:53 | 23 | update our forms, and we would accomplish 02:54:27 |
| 24 0 | Q. Do the different standards developers tend to 02:51:55 | 24 | that through our process. 02:54:29 |
| 25 | converge around using words in similar 02:51:58 | 25 | Q. What were some of the changes to the forms 02:54:31 |
| | Page 138 | _ | Page 140 |
| 1 | fashion? 02:52:01 | 1 | that you recall as part of those updates? 02:54:35 |
| 2 | MR. REHN: Object to the form. 02:52:03 | 2 | MR. REHN: Objection. Documents 02:54:38 |
| 3 A | A. In my opinion I would say standard developers 02:52:08 | 3 | speak for themselves. 02:54:40 |
| 4 | converge around terminology and format that 02:52:13 | 4 | A. I think some of the major changes are 02:54:43 |
| 5 | works for their constituents that utilize 02:52:15 | 5 | consistent format. If you notice 02:54:46 |
| 6 | their standards. 02:52:18 | 6 | historically, there was lots of different 02:54:49 |
| 7 Q | Q. Does that lead to some convergence among the 02:52:20 | 7 | formattings and layouts. Having consistent 02:54:49 |
| 8 | practices of various standards development 02:52:23 | 8 | format, consistent titles, consistent look 02:54:51 |
| 9 | organizations? 02:52:26 | 9 | and feel is probably the biggest ones that I 02:54:55 |
| 10 | MR. REHN: Object to the form. May 02:52:33 | 10 | was that I'm aware of and was involved in. 02:54:59 |
| 11 | call for speculation. 02:52:34 | 11 | Q. My question was specifically to the updates 02:55:02 |
| 12 A | A. I would from my personal opinion, I view 02:52:37 | 12 | of disclaimers and copyright releases. What 02:55:05 |
| 13 | it as a usability and we want to make it as 02:52:41 | 13 | updates do you recall to the text of the 02:55:09 |
| 14 | easy and as possible for users to understand 02:52:45 | 14 | disclaimers and copyright releases? 02:55:12 |
| 15 | the structure of the standard and the 02:52:49 | 15 | MR. REHN: Object to the form. 02:55:15 |
| 16 | requirements and the layout of the documents, 02:52:51 | 16 | A. That was not, again, not part of my 02:55:18 |
| 17 | so often those changes may end up in a common 02:52:53 | 17 | responsibility. Oftentimes we were given a 02:55:21 |
| 18 | format to make it easier to understand. 02:52:57 | 18 | set of text to insert as that part of the 02:55:23 |
| | Q. A common format with some other standards 02:52:59 | 19 | form and we didn't do a line by line 02:55:26 |
| 20 | developers organizations? 02:53:01 | 20 | comparison. That was our job was to 02:55:29 |
| 21 | MR. REHN: Object to the form. 02:53:05 | 21 | implement the appropriate disclaimers, which 02:55:31 |
| | Vague. 02:53:06 | 21 | was legal's responsibility to provide to us 02:55:33 |
| 22 | 6 | 23 | |
| 22 23 A | A THINK VIEW VES FOR EXAMPLE A DIVENSET 17753-06 | | and ensure many gor in mere U/155 |
| 23 A | A. In my view, yes. For example, a given set 02:53:06 chapter where all the definitions are 02:53:13 | | and ensure that it got in there. 02:55:35 Q What are some of the changes that you recall? 02:55:37 |
| | A. In my view, yes. For example, a given set 02:53:06 chapter where all the definitions are 02:53:13 contained is a good example. 02:53:14 | 23 24 25 | and ensure that it got in there. 02:55:35 Q. What are some of the changes that you recall? 02:55:37 MR. REHN: Objection. Asked and 02:55:40 |

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| 1 | Electrical Code; is that correct? 03:04:18 | 1 | Exhibit 1250. 03:10:40 |
|----|---|----|---|
| 2 | MR. REHN: Objection as to form. 03:04:21 | 2 | Q. Do you know Mr. Belke, James C. Belke? 03:10:41 |
| 3 | A. It appears based on Line Item 1A that the 03:04:26 | 3 | A. No, sir. 03:10:46 |
| 4 | document the person was submitting it on was 03:04:29 | 4 | Q. Do you know whether he's a member of any 03:10:46 |
| 5 | to the National Electrical Code. 03:04:32 | 5 | technical committee? 03:10:50 |
| 6 | Q. There was normally didn't you say there 03:04:34 | 6 | A. Not off the top of my head. 03:10:55 |
| 7 | was normally a different type of form for 03:04:36 | 7 | Q. Do you know what the annotations in 03:10:56 |
| 8 | submissions for the National Electrical Code? 03:04:39 | 8 | handwriting various places in the form 03:11:05 |
| 9 | A. If we look at some of the forms you've 03:04:45 | 9 | indicate? There's a checkmark in several 03:11:14 |
| 10 | submitted to me, some of them had the title. 03:04:47 | 10 | different places. There's some asterisks, 03:11:21 |
| 11 | The title was different, said form for the X 03:04:49 | 11 | there's a pound sign A, pound sign B, pound 03:11:32 |
| 12 | edition of the National Electrical Code, and 03:04:51 | 12 | sign C. 03:11:36 |
| 13 | so we didn't prohibit you from using any 03:04:53 | 13 | MR. REHN: Is that the question? 03:11:46 |
| 14 | standard form. 03:04:57 | 14 | MR. BRIDGES: Yes. 03:11:48 |
| 15 | (Exhibit 1248 marked for 03:05:30 | 15 | MR. REHN: Objection that it's 03:11:49 |
| 16 | identification.) 03:06:03 | 16 | compound. 03:11:50 |
| 17 | (Pause) 03:06:05 | 17 | A. So let me first answer the first part and we 03:11:57 |
| 18 | Q. Do you recognize Exhibit 1248 as a form for 03:06:05 | 18 | can follow up if we need to. Each change 03:12:00 |
| 19 | proposal that NFPA has maintained in the 03:06:44 | 19 | that came in was processed, again, by 03:12:03 |
| 20 | ordinary course of business as part of its 03:06:47 | 20 | full-time staff to verify signatures and 03:12:06 |
| 21 | standards development process? 03:06:50 | 21 | copyright concerns. And if you notice on 03:12:09 |
| 22 | A. Yes, Exhibit 1248 does look typical. 03:06:53 | 22 | the first page under Proposals, not original 03:12:11 |
| 23 | (Exhibit 1249 marked for 03:07:33 | 23 | material, there's supporting material which 03:12:15 |
| 24 | identification.) 03:07:41 | 24 | has an attached CSB report. 03:12:16 |
| 25 | Q. Do you recognize Exhibit 1249 as a form for 03:07:41 Page 146 | 25 | And it appears that someone wrote 03:12:26 Page 148 |
| 1 | proposal that NFPA has maintained in the 03:07:53 | 1 | down that it was not being submitted as 03:12:29 |
| 2 | ordinary course of business in its standards 03:07:58 | 2 | change but as supporting material to support 03:12:31 |
| 3 | development process? 03:08:04 | 3 | a change. 03:12:35 |
| 4 | A. Yes, Exhibit 1249 does look typical. 03:08:13 | 4 | Q. Go ahead. 03:12:41 |
| 5 | Q. And some persons might suggest proposals with 03:08:21 | 5 | A. The checkmarks, each of these changes had to 03:12:42 |
| 6 | attachments where they can't fit the text of 03:08:27 | 6 | be keyed manually by the staff who verified 03:12:45 |
| 7 | the proposal in the lines on the form. And 03:08:33 | 7 | all the text, editorial and production staff, 03:12:47 |
| 8 | this exhibit reflects an attachment on the 03:08:36 | 8 | and oftentimes they would check the forms as 03:12:51 |
| 9 | reverse page of Exhibit 1249; is that 03:08:42 | 9 | they worked through them to ensure they had 03:12:53 |
| 10 | correct? 03:08:45 | 10 | captured everything. That in this case it 03:12:55 |
| 11 | A. Based upon my review of the statement of 03:08:47 | 11 | would be speculation on my part that that's 03:12:57 |
| 12 | Item 4 and the proposed text on the back, it 03:09:02 | 12 | what those checkmarks are there for. 03:12:59 |
| 13 | appears to be consistent that the two pages 03:09:06 | 13 | (Exhibit 1251 marked for 03:13:22 |
| 14 | were copied correctly. 03:09:08 | 14 | identification.) 03:13:30 |
| 15 | (Exhibit 1250 marked for 03:09:26 | 15 | Q. Does Exhibit strike that. 03:13:30 |
| 16 | identification.) 03:09:41 | 16 | Do you recognize 1251 as a document 03:13:46 |
| 17 | Q. I've handed you Exhibit 1250. Do you 03:09:46 | 17 | that NFPA maintains in the ordinary course of 03:13:49 |
| 18 | recognize this as a form for proposals that 03:10:01 | 18 | business in the standards development 03:13:52 |
| 19 | NFPA has maintained in the ordinary course of 03:10:09 | 19 | process? 03:13:53 |
| 20 | business in its standards development 03:10:13 | 20 | A. Exhibit 1251 does look typical for a proposal 03:13:54 |
| 21 | process? 03:10:17 | 21 | form. 03:13:58 |
| 22 | A. (Witness examines document) Based upon my 03:10:18 | 22 | Q. So the answer is yes? 03:13:59 |
| 23 | review, it appears that this is typical. 03:10:33 | 23 | MR. REHN: Object to the form. 03:14:01 |
| 24 | Q. So that's a yes? 03:10:36 | 24 | A. Yes, Exhibit 1251 does look typical. 03:14:05 |
| 25 | A. That's a yes. It appears to be typical, 03:10:37 | 25 | 03:14:30 |
| 1 | Page 147 | | Page 149 |

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| 1 | | | |
|--|---|--|--|
| 1 | MR. REHN: Object to the form. 06:01:45 | 1 | Q. You can't give any estimate at all? 06:03:44 |
| 2 | Argumentative. Question has been asked and 06:01:46 | 2 | A. No. 06:03:46 |
| 3 | answered. 06:01:49 | 3 | Q. Were you ever aware of how much time they 06:03:46 |
| 4 | A. And my response remains the same that I can't 06:01:50 | 4 | spent on the task? 06:03:54 |
| 5 | speculate specifically to that level of 06:01:52 | 5 | A. I'm aware of the full-time resources that it 06:03:57 |
| 6 | detail of their day-to-day tasks. 06:01:54 | 6 | takes to accomplish our process of supporting 06:04:00 |
| 7 | Q. You can speculate as to specific detail about 06:01:57 | 7 | our technical committees. 06:04:03 |
| 8 | other tasks, but not about these tasks? 06:02:00 | 8 | Q. But you're unaware of how much time they 06:04:08 |
| 9 | MR. REHN: Objection. 06:02:02 | 9 | spend carrying out the policy that you 06:04:10 |
| 10 | Argumentative. Mischaracterizes the 06:02:03 | 10 | described? 06:04:14 |
| 11 | testimony. 06:02:05 | 11 | MR. REHN: Objection. 06:04:14 |
| 12 | Q. Why are you not answering the question I've 06:02:05 | 12 | Argumentative. 06:04:14 |
| 13 | asked, which is, what's your best estimate of 06:02:07 | 13 | A. I believe I've answered your question. 06:04:17 |
| 14 | the time, of the percentage of time those 06:02:10 | 14 | Q. What verification strike that. 06:04:19 |
| 15 | persons spent on checking for signatures and 06:02:12 | 15 | What efforts did NFPA make to obtain 06:04:34 |
| 16 | copyright information in the submissions? 06:02:17 | 16 | assignments from the companies that employed 06:04:38 |
| 17 | MR. REHN: Objection. 06:02:20 | 17 | individuals who submitted proposals or 06:04:48 |
| 18 | Argumentative. Asked and answered. 06:02:21 | 18 | comments for NFPA's codes and standards? 06:04:53 |
| 19 | A. I can speculate on their total workload, 06:02:24 | 19 | MR. REHN: Object to the form. It's 06:04:58 |
| 20 | their tasks they took 06:02:27 | 20 | ambiguous. It assumes facts. There's some 06:05:00 |
| 21 | Q. That wasn't my question. My question is, 06:02:29 | 21 | embedded legal conclusions. 06:05:04 |
| 22 | what percentage applied to checking for 06:02:30 | 22 | A. NFPA verifies through our policy the 06:05:07 |
| 23 | signatures and copyright information? That's 06:02:33 | 23 | submission from the individual. We do not go 06:05:11 |
| 24 | my question. Is it clear? 06:02:37 | 24 | to their companies to verify authority of 06:05:16 |
| 25 | MR. REHN: Objection. 06:02:39 Page 218 | 25 | their signature. 06:05:18 Page 220 |
| | 1 420 210 | | 1 ugo 220 |
| 1 | Argumentative. 06:02:39 | 1 | Q. And how does NFPA verify submissions from the 06:05:20 |
| 2 | Q. Is the question clear? 06:02:41 | 2 | individuals? 06:05:30 |
| 3 | A. No. 06:02:43 | 3 | MR. REHN: Objection. I think this 06:05:36 |
| 4 | Q. What's unclear about it? Do you understand 06:02:44 | 4 | topic has been extensively asked and answered 06:05:38 |
| 5 | what checking for signatures means in looking 06:02:47 | 5 | at this point. 06:05:40 |
| 6 | at the assignment for copyright forms? Do 06:02:51 | 6 | A. Several ways, one of which includes verifying 06:05:43 |
| 7 | you understand? 06:02:58 | 7 | that the submitter has signed the release 06:05:46 |
| 8 | MR. REHN: Objection. 06:02:58 | 8 | form indicating it is their right or their 06:05:48 |
| 9 | Argumentative. 06:02:59 | 9 | authority to release it. 06:05:53 |
| 10 | A. I understand that we have a policy that each 06:03:00 | 10 | Q. What else does NFPA do to verify the 06:05:54 |
| 11 | and every proposal and comment is checked for 06:03:02 | 11 | submission from the individual? 06:06:06 |
| 12 | copyright and any associated submitted 06:03:04 | 12 | MR. REHN: Same objection. 06:06:08 |
| 13 | material is also checked. I have a team, a 06:03:07 | 13 | A. Another example is if we review the material 06:06:10 |
| 14 | full-time staff that that is one of their 06:03:09 | 14 | and there's an obvious copyright statement 06:06:14 |
| 1 | | 15 | that is not of that individual who submitted 06:06:18 |
| 15 | primary tasks to do each and every day. 06:03:11 | | |
| 15 16 | Q. Great. I'm glad to know about the policy. 06:03:14 | 16 | it, we then contact them and if possible, we 06:06:21 |
| 16 17 | Q. Great. I'm glad to know about the policy.06:03:14Now my question is, what percentage of their06:03:18 | 16 17 | it, we then contact them and if possible, we 06:06:21 contact the owner of the copyright of the 06:06:24 |
| 16 | Q. Great. I'm glad to know about the policy. 06:03:14 | 16 | |
| 16 17 | Q. Great. I'm glad to know about the policy.06:03:14Now my question is, what percentage of their06:03:18time do you estimate, your best estimate,06:03:23that they spend carrying out that policy?06:03:27 | 16 17 | contact the owner of the copyright of the 06:06:24 |
| 16 17 18 | Q. Great. I'm glad to know about the policy.06:03:14Now my question is, what percentage of their06:03:18time do you estimate, your best estimate,06:03:23 | 16 17 18 | contact the owner of the copyright of the06:06:24statement that's within that attached06:06:27 |
| 16 17 18 19 | Q. Great. I'm glad to know about the policy.06:03:14Now my question is, what percentage of their06:03:18time do you estimate, your best estimate,06:03:23that they spend carrying out that policy?06:03:27 | 16 17 18 19 | contact the owner of the copyright of the06:06:24statement that's within that attached06:06:27material.06:06:28 |
| 16 17 18 19 20 | Q. Great. I'm glad to know about the policy.06:03:14Now my question is, what percentage of their06:03:18time do you estimate, your best estimate,06:03:23that they spend carrying out that policy?06:03:27MR. REHN: Objection. Asked and06:03:30 | 16 17 18 19 20 | contact the owner of the copyright of the statement that's within that attached06:06:24material.06:06:28Q. What else does NFPA do to verify the06:06:31 |
| 16 17 18 19 20 21 | Q. Great. I'm glad to know about the policy.06:03:14Now my question is, what percentage of their06:03:18time do you estimate, your best estimate,06:03:23that they spend carrying out that policy?06:03:27MR. REHN: Objection. Asked and06:03:30answered.06:03:31 | 16 17 18 19 20 21 | contact the owner of the copyright of the statement that's within that attached06:06:24material.06:06:28Q. What else does NFPA do to verify the submission from the individual?06:06:31 |
| 16 17 18 19 20 21 22 | Q. Great. I'm glad to know about the policy.06:03:14Now my question is, what percentage of their06:03:18time do you estimate, your best estimate,06:03:23that they spend carrying out that policy?06:03:27MR. REHN:Objection.Asked and06:03:30answered.06:03:31A. I would restate that, due to all the06:03:34 | 16 17 18 19 20 21 22 | contact the owner of the copyright of the statement that's within that attached06:06:24material.06:06:28Q. What else does NFPA do to verify the submission from the individual?06:06:35MR. REHN: Same objection.06:06:37 |
| 16 17 18 19 20 21 22 23 | Q. Great. I'm glad to know about the policy. 06:03:14 Now my question is, what percentage of their 06:03:18 time do you estimate, your best estimate, 06:03:23 that they spend carrying out that policy? 06:03:27 MR. REHN: Objection. Asked and 06:03:30 answered. 06:03:31 A. I would restate that, due to all the 06:03:34 variables and the amount of variations that 06:03:37 | 16 17 18 19 20 21 22 23 | contact the owner of the copyright of the statement that's within that attached06:06:24material.06:06:28Q. What else does NFPA do to verify the submission from the individual?06:06:35MR. REHN: Same objection.06:06:37A. That's to the best of my recollection, of:06:06:44 |

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| 1 | Q. Yes. 06:51:42 | 1 | correlation across the entire standard 06:54:56 |
|----------|--|----------|--|
| 2 | A. Top left-hand paragraph below the bold 06:51:52 | 2 | itself. 06:54:59 |
| 3 | discusses what we used to indicate changes 06:51:57 | 3 | Q. And these pages identify various code-making 06:55:05 |
| 4 | including shaded or bulleting, like a dot. 06:51:59 | 4 | panels and then they indicate which portions 06:55:12 |
| 5 | Q. It says, "Changes other than editorial are 06:52:07 | 5 | of the National Electrical Code they were 06:55:16 |
| 6 | highlighted with gray shading." Do you see 06:52:13 | 6 | responsible for; is that correct? 06:55:18 |
| 7 | that? 06:52:15 | 7 | MR. REHN: Object to the form of the 06:55:25 |
| 8 | A. Yes. 06:52:15 | 8 | question. 06:55:26 |
| 9 | Q. What's an example of some editorial changes 06:52:16 | 9 | A. That is my understanding. 06:55:27 |
| 10 | that would have occurred between editions of 06:52:19 | 10 | Q. And it indicates the and this list 06:55:29 |
| 11 | the NEC? 06:52:22 | 11 | of these persons who pertining the work 06:55:34 |
| 12 | A. Sample could be a spelling error.06:52:23O. Anything else?06:52:34 | 12 13 | of those persons who participated in the work 06:55:41 |
| 13 | | | that's reflected in this edition; is that 06:55:45 |
| 14 | A. The only thing I can think of is occasionally 06:52:36 | 14 | correct? 06:55:50 |
| 15 16 | documents, paragraphs roll into each other, 06:52:46 so spacing, things like that. 06:52:50 | 15 16 | MR. REHN: Object to the form. 06:55:50 A. Our committee lists indicate the name of the 06:55:51 |
| | | | |
| 17 18 | Q. The document contains lists of persons 06:52:52 starting at Page 17547 up through Page 17558, 06:53:07 | 17 18 | individual who holds the seat, whether 06:55:56 they're a principal or alternate, what 06:55:59 |
| | | | |
| 19 20 | correct? 06:53:18 MR. FEE: Could you repeat that. 06:53:25 | 19 20 | company they work for and, if any,06:56:01representation if they do have a06:56:03 |
| 20 | What was the question? 06:53:30 | 20 | representation. 06:56:05 |
| 21 | Q. The document contains lists of persons 06:53:31 | 21 | Q. So let's say in the case of Page 17551 06:56:08 |
| 22 | starting at Page 17547 up through Page 17558, 06:53:34 | 22 | A. 551. 06:56:20 |
| 23 24 | correct? 06:53:39 | 23 | Q. There's a reference to John Ray of Duke 06:56:22 |
| 24 | A. Just to make sure I understand your question, 06:53:41 | 24 | Energy Corporation and it says, "Rep, 06:56:28 |
| | A. Just to make sure runderstand your question, 00.55.41 Page 238 | | Page 240 |
| 1 | you just indicated there is a list of 06:53:49 | 1 | Electric Light and Power Group." What does 06:56:29 |
| 2 | persons? 06:53:50 | 2 | that mean? 06:56:33 |
| 3 | Q. Right. 06:53:51 | 3 | A. Before I answer the question, I'm just having 06:56:38 |
| 4 | A. Those pages appear to contain lists of 06:53:54 | 4 | trouble finding John's name. Is he on the 06:56:41 |
| 5 | technical committee members as well as NFPA 06:53:57 | 5 | one on Code-Making Panel 7? 06:56:43 |
| 6 | staff, where appropriate. 06:54:00 | 6 | Q. Panel 7, left column, four from the bottom. 06:56:46 |
| 7 | Q. And I think you testified earlier but just 06:54:02 | 7 | A. So in that case it appears Mr. Ray, the 06:56:55 |
| 8 | for the sake of clarification, committees 06:54:04 | 8 | company he works for is Duke Engineering 06:57:00 |
| 9 | that are called technical committees for 06:54:09 | 9 | Corporation. He represents a utility, and 06:57:02 |
| 10 | other codes and standards are called 06:54:11 | 10 | his representation of the committee is 06:57:04 |
| 11 | code-making panels when it comes to the 06:54:13 | 11 | Electrical Light and Power Group, EEI. 06:57:06 |
| 12 | National Electrical Code; is that correct? 06:54:15 | 12 | Q. And the letters in brackets after the names, 06:57:13 |
| 13 | A. That is partially correct. There are two 06:54:18 | 13 | employers and states indicate the what do 06:57:23 |
| 14 | ways we address the National Electrical Code. 06:54:21 | 14 | you call it? Not the interest group. The 06:57:29 |
| 15 | There are code-making panels and their work 06:54:24 | 15 | interest section? 06:57:32 |
| 16 | is overseen by a technical correlating 06:54:26 | 16 | A. It's the interest category. 06:57:34 |
| 17 | committee. 06:54:30 | 17 | Q. The interest category. So the letters within 06:57:37 |
| 18 | Q. What is the work of the technical correlating 06:54:31 | 18 | brackets at the end of the line on which the 06:57:39 |
| 19 | committee? 06:54:35 | 19 | names of the individuals are found is a code 06:57:43 |
| 20 | A. The technical correlating committee is 06:54:37 | 20 | for the interest category; is that correct? 06:57:45 |
| 21 | responsible for correlation across the entire 06:54:42 | 21 | A. That is correct. 06:57:47 |
| 22 | document to ensure that the code-making 06:54:45 | 22 | Q. M is manufacturer; is that right? M stands 06:57:48 |
| 23 | panels are aware of potential conflicting 06:54:49 | 23 | for manufacturer? 06:58:00 |
| 24 | requirements between their portions of the 06:54:52 | 24 | A. Yes, M is for manufacturer. 06:58:00 |
| 25 | document and also consistency. It's 06:54:53 | 25 | Q. E stands for enforcer; is that correct? 06:58:02 |
| 25 | Page 239 | | Page 241 |

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| 1A. Correct. The Es could represent federal06:58:051Vague and ambiguous.07:01:332government, state and local government as06:58:142A. Yes. We had a major rewrite of our07:01:363well as state fire officials, local fire06:58:173regulations in approximately 2007, 2008 time07:01:484officials.06:58:204frame we started that process.07:01:485Q. I notice on the front page of this there's a06:58:426since strike that.07:01:536section near the bottom right of the page06:58:426since strike that.07:01:547that says "Order redline PDF." Do you see06:58:457You said that's when the process07:01:548that?06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:52112010.07:02:0911This is not the redline, correct?06:58:5712Q. Have there been any other, in your mind,07:02:1313the, quote, unquote, normal version with the06:59:0113significant changes to the standards07:02:16 | 5 |
|--|--------|
| 3well as state fire officials, local fire06:58:173regulations in approximately 2007, 2008 time07:01:404officials.06:58:204frame we started that process.07:01:485Q. I notice on the front page of this there's a06:58:215Q. Has there been any significant change07:01:506section near the bottom right of the page06:58:426since strike that.07:01:537that says "Order redline PDF." Do you see06:58:457You said that's when the process07:01:548that?06:58:488started. When did that process end?07:01:569A. Yes.06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:52112010.07:02:0911This is not the redline, correct?06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 4officials.06:58:204frame we started that process.07:01:485Q. I notice on the front page of this there's a06:58:215Q. Has there been any significant change07:01:506section near the bottom right of the page06:58:426since strike that.07:01:537that says "Order redline PDF." Do you see06:58:457You said that's when the process07:01:548that?06:58:488started. When did that process end?07:01:569A. Yes.06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:5210best of my knowledge, in approximately 2009,07:02:0911This is not the redline, correct?06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 5Q. I notice on the front page of this there's a06:58:215Q. Has there been any significant change07:01:506section near the bottom right of the page06:58:426since strike that.07:01:537that says "Order redline PDF." Do you see06:58:457You said that's when the process07:01:548that?06:58:488started. When did that process end?07:01:569A. Yes.06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:52112010.07:02:0911This is not the redline, correct?06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 6section near the bottom right of the page06:58:426since strike that.07:01:537that says "Order redline PDF." Do you see06:58:457You said that's when the process07:01:548that?06:58:488started. When did that process end?07:01:569A. Yes.06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:4910best of my knowledge, in approximately 2009,07:02:0711This is not the redline, correct?06:58:52112010.07:02:0912A. Based upon my review here, it appears to be06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 7that says "Order redline PDF." Do you see06:58:457You said that's when the process07:01:548that?06:58:488started. When did that process end?07:01:569A. Yes.06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:4910best of my knowledge, in approximately 2009,07:02:0711This is not the redline, correct?06:58:52112010.07:02:0912A. Based upon my review here, it appears to be06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 8that?06:58:488started. When did that process end?07:01:569A. Yes.06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:4910best of my knowledge, in approximately 2009,07:02:0911This is not the redline, correct?06:58:52112010.07:02:0912A. Based upon my review here, it appears to be06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 9A. Yes.06:58:489A. The rewrite to our regulations ended, to the07:01:5710Q. That redline PDF is a different document.06:58:4910best of my knowledge, in approximately 2009,07:02:0911This is not the redline, correct?06:58:52112010.07:02:0912A. Based upon my review here, it appears to be06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 10Q. That redline PDF is a different document.06:58:4910best of my knowledge, in approximately 2009,07:02:0911This is not the redline, correct?06:58:52112010.07:02:0912A. Based upon my review here, it appears to be06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 11This is not the redline, correct?06:58:52112010.07:02:0912A. Based upon my review here, it appears to be06:58:5712Q. Have there been any other, in your mind,07:02:13 | 5 |
| 12 A. Based upon my review here, it appears to be 06:58:5712 Q. Have there been any other, in your mind, 07:02:13 | |
| | |
| 13 the, quote, unquote, normal version with the 06:59:01 13 significant changes to the standards 07:02:16 | |
| | |
| 14shading to track changes and not a full track06:59:0414development process since 2010?07:02:18 | |
| 15 changes redline version. 06:59:07 15 A. No. 07:02:22 | |
| 16 Q. And if one orders the redline PDF, does that 06:59:08 16 Q. Do you, in preparing and overseeing the 07:02:22 | |
| 17 show the text that was deleted which might 06:59:11 17 development of codes and standards, strive to 07:02:48 | |
| 18 not appear in this version? 06:59:14 18 make them suitable for governments to adopt 07:02:53 | |
| 19A. That is my understanding, but I have not seen06:59:1719for purposes of enforcement?07:02:59 | |
| 20the redline version of this document.06:59:2120MR. REHN: Object to the form. It's 07:03:05 | |
| 21Q. Let me ask you to turn to Page 17538.06:59:2321vague. May call for a legal opinion.07:03:07 | |
| 22 A. 17538. 06:59:53 22 A. Part of our committee officers guide is a 07:03:15 | |
| 23Q. Does the language on that page appear06:59:5723guidance document that is to address07:03:19 | |
| 24correct, to your knowledge?07:00:0224usability, adoptability and enforceability.07:03:22 | |
| 25 MR. REHN: You're referring to the 07:00:11 25 It's guidance to our committees to 07:03:27 | - 244 |
| Page 242 Pa | ge 244 |
| 1 whole language on the page? 07:00:13 1 ensure that they write clear and not vague 07:03:29 | |
| 2 MR. BRIDGES: Right. 07:00:15 2 requirements that are understandable and 07:03:31 | |
| 3 MR. REHN: Objection as to form. 07:00:15 3 concise. 07:03:33 | |
| 4 A. To the best of my knowledge, it appears like 07:00:21 4 Q. You said usability, adoptability and 07:03:34 | |
| 5 our opening issuing statement, our history 07:00:23 5 enforceability; is that right? 07:03:38 | |
| 6 and development of the National Electrical 07:00:27 6 A. Yes. 07:03:40 | |
| 7 Code as well as our copyright statements, to 07:00:29 7 Q. Does adoptability include within that concept 07:03:4 | |
| 8 the best of my knowledge. 07:00:34 8 the ease of adoption by governments of codes 07:03:50 | |
| 9 Q. So it's correct, to the best of your 07:00:34 9 as enforceable law? 07:04:01 | |
| 10knowledge?07:00:3710MR. REHN: Object to the form. May07:04:03 | |
| 11A. It appears correct.07:00:3711call for a legal opinion.07:04:07 | |
| 12 Q. What about the language on Page 17536? 07:00:40 12 A. I can't comment on the ease of the adoption. 07:04:11 | |
| 13 A. 536. 07:00:45 13 What I can comment on is my view of that is 07:04:15 | |
| | |
| 14MR. REHN: Object to the form and07:00:5214that our standards need to contain, for07:04:19 | |
| 14MR. REHN: Object to the form and07:00:5214that our standards need to contain, for07:04:1915to the extent the question calls for the07:00:5315example, mandatory language if they're going07:04:22 | |
| | |
| 15 to the extent the question calls for the 07:00:53 15 example, mandatory language if they're going 07:04:22 | |
| 15to the extent the question calls for the07:00:5315example, mandatory language if they're going07:04:2216witness to render a legal opinion.07:00:5516to be a standard and enforceable and, I would07:04:26 | |
| 15to the extent the question calls for the07:00:5315example, mandatory language if they're going07:04:2216witness to render a legal opinion.07:00:5516to be a standard and enforceable and, I would07:04:2617MR. BRIDGES: I'm just asking if07:01:0117assume, adoptable.07:04:29 | |
| 15to the extent the question calls for the07:00:5315example, mandatory language if they're going07:04:2216witness to render a legal opinion.07:00:5516to be a standard and enforceable and, I would07:04:2617MR. BRIDGES: I'm just asking if07:01:0117assume, adoptable.07:04:2918it's correct to the best of his knowledge.07:01:0318Q. That makes the mandatory language makes07:04:29 | |
| 15to the extent the question calls for the witness to render a legal opinion.07:00:5315example, mandatory language if they're going 07:04:2216witness to render a legal opinion.07:00:5516to be a standard and enforceable and, I would 07:04:2917MR. BRIDGES: I'm just asking if it's correct to the best of his knowledge.07:01:0117assume, adoptable.07:04:2918it's correct to the best of my knowledge, this appears07:01:0819them suitable for a government to adopt the 07:04:34 | |
| 15to the extent the question calls for the07:00:5315example, mandatory language if they're going07:04:2216witness to render a legal opinion.07:00:5516to be a standard and enforceable and, I would07:04:2617MR. BRIDGES: I'm just asking if07:01:0117assume, adoptable.07:04:2918it's correct to the best of his knowledge.07:01:0318Q. That makes the mandatory language makes07:04:3420correct and typical of our front matter07:01:1120codes and standards as law?07:04:35 | |
| 15to the extent the question calls for the07:00:5315example, mandatory language if they're going07:04:2216witness to render a legal opinion.07:00:5516to be a standard and enforceable and, I would07:04:2617MR. BRIDGES: I'm just asking if07:01:0117assume, adoptable.07:04:2918it's correct to the best of his knowledge.07:01:0318Q. That makes the mandatory language makes07:04:3420correct and typical of our front matter07:01:1120codes and standards as law?07:04:3521within our standards.07:01:1421MR. REHN: Object to the form.07:04:37 | |
| 15to the extent the question calls for the07:00:5315example, mandatory language if they're going07:04:2216witness to render a legal opinion.07:00:5516to be a standard and enforceable and, I would07:04:2617MR. BRIDGES: I'm just asking if07:01:0117assume, adoptable.07:04:2918it's correct to the best of his knowledge.07:01:0318Q. That makes the mandatory language makes07:04:3420correct and typical of our front matter07:01:1120codes and standards as law?07:04:3521within our standards.07:01:1421MR. REHN: Object to the form.07:04:3722Q. A couple broad questions: Has the standards07:01:2022Assumes facts. May call for a legal opinion.07:04:40 | |
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| 1 | utilize them in their facilities and 07:04:54 | 1 | This is the end of Tape No. 4 as well as | 07:06:35 |
|----|--|----|--|----------|
| 2 | applications. 07:04:57 | 2 | the deposition, and we are now off the | 07:06:37 |
| 3 | VIDEOGRAPHER: We've reached the 07:04:59 | 3 | record. 07:06:39 | |
| 4 | seven hours. 07:05:01 | 4 | (Whereupon the deposition was | 07:06:39 |
| 5 | MR. BRIDGES: Thank you very much. 07:05:01 | 5 | concluded at 7:06 p.m.) | |
| 6 | CROSS EXAMINATION 07:05:01 | 6 | | |
| 7 | BY MR. REHN: 07:05:01 | 7 | | |
| 8 | Q. Mr. Dubay, I have a couple of questions for 07:05:05 | 8 | | |
| 9 | you just to clear up some issues that arose 07:05:07 | 9 | | |
| 10 | earlier I think in response to my own perhaps 07:05:10 | 10 | | |
| 11 | confusing instruction. 07:05:14 | 11 | | |
| 12 | Do you recall being asked whether 07:05:17 | 12 | | |
| 13 | you reviewed any documents in preparation for 07:05:18 | 13 | | |
| 14 | this deposition? 07:05:20 | 14 | | |
| 15 | A. Yes. 07:05:21 | 15 | | |
| 16 | Q. Do you recall that before you answered 07:05:21 | 16 | | |
| 17 | that question, I instructed you to answer to 07:05:24 | 17 | | |
| 18 | the extent you remembered any specific 07:05:26 | 18 | | |
| 19 | documents? 07:05:27 | 19 | | |
| 20 | A. Yes. 07:05:29 | 20 | | |
| 21 | Q. And do you recall that your answer to that 07:05:29 | 21 | | |
| 22 | question was "no" after I've given you that 07:05:31 | 22 | | |
| 23 | instruction? 07:05:35 | 23 | | |
| 24 | A. Yes. 07:05:35 | 24 | | |
| 25 | Q. So I'd like to just ask that question again. 07:05:35 | 25 | | |
| | Page 246 | | | Page 248 |
| 1 | In preparation for this deposition, did 07:05:38 | 1 | I declare under penalty of perjury | |
| 2 | you review any documents, excluding 07:05:40 | 2 | under the laws that the foregoing is | |
| 3 | identifying any specific documents, but 07:05:43 | 3 | true and correct. | |
| 4 | did you review any documents in preparation 07:05:45 | 4 | | |
| 5 | for today? 07:05:45 | 5 | Executed on, 20 | |
| 6 | A. The only documents I reviewed were the 07:05:47 | 6 | at, | · |
| 7 | several that I reviewed with counsel. 07:05:49 | 7 | | |
| 8 | Q. Thank you. 07:05:53 | 8 | | |
| 9 | MR. REHN: No further questions. 07:05:53 | 9 | | |
| 10 | MR. BRIDGES: I have a follow-up. 07:05:55 | 10 | | |
| 11 | What were the documents 07:05:55 | 11 | | |
| 12 | MR. FEE: Hold on. I have no 07:05:55 | 12 | Christian Dubay | |
| 13 | questions. 07:05:59 | 13 | | |
| 14 | REDIRECT EXAMINATION 07:05:59 | 14 | | |
| 15 | BY MR. BRIDGES: 07:05:59 | 15 | | |
| 16 | Q. What were the documents that you reviewed 07:05:59 | 16 | | |
| 17 | with counsel? 07:06:00 | 17 | | |
| 18 | MR. REHN: I will instruct the 07:06:01 | 18 | | |
| 19 | witness not to answer that question on the 07:06:02 | 19 | | |
| 20 | ground of attorney-client privilege. 07:06:04 | 20 | | |
| 21 | Q. And do you intend to follow your counsel's 07:06:17 | 21 | | |
| 22 | instruction? 07:06:24 | 22 | | |
| 23 | A. Yes. 07:06:27 | 23 | | |
| 24 | Q. Okay. 07:06:29 | 24 | | |
| | VIDEOGRAPHER: The time is 7:06. 07:06:31 | 25 | | |
| 25 | Page 247 | | | Page 249 |

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| 1 | COMMONWEALTH OF MASSACHUSETTS) | |
|----------|---|--|
| 2 | SUFFOLK, SS.) | |
| 3 | | |
| 4 | | |
| - | I, Jeanette Maracas, Registered | |
| 5 | Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, do | |
| 6 | hereby certify that there came before me on | |
| Ŭ | the 1st day of April, 2015, at 10:00 a.m., | |
| 7 | the person hereinbefore named, who was by me | |
| | duly sworn to testify to the truth and | |
| 8 | nothing but the truth of his knowledge | |
| | touching and concerning the matters in | |
| 9 | controversy in this cause; that he was | |
| 4.0 | thereupon examined upon his oath, and his | |
| 10 | examination reduced to typewriting under my direction; and that the deposition is a true | |
| 11 | record of the testimony given by the witness. | |
| 12 | record of the testimony given by the witness. | |
| | I further certify that I am neither | |
| 13 | attorney or counsel for, nor related to or | |
| | employed by, any attorney or counsel employed | |
| 14 | by the parties hereto or financially | |
| 15 | interested in the action. | |
| 15 16 | In witness whereof, I have hereunto | |
| 10 | set my hand this 8th day of April, 2015. | |
| 17 | see my nana and ou aug of rapin, 2015. | |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | Notary Public | |
| | My commission expires 8/14/20 | |
| 22 | | |
| 23 24 | | |
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EXHIBIT 7

Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 235 of 298 Capital Reporting Company American Society for Testing and Materials, et al. v. Public Resources 07-31-2015

1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA AMERICAN SOCIETY FOR TESTING AND MATERIALS, d/b/a ASTM INTERNATIONAL; NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and AMERICAN SOCIETY OF HEATING, REFRIGERATION AND AIR CONDITIONING ENGINEERS, Plaintiffs and Counter-Defendants, Civil Action No. v. 1:13-cv-01215-TSC PUBLIC.RESOURCE.ORG, INC., Defendant and PAGES 1 - 264 Counter-Plaintiff. Videotaped Deposition of: JAMES FRUCHTERMAN DATE: Friday, July 31, 2015 TIME: 9:34 a.m. LOCATION: Morgan, Lewis & Brockius, LLP Two Palo Alto Square, Suite 700 Palo Alto, California REPORTED BY: Kelli Combs Certified Shorthand Reporter License 7705. CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Case 1:13-cv-01215-TSC Document 122-1 Eiled 12/22/15 Page 236 of 298 American Society for Testing and Materials, et al. v. Public Resources 07-31-2015

| | 42 | | | 44 |
|---|--|--|--|----|
| 1 | THE WITNESS: Yes. | 1 | MR. KAPLAN: Objection; vague. | |
| 2 | BY MS. RUBEL: | 2 | THE WITNESS: In my opinion, I think it's | |
| 3 | Q Have there been issues with technology | 3 | not a I don't think it's in their interests. | |
| 4 | providers disabling access to eBooks for people with | 4 | BY MS. RUBEL: | |
| 5 | print disabilities? | 5 | Q You don't think what is in their | |
| 6 | MR. KAPLAN: Objection; vague, calls for | 6 | interests? | |
| 7 | speculation. | 7 | A I think that the technical protection | |
| 8 | THE WITNESS: There have been issues with | 8 | mechanisms make their product less attractive to | |
| 9 | technology providers providing the ability to | 9 | consumers. | |
| 10 | disable access and that capability being utilized. | 10 | Q Well, let me take a step back. | |
| 11 | Yes. | 11 | A Uh-huh. | |
| 12 | BY MS. RUBEL: | 12 | Q My question was: Do you think it's a | |
| 13 | Q What's your understanding of why the | 13 | valid concern for publishers to be worried that | |
| 14 | technology providers were making it possible to | 14 | consumers may make copies to give away to other | |
| 15 | disable access to the eBooks for people with print | 15 | people? So I want to understand how your response | |
| 16 | disabilities? | 16 | is responsive to my question. | |
| 17 | A Public statements by different | 17 | MR. KAPLAN: Is there a question, Counsel? | |
| 18 | stakeholders have mentioned concerns over rights. | 18 | BY MS. RUBEL: | |
| 19 | | 19 | Q Do you think it's a valid concern for | |
| 20 | | 20 | publishers that to want to prevent consumers from | |
| 21 | Probably the top two issues that I've heard | 21 | | |
| 22 | discussed. | 22 | MR. KAPLAN: Objection; vague. | |
| 23 | Q Who do you mean by the "making of | 23 | THE WITNESS: I think that the way that | |
| 24 | 1 | 24 | publishers try to prevent making of copies is not in | |
| 25 | A I guess that's kind of a legal conclusion | 25 | their interest; so no, I don't think it's a valid | |
| | | | | |
| | 43 | | | 45 |
| 1 | 43 whether it's authorized or not, but the Authors | 1 | concern because I think they their interests | 45 |
| | | | concern because I think they their interests would be better served if they didn't use those | 45 |
| 2 | whether it's authorized or not, but the Authors | | would be better served if they didn't use those | 45 |
| 2 3 | whether it's authorized or not, but the Authors Guild, for example, or authors would like to get | 2 3 | would be better served if they didn't use those | 45 |
| 2 3 4 | whether it's authorized or not, but the Authors Guild, for example, or authors would like to get control of the making of copies. That's, I think, | 2 3 | would be better served if they didn't use those technologies. BY MS. RUBEL: Q Why do you think the use of those | 45 |
| 2 3 4 | whether it's authorized or not, but the Authors Guild, for example, or authors would like to get control of the making of copies. That's, I think, my understanding of what copyright is; the ability to control who makes copies. Q So was there some concern that providing | 2 3 4 | would be better served if they didn't use those technologies. BY MS. RUBEL: Q Why do you think the use of those | 45 |
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| | 98 | | | 100 |
|--|---|--|---|-----|
| 1 | BY MS. RUBEL: | 1 | MR. KAPLAN: Objection; vague. | |
| 2 | Q I'll give you an opportunity to take a | 2 | THE WITNESS: Not in practice. | |
| | look at this and see if that refreshes your | | BY MS. RUBEL: | |
| | recollection of how many total standards you | 4 | Q Can you explain what you mean by that? | |
| | reviewed in the process of drafting your report. | 5 | A I could imagine a blind person trying to | |
| 6 | A NFPA 101-2000, ASHRAE 90.1-2010, five | - | take a picture of the screen, uploading that picture | |
| 7 | | | into an OCR device and trying to see the text they | |
| 8 | expert report, ASTM standard B57-84e1 of that | 8 | can't see on the screen. That's really difficult to | |
| | standard, as in Edward 1, ASTM A20, like Apple, 20A, | 9 | do, but it's imaginable. | |
| | like Apple, 20M, like Mary, -93a, like Apple. And I | 10 | Q So theoretically it could be possible for | |
| 11 | | 11 | a copyright owner to protect the text against | |
| 12 | MR. KAPLAN: I believe, for the court | | copying while also making it possible for someone | |
| 13 | | | with a print disability to review the material; is | |
| 14 | THE WITNESS: Correct. I misread the | | that what you were explaining? | |
| | number. In addition, I accessed the 2012 version of | 15 | MR. KAPLAN: Objection; misstates the | |
| | the NPFA standards or NFPA standards. It's NFPA, | | testimony, incomplete hypothetical, vague, | |
| | right? | 17 | | |
| 18 | MR. REHN: NFPA. | 18 | THE WITNESS: I believe that technology | |
| 19 | THE WITNESS: Yeah. So there's an error | 19 | that makes it impossible to access text as text but | |
| 20 | | 20 | instead presents a picture of the text is, for all | |
| | cross-referenced whether the ASHRAE standard is the | 21 | | |
| | same one that I looked at here. Let's see. Yeah, | | person. | |
| | that looks like the same one. So I wasn't keeping a | | BY MS. RUBEL: | |
| | running count, but I think that's the complete list. | 23 | Q Is there another way, other than | |
| | So it's in three, plus five, plus one, plus | | presenting the material as a picture, that a | |
| 20 | | 20 | prosonting the material as a protate, that a | |
| | | | | |
| | 99 | | | 101 |
| 1 | 99 another version of the same thing, so on the order | 1 | copyright owner could provide could protect their | 101 |
| | | | copyright owner could provide could protect their work against copying but at the same time still make | 101 |
| | another version of the same thing, so on the order | 2 | | 101 |
| 2 | another version of the same thing, so on the order of 10. | 2 3 | work against copying but at the same time still make | 101 |
| 2 3 | another version of the same thing, so on the order of 10. BY MS. RUBEL: Q Do you know how many standards the | 2 3 | work against copying but at the same time still make it available to be accessed by people with print | 101 |
| 2 3 4 | another version of the same thing, so on the order of 10. BY MS. RUBEL: Q Do you know how many standards the | 2 3 4 5 | work against copying but at the same time still make it available to be accessed by people with print disabilities? | 101 |
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| | 110 | | | 112 |
| 2 3 4 5 6 7 8 | to certify the people and then represent that to us. And so if a physician looks at someone's disability and says, "I think they meet the standards of the Chafee Amendment," we take that. BY MS. RUBEL: Q You focus in your report on whether the | 2 3 4 5 6 7 8 9 10 11 12 | both talk what's on the screen as well as send it to a Braille display so you can feel the same characters. And so the Braille display requires, for online content, to have a screen reader or a book reading program, but kind of most roads lead through a screen reader unless you're handed the digital file in an accessible format or someone converts it for you. BY MS. RUBEL: Q What about a screen enlarger; did you consider whether any of the Plaintiffs' standards that you reviewed, whether a person would be able to | |
| 14 15 16 17 18 | , 1 | 14 15 16 17 18 | use a screen enlarger on those standards? A I did not consider the use of a screen enlarger. Q We'll talk a little more about your the conclusions that you drew about screen readers, but is it correct to summarize your opinion that the | |
| 24 | computer. Q What other types of tools do they use? MR. KAPLAN: Objection; vague. THE WITNESS: Common tools used by blind people around accessibility include Braille displays, as I mentioned before, screen readers, screen enlargers for people with low vision, eBook | 19 20 21 22 23 24 25 | versions of the Plaintiffs' standards on the free on the free access sections of their websites were not accessible by screen readers? MR. KAPLAN: Objection; misstates testimony, vague. THE WITNESS: Yes. | |
| | 111 | | | 113 |
| 2 3 4 5 6 7 8 9 9 10 11 11 12 13 14 15 16 17 18 | Q And did you consider for the purpose of this of your report whether the Plaintiffs' standards were accessible by blind people using any of those other tools, other than the screen reader? MR. KAPLAN: Objection; vague. THE WITNESS: I believe that the problems that they would run into with a screen reader were similar to those that they would run into with other technologies, if they could get the material. I think that's an accurate answer. BY MS. RUBEL: | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | BY MS. RUBEL: | |
| 21 | Q So it's your belief that if they wouldn't be able to access it through a screen reader, they also wouldn't be able to access it through a Braille display? MR. KAPLAN: Objection; misstates the testimony. THE WITNESS: Yes. A screen reader can | 21 22 23 24 | Q How else would having somebody else's assistance sorry. Strike that. You mentioned that it would be possible if the person was handed a digital copy to access the content of the standards. In what other ways, if they had assistance, would a blind person be able to access copies of the Plaintiffs' standards? | |

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| | 122 | | | 124 |
| 1 | usage, only their accessibility. | 1 | professions. | |
| 2 | Q Do you know of any person who has ever | 2 | Q Do any of the standards from Plaintiffs | |
| 3 | used any of the 10 standards that you reviewed? | 3 | that you reviewed relate to computer software | |
| 4 | MR. KAPLAN: Objection; vague. | 4 | | |
| 5 | THE WITNESS: I don't personally know of a | 5 | A No. | |
| 6 | person who has shared with me that they've used | 6 | Q Has anyone ever informed you that they | |
| 7 | these standards. | 7 | wanted to be able to access a standard that was | |
| 8 | BY MS. RUBEL: | | available on one of Plaintiffs' websites, but they | |
| 9 | Q What percentage of people in the United | 9 | were unable to do so because of a print disability? | |
| 10 | States are completely blind? | 10 | A Nobody has personally asked me about the | |
| 11 | A Less than 1 percent. | 11 | accessibility of a document on one of the | |
| 12 | Q What percentage of the population in the | 12 | Plaintiffs' sites. | |
| 13 | United States has print disability? | 13 | Q Are you aware that anyone with a print | |
| 14 | A We do not have a precise number, but our | 14 | disability has asked anyone else about the ability | |
| | estimate is in the 2 to 3 percent range that would | 15 | to access a standard from one of the Plaintiffs' | |
| | meet our qualifications. | | websites? | |
| 17 | Q And that's including the 1 percent that's | 17 | A Yes. | |
| | blind? | 18 | MR. KAPLAN: You got to let me object. | |
| 19 | A Yeah. All people with print disabilities | 19 | THE WITNESS: Sorry. | |
| | are in that range. | 20 | MR. KAPLAN: It's okay. | |
| 21 | Q Are you excuse me. | | BY MS. RUBEL: | |
| 22 | Are you aware of any individual who works | 22 | Q How many people are you aware of who have | |
| 23 24 | 1 | | indicated that they were unable to access a standard from one of the Plaintiffs' websites because of a | |
| 24 | MR. KAPLAN: Objection; vague. THE WITNESS: No. | | print disability? | |
| 23 | THE WITNESS. NO. | 23 | | |
| | 123 | | | |
| | | | | 125 |
| 1 | BY MS. RUBEL: | 1 | MR. KAPLAN: Objection; misstates | 125 |
| 1 2 | BY MS. RUBEL: Q Are you aware of anyone who works in the | | MR. KAPLAN: Objection; misstates testimony, misleading, vague. | 125 |
| | | | - | 125 |
| 2 | Q Are you aware of anyone who works in the | 2 3 4 | testimony, misleading, vague. THE WITNESS: I don't know the number of people who have requested the standards. I simply | 125 |
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| | 130 | | 132 |
|---|--|--|-----|
| 1 priority based on our funding structure of which | 1 co | ould have called the Plaintiffs, for example, and | |
| 2 titles we will do. If it's for an educational | | sked for an electronic copy of the standard that | |
| 3 purpose by an American student, we're funded by the | | ey would have been able to use to make it print | |
| 4 Department Of Education to produce those. | | ccessible to someone with a print disability? | |
| 5 If someone didn't have a school reason, we | 5 | MR. KAPLAN: Objection; incomplete | |
| 6 could put it on a what we call a wish list, and | | ypothetical, vague. | |
| 7 volunteers could produce the book or the person with | 7 | THE WITNESS: Outside the scope of my | |
| 8 disability could cause it to be created themselves | 8 ez | pert engagement. | |
| 9 and submit it to us to add to our library. | 9 B | Y MS. RUBEL: | |
| 10 BY MS. RUBEL: | 10 | Q My question is: Did you ever investigate | |
| 11 Q Other than those several NFPA standards on | 11 it | ? So the answer may be "no" | |
| 12 the Bookshare collection, are you aware of any other | 12 | A Okay. No. | |
| 13 standards of the Plaintiffs that anyone with a print | 13 | Q Okay. | |
| 14 disability has indicated they were not able to | 14 | I'm just going to ask another short series | |
| 15 access because of their print disability? | 15 of | f questions, and then we can take another break. | |
| 16 MR. KAPLAN: Objection; vague. | 16 | A Okay. Sounds good. | |
| 17 THE WITNESS: I have no knowledge of that. | 17 | Q On page 7 of your report | |
| 18 BY MS. RUBEL: | 18 | A Yes. | |
| 19 Q The 10 specific standards that you | 19 | Q it's the first full the first | |
| 20 reviewed, are you aware of any person with a print | 20 cc | omplete sentence on page 7, you indicated that it's | |
| 21 disability who attempted to access those standards | 21 ye | our opinion that people with other print | |
| 22 on the Plaintiffs' websites and was unable to do so? | 22 di | sabilities, such as vision impairment, dyslexia, | |
| 23 MR. KAPLAN: Objection; vague. | | ain injury and physical disabilities, would find | |
| 24 THE WITNESS: No. Sorry, I thought you | 24 th | e standards accessible with screen readers on | |
| 25 were finished. | 25 Pi | ublic Resource's website but that the standards on | |
| | | | |
| | 131 | | 133 |
| 1 MR KAPLAN [.] Yeah No No | | e free reading portions of the Plaintiffs' | 133 |
| 1 MR. KAPLAN: Yeah. No. No. 2 BY MS. RUBEL: | 1 th | e free reading portions of the Plaintiffs' ebsites would not be accessible to the great | 133 |
| 2 BY MS. RUBEL: | 1 th 2 w | ebsites would not be accessible to the great | 133 |
| 2 BY MS. RUBEL: | 1 th 2 w 3 m | | 133 |
| 2 BY MS. RUBEL:3 Q Do you have any reason to believe that if | 1 th 2 w 3 m | ebsites would not be accessible to the great ajority of people with these types of disabilities; | 133 |
| 2 BY MS. RUBEL: 3 Q Do you have any reason to believe that if 4 an individual approached any of the Plaintiffs to | 1 th 2 w 3 m 4 is | ebsites would not be accessible to the great ajority of people with these types of disabilities; that correct? | 133 |
| 2 BY MS. RUBEL: 3 Q Do you have any reason to believe that if 4 an individual approached any of the Plaintiffs to 5 request access of a standard due to their print | 1 th 2 w 3 m 4 is 5 6 | ebsites would not be accessible to the great ajority of people with these types of disabilities; that correct? A Correct. | 133 |
| 2 BY MS. RUBEL: 3 Q Do you have any reason to believe that if 4 an individual approached any of the Plaintiffs to 5 request access of a standard due to their print 6 disability, that the Plaintiffs would not have | 1 th 2 w 3 m 4 is 5 6 7 do | ebsites would not be accessible to the great ajority of people with these types of disabilities; that correct? A Correct. MR. KAPLAN: Objection; misstates the | 133 |
| 2 BY MS. RUBEL: 3 Q Do you have any reason to believe that if 4 an individual approached any of the Plaintiffs to 5 request access of a standard due to their print 6 disability, that the Plaintiffs would not have 7 provided them access? | 1 th 2 w 3 m 4 is 5 6 7 do | ebsites would not be accessible to the great ajority of people with these types of disabilities; that correct? A Correct. MR. KAPLAN: Objection; misstates the ocument. | 133 |
| 2 BY MS. RUBEL: 3 Q Do you have any reason to believe that if 4 an individual approached any of the Plaintiffs to 5 request access of a standard due to their print 6 disability, that the Plaintiffs would not have 7 provided them access? 8 A I'm having a hard time parsing the 9 question. Can you ask it just a little bit more 10 simply. | 1 th 2 w 3 m 4 is 5 6 7 dc 8 B 9 10 th | ebsites would not be accessible to the great ajority of people with these types of disabilities; that correct? A Correct. MR. KAPLAN: Objection; misstates the ocument. Y MS. RUBEL: Q What's the basis of your conclusion that e great majority of people with these types of | 133 |
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|---|--|--|--|-----|
| | 142 | | | 144 |
| 3 4 5 6 7 8 9 10 11 12 13 14 | | 2 3 4 5 6 7 8 9 10 11 12 13 14 | technology. Q Does Benetech participate in the World | |
| 16 17 18 19 20 21 22 23 | BY MS. RUBEL:Q What what is his role Is he employed by Benetech?A Yes, he's employed by Benetech as a as | 16 17 18 19 20 21 22 23 24 | Q During what time period did Benetechparticipate in the standards development process forthis organization?A In one form or another, we have | |
| | 143 | | | 145 |
| 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | A He's one of our blind employees who happens to be in the office regularly as opposed to being located in other locations; so I could go down and talk to him. Q So you asked You asked Rob to try to access standards from NFPA's website and see if he was able to do so? MR. KAPLAN: Objection; vague. Go ahead. THE WITNESS: Correct. First, I asked him to look at the sign-up process to see if he could sign up for a free reading account without needing assistance from a sighted person, and he wasn't able to do that. BY MS. RUBEL: Q Was there anything else you asked him to do? A After I pushed the "I Agree" button and got him through that, that roadblock, I also asked him to try to read the standard in question. Q Did you ask Rob to try to access any of the Plaintiffs' standards that are posted on Public Resource's website? A No, I did not. | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | A I believe that there are people who are members of the W3C and pay fees and people who do not. Q How much do members pay? A I am not aware of that number. Q Do you have a ballpark? A No. I wouldn't speculate. Q Are you familiar with the license that the Consortium uses with respect to the standards that it develops? MR. KAPLAN: Objection; argumentative, vague, calls for a legal conclusion. THE WITNESS: Is the question about the W3C? I don't recall having read their license in | |

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|--|---|---|--|-----|
| | 162 | | | 164 |
| | right? | | is that right? | |
| 2 | A Yes. | 2 | MR. KAPLAN: Objection; asked and | |
| 3 | Q Was this the entire screen that you saw or just a portion of the screen? | 4 | answered, argumentative, vague. THE WITNESS: Though I don't recall ASTM | |
| 5 | A A portion, but I'd say that, you know, you | | particularly, a zoom function is quite common in an | |
| | can see the scroll bar, that there are multiple | | image viewer, so I probably just assumed it was | |
| 7 | scroll bars that I could access to scan down and see | | there even though I didn't specifically look for it. | |
| 8 | more of it or to go forward. | | BY MS. RUBEL: | |
| 9 | Q So you were able to scroll down to see | 9 | Q If you look at the screenshot on page 14 | |
| 10 | what was the entire page 1 on the screen of the | 10 | in the top right-hand corner of where the of the | |
| 11 | ASTM's Reading Room? | 11 | window in which the standard is shown, do you see | |
| 12 | A As a sighted person, I believe that I | | the icon that's all the way to the right? | |
| 13 | could see all of page 1, yes. | 13 | A The plus icon. | |
| 14 | Q And you could click through and the | 14 | Q Yes. What what does that indicate to | |
| 15 | arrows, using the arrows to see page 2; is that | | you? | |
| 16 17 | correct? A As a sighted person, yes, I believe I can. | 16 | A It's probably the zoom function that I just referred to. | |
| 18 | Q And all the way through up to page 11; is | 17 | Q And do you recall pushing that button | |
| 19 | that right? | | and | |
| 20 | A I believe that I doubt that I actually | 20 | Do you recall pushing that button? | |
| 21 | went page by page all the way to page 11. | 21 | A Usually when these windows first come up, | |
| 22 | Q Was there an option on the ASTM's Reading | 22 | the standards are illegible, so yeah, usually I | |
| 23 | Room to make the text larger? | 23 | probably push the magnification button to make it | |
| 24 | A I didn't look for that feature. | 24 | readable. So it's quite typical in an image-based | |
| 25 | Q Did you believe that was relevant; that an | 25 | window to have a zoom function, especially because | |
| | | | | |
| | 163 | | | 165 |
| 1 | | 1 | you have no idea how big a screen the person is | 165 |
| | 163 option to make the text larger would be relevant to evaluating whether the standard is accessible to | | you have no idea how big a screen the person is viewing this on. | 165 |
| | option to make the text larger would be relevant to | | | 165 |
| 2 3 4 | option to make the text larger would be relevant to evaluating whether the standard is accessible to people with print disabilities? MR. KAPLAN: Objection; argumentative, | 2 3 | viewing this on. | 165 |
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| | text searching function, that's because it isn't there unless it's well hidden. Also, the page looks like a picture of a standards page as opposed to a text version. So the fact that it was a picture of the page, generally that means that text searching tends to be unavailable unless they've done something extra. Q In addition to ASTM standard B557, you also evaluated one other ASTM standard. What standard was that? A ASTM A20/A20M, like Mary, -93a, like Apple. Q Why did you evaluate that standard? Why did you choose that standard? A Because it was the first one listed, and I just wanted to see, gee, the other standard's presenting the same image-based interface. Yes, lack like it and Likik L had text of fur of them | didn't have to sign up for anything. BY MS. RUBEL: Q So Public Resource is not providing access to Plaintiffs' standards exclusively to people with print disabilities, correct? MR. KAPLAN: Objection; vague, calls for a legal conclusion. THE WITNESS: Yes. BY MS. RUBEL: Q Does the material that Public Resource posted on its website bear any notice that further reproduction of the material could be an infringement? MR. KAPLAN: Objection; vague, lacks foundation. THE WITNESS: No. At least it's been long enough that let me reread the question. | |
| | 18 looks like it, and I think I had tested five of them19 on another standards website, and so after you've | 18 MR. KAPLAN: Can you restate the question. 19 (Record read as follows: | |
| | 20 tested them, you got to say, "Well, gee, looks like | 20 "Q Does the material that | |
| | 21 they're all presenting this image-based interface," | 21 Public Resource posted on its | |
| | 22 but obviously I did not comprehensively go through | 22 website bear any notice that | |
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| | issue in this litigation? A No, I do not. Q Did you review Public Resource's website in connection with this expert report? A Yes. Q Is the general public able to access Public Resource's website? A Yes. Sorry. Q Is there any mechanism within Public Resource's website that allows only people with print impairments to view copies of any of the material on that website? MR. KAPLAN: Objection; vague. THE WITNESS: Not that I'm aware of. BY MS. RUBEL: Q So Public Resource has not published the standard the Plaintiffs' standards in a manner that is exclusively available to people with print disabilities, correct? MR. KAPLAN: Objection; misstates testimony, calls for speculation. THE WITNESS: The standards that are on the Public Resource website seem to work for people | 1 MR. KAPLAN: And I'll make the same 2 objections. 3 THE WITNESS: Yeah. No, not to my 4 knowledge, based on the parts that I examined. 5 BY MS. RUBEL: 6 Q 1 m what formats does Public Resource's 7 website provide Plaintiffs' standards in? 8 MR. KAPLAN: Objection; lacks foundation. 9 THE WITNESS: I believe multiple 10 standards. The two formats that I particularly 11 examined were HTML and PDF. 12 BY MS. RUBEL: 13 Q 14 standards Public Resource has posted in HTML format? 15 A 16 Q 17 A 18 Q 19 issue in this case Public Resource has posted in 19 issue in this case Public Resource has posted in 20 How down how many standards that are at 21 A No. 22 Q How can a screen reader 23 How does a screen reader read the text of | 69 |

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| | | Г | | |
|---|---|---|---|-----|
| | 202 | | | 204 |
| 1 | documents, which is a different Adobe product | 1 | A Yes. | |
| | that yes. | 2 | Q When you were retained to evaluate the | |
| 3 | Q Are you aware that NFPA sells PDF versions | 3 | | |
| 4 | of its standards on its website? | 4 | | |
| 5 | A Let's see if it has a Buy Now button on my | 5 | should check to see if there were PDF versions | |
| | screenshot. I see a cart on there, so I assume that | 6 | available from the Plaintiffs? | |
| 7 | | 7 | MR. KAPLAN: You can go ahead and answer. | |
| | to see whether you sell PDF versions of the | 8 | THE WITNESS: No. | |
| 9 | standard. | 9 | BY MR. REHN: | |
| 10 | Q Did anybody ask you to check whether any | 10 | Q You just didn't think | |
| 11 | of the Plaintiffs in this case sold PDF standards? | 11 | That didn't occur to you that that might | |
| 12 | MR. KAPLAN: Objection; calls for | 12 | | |
| 13 | | 13 | MR. KAPLAN: Objection; asked and | |
| 14 | You can answer to the extent that you | 14 | answered, argumentative. | |
| 15 | don't divulge privileged communications. | 15 | THE WITNESS: I'll just go back to my | |
| 16 | THE WITNESS: No. | 16 | expert report and that sentence. I was asked to | |
| 17 | BY MR. REHN: | 17 | evaluate the accessibility of certain online | |
| 18 | Q When you were asked to render an opinion | 18 | content. | |
| 19 | about the accessibility of Plaintiffs' standards, | 19 | BY MR. REHN: | |
| 20 | did it occur to you to check whether those standards | 20 | Q Now, if I can ask you to turn to page 5 of | |
| 21 | were available in a PDF version or any other | 21 | your report, where you say it says "Overview and | |
| 22 | electronic version? | 22 | Summary of Opinions." | |
| 23 | MR. KAPLAN: Objection; misleading, | 23 | A Uh-huh. | |
| 24 | misstates testimony, vague, argumentative. | 24 | Q If you could just read the first sentence | |
| 25 | THE WITNESS: Privileged conversation. | 25 | there, the first full sentence under that heading. | |
| - | | + | | |
| | 202 | | | 205 |
| | 203 | | | 205 |
| 1 | 203 BY MR. REHN: | 1 | A (Reading): | 205 |
| 12 | | 1 2 | A (Reading): "Having reviewed the | 205 |
| 2 | BY MR. REHN: | | | 205 |
| 2 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this | 2 3 4 | "Having reviewed the accessibility of the same standards content rendered by | 205 |
| 2 3 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was | 2 3 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of | 205 |
| 2 3 4 5 6 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? | 2 3 4 5 6 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by | 205 |
| 2 3 4 5 6 7 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. | 2 3 4 5 6 7 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my | 205 |
| 2 3 4 5 6 7 8 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think | 2 3 4 5 6 7 8 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org | 205 |
| 2 3 4 5 6 7 8 9 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the | 2 3 4 5 6 7 8 9 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only | 205 |
| 2 3 4 5 6 7 8 9 10 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility | 2 3 4 5 6 7 8 9 10 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for | 205 |
| 2 3 4 5 6 7 8 9 10 11 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged | 2 3 4 5 6 7 8 9 10 11 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print | 205 |
| 2 3 4 5 6 7 8 9 10 11 12 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. | 2 3 4 5 6 7 8 9 10 11 12 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these | 205 |
| 2 3 4 5 6 7 8 9 10 11 12 13 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. | 2 3 4 5 6 7 8 9 10 11 12 13 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." | 205 |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: | 2 3 4 5 6 7 8 9 10 11 12 13 14 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared | 205 |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on | 205 |
| 2 3 4 5 6 6 7 7 8 9 10 11 11 12 13 14 15 16 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access | 205 |
| 2 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that | 205 |
| 2 3 4 5 6 7 8 9 10 111 12 13 14 15 16 17 7 18 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. Q it says: | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that opinion; is that correct? | 205 |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 7 18 19 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. Q it says: "I have been retained by | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that opinion; is that correct? A Correct. | 205 |
| 2 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 7 18 19 20 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. Q it says: "I have been retained by Public.Resource.Org to evaluate the | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that opinion; is that correct? A Correct. Q Did you evaluate any PDFs being sold by | 205 |
| 2 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 7 18 19 20 21 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. Q it says: "I have been retained by Public.Resource.Org to evaluate the accessibility of certain online | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that opinion; is that correct? A Correct. Q Did you evaluate any PDFs being sold by NFPA in forming that opinion? | 205 |
| 2 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. Q it says: "I have been retained by Public.Resource.Org to evaluate the accessibility of certain online content available on the websites | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that opinion; is that correct? A Correct. Q Did you evaluate any PDFs being sold by NFPA in forming that opinion? A No. | 205 |
| 2 3 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. Q it says: "I have been retained by Public.Resource.Org to evaluate the accessibility of certain online content available on the websites of the Plaintiffs and the Defendant | 2 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that opinion; is that correct? A Correct. Q Did you evaluate any PDFs being sold by NFPA in forming that opinion? A No. Q Did you evaluate any PDFs being sold by | 205 |
| 2 2 3 4 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | BY MR. REHN: Q I'm asking what occurred to you, outside of conversations you had with attorneys about this project. Did it ever occur to you that that was something that might be necessary to check? MR. KAPLAN: Objection; vague. THE WITNESS: Go ahead. I I I think I stated my opinion. I was asked to evaluate the accessibility MR. KAPLAN: Let's not get into privileged communications. THE WITNESS: Okay. All right. BY MR. REHN: Q If you would turn to page 1 of your expert report A Yes. Q it says: "I have been retained by Public.Resource.Org to evaluate the accessibility of certain online content available on the websites | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | "Having reviewed the accessibility of the same standards content rendered by Public.Resource.Org and those of the free access options provided by the NFPA, ASHRAE and ASTM, it is my opinion that Public.Resource.Org currently provides the only accessible option for people/citizens with print disabilities to access these standards." Q And in forming that opinion, you compared the standards that were available on Public.Resource.Org's website with the free access options provided by Plaintiffs in forming that opinion; is that correct? A Correct. Q Did you evaluate any PDFs being sold by NFPA in forming that opinion? A No. | 205 |

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| | 25 | 3 | | 260 |
|--|---|--|---|-----|
| 2 2 3 3 4 5 6 7 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | A I didn't make any documents from Plaintiffs' websites. I downloaded whatever document no, I downloaded I viewed the document, yes. So, no. Q After you sent him a document, it would have been one from Public Resource's website? A That's correct. Thank you. Q And if I could direct you to the last sentence of the first paragraph of his e-mail, would | | 1 2 3 4 5 6 6 7 8 9 0 0 1 2 3 4 | |
| 2 2 3 4 4 5 6 7 7 8 9 9 10 111 122 133 144 155 166 177 188 199 200 211 222 233 24 | believe it meets our accessibility standards, which is what his job is to primarily work on our library for the blind. We would not post an image-based PDF and call it accessible. BY MR. REHN: Q And do you agree with Mr. Turner's assessment that this type of document cannot be considered to be accessible? A I think it's less accessible than many of the other documents and more than others, as I wrote in my expert report. I can probably quote from the report. Q There's no question pending. So A Okay. I would direct you to my last sentence of my report MR. KAPLAN: Jim, there's no question pending. THE WITNESS: All right. MR. REHN: I have no further questions. And I believe that concludes Plaintiffs' questioning of this witness. | 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 | 3 original transcript of a deposition in a Federal Case, 4 before completion of the proceedings, a review of the 5 transcript [] was [X] was not requested. 6 I further certify I am neither financially 7 interested in the action nor a relative or employee of 8 any attorney or any party to this action. 9 0 1 2 3 KELLI COMBS 4 CSR No. 7705 | 261 |

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EXHIBIT 8

USCA Case #22-7063 Document #1982413 Filed: 01/20/2023 Page 235 of 395 Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 247 of 298

1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF COLUMBIA 3 _____ AMERICAN SOCIETY FOR TESTING AND) Case No. 4 MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS) 5 NATIONAL FIRE PROTECTION) ASSOCIATION, INC.; and) 6 AMERICAN SOCIETY OF HEATING,) REFRIGERATING, AND 7) AIR-CONDITIONING ENGINEERS, INC.,) 8) Plaintiffs,) 9 vs.) 10 PUBLIC.RESOURCE.ORG, INC.,) 11 Defendant. -----) 12 AND RELATED COUNTERCLAIMS.) -----) 13 14 15 RULE 30(B)(6) VIDEOTAPED DEPOSITION OF AMERICAN 16 STANDARDS SOCIETY FOR TESTING AND MATERIALS, BY AND 17 THROUGH ITS DESIGNEE, 18 JEFFREY GROVE 19 WASHINGTON, D.C. 20 WEDNESDAY, MARCH 4, 2015 21 22 Reported by: 23 NANCY J. MARTIN, CSR No. 9504, RMR 24 Job No. 2010158 25 PAGES 1 - 284 Page 1

USCA Case #22-7063 Document #1982413 Filed: 01/20/2023 Page 236 of 395 Case 1:13-cv-01215-TSC Document 122-1 Filed 12/22/15 Page 248 of 298

| | ncy Martin, please swear in the witness, and w | re can 09:22:25 | 5 |
|----------|--|-----------------|--|
| 2 begi | | | 2 Just I thought it would be a good idea to review 09:24:58 |
| 3 | , | 9:22:36 | 3 annual reports and that type of publicly available 09:25:02 |
| 4 | | 9:22:40 | 4 information about ASTM. 09:25:04 |
| 5 | and testified as follows: 09:22 | 2:40 | 5 BY MR. BRIDGES: 09:25:08 |
| 6 | 09:22:40 | | 6 Q. What else did you review among the documents? 09:25:0 |
| 7 | | 0:22:40 | 7 MR. FEE: Objection. Are you asking about 09:25:11 |
| 8 BY | MR. BRIDGES: 09 | 9:22:40 | 8 the ones he selected on his own or the ones 09:25:12 |
| 9 (| Q. Good morning, Mr. Grove. | 09:22:40 | 9 MR. BRIDGES: No 09:25:14 |
| 10 A | A. Good morning. 09:22 | 2:41 | 10 MR. FEE: Well, I'm going to instruct you not 09:25:14 |
| 11 (| Q. Have you ever been deposed before? | | 11 to disclose the documents that you reviewed at the 09:25:16 |
| 12 A | A. I have not. 09:22:46 | 5 | 12 request or direction of counsel. You can disclose any 09:25:18 |
| 13 (| Q. Have you had a chance to meet with ASTM | M 09:22:49 | 13 other documents you reviewed.09:25:21 |
| 14 atto | orneys to prepare you for this deposition? | 09:22:51 | 14 MR. BRIDGES: I think I'm entitled to know 09:25:22 |
| 15 A | A. I did. 09:22:57 | | 15 what documents he reviewed to prepare for the 09:25:23 |
| 16 (| Q. When did you meet with them? | 09:22:57 | 16 deposition. It might reveal attorney work product if 09:25:27 |
| 17 A | A. I met with our attorneys over a period of | 09:22:58 | 17 he told us what documents were discussed with counsel, 09:25:3 |
| 18 thre | e days. The last two days, and once in Decen | nber. 09:23:01 | 18 but I'm entitled to know which documents he reviewed 09:25:3 |
| 19 A to | otal of 15 hours. 09:23: | :06 | 19 in general. 09:25:39 |
| 20 0 | Q. With whom did you meet? | 09:23:12 | 20 MR. FEE: I disagree. 09:25:41 |
| 21 A | A. I met with Kevin Fee and with Jordana Ru | bel, 09:23:13 | 21You should follow my instruction.09:25:43 |
| 22 and | with our corporate attorney, Tom O'Brien. | 09:23:19 | 22 THE WITNESS: I have no other documents that 09:25:44 |
| 23 (| Q. You understand that you are testifying today | ay 09:23:32 | 23 I can recall to disclose. 09:25:46 |
| 24 as a | a representative of ASTM? | 9:23:34 | 24 BY MR. BRIDGES: 09:25:47 |
| 25 A | A. Yes. 09:23:38 | Page 14 | 25 Q. So you're saying that all the documents of 09:25:47 Page 1 |
| 2 a rej | Q. And you understand that you are testifying presentative of ASTM with respect to certain | 09:23:46 | 1 all the documents you reviewed, only annual reports09:25:522 are those that you thought to review on your own?09:25:55 |
| 3 subj | ject matters? 09:23:4 | 48 | 3 A. Right. I think the exception to that would 09:25:56 |
| | A. Yes. 09:23:49 | | 4 be standardization news. I contributed some articles 09:26:01 |
| | Q. What did you do to educate yourself about | 09:23:49 | 5 that I thought I should refresh my memory with. 09:26:03 |
| | se subjects? 09:23:5 | | 6 Q. What did those articles concern? 09:26:08 |
| | A. In addition to the meetings, I reviewed a lo | | 7 A. Discussed generally ASTM's mission and work 09:26:11 |
| | locuments. 09:23:5 | | 8 we do to promote ASTM's mission and its important role 09:26: |
| | Q. And when did you review the documents? | | 9 in protecting everyday citizens due to the development 09:26:24 |
| | A. Over the last few days and in my own pers | | 10 of standards that protect the environment, health, and 09:26:26 |
| | e before then. 09:24: | | 11 safety. 09:26:31 |
| | Q. How much time did you spend reviewing | | 12 MR. BRIDGES: One thing occurred to me. We 09:26:3. |
| | uments outside of meetings with attorneys? | | 13 may need a short break. I forgot, you know, I was 09:26:37 |
| | • | | 14 supposed to have real time. Can we get real time? 09:26:39 |
| | Q. Did you select those documents, or did the | | 15 REPORTER MARTIN: Yes, sir. I'm working on 09:26: |
| 16 law | yers select the documents? 0 | 9:24:25 | 16 it right now. 09:26:43 |
| | A. Personal knowledge, I selected them. | | 17 MR. BRIDGES: Thanks. 09:26:43 |
| 18 (| Q. What determined which documents you se | lected 09:24:38 | MR. BECKER: We also have an email from Thane 09:26 |
| 19 to re | eview? 09:24:41 | | 19 stating he'd like to listen in. So perhaps we should 09:26:49 |
| 20 | MR. FEE: Objection. To the extent that | 09:24:42 | 20 take a break and set up real-time. 09:26:51 |
| 21 lega | al counsel or their guidance provided any basis | s for 09:24:43 | 21 MR. BRIDGES: I think we've got a separate 09:26:55 |
| | r determination, I'm going to instruct you not | to 09:24:48 | 22 bridge. I think Carl dialed in directly. So we're 09:26:57 |
| 22 you | | | |
| - | close that. If you have some independent revie | ew 09:24:50 | 23 going to have to drop him and set up a bridge. 09:26:59 |
| 23 disc | close that. If you have some independent revie eria that you can share with the other side, | | 23 going to have to drop him and set up a bridge.09:26:5924Sorry about this, but let's go off the record09:27:01 |
| 23 disc | eria that you can share with the other side, | 09:24:53 | |

5 (Pages 14 - 17)

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| 1 THE VIDEOGRAPHER: We're now going off the 09:27:05 | 1 Q. Did you attach any significance to that 09:41:21 |
|---|---|
| 2 record at 9:26. 09:27:05 | 2 figure? 09:41:23 |
| 3 (A recess was taken from 9:26 a.m. 09:34:30 | 3 MR. FEE: Objection. Vague. 09:41:25 |
| 4 to 9:37 a.m.) 09:38:32 | 4 THE WITNESS: No. 09:41:28 |
| 5 THE VIDEOGRAPHER: And we're back on the 09:38:33 | 5 BY MR. BRIDGES: 09:41:30 |
| 6 record at 9:37. 09:38:34 | 6 Q. Did it strike you as unusual or unexpected in 09:41:30 |
| 7 BY MR. BRIDGES: 09:38:48 | 7 any 09:41:33 |
| 8 Q. Do you recall any other documents that you 09:38:48 | 8 MR. FEE: Objection. Vague and compound. 09:41:34 |
| 9 reviewed on your own initiative apart from annual 09:38:50 | 9 THE WITNESS: It did not. 09:41:40 |
| 10 reports and standardization news? 09:38:53 | 10 BY MR. BRIDGES: 09:41:43 |
| 11 A. I do not. 09:38:59 | 11 Q. Did those figures he gave you accord with 09:41:43 |
| 12 Q. Apart from conversations specifically with 09:39:01 | 12 your expectations? 09:41:45 |
| 13 attorneys, did you discuss the topics of today's 09:39:06 | 13 A. Generally, yes. 09:41:51 |
| 14 conversation of today's deposition with anyone else 09:39:12 | 14 Q. Did that revenue trend strike that. 09:41:56 |
| 15 in preparation for your deposition today? 09:39:18 | 15 Was that revenue trend consistent with 09:42:03 |
| 16 A. I made a phone call to our vice president of 09:39:21 | 16 revenue trends over previous years? 09:42:05 |
| 17 sales and publications. 09:39:24 | 10 revenue inclusiover previous years0):42:0017MR. FEE: Objection. Vague.09:42:09 |
| 17 sales and publications. 09:39:24 18 Q. Who is that? 09:39:28 | 17 INR. FEE. Objection. Vagae. 09.42.07 18 THE WITNESS: I don't know. 09:42:14 |
| 19 A. John Pace. 09:39:31 | 19 BY MR. BRIDGES: 09:42:15 |
| 20 Q. What did you discuss with him? 09:39:31 | 20 Q. Do you know anything about revenue trends 09:42:15 |
| 21 A. Wanted to review ASTM's financials and 09:39:38 | 21 before three years ago? 09:42:17 |
| 22 revenues so I was prepared. 09:39:42 | 21Weilde years ago:05:12:1722MR. FEE: Same objection.09:42:19 |
| 23 Q. What did you learn from him? 09:39:46 | 23 THE WITNESS: Not that I can produce or 09:42:26 |
| 24 A. Not much. To be honest, I think I have a 09:39:47 | 24 recall. 09:42:27 |
| 25 good understanding. 09:39:52 | 25 BY MR. BRIDGES: 09:42:32 |
| Page 18 | Page 20 |
| 1 Q. What did you ask him about? 09:39:55 | 1 Q. What else did you discuss with Mr. Pace? 09:42:32 |
| | |
| 2 A. I wanted to review with him what I knew about 09:39:59 | 2 A. That's all I recall. 09:42:39 |
| A. I wanted to review with him what I knew about 09:39:59 3 sources of ASTM's revenue from the sale publications. 09:40:07 | 2A. That's all I recall.09:42:393Q. Did you have conversations with anyone else09:42:40 |
| | |
| 3 sources of ASTM's revenue from the sale publications. 09:40:07 | 3 Q. Did you have conversations with anyone else 09:42:40 |
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| 1 | something that I would speak about. 12:06:06 | 1 | when they're looking at participating in standards 12:08:53 |
|--|---|--|---|
| 2 | 2 BY MR. BRIDGES: 12:06:08 | 2 | development activities and utilizing voluntary 12:08:57 |
| 3 | Q. So what factors should government agencies 12:06:08 | 3 | consensus standards in support of their agency's 12:09:01 |
| 4 | take into consideration when examining industry 12:06:08 | 4 | mission. 12:09:03 |
| 5 | 5 standards for regulatory purposes? 12:06:10 | 5 | BY MR. BRIDGES: 12:09:11 |
| 6 | A. Well, one of the most important factors that 12:06:13 | 6 | Q. So my question is what are the regulatory 12:09:11 |
| 7 | we believe is important to maintain the robust, viable 12:06:15 | 7 | purposes that in your interactions with government on 12:09:16 |
| 8 | 3 system of standardization that we have in the U.S. is 12:06:24 | 8 | behalf of ASTM, you believe government agencies have 12:09:2 |
| 9 | P looking to see if standards development organizations 12:06:26 | 9 | when they examine industry standards? So I'm asking $ 12{:}09{:}25$ |
| 10 |) meet the world trade organizations, technical barriers 12:06:28 | 10 | what do you think the regulatory purposes are. 12:09:29 |
| 11 | to trade agreement principles for international 12:06:31 | 11 | MR. FEE: Same objections, plus compound. 12:09:31 |
| 12 | 2 standardization. It's a message that we believe 12:06:34 | 12 | THE WITNESS: Yeah. And I don't believe 12:09:33 |
| 13 | ³ strongly in at ASTM, we've invested heavily in, and we 12:06:37 | 13 | there's any one answer to that. Each agency that 12:09:34 |
| 14 | promote it as widely as possible. 12:06:41 | 14 | we're aware of that we interact with or that 12:09:38 |
| 15 | Q. What regulatory purposes do you anticipate 12:06:49 | 15 | participate in our committees have different needs and 12:09:40 |
| 16 | 5 government agencies have that causes them to examine 12:06:54 | 16 | different expectations and different motivations for 12:09:42 |
| 17 | 7 industry standards? 12:07:01 | 17 | participating in our process. 12:09:46 |
| 18 | MR. FEE: Read that back, please. 12:07:03 | 18 | BY MR. BRIDGES: 12:09:48 |
| 19 | (Record read.) 12:07:13 | 19 | Q. So beyond that, you can't give your testimony 12:09:48 |
| 20 | MR. FEE: Objection. Calls for speculation. 12:07:14 | 20 | as to what you think the government regulatory 12:09:51 |
| 21 | It's beyond the scope of his designation. 12:07:15 | 21 | purposes are on a general basis? 12:09:54 |
| 22 | 2 THE WITNESS: I don't have an answer for 12:07:23 | 22 | MR. FEE: Same objections. 12:09:57 |
| 23 | B that. I think you could assume that government 12:07:24 | 23 | BY MR. BRIDGES: 12:10:00 |
| 24 | a participants in the standardization process bring 12:07:30 | 24 | Q. In using or in examining ASTM's standards. 12:10:00 |
| 25 | 5 knowledge of regulatory agendas and regulatory needs 12:07:32 | 25 | MR. FEE: Same objections. 12:10:05 |
| | Page 94 | | Page 96 |
| 1 | of agencies to the voluntary consensus standards 12:07:37 | 1 | THE WITNESS: Yeah. I think we discussed 12:10:09 |
| 2 | 2 community of which ASTM is one member amongst 225 12:07:40 | 2 | earlier federal agencies do incorporate, by reference, 12:10:11 |
| 3 | B others. 12:07:45 | 3 | standards from voluntary consensus standards bodies 12:10:16 |
| 4 | BY MR. BRIDGES: 12:07:50 | 4 | like ASTM. So that could be one potential one 12:10:19 |
| 5 | Q. This agenda item referred to government 12:07:50 | 5 | potential factor. 12:10:24 |
| 6 | 6 agencies examining industry standards for regulatory 12:07:52 | 6 | BY MR. BRIDGES: 12:10:28 |
| 7 | 7 purposes. 12:07:56 | 7 | Q. Do you understand what regulatory purposes 12:10:28 |
| 8 | MR. FEE: Objection. Vague. What agenda 12:07:57 | 8 | federal agencies may have in incorporating ASTM 12:10:33 |
| 9 | I'm unclear as to what agenda you're referring. 12:08:00 | 9 | standards by reference into CFR? 12:10:36 |
| 10 |) There's no agenda in front of him. 12:08:04 | 10 | MR. FEE: Objection. Calls for speculation. 12:10:41 |
| 11 | MR. BRIDGES: That's all right. It's so 12:08:07 | 11 | It's also beyond the scope of his designation. 12:10:42 |
| | | 12 | You can answer if you know. 12:10:44 |
| 12 | 2 short, I can read it to him. 12:08:08 | | * |
| 12 13 | | 13 | THE WITNESS: Generally, I believe the EPA 12:10:46 |
| 13 | | 13 | THE WITNESS: Generally, I believe the EPA 12:10:46 would look to has a mission of helping to keep the 12:10:48 |
| 13 14 | Q. So my question is what regulatory purposes do 12:08:10 | 13 14 | |
| 13 14 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 | 13 14 15 | would look to has a mission of helping to keep the 12:10:48 air we breathe, the water we drink and the ground that 12:10:53 |
| 13 14 15 16 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 | 13 14 15 16 | would look to has a mission of helping to keep the 12:10:48 air we breathe, the water we drink and the ground that 12:10:53 |
| 13 14 15 16 17 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 5 MR. FEE: Objection. He's not been 12:08:22 7 designated as to speculation as to government 12:08:24 | 13 14 15 16 17 | would look to has a mission of helping to keep the12:10:48air we breathe, the water we drink and the ground that12:10:53we habitate on as safe and as clean and sustainable as12:10:56possible. So they might look to organizations like12:11:02 |
| 13 14 15 16 17 18 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 5 MR. FEE: Objection. He's not been 12:08:22 | 13 14 15 16 17 18 | would look to has a mission of helping to keep the12:10:48air we breathe, the water we drink and the ground that12:10:53we habitate on as safe and as clean and sustainable as12:10:56 |
| 13 14 15 16 17 18 19 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 5 MR. FEE: Objection. He's not been 12:08:22 7 designated as to speculation as to government 12:08:24 8 regulatory motivations, but to the extent you have an 12:08:26 9 understanding individually, you can try to answer 12:08:31 | 13 14 15 16 17 18 19 | would look to has a mission of helping to keep the12:10:48air we breathe, the water we drink and the ground that12:10:53we habitate on as safe and as clean and sustainable as12:10:56possible. So they might look to organizations like12:11:02ASTM and many others to see what work we're doing in12:11:08many of these areas and ensure that their employees12:11:08 |
| 13 14 15 16 17 18 19 20 | Q. So my question is what regulatory purposes do 12:08:10 you understand government agencies to have when they 12:08:16 seamine industry standards? 12:08:20 MR. FEE: Objection. He's not been 12:08:22 designated as to speculation as to government 12:08:24 regulatory motivations, but to the extent you have an 12:08:26 understanding individually, you can try to answer 12:08:31 that. 12:08:34 | 13 14 15 16 17 18 19 20 | would look to has a mission of helping to keep the 12:10:48 air we breathe, the water we drink and the ground that 12:10:53 we habitate on as safe and as clean and sustainable as 12:10:56 possible. So they might look to organizations like 12:11:02 ASTM and many others to see what work we're doing in 12:11:02 many of these areas and ensure that their employees 12:11:08 are participating in our standards development process 12:11:10 |
| 13 14 15 16 17 18 19 20 21 | Q. So my question is what regulatory purposes do 12:08:10 you understand government agencies to have when they 12:08:16 sexamine industry standards? 12:08:20 5 MR. FEE: Objection. He's not been 12:08:22 7 designated as to speculation as to government 12:08:24 8 regulatory motivations, but to the extent you have an 12:08:26 9 understanding individually, you can try to answer 12:08:31 9 that. 12:08:34 11 THE WITNESS: Sure. And I'm not an attorney, 12:08:35 | 13 14 15 16 17 18 19 20 21 | would look to has a mission of helping to keep the 12:10:48 air we breathe, the water we drink and the ground that 12:10:53 we habitate on as safe and as clean and sustainable as 12:10:56 possible. So they might look to organizations like 12:11:02 ASTM and many others to see what work we're doing in 12:11:02 many of these areas and ensure that their employees 12:11:08 are participating in our standards development process 12:11:10 to reflect the agency's mission. 12:11:12 |
| 13 14 15 16 17 18 19 20 21 22 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 5 MR. FEE: Objection. He's not been 12:08:22 7 designated as to speculation as to government 12:08:24 8 regulatory motivations, but to the extent you have an 12:08:26 9 understanding individually, you can try to answer 12:08:31 1 that. 12:08:34 1 THE WITNESS: Sure. And I'm not an attorney, 12:08:35 2 but my understanding is the National Technology 12:08:36 | 13 14 15 16 17 18 19 20 21 22 | would look to has a mission of helping to keep the12:10:48air we breathe, the water we drink and the ground that12:10:53we habitate on as safe and as clean and sustainable as12:10:56possible. So they might look to organizations like12:11:02ASTM and many others to see what work we're doing in12:11:02many of these areas and ensure that their employees12:11:08are participating in our standards development process12:11:10to reflect the agency's mission.12:11:12BY MR. BRIDGES:12:11:17 |
| 13 14 15 16 17 18 19 20 21 22 23 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 5 MR. FEE: Objection. He's not been 12:08:22 7 designated as to speculation as to government 12:08:24 8 regulatory motivations, but to the extent you have an 12:08:26 9 understanding individually, you can try to answer 12:08:31 9 that. 12:08:34 1 THE WITNESS: Sure. And I'm not an attorney, 12:08:35 2 but my understanding is the National Technology 12:08:36 3 rransfer and Advancement Act of 1995 combined with the 12:08:38 | 13 14 15 16 17 18 19 20 21 22 23 | would look to has a mission of helping to keep the12:10:48air we breathe, the water we drink and the ground that12:10:53we habitate on as safe and as clean and sustainable as12:10:56possible. So they might look to organizations like12:11:02ASTM and many others to see what work we're doing in12:11:02are participating in our standards development process12:11:10to reflect the agency's mission.12:11:12BY MR. BRIDGES:12:11:17Q. How would the government employees affect12:11:17 |
| 13 14 15 16 17 18 19 20 21 22 23 24 | Q. So my question is what regulatory purposes do 12:08:10 4 you understand government agencies to have when they 12:08:16 5 examine industry standards? 12:08:20 5 MR. FEE: Objection. He's not been 12:08:22 7 designated as to speculation as to government 12:08:24 8 regulatory motivations, but to the extent you have an 12:08:26 9 understanding individually, you can try to answer 12:08:31 1 that. 12:08:34 1 THE WITNESS: Sure. And I'm not an attorney, 12:08:35 2 but my understanding is the National Technology 12:08:36 | 13 14 15 16 17 18 19 20 21 22 23 | would look to has a mission of helping to keep the12:10:48air we breathe, the water we drink and the ground that12:10:53we habitate on as safe and as clean and sustainable as12:10:56possible. So they might look to organizations like12:11:02ASTM and many others to see what work we're doing in12:11:02are participating in our standards development process12:11:08are participating in our standards development process12:11:12BY MR. BRIDGES:12:11:17Q. How would the government employees affect12:11:17strike that.12:11:22 |

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| 1 employees have in the standards development process at 12:11:30 | 1 Q. Have you seen Exhibit 1038 before? 12:14:55 |
|---|---|
| 2 ASTM? 12:11:36 | 2 (The witness reviewed Exhibit 1038.) 12:15:20 |
| 3 MR. FEE: Objection. Vague. 12:11:37 | 3 THE WITNESS: Yes, I have. 12:15:20 |
| 4 THE WITNESS: In my experience, federal 12:11:43 | 4 BY MR. BRIDGES: 12:15:21 |
| 5 government participation in standards development 12:11:45 | 5 Q. Is this an organizational chart as of 12:15:22 |
| 6 helps to make a more effective public/private 12:11:47 | 6 July 21, 2014? 12:15:23 |
| 7 collaboration in our process. 12:11:50 | 7 A. I believe it is, yes. 12:15:25 |
| 8 BY MR. BRIDGES: 12:11:51 | 8 Q. Have you seen a more recent organizational 12:15:27 |
| 9 Q. How does it help in the drafting of 12:11:52 | 9 chart of ASTM? 12:15:29 |
| 10 standards? 12:11:53 | 10 A. I have not, but I believe that this is just 12:15:31 |
| 11 MR. FEE: Objection. Lack of foundation. 12:11:54 | 11 slightly out of date. 12:15:35 |
| 12 THE WITNESS: In the area of drafting 12:11:58 | 12 Q. What changes are necessary to make it 12:15:36 |
| 13 standards, I wouldn't have specific knowledge. 12:11:59 | 13 current? 12:15:40 |
| 14 BY MR. BRIDGES: 12:12:03 | 14 A. Under the direct line from Jim Thomas, that 12:15:46 |
| 15 Q. Who would? 12:12:03 | 15 would be a new box that would say, "Kathie Morgan, 12:15:51 |
| 16 MR. FEE: Objection. Calls for speculation. 12:12:04 | 16 Executive Vice President," and then a number of 12:15:57 |
| | |
| 17 THE WITNESS: Right. We have 140 different 12:12:07 18 technical committees and over 1,000 individual 12:12:09 | 17 departments would be reporting up through Kathie.12:16:0118 This is as of just a few weeks ago.12:16:04 |
| | |
| 19 subcommittees. So each agency's participation and 12:12:12 | 19 Q. I see that she is almost directly under 12:16:10 |
| 20 what role they play in the drafting of standards, I 12:12:15 | 20 Mr. Thomas in what looks like a direct report as vice 12:16:11 |
| 21 believe was your term, that would vary significantly. 12:12:20 | 21 president of Technical Committee Operations. Would 12:16:16 |
| 22 BY MR. BRIDGES: 12:12:23 | 22 that be simply changing the title in that box? 12:16:18 |
| 23 Q. Who are two or three people at ASTM you think 12:12:23 | 23 A. It would be expanding her responsibilities. 12:16:23 |
| 24 would be in a best position to answer the question of 12:12:25 | 24 For instance, now I report to Kathie Morgan, as does 12:16:25 |
| 25 what effect the presence of government employees has 12:12:32 Page 98 | 25 Phil Lively, as does Teresa Cendrowska, as does Tim 12:16:30 Page 100 |
| 1 in the creation of standards? 12:12:38 | 1 Brooke, and a new box would need to be created or 12:16:38 |
| 2 MR. FEE: Objection. Calls for speculation. 12:12:43 | 2 in the old box that said Kathie Morgan, I would put 12:16:48 |
| 3 Vague. 12:12:44 | 3 Daniel G. Smith. 12:16:51 |
| 4 THE WITNESS: Well, other than me, I would 12:12:49 | |
| | 4 Q. That's on Page 5 of 11 of the document? 12:16:53 |
| 5 say I'm one. Beyond that, you know, ASTM, it's a 12:12:50 | 4 Q. That's on Page 5 of 11 of the document? 12:16:53 5 A. Page 6 of 11. So Kathie has been promoted, 12:16:56 |
| | |
| 5 say I'm one. Beyond that, you know, ASTM, it's a12:12:506 decentralized process. So it would really vary again12:13:01 | 5 A. Page 6 of 11. So Kathie has been promoted, 12:16:56 6 and Dan has taken Kathie's old job, if that helps. 12:17:12 |
| 5 say I'm one. Beyond that, you know, ASTM, it's a12:12:506 decentralized process. So it would really vary again12:13:017 by the individual committees and the actions by the12:13:05 | A. Page 6 of 11. So Kathie has been promoted, 12:16:56 and Dan has taken Kathie's old job, if that helps. 12:17:12 Q. All right. In the standards development but 12:17:16 |
| 5 say I'm one. Beyond that, you know, ASTM, it's a12:12:506 decentralized process. So it would really vary again12:13:017 by the individual committees and the actions by the12:13:058 committee officers. So if I had to give you another12:13:08 | A. Page 6 of 11. So Kathie has been promoted, 12:16:56 and Dan has taken Kathie's old job, if that helps. 12:17:12 Q. All right. In the standards development but 12:17:16 not Technical Committee Operations? Page 5 of 11 is 12:17:17 |
| 5 say I'm one. Beyond that, you know, ASTM, it's a12:12:506 decentralized process. So it would really vary again12:13:017 by the individual committees and the actions by the12:13:058 committee officers. So if I had to give you another12:13:089 name, I would say probably Katherine Morgan, who12:13:14 | A. Page 6 of 11. So Kathie has been promoted, 12:16:56 6 and Dan has taken Kathie's old job, if that helps. 12:17:12 7 Q. All right. In the standards development but 12:17:16 8 not Technical Committee Operations? Page 5 of 11 is 12:17:24 |
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| andard, and rather than referencing D6751 they've 12:53:06 |
| andard, and rather than referencing D6751 they've 12:53:06 |
| |
| |
| eferenced D56571, gotten the numbers wrong, we will 12:53:09 |
| ngage with an agency and either make them aware 12:53:14 |
| here's a more recent version or make them aware that 12:53:16 |
| hat they are trying to reference doesn't make a lot 12:53:20 |
| f sense. 12:53:22 |
| Y MR. BRIDGES: 12:53:23 |
| Q. Does ASTM bring standards to the attention of 12:53:26 |
| the federal government with some sort of 12:53:36 |
| ecommendation that the federal government incorporate 12:53:38 |
| he standard by reference? 12:53:41 |
| MR. FEE: Objection. Vague. 12:53:43 |
| THE WITNESS: That's not part of what we call 12:53:45 |
| - |
| ngaging federal agencies in Congress. What we will 12:53:49 |
| o is work with agencies and work with Congress to 12:53:53 |
| hake them aware of the voluntary consensus standards 12:53:56 |
| hat we're developing in any given area that they 12:53:59 |
| hight have an interest. But the ultimate decision of 12:54:02 |
| hether or not to utilize and reference those 12:54:07 |
| |
| tandards we rarely take positions on, and I can't 12:54:08 |
| |
| tandards we rarely take positions on, and I can't 12:54:08 |
| tandards we rarely take positions on, and I can't 12:54:08 ive you a specific example of a time that we have 12:54:14 |
| tandards we rarely take positions on, and I can't 12:54:08 ive you a specific example of a time that we have 12:54:14 iken an example on taken a position on. 12:54:17 |
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| - | won't disclose privileged communications. 14:24:48 | 1 of Mr. Thomas' statement in that sentence | e? 14:28:32 |
|--|---|---|---|
| 2 | | 2 MR. FEE: Objection. Calls for spe | |
| | this communication chain between Jim and the executive 14:24 | 3 THE WITNESS: I understand that | |
| | committee, and it's not a government relations issue 14:24:56 | 4 an impact and a drag on ASTM's revenue | |
| | I'm working on. 14:24:59 | 5 confusion in business execution issues du | |
| | BY MR. BRIDGES: 14:25:00 | 6 that some of our standards are now availa | |
| | | | |
| 7 | | 7 of our licensed distributors and outside of directly qualitable from ASTM | e |
| | that's mentioned in that E-mail to be a government 14:25:03 | 8 directly available from ASTM. | 14:28:58 |
| | relations strategy? 14:25:06 | Q. So Mr. Thomas was lying in that s | |
| 10 | 5 1 | MR. FEE: Objection. Mischaracte | |
| 11 | | ···· · · · · · · | 14:29:07 |
| 12 | | 2 MR. BRIDGES: I'll withdraw it. | 14:29:08 |
| 13 | · | 3 Q. You didn't answer my question, M | Ir. Grove. 14:29:08 |
| 14 | 5 | 2 | 4:29:10 |
| 15 | Q. Have you seen this document before? 14:26:03 | 5 Q. My question is what do you under | stand to have 14:29:11 |
| 16 | | 6 been the basis of Mr. Thomas' statement | in that 14:29:14 |
| 17 | THE WITNESS: So the world justice project, 14:26:25 | 7 sentence? | 4:29:17 |
| 18 | the origination of the E-mail, which I received, yes, 14:26:27 | 8 MR. FEE: Objection. Calls for spe | eculation. 14:29:17 |
| 19 | I believe I reviewed that document. But from beyond 14:26:30 | 9 THE WITNESS: I wouldn't be able | e to answer 14:29:20 |
| 20 | that point in the E-mail chain, I do not have 14:26:35 | 0 that. I apologize. | 14:29:20 |
| 21 | recollection of being involved in this. 14:26:38 | 1 BY MR. BRIDGES: | 14:29:24 |
| 22 | BY MR. BRIDGES: 14:26:41 | 2 Q. When did ASTM first notice a mea | asurable 14:29:24 |
| 23 | Q. Did you review this document in preparation 14:26:41 | 3 impact on its finances from the activities | of 14:29:27 |
| 24 | to testify today? 14:26:44 | 4 Mr. Malamud and Public Resource? | 14:29:30 |
| 25 | A. I did not. 14:26:50 | 5 MR. FEE: Objection. Vague. | 14:29:32 |
| | Page 14 | | Page 14 |
| 1 | Q. Who at ASTM would have the most knowledge 14:26 | 1 THE WITNESS: Again, I don't have dire | ect 14:29:39 |
| | about the content on the front page of Exhibit 1046? 14:26:56 | 2 knowledge of such impact. | 14:29:42 |
| 3 | MR. FEE: Objection. Vague. Calls for 14:27:01 | 3 BY MR. BRIDGES: | 14.20.49 |
| Δ | | b i mit bilbolb. | 14:29:48 |
| - | speculation. 14:27:04 | 4 Q. What other knowledge do you have othe | |
| 5 | * | 4 Q. What other knowledge do you have othe | |
| 5 | - | 4 Q. What other knowledge do you have othe | er than 14:29:48 |
| 5 6 | THE WITNESS: Well, my understanding is that 14:27:1 | 4 Q. What other knowledge do you have othe 5 direct knowledge? 14: | r than 14:29:48 29:51 14:29:52 |
| 5 6 7 | THE WITNESS: Well, my understanding is that 14:27:1 this mentions litigation and copyright. I would think 14:27:15 | 4 Q. What other knowledge do you have othe 5 direct knowledge? 14: 6 MR. FEE: Same objection. | r than 14:29:48 29:51 14:29:52 vased on 14:29:53 |
| 5 6 7 | THE WITNESS: Well, my understanding is that14:27:1this mentions litigation and copyright. I would think14:27:15it would be legal counsel, Tom O'Brien.14:27:19BY MR. BRIDGES:14:27:26 | 4 Q. What other knowledge do you have othe 5 direct knowledge? 14: 6 MR. FEE: Same objection. 7 THE WITNESS: So to date, I'm aware, b | r than 14:29:48 29:51 14:29:52 pased on 14:29:53 and 14:29:57 |
| 5 6 7 8 9 | THE WITNESS: Well, my understanding is that14:27:1this mentions litigation and copyright. I would think14:27:15it would be legal counsel, Tom O'Brien.14:27:19BY MR. BRIDGES:14:27:26 | Q. What other knowledge do you have othe direct knowledge? 14: MR. FEE: Same objection. THE WITNESS: So to date, I'm aware, b conversations with our vice president for sales a | r than 14:29:48 29:51 14:29:52 pased on 14:29:53 and 14:29:57 ds 14:29:59 |
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| 7MR. FEE: Objection. He's here to provide14:36:397life, and safety. I would certainly be concerned if14:39:238some of these documents that contain futural and other14:36:428some of these documents that contain futural and other14:39:2310on this subject as well.14:36:6510injury or loss of life because of the sensitive.14:39:3311TUE WITNESS: Yes.14:36:5011inportant role that our standards pluy in protecting14:39:4313BY MR. RRIDGES:14:36:5514Q. What other harms to ASTM?14:39:4514Q. So I need to know every other fact you're14:36:0515MR. FEE: Same objections.14:39:4315from the defendants.So, please, IT tak as much14:37:0616THE WITNESS: I can't think of additional14:39:5816from the defendants.14:37:1619Q. Has ASTM heard from any customers that as ind, 14:40:0018BY MR. RRIDGES:14:40:0016savare of that pertains to harm that ASTM has 14:37:172016THE WITNESS: I can't think of additional14:39:5817inta entrains to ASTM?14:40:0018BY MR. RRIDGES:14:40:0018arrantive, Objection to the extent14:37:302016THE WITNESS: I can't think of additional14:40:2021clash for a marative, Objection to the extent14:37:302016THE WITNESS: I can't think can't dubitional14:40:2022for an arrative, Objection to the extent14:38:02 | 5 of ASTM to provide the information available to ASTM 14:36:3 | 5 THE WITNESS: Well, I would be concerned I 14:39:19 |
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| 9 earlier today. Of course, we'll have expert testimony 14:36:42 10 on this subject as well. 14:36:45 11 You can answer. 14:33:647 12 THE WITNESS: Yes. 14:36:57 13 BY MR. BRIDGES: 14:36:57 14 Q. So'n lead to know every other fact you're 14:37:65 15 aware of that pertains to harms that ASTM has suffered 14:36:57 16 from the defendants. So, please. I'll take as much 14:37:67 17 ime as we need. Tell me every other fact you're 14:37:68 18 aware of that pertains to harms that ASTM has 14:37:11 19 suffered as a consequence of the defendants. 14:37:11 19 suffered as a consequence of the defendants. 14:37:12 21 calls for a partialize. Objection to the extent 14:37:19 21 icalls for a narraive. Objection as to vague. 14:37:29 23 icalls for a narraive. Objection as to vague. 14:37:30 24 tharms? That's how lunderstand the question. 14:37:30 25 Can you read that back just to make sure 1 14:37:34 26 (MR. FEE: Objection to norm. 14:40:13 27 (Garto Yet talking about harms as opposed to financial 14:37:29 29 that SRTM have flow of the talt 14:38:02 20 (Record read.) 14:37:34 21 (Questord read.) 14:37:34 23 MR. REIDGES: 10:47:14:40:24 24 type of communication? 14:40:22 25 BY MR. BRIDGES: 10:47:14:40:24 25 BY MR. BRIDGES: 10:47:14:40:24 26 MR. BRIDGES: 10:47:14:40:24 27 type of communication? 14:40:22 28 more france in the start the 14:38:02 39 (Record read.) 14:37:34 30 (Record read.) 14:37:34 30 (Record read.) 14:37:34 30 (Record read.) 14:38:02 30 (MR. BRIDGES: Fin asking him as a corporate 14:40:34 31 (Do representative. 14:40:34 31 (Do representative | 7 MR. FEE: Objection. He's here to provide 14:36:39 | 7 life, and safety. I would certainly be concerned if 14:39:23 |
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| 15 viewing certain documents that have been put in the14:38:2115Q. What members of the public?14:41:0616 public domain, these documents contain errors. I've14:38:2216A. I'm not able to answer that at this time.14:41:0917 seen standards where tables have been upside down.14:38:2917Q. Did Mr. Pace put a dollar amount on his14:41:1718 I've seen tables and columns and rows that don't align14:38:3418estimate of lost revenues to ASTM as a consequence of14:41:1919 properly.14:38:3919the defendants' actions?14:41:2320So if there's a real risk to ASTM's14:38:4120MR. FEE: Objection to the extent that calls14:41:2521 reputation and to ASTM's standing in the global14:38:4821for expert testimony.14:41:2623 stakeholders utilize these documents with the14:38:5223no.14:41:3124 expectation and understanding that these were the14:38:5824BY MR. BRIDGES:14:41:33 | 13 development and quality control process. My 14:38:14 | 13 Q. Well, what customers? 14:40:54 |
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| 17seen standards where tables have been upside down.14:38:2917Q. Did Mr. Pace put a dollar amount on his14:41:1718I've seen tables and columns and rows that don't align14:38:3418estimate of lost revenues to ASTM as a consequence of14:41:1919properly.14:38:3919the defendants' actions?14:41:2320So if there's a real risk to ASTM's14:38:4120MR. FEE: Objection to the extent that calls14:41:2521reputation and to ASTM's standing in the global14:38:4821for expert testimony.14:41:2622economy, if customers or the public or other14:38:5223no.14:41:3124expectation and understanding that these were the14:38:5824BY MR. BRIDGES:14:41:33 | 15 viewing certain documents that have been put in the 14:38:21 | 15 Q. What members of the public? 14:41:06 |
| 18I've seen tables and columns and rows that don't align14:38:3418estimate of lost revenues to ASTM as a consequence of14:41:1919properly.14:38:3919the defendants' actions?14:41:2320So if there's a real risk to ASTM's14:38:4120MR. FEE: Objection to the extent that calls14:41:2521reputation and to ASTM's standing in the global14:38:4421for expert testimony.14:41:2622economy, if customers or the public or other14:38:4822THE WITNESS: In my communications with him,14:41:2923stakeholders utilize these documents with the14:38:5223no.14:41:3124expectation and understanding that these were the14:38:5824BY MR. BRIDGES:14:41:33 | 16 public domain, these documents contain errors. I've 14:38:22 | 16 A. I'm not able to answer that at this time. 14:41:09 |
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| 23 stakeholders utilize these documents with the14:38:5223 no.14:41:3124 expectation and understanding that these were the14:38:5824 BY MR. BRIDGES:14:41:33 | 21 reputation and to ASTM's standing in the global 14:38:44 | 21 for expert testimony. 14:41:26 |
| 24 expectation and understanding that these were the14:38:5824 BY MR. BRIDGES:14:41:33 | | 22 THE WITNESS: In my communications with him, 14:41:2 |
| | 23 stakeholders utilize these documents with the 14:38:52 | 23 no. 14:41:31 |
| 25 official ASTM documents, and products and materials 14:39:00 25 Q. As a representative of ASTM at this 14:41:33 | 24 expectation and understanding that these were the 14:38:58 | 24 BY MR. BRIDGES: 14:41:33 |
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| 1 deposition, does ASTM have any estimate of the dollar 14:41:37 | 3 |
|--|---|
| 2 amount of lost revenues to it as a consequence of the 14:41:42 | 2 THE WITNESS: I'm not sure. 14:44:08 |
| 3 defendants' actions? 14:41:45 | 3 MR. FEE: It's beyond the scope his 14:44:08 |
| 4 MR. FEE: Objection. Calls for expert 14:41:46 | 4 designation as well. 14:44:10 |
| 5 testimony. Let me see if that's really a topic that 14:41:48 | 5 Go ahead. 14:44:11 |
| 6 he's been designated on. 14:41:52 | 6 THE WITNESS: I'm not sure, no. 14:44:12 |
| 7 MR. BRIDGES: He may answer. 14:41:59 | 7 BY MR. BRIDGES: 14:44:13 |
| 8 MR. FEE: Hold on. I'm waiting to see if 14:42:00 | 8 Q. Was it more than three years ago? 14:44:13 |
| 9 that's actually a topic he's been designated on. 14:42:01 | 9 MR. FEE: Same objections. 14:44:16 |
| 0 MR. BRIDGES: Make the objections, and if 14:42:08 | 10 THE WITNESS: I'm not sure. 14:44:17 |
| 1 it's superfluous and he hasn't been designated on. 14:42:11 | 11 BY MR. BRIDGES: 14:44:18 |
| 2 I'd like to go ahead and get an answer. 14:42:11 | 12 Q. Was it more than two weeks ago? 14:44:18 |
| 3 MR. FEE: No. If you want to take off the 14:42:12 | 13 MR. FEE: Same objection. 14:44:21 |
| 4 prelude to your question there, then I'm happy to have 14:42:14 | 14THE WITNESS: I'm not sure.14:44:22 |
| 5 his answer without the prelude, but if you're going to 14:42:16 | 15 BY MR. BRIDGES: 14:44:23 |
| 6 have 14:42:16 | 16 Q. Do you know whether ASTM had any knowledge of 14:44:23 |
| 7 MR. BRIDGES: Okay. Sure. 14:42:16 | 17 errors in connection with defendants posting of ASTM 14:44:26 |
| 8 Q. Does ASTM have any estimate of the dollar 14:42:17 | 18 standards more than a week ago? 14:44:31 |
| 9 amount of lost revenues to it as a consequence of 14:42:20 | 19 MR. FEE: Same objection objections, I 14:44:35 |
| 0 defendants' actions? 14:42:23 | 20 should say. 14:44:36 |
| MR. FEE: Objection. Calls for expert 14:42:25 | 21 THE WITNESS: More than a week ago, I believe 14:44:38 |
| 2 testimony. 14:42:26 | 22 so, yes. 14:44:39 |
| THE WITNESS: Not to my knowledge. 14:42:27 | 23 BY MR. BRIDGES: 14:44:40 |
| 4 BY MR. BRIDGES: 14:42:30 | 24 Q. When did you first learn of any errors in 14:44:40 |
| 5 Q. Does ASTM have any facts in its possession 14:42:30 Page 154 | 25 defendants' posting of ASTM standards? 14:44:46 Page 15 |
| 1 that suggest to ASTM that it has lost money as a 14:42:39 | |
| 1 that suggest to ASTM that it has lost money as a 14:42:39 | 1 A. I first learned of it by hearing of it in the 14:44:51 |
| 2 consequence of defendants' actions? 14:42:46 | 1 A. I first learned of it by hearing of it in the 14:44:51 2 last year. I first viewed it yesterday. 14:44:53 |
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| 2 consequence of defendants' actions?14:42:463MR. FEE: Objection. Asked and answered.14:42:50 | 2 last year. I first viewed it yesterday.14:44:533Q. How many standards posted by defendants14:44:56 |
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| 2 consequence of defendants' actions? 14:42:46 3 MR. FEE: Objection. Asked and answered. 14:42:50 4 Calls for expert testimony. Vague. 14:42:51 5 THE WITNESS: Not that I'm aware of. 14:42:57 6 BY MR. BRIDGES: 14:43:05 7 Q. Is ASTM aware of any property damage, injury, 14:43:05 | 2 last year. I first viewed it yesterday. 14:44:53 3 Q. How many standards posted by defendants 14:44:56 4 contain errors? 14:45:00 5 MR. FEE: Objection. Beyond the scope of his 14:45:01 6 designation. Calls for speculation. 14:45:03 7 THE WITNESS: My understanding is that it 14:45:08 |
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| 2consequence of defendants' actions?14:42:463MR. FEE: Objection. Asked and answered.14:42:504Calls for expert testimony. Vague.14:42:515THE WITNESS: Not that I'm aware of.14:42:576BY MR. BRIDGES:14:43:057Q. Is ASTM aware of any property damage, injury,14:43:058or loss of life that has occurred because of the14:43:109defendants' actions?14:43:150MR. FEE: Objection. Calls for expert14:43:171testimony and speculation.14:43:192THE WITNESS: Fortunately, not at this time.14:43:223BY MR. BRIDGES:14:43:264Q. When did you first sorry.14:43:26 | 2last year. I first viewed it yesterday.14:44:533Q. How many standards posted by defendants14:44:564contain errors?14:45:005MR. FEE: Objection. Beyond the scope of his14:45:016designation. Calls for speculation.14:45:037THE WITNESS: My understanding is that it14:45:088would be extremely difficult to do a complete14:45:1410significant errors.14:45:2111BY MR. BRIDGES:14:45:2812Q. What are the significant ones?14:45:3014information, yes, I would say so.14:45:32 |
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| 1 more than one error in the ASTM standards? 14:50:24 | 1 THE WITNESS: I'm not familiar with the term 14:53:06 |
|--|--|
| 2 MR. FEE: Same objections. 14:50:28 | 2 "errata." 14:53:07 |
| 3 THE WITNESS: I'd be speculating. 14:50:31 | 3 BY MR. BRIDGES: 14:53:08 |
| 4 BY MR. BRIDGES: 14:50:34 | 4 Q. Does ASTM ever issue corrigenda to its 14:53:08 |
| 5 Q. Well, you have testified as to what would 14:50:34 | 5 standards? 14:53:13 |
| 6 surprise you. I'd like to know what would surprise 14:50:34 | 6 MR. FEE: Objection. Vague. Beyond the 14:53:14 |
| 7 you. 14:50:35 | 7 scope of his designation. 14:53:15 |
| 8 MR. FEE: Same objections. 14:50:37 | 8 THE WITNESS: I'm not certain. 14:53:20 |
| 9 THE WITNESS: I'm aware of ASTM's rigorous 14:50:37 | 9 BY MR. BRIDGES: 14:53:21 |
| 0 quality control process and the value of bringing 14:50:40 | 10 Q. Does ASTM ever issue a notice of errors in 14:53:21 |
| 1 people together under an open, transparent process and 14:50:42 | 11 any of its standards? 14:53:28 |
| 2 the important role that ASTM staff plays in helping to 14:50:47 | 12 MR. FEE: Same objections. 14:53:31 |
| 3 ensure the quality of our documents. And I would be 14:50:49 | 13 THE WITNESS: I'm not certain. 14:53:32 |
| 4 skeptical that that could be replicated if any steps 14:50:54 | 14 BY MR. BRIDGES: 14:53:34 |
| 5 were bypassed. So 14:50:59 | 15 Q. What happens if ASTM publishes and 14:53:34 |
| 6 BY MR. BRIDGES: 14:51:03 | 16 distributes a standard that's widely held by persons 14:53:37 |
| 7 Q. Would it surprise you for an ASTM standard to 14:51:03 | 17 and then discovers that there is a mistake in the 14:53:40 |
| 8 have three or more errors in it? 14:51:05 | 18 standard? How does ASTM notify the public? 14:53:42 |
| 9 MR. FEE: Same objections. 14:51:08 | 19 MR. FEE: Objection. Calls for speculation. 14:53:45 |
| THE WITNESS: Would it surprise me? Yes. 14:51:13 | 20 It's beyond the scope of his designation, and 14:53:47 |
| 21 BY MR. BRIDGES: 14:51:16 | 21 compound. 14:53:50 |
| | 22 THE WITNESS: I'm not able to explain that 14:53:52 |
| 22 Q. Are you aware of any ASTM standards with 14:51:16 23 three or more errors? 14:51:19 | - |
| | 1 |
| MR. FEE: Same objections. Just give me a 14:51:21 | 24 BY MR. BRIDGES: 14:53:55 |
| 25 second to object. 14:51:23 Page 162 | 25 Q. Would it harm ASTM's reputation to issue a 14:53:55 Page 16 |
| | |
| 1 THE WITNESS: I'm not personally, no. 14:51:25 | 1 standard with mistakes? 14:53:58 |
| 1 THE WITNESS: I'm not personally, no. 14:51:25 2 BY MR. BRIDGES: 14:51:27 | 1 standard with mistakes? 14:53:58 2 MR. FEE: Objection. Calls for expert 14:53:59 |
| | |
| 2 BY MR. BRIDGES: 14:51:27 | 2 MR. FEE: Objection. Calls for expert 14:53:59 |
| 2 BY MR. BRIDGES: 14:51:27 3 Q. Are you aware of how ASTM standards are 14:51:27 | 2 MR. FEE: Objection. Calls for expert 14:53:59 3 testimony. It's beyond the scope of his designation. 14:54:01 |
| 2 BY MR. BRIDGES: 14:51:27 3 Q. Are you aware of how ASTM standards are proofread? 14:51:27 4 proofread? 14:51:44 | 2MR. FEE: Objection. Calls for expert14:53:593testimony. It's beyond the scope of his designation.14:54:014THE WITNESS: I'm not certain.14:54:07 |
| 2 BY MR. BRIDGES: 14:51:27 3 Q. Are you aware of how ASTM standards are 14:51:27 4 proofread? 14:51:44 5 MR. FEE: Objection. Vague. 14:51:47 | 2MR. FEE: Objection. Calls for expert14:53:593 testimony. It's beyond the scope of his designation.14:54:014THE WITNESS: I'm not certain.14:54:075BY MR. BRIDGES:14:54:09 |
| 2BY MR. BRIDGES:14:51:273Q. Are you aware of how ASTM standards are14:51:274proofread?14:51:445MR. FEE: Objection. Vague.14:51:476THE WITNESS: Yes, generally.14:51:51 | 2MR. FEE: Objection. Calls for expert14:53:593 testimony. It's beyond the scope of his designation.14:54:014THE WITNESS: I'm not certain.14:54:075BY MR. BRIDGES:14:54:096Q. How has ASTM's reputation suffered from the14:54:09 |
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| 2BY MR. BRIDGES:14:51:273Q. Are you aware of how ASTM standards are14:51:274proofread?14:51:445MR. FEE: Objection. Vague.14:51:476THE WITNESS: Yes, generally.14:51:517BY MR. BRIDGES:14:51:538Q. How?14:51:539A. There's a rigorous process under which at14:51:5410every point in the standards development process14:51:5811there's peer review of the standard and of the14:52:0012document, and as it goes through the process, as it14:52:0513works through the ASTM process, which involves many14:52:0914steps, at the end there's an editor, an ASTM staff14:52:1315that reviews the standard and insures that the14:52:2617for for it to be.14:52:2918Q. And do ASTM editors catch every mistake?14:52:3219MR. FEE: Objection. Calls for speculation.14:52:3620THE WITNESS: I'm not aware of errors, but it14:52:4421wouldn't surprise me if there were some.14:52:4722BY MR. BRIDGES:14:52:49 | 2 MR. FEE: Objection. Calls for expert 14:53:59 3 testimony. It's beyond the scope of his designation. 14:53:59 4 THE WITNESS: I'm not certain. 14:54:07 5 BY MR. BRIDGES: 14:54:09 6 Q. How has ASTM's reputation suffered from the 14:54:09 7 activities of the defendants? 14:54:15 8 MR. FEE: Objection. Calls for expert 14:54:24 9 testimony. 14:54:25 10 THE WITNESS: I'm not certain. 14:54:28 11 BY MR. BRIDGES: 14:54:29 12 Q. Have you noticed an effect on ASTM's 14:54:29 13 reputation as a consequence of the defendants' 14:54:32 14 activities? 14:54:37 16 Q. What instances is ASTM aware of, of people 14:54:44 17 being confused about the relationship between ASTM and 14:54:50 18 the defendant? 14:54:57 19 MR. FEE: Objection. Vague. Asked and 14:54:59 20 answered. 14:55:02 21 THE WITNESS: Based on communications with 14:55:04 |
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| 2BY MR. BRIDGES:14:51:273Q. Are you aware of how ASTM standards are14:51:274proofread?14:51:445MR. FEE: Objection. Vague.14:51:476THE WITNESS: Yes, generally.14:51:517BY MR. BRIDGES:14:51:538Q. How?14:51:539A. There's a rigorous process under which at14:51:5410every point in the standards development process14:51:5811there's peer review of the standard and of the14:52:0012document, and as it goes through the process, as it14:52:0513works through the ASTM process, which involves many14:52:0914steps, at the end there's an editor, an ASTM staff14:52:1315that reviews the standard and insures that the14:52:2617for for it to be.14:52:2918Q. And do ASTM editors catch every mistake?14:52:3620THE WITNESS: I'm not aware of errors, but it14:52:4421wouldn't surprise me if there were some.14:52:4722BY MR. BRIDGES:14:52:49 | 2 MR. FEE: Objection. Calls for expert 14:53:59 3 testimony. It's beyond the scope of his designation. 14:54:01 4 THE WITNESS: I'm not certain. 14:54:07 5 BY MR. BRIDGES: 14:54:09 6 Q. How has ASTM's reputation suffered from the 14:54:09 7 activities of the defendants? 14:54:15 8 MR. FEE: Objection. Calls for expert 14:54:24 9 testimony. 14:54:25 10 THE WITNESS: I'm not certain. 14:54:28 11 BY MR. BRIDGES: 14:54:29 12 Q. Have you noticed an effect on ASTM's 14:54:32 13 reputation as a consequence of the defendants' 14:54:32 14 activities? 14:54:37 16 Q. What instances is ASTM aware of, of people 14:54:50 18 the defendant? 14:54:57 19 MR. FEE: Objection. Vague. Asked and 14:54:59 20 answered. 14:55:02 21 THE WITNESS: Based on communications with 14:55:04 22 our sales and publications vice president. 14:55:06 |

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| 1 | by reference? 15:01:47 | 1 | than the dated issue. 15:04:36 |
|--|---|----------------------------|---|
| 2 | MR. FEE: Objection. Vague as to whether or 15:01:48 | 2 | BY MR. BRIDGES: 15:04:38 |
| 3 | not that older version is authentic. 15:01:51 | 3 | Q. The authenticity of the standard didn't come 15:04:38 |
| 4 | THE WITNESS: Yeah. I'm sorry. Could you 15:01:54 | 4 | into your answer until you heard counsel's objection. 15:04:41 |
| 5 | just repeat that? 15:01:55 | 5 | MR. FEE: That's absolutely false. You 15:04:41 |
| | BY MR. BRIDGES: 15:01:57 | 6 | should read the transcript when you get done with 15:04:43 |
| 7 | | | this. 15:04:47 |
| 8 | ASTM logo on an older version of an ASTM standard 15:02:01 | | BY MR. BRIDGES: 15:04:49 |
| | where the older version has been incorporated by 15:02:07 | 9 | Q. Would it harm ASTM less if defendant took the 15:04:49 |
| | reference? 15:02:09 | 10 | ASTM logo off the standards that it sorry, that it 15:04:53 |
| 11 | MR. FEE: Same objection as to the vagueness. 15:02:11 | | posts? 15:04:58 |
| 12 | | 12 | - |
| | the most recent version of any document, you more than 15:02:19 | | and a hypothetical. 15:05:01 |
| | likely need to come to ASTM or one of our licensed 15:02:27 | 13 | |
| | distributors. 15:02:31 | 14 | MR. FEE: Calls for an expert opinion, 15:05:08 |
| | | | |
| | | | 1 1, , , , , , , , , , , , , , , , , , |
| 17 | Q. But if somebody is interested in, let's say, 15:02:32 a 2008 standard because the 2008 standard has been 15:02:39 | 17 | THE WITNESS: I'm not able to answer that 15:05:10 question. 15:05:12 |
| | | | A A A A A A A A A A A A A A A A A A A |
| | incorporated by reference but a more recent standard 15:02:42 has not been, what is the harm to ASTM from the 15:02:44 | | BY MR. BRIDGES: 15:05:14 O. Would ASTM well, would you find it 15:05:14 |
| | | 20 | () |
| | inclusion of the ASTM logo on that 2008 standard 15:02:49 | | problematic I'm just curious. Which would you find 15:05:18 |
| | posted by Public Resource? 15:02:55 | | to be more of a problem to ASTM, for Public Resource 15:05:2 |
| 23 | 5 1 | | to public strike that. 15:05:27 |
| 24 | ······································ | 24 | , , , , , , , , , , , , , , , , , , , |
| 25 | I'm not familiar with the regulatory the connection 15:03:04 Page 170 | 25 | more of a problem, for Public Resource to post the 15:05:41 Page 172 |
| 1 | between regulations and law, I will share my 15:03:09 | 1 | ASTM standards it posts with the ASTM logo or for 15:05:49 |
| 2 | observation 15:03:12 | 2 | Public Resource to publish them without the ASTM logo? 15:05:56 |
| 3 | BY MR. BRIDGES: 15:03:14 | 3 | MR. FEE: Objection. To the extent that 15:06:02 |
| 4 | Q. Please do. 15:03:14 | 4 | you're asking for what would be more problematic from 15:06:03 |
| 5 | A that just because a version of a standard 15:03:15 | 5 | a legal perspective 15:06:06 |
| 6 | that's in the law might be outdated, that doesn't seem 15:03:18 | 6 | MR. BRIDGES: Just please state the basis for 15:06:08 |
| 7 | to stop industry from wanting to use the most recent 15:03:26 | 7 | your objection instead of 15:06:10 |
| 8 | version of the standard. 15:03:30 | 8 | MR. FEE: Andrew, do you forget how your 15:06:11 |
| 9 | Q. And is it ASTM's view that it's misleading to 15:03:35 | 9 | deposition objections went? Do you remember your 15:06:12 |
| 10 | have the ASTM logo on anything that's currently 15:03:39 | 10 | deposition objections the other day? They were much 15:06:14 |
| | available strike that. 15:03:43 | 11 | more talkative than this. 15:06:16 |
| 12 | Is it ASTM's view that it is misleading to 15:03:48 | 12 | MR. BRIDGES: Not so. 15:06:18 |
| 13 | display the ASTM logo on standards currently available 15:03:54 | 13 | MR. FEE: I'm going to make my objections. 15:06:19 |
| 14 | on the Internet when the standards are not the most 15:04:03 | 14 | To the extent you're asking for a legal 15:06:21 |
| 15 | recent versions? 15:04:09 | 15 | conclusion with respect to "problematic," I object on 15:06:22 |
| | MR. FEE: Objection. To the extent you're 15:04:11 | | that basis. I object because it calls for 15:06:25 |
| 16 | | 17 | speculation, and it's a hypothetical question. 15:06:28 |
| 16 | using "misleading" as a legal term, I object on that 15:04:13 | | |
| 16 17 | using "misleading" as a legal term, I object on that 15:04:13 ground. I also object to the vagueness of that 15:04:15 | 18 | BY MR. BRIDGES: 15:06:35 |
| 16 17 18 | | 18 19 | |
| 16 17 18 19 | ground. I also object to the vagueness of that15:04:15because it's not clear whether or not the standards15:04:18 | | |
| 16 17 18 19 20 | ground. I also object to the vagueness of that15:04:15because it's not clear whether or not the standards15:04:18you're referencing are authentic or not.15:04:21 | 19 20 | Q. You may answer.15:06:35MR. FEE: Hold on. I'm not done objecting15:06:36 |
| 16 17 18 19 20 21 | ground. I also object to the vagueness of that15:04:15because it's not clear whether or not the standards15:04:18you're referencing are authentic or not.15:04:21MR. BRIDGES: That's coaching the witness,15:04:23 | 19 20 21 | Q. You may answer. 15:06:35 MR. FEE: Hold on. I'm not done objecting 15:06:36 yet. And objection to form. 15:06:38 |
| 16 17 18 19 20 21 22 | ground. I also object to the vagueness of that15:04:15because it's not clear whether or not the standards15:04:18you're referencing are authentic or not.15:04:21MR. BRIDGES: That's coaching the witness,15:04:23Mr. Fee.15:04:24 | 19 20 21 22 | Q. You may answer. 15:06:35 MR. FEE: Hold on. I'm not done objecting 15:06:36 yet. And objection to form. 15:06:38 THE WITNESS: And I'm not able to answer that 15:06:49 |
| 16 17 18 19 20 21 22 23 | ground. I also object to the vagueness of that 15:04:15 because it's not clear whether or not the standards 15:04:18 you're referencing are authentic or not. 15:04:21 MR. BRIDGES: That's coaching the witness, 15:04:23 Mr. Fee. 15:04:24 THE WITNESS: Well, that's exactly the point 15:04:25 | 19 20 21 22 23 | Q. You may answer. 15:06:35 MR. FEE: Hold on. I'm not done objecting 15:06:36 yet. And objection to form. 15:06:38 THE WITNESS: And I'm not able to answer that 15:06:49 question. 15:06:50 |
| 16 17 18 19 20 21 22 23 24 | ground. I also object to the vagueness of that15:04:15because it's not clear whether or not the standards15:04:18you're referencing are authentic or not.15:04:21MR. BRIDGES: That's coaching the witness,15:04:23Mr. Fee.15:04:24 | 19 20 21 22 23 | Q. You may answer. 15:06:35 MR. FEE: Hold on. I'm not done objecting 15:06:36 yet. And objection to form. 15:06:38 THE WITNESS: And I'm not able to answer that 15:06:49 |

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| 1 THE WITNESS: It's a little out of context. 16:32:42 | 1 Q. What were you suggesting in addition to a 16:36:38 |
|---|---|
| 2 BY MR. BRIDGES: 16:32:45 | 2 reading room? 16:36:40 |
| 3 Q. What would be necessary to add to that 16:32:45 | 3 A. I see that I was recommending that we 16:36:41 |
| 4 statement in order to supply the context? 16:32:50 | 4 consider beefing up excuse me making our 16:36:42 |
| 5 MR. FEE: Same objections. 16:32:55 | 5 summaries, which the abstracts which we provide to our 16:36:47 |
| 6 THE WITNESS: Looking at standards on an 16:33:12 | 6 standards, considering whether those abstracts could 16:36:53 |
| 7 individual basis devalues the real value that ASTM 16:33:14 | 7 be converted to something that's more of a summary. 16:36:57 |
| 8 standards have as a collection of a whole. 16:33:14 | 8 Q. Was that in addition to doing a reading room 16:37:08 |
| 9 BY MR. BRIDGES: 16:33:17 | 9 or instead of doing a reading room? 16:37:10 |
| 10 Q. What is the real value that ASTM standards 16:33:17 | 10 A. Obviously, John was thinking I was suggesting 16:37:20 |
| 11 have as a collection? 16:33:19 | 11 it as an addition, and I'm not sure if I was or not. 16:37:21 |
| 12 A. Customers in the public benefit from getting 16:33:25 | 12 I was explaining I'm not the IT guy. So I didn't know 16:37:40 |
| 13 a collection of standards at a very affordable price 16:33:27 | 13 how difficult this task would be. 16:37:45 |
| 14 point, which allows them to access numerous standards 16:33:32 | 14 Q. Did you have in mind providing summaries as 16:37:48 |
| 15 rather than looking at them as individual standards 16:33:39 | 15 opposed to the standards themselves in the reading 16:37:53 |
| 16 purchased separately. 16:33:42 | 16 room? 16:37:55 |
| 17 Q. Is there anything else about the context 16:33:48 | 17 MR. FEE: Objection. Are you asking him his 16:37:56 |
| 18 sorry. Anything else necessary to supply an 16:33:52 | 18 personal opinion in this question? 16:37:59 |
| 19 appropriate context for that statement? 16:33:54 | 19 MR. BRIDGES: I'm asking him what his state 16:38:02 |
| 20 MR. FEE: Objection. Lack of foundation. 16:33:56 | 20 of mind was at the time. 16:38:03 |
| 21 Calls for speculation. It's beyond the scope of his 16:33:59 | 21 MR. FEE: It's beyond the scope of his 16:38:04 |
| 22 designation. 16:34:01 | 22 designation. 16:38:06 |
| 23 THE WITNESS: No. 16:34:14 | 23 But you can answer. 16:38:07 |
| 24 (Deposition Exhibit 1056 was marked for 16:34:40 | 24 THE WITNESS: In our efforts to strike the 16:38:08 |
| 25 identification.) 16:34:40 | 25 right balance between providing the public with public 16:38:10 |
| Page 210 | Page 212 |
| 1 BY MR. BRIDGES: 16:34:41 | 1 access to standards incorporated by reference and 16:38:12 |
| 2 Q. Exhibit 1056 consists of a series of E-mails 16:34:41 | 2 maintaining our viability of our standards development 16:38:14 |
| 3 in which you and John Pace were either authors or 16:34:54 | 3 enterprise, I was recommending that we review a lot of 16:38:18 |
| 4 recipients; correct? 16:35:04 | 4 options. One of which was this summaries idea. 16:38:22 |
| 5 (The witness reviewed Exhibit 1056.) 16:35:28 | 5 BY MR. BRIDGES: 16:38:26 |
| 6 THE WITNESS: Yes, that's correct. 16:35:28 | 6 Q. Was it the idea of providing summaries as 16:38:26 |
| 7 BY MR. BRIDGES: 16:35:29 | 7 opposed to the text of the standards themselves? 16:38:29 |
| 8 Q. What did you understand Mr. Pace to mean in 16:35:29 | 8 MR. FEE: Same objection. 16:38:33 |
| 9 the first sentence about "sticking to our guns and 16:35:34 | 9 THE WITNESS: I don't recall. 16:38:36 |
| 10 doing the reading room exactly as how we have all 16:35:39 | 10 BY MR. BRIDGES: 16:38:41 |
| | |
| 11 agreed to date"? 16:35:43 | 11 Q. Does someone are you familiar with the 16:38:41 |
| | |
| 11 agreed to date"? 16:35:43 | 11 Q. Does someone are you familiar with the 16:38:41 |
| 11 agreed to date"? 16:35:43 12 A. I'd be speculating. 16:35:48 | 11Q. Does someone are you familiar with the16:38:4112operation of the reading room for ASTM today?16:38:44 |
| 11 agreed to date"? 16:35:43 12 A. I'd be speculating. 16:35:48 13 Q. Well, you were a recipient the sole 16:35:52 | 11Q. Does someone are you familiar with the16:38:4112operation of the reading room for ASTM today?16:38:4413A. Yes.16:38:47 |
| 11 agreed to date"?16:35:4312A. I'd be speculating.16:35:4813Q. Well, you were a recipient the sole16:35:5214 recipient of that E-mail. So please tell me what your16:35:56 | 11Q. Does someone are you familiar with the16:38:4112operation of the reading room for ASTM today?16:38:4413A. Yes.16:38:4714Q. Does one have to register to gain access to16:38:47 |
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| 11 agreed to date"?16:35:4312A. I'd be speculating.16:35:4813Q. Well, you were a recipient the sole16:35:5214 recipient of that E-mail. So please tell me what your16:35:5615 understanding was.16:35:5816MR. FEE: Objection. Lack of foundation.16:35:5917Beyond the scope of his designation as well.16:36:07 | 11Q. Does someone are you familiar with the16:38:4112operation of the reading room for ASTM today?16:38:4413A. Yes.16:38:4714Q. Does one have to register to gain access to16:38:4715the reading room?16:38:5016A. Yes.16:38:5117Q. What does one have to do to register to get16:38:52 |
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| 1 that they must be they have to be referred to as 17:24:32 | |
|--|---|
| | 1 stakeholders because the government is a very 17:29:07 |
| 2 "musts," and this would have the voluntary consensus 17:24:35 | 2 important member. 17:29:09 |
| 3 standards process. This isn't the intention when 17:24:39 | 3 BY MR. BRIDGES: 17:29:11 |
| 4 people come together to work in a voluntary consensus 17:24:43 | 4 Q. So is the answer to my question "yes"? 17:29:11 |
| 5 standard environment. They want the words to mean 17:24:47 | 5 MR. FEE: Objection. 17:29:13 |
| 6 what they carefully craft them to mean in the process, 17:24:49 | 6 You can answer it however you'd like. 17:29:14 |
| 7 and when so I believe that's what I was referring 17:24:52 | 7 MR. BRIDGES: He already has. 17:29:17 |
| 8 to in this. 17:24:55 | 8 Q. I'm now asking him is the answer to my 17:29:18 |
| 9 BY MR. BRIDGES: 17:25:00 | 9 question "yes." 17:29:20 |
| 0 Q. Well, Mr. Miller was not saying that the 17:25:00 | 10 MR. FEE: Same objection. Asked and 17:29:21 |
| 1 government was changing the standard. The government 17:25:02 | 11 answered. 17:29:22 |
| 2 was proposing to change the law; correct? 17:25:07 | 12 THE WITNESS: Speaking for Jeff Grove, yes. 17:29:23 |
| 3 MR. FEE: Objection. The document speaks for 17:25:11 | 13 BY MR. BRIDGES: 17:29:26 |
| 4 itself. Calls for speculation. 17:25:13 | 14 Q. What about speaking for ASTM? 17:29:26 |
| 5 THE WITNESS: I guess I would be speculating, 17:25:22 | 15 MR. FEE: Objection. Asked and answered. 17:29:28 |
| 6 but that was my interpretation of what this means. 17:25:24 | 16 THE WITNESS: I don't believe ASTM would have 17:29: |
| 7 BY MR. BRIDGES: 17:25:29 | 17 an official position. 17:29:31 |
| 8 Q. That the government would be changing the law 17:25:29 | 18 BY MR. BRIDGES: 17:29:35 |
| 9 as the law interprets the standard? 17:25:31 | 19 Q. You don't think that ASTM has a view as to 17:29:35 |
| MR. FEE: Same objections. And vague. 17:25:36 | 20 whether it is pleased when governments incorporate its 17:29:39 |
| THE WITNESS: Yeah. That the government was 17:25:41 | 21 standards by reference? 17:29:43 |
| 22 interpreting a standard in a way that the voluntary 17:25:43 | 22 MR. FEE: Objection. Vague and asked and 17:29:44 |
| 3 consensus standard group didn't necessarily intend it 17:25:46 | 23 answered. 17:29:46 |
| 4 to without coming back to the organization and working 17:25:50 | 24 THE WITNESS: It's never been a performance 17:29:49 |
| 25 with them. 17:25:57 | 25 metric for me. So no. 17:29:50 |
| Page 234 | Page 236 |
| 1 BY MR. BRIDGES: 17:27:38 | 1 BY MR. BRIDGES: 17:29:58 |
| 2 Q. Mr. Grove, does ASTM encourage any 17:27:38 | 2 Q. Does ASTM have views about things that are 17:29:58 |
| | |
| 5 governments to incorporate its standards by reference? 17:27:46 | 3 not performance metrics? 17:30:01 |
| | 3 not performance metrics?17:30:014MR. FEE: Objection. Beyond the scope of his17:30:05 |
| 4 MR. FEE: Objection. Vague. 17:27:49 | |
| 4 MR. FEE: Objection. Vague. 17:27:49 5 THE WITNESS: As a matter of policy, we make 17:27:54 | 4 MR. FEE: Objection. Beyond the scope of his 17:30:05 |
| 5 THE WITNESS: As a matter of policy, we make 17:27:54 | 4MR. FEE: Objection. Beyond the scope of his17:30:055designation. Vague.17:30:06 |
| 4MR. FEE: Objection. Vague.17:27:495THE WITNESS: As a matter of policy, we make17:27:546organizations sorry governments aware of our17:27:58 | 4MR. FEE: Objection. Beyond the scope of his17:30:055designation. Vague.17:30:066THE WITNESS: It could.17:30:11 |
| 4MR. FEE: Objection. Vague.17:27:495THE WITNESS: As a matter of policy, we make17:27:546organizations sorry governments aware of our17:27:587standards and point out and connect with agency17:28:04 | 4MR. FEE: Objection. Beyond the scope of his17:30:055designation. Vague.17:30:066THE WITNESS: It could.17:30:117BY MR. BRIDGES:17:30:14 |
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60 (Pages 234 - 237)

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| 1 | | - | |
|--|--|---|---|
| | A. Kathe Hooper is responsible for permissions 18:16:38 | 1 | legislation that causes an incorporation by reference? 18:20:11 |
| 2 | at ASTM. 18:16:47 | 2 | MR. FEE: Can you read that back to me, 18:20:19 |
| 3 | Q. Who is Joe Koury? 18:16:49 | 3 | please. 18:20:20 |
| 4 | A. Joe Koury is a staff manager that works with 18:16:51 | 4 | (Record read.) 18:20:38 |
| 5 | technical committees. 18:16:53 | 5 | MR. FEE: Objection to form. Beyond the 18:20:39 |
| 6 | (Deposition Exhibit 1070 was marked for 18:17:06 | 6 | scope of his designation. Calls for speculation. 18:20:40 |
| 7 | identification.) 18:17:06 | 7 | BY MR. BRIDGES: 18:20:48 |
| 8 | MR. BRIDGES: I'm showing you Exhibit 1070. 18:17:06 | 8 | Q. You may answer. 18:20:48 |
| 9 | Q. This is an E-mail from Ms. Hooper responding 18:17:12 | 9 | MR. FEE: Hold on. 18:20:49 |
| 0 | to a permission request; is that correct? 18:17:17 | 10 | Lack of foundation. 18:20:53 |
| 1 | (The witness reviewed Exhibit 1070.) 18:17:58 | 11 | Go ahead. 18:20:55 |
| 2 | THE WITNESS: Yes. 18:17:59 | 12 | THE WITNESS: Yeah. So I think we think 18:20:55 |
| 3 | (Deposition Exhibit 1071 was marked for 18:18:11 | | we want to make sure that Congress is aware of the 18:20:59 |
| 4 | identification.) 18:18:11 | | fact there may be a more recent version because 18:21:02 |
| | BY MR. BRIDGES: 18:18:12 | | oftentimes it may be unintended that they're not using 18:21:05 |
| 16 | Q. Exhibit 1071 is an E-mail from Sarah Petre to 18:18:12 | | the most recent version. 18:21:08 |
| | - | | BY MR. BRIDGES: 18:21:12 |
| | you and others; is that correct? 18:18:16 | | |
| 8 | (The witness reviewed Exhibit 1071.) 18:18:26 | 18 | Q. Ms. Petre asked you whether ASTM should 18:21:12 |
| 9 | MR. FEE: Objection. Lack of foundation 18:18:26 | | request that Congress use the language. Does ASTM 18:21:1 |
| | strike that. No objection. 18:18:27 | | ever request Congress to use particular language 18:21:21 |
| 21 | | | regarding ASTM standards? 18:21:25 |
| | and Congressional staff and then ASTM staff, correct. 18:18:44 | 22 | MR. FEE: Objection. Beyond the scope of his 18:21:32 |
| | BY MR. BRIDGES: 18:18:48 | | designation. 18:21:36 |
| 24 | Q. And within the ASTM 18:18:48 | 24 | You can answer. 18:21:36 |
| 25 | A. Correct. 18:18:51 Page 258 | 25 | THE WITNESS: Okay. I can think of instances 18:21:38 Page 26 |
| | 1 450 200 | | 1 450 20 |
| 1 | Q. And it's discussing Congressional 18:18:51 | 1 | like this where Congress what's happening here is 18:21:40 |
| 2 | legislation; is that correct? 18:18:54 | 2 | this is incorporation by reference by Congress and not 18:21:45 |
| 3 | MR. FEE: Objection. The document speaks for 18:18:56 | 3 | by an agency, and the concern that's expressed at 18:21:48 |
| 4 | itself. 18:18:57 | 4 | times by our committee members is if Congress acts to 18:21:5 |
| 5 | | | 5 |
| 5 | THE WITNESS: Legislation passed the House 18:19:10 | | designate a specific standard in legislation that 18:21:57 |
| | THE WITNESS: Legislation passed the House 18:19:10 and now it's being referred to the Senate, and Sarah 18:19:11 | 5 | |
| 6 | | 5 6 | designate a specific standard in legislation that 18:21:57 |
| 6 7 | and now it's being referred to the Senate, and Sarah 18:19:11 | 5 6 7 | designate a specific standard in legislation that18:21:57freezes that piece of that reference in statute for18:22:02 |
| 6 7 8 | and now it's being referred to the Senate, and Sarah 18:19:11 Petre recognized that there's references to ASTM 18:19:16 | 5 6 7 8 | designate a specific standard in legislation that18:21:57freezes that piece of that reference in statute for18:22:02years to come and agencies since it's something18:22:06 |
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| 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | and now it's being referred to the Senate, and Sarah 18:19:11 Petre recognized that there's references to ASTM 18:19:16 standards which are out of date, and she wanted to 18:19:18 contact the staffer to make him aware of that fact. 18:19:22 BY MR. BRIDGES: 18:19:26 Q. Was this a discussion about incorporation by 18:19:26 reference? 18:19:28 MR. FEE: Same objection. 18:19:29 THE WITNESS: It's a discussion about 18:19:35 Congressional intent to use the most recent standard, 18:19:37 I believe. 18:19:40 BY MR. BRIDGES: 18:19:41 Q. Is that for Congress's use in making an 18:19:41 incorporation by reference into a federal law of an 18:19:48 ASTM standard? 18:19:52 MR. FEE: Same objection. 18:19:54 | 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | designate a specific standard in legislation that 18:21:57 freezes that piece of that reference in statute for 18:22:02 years to come and agencies since it's something 18:22:06 that Congress said, agencies will simply say, "Hey, 18:22:12 talk to Congress, not to agencies about it." 18:22:16 So that's a concern that I'm familiar with, 18:22:19 and I can't tell if that I don't recall the 18:22:21 circumstances of this here, but that's the most 18:22:26 current version language. That's why we're interested 18:22:29 in making sure Congress is aware as a more current 18:22:32 version. 18:22:36 BY MR. BRIDGES: 18:22:38 Q. Mr. Grove, again, you didn't answer my 18:22:38 question. My question is does ASTM ever request 18:22:40 Congress to use particular language regarding ASTM 18:22:40 MR. FEE: Same objections. Plus asked and 18:22:47 |
| 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | and now it's being referred to the Senate, and Sarah 18:19:11 Petre recognized that there's references to ASTM 18:19:16 standards which are out of date, and she wanted to 18:19:18 contact the staffer to make him aware of that fact. 18:19:22 BY MR. BRIDGES: 18:19:26 Q. Was this a discussion about incorporation by 18:19:26 reference? 18:19:28 MR. FEE: Same objection. 18:19:29 THE WITNESS: It's a discussion about 18:19:35 Congressional intent to use the most recent standard, 18:19:37 I believe. 18:19:40 BY MR. BRIDGES: 18:19:41 Q. Is that for Congress's use in making an 18:19:41 incorporation by reference into a federal law of an 18:19:48 ASTM standard? 18:19:54 THE WITNESS: It appears, yes. 18:19:55 | 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | designate a specific standard in legislation that18:21:57freezes that piece of that reference in statute for18:22:02years to come and agencies since it's something18:22:02years to come and agencies since it's something18:22:02that Congress said, agencies will simply say, "Hey,18:22:12talk to Congress, not to agencies about it."18:22:12talk to Congress, not to agencies about it."18:22:16So that's a concern that I'm familiar with,18:22:19and I can't tell if that I don't recall the18:22:26current version language. That's why we're interested18:22:29in making sure Congress is aware as a more current18:22:32version.18:22:36BY MR. BRIDGES:18:22:38Q. Mr. Grove, again, you didn't answer my18:22:40Congress to use particular language regarding ASTM18:22:40Congress to use particular language regarding ASTM18:22:47answered.18:22:50 |
| 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | and now it's being referred to the Senate, and Sarah 18:19:11 Petre recognized that there's references to ASTM 18:19:16 standards which are out of date, and she wanted to 18:19:18 contact the staffer to make him aware of that fact. 18:19:22 BY MR. BRIDGES: 18:19:26 Q. Was this a discussion about incorporation by 18:19:26 reference? 18:19:28 MR. FEE: Same objection. 18:19:29 THE WITNESS: It's a discussion about 18:19:35 Congressional intent to use the most recent standard, 18:19:37 I believe. 18:19:40 BY MR. BRIDGES: 18:19:41 Q. Is that for Congress's use in making an 18:19:41 incorporation by reference into a federal law of an 18:19:48 ASTM standard? 18:19:52 MR. FEE: Same objection. 18:19:54 THE WITNESS: It appears, yes. 18:19:55 BY MR. BRIDGES: 18:20:01 | 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | designate a specific standard in legislation that 18:21:57 freezes that piece of that reference in statute for 18:22:02 years to come and agencies since it's something 18:22:06 that Congress said, agencies will simply say, "Hey, 18:22:12 talk to Congress, not to agencies about it." 18:22:16 So that's a concern that I'm familiar with, 18:22:19 and I can't tell if that I don't recall the 18:22:21 circumstances of this here, but that's the most 18:22:26 current version language. That's why we're interested 18:22:29 in making sure Congress is aware as a more current 18:22:32 version. 18:22:36 BY MR. BRIDGES: 18:22:38 Q. Mr. Grove, again, you didn't answer my 18:22:38 question. My question is does ASTM ever request 18:22:40 Congress to use particular language regarding ASTM 18:22:40 MR. FEE: Same objections. Plus asked and 18:22:47 answered. 18:22:50 THE WITNESS: Yes. 18:22:52 |
| 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | and now it's being referred to the Senate, and Sarah 18:19:11 Petre recognized that there's references to ASTM 18:19:16 standards which are out of date, and she wanted to 18:19:18 contact the staffer to make him aware of that fact. 18:19:22 BY MR. BRIDGES: 18:19:26 Q. Was this a discussion about incorporation by 18:19:26 reference? 18:19:28 MR. FEE: Same objection. 18:19:29 THE WITNESS: It's a discussion about 18:19:35 Congressional intent to use the most recent standard, 18:19:37 I believe. 18:19:40 BY MR. BRIDGES: 18:19:41 Q. Is that for Congress's use in making an 18:19:41 incorporation by reference into a federal law of an 18:19:48 ASTM standard? 18:19:54 THE WITNESS: It appears, yes. 18:19:55 | 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | designate a specific standard in legislation that18:21:57freezes that piece of that reference in statute for18:22:02years to come and agencies since it's something18:22:06that Congress said, agencies will simply say, "Hey,18:22:12talk to Congress, not to agencies about it."18:22:16So that's a concern that I'm familiar with,18:22:19and I can't tell if that I don't recall the18:22:21circumstances of this here, but that's the most18:22:26current version language. That's why we're interested18:22:32version.18:22:36BY MR. BRIDGES:18:22:38Q. Mr. Grove, again, you didn't answer my18:22:38question. My question is does ASTM ever request18:22:40Congress to use particular language regarding ASTM18:22:47answered.18:22:50 |

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| 2 its standards by reference?18:23:0423MR. FEE: Objection. Beyond the scope of his18:23:073 | don't think it happens very often, but I believe it18:25:33has happened in the last 10 years since I've been at18:25:35 |
|---|---|
| 3 MR. FEE: Objection. Beyond the scope of his 18:23:07 3 | |
| | |
| 4 designation. 18:23:09 4 | ASTM. 18:25:38 |
| | BY MR. BRIDGES: 18:25:40 |
| 5 THE WITNESS: To my knowledge, no. I believe 18:23:15 5 | Q. Are you saying that there has to be a 18:25:40 |
| 6 it's possible that there's been reasons why committees 18:23:21 6 | consensus process in order to cooperate with a federal 18:25:42 |
| 7 haven't wanted to see standards incorporated by 18:23:24 7 | government in incorporating standards by reference? 18:25:46 |
| 8 reference, but I can't recall an instance. 18:23:26 8 | MR. FEE: Objection. Mischaracterizes his 18:25:52 |
| 9 BY MR. BRIDGES: 18:23:31 9 | testimony. Vague. 18:25:54 |
| 10Q. Has ASTM ever imposed conditions on whether18:23:3110 | You can answer. 18:25:58 |
| 11 the federal government may incorporate its standards 18:23:37 11 | THE WITNESS: No, that's not what I'm saying. 18:26:00 |
| 12 by reference? 18:23:42 12 | BY MR. BRIDGES: 18:26:14 |
| 13MR. FEE: Same objection. Vague as well.18:23:4413 | Q. Do you know whether any federal official has 18:26:14 |
| 14 THE WITNESS: I don't have direct knowledge. 18:23:52 14 | taken advantage of the reading room that ASTM provides 18:26:17 |
| 15 It was before my time at ASTM, but I understand at one 18:23:54 15 | the public? 18:26:22 |
| 16 point in time there was a concern that Congress was18:23:5816 | MR. FEE: Objection. Vague. 18:26:23 |
| 17 perhaps taking ASTM taking key content from an ASTM 18:24:03 17 | THE WITNESS: I don't know specifically 18:26:30 |
| 18 standard and placing it in a piece of legislation and18:24:0918 | whether they have. I do know I've received accolades 18:26:31 |
| | from federal agencies, the fact that it exists. So I 18:26:34 |
| 20 BY MR. BRIDGES: 18:24:16 20 | would presume that they have. 18:26:40 |
| 21Q. Why would ASTM be concerned about that?18:24:1621 | BY MR. BRIDGES: 18:26:44 |
| 22 MR. FEE: Objection. Beyond the scope of his 18:24:20 22 | Q. How much money has ASTM received from the 18:26:44 |
| 23 designation. Calls for speculation. Lack of18:24:2223 | federal government in each of the last five years? 18:26:49 |
| 24 foundation. 18:24:24 24 | MR. FEE: Objection. Vague. 18:26:58 |
| 25THE WITNESS: It would be taking the standard18:24:2625Page 262 | THE WITNESS: Well, I believe we've received 18:27:00 Page 264 |
| | - |
| | anywhere from \$650,000 to \$900,000 per year over the 18:27:04 |
| | last five years from the federal government. 18:27:11 |
| · · | BY MR. BRIDGES: 18:27:17 |
| 4 BY MR. BRIDGES: 18:24:43 4 | Q. Were some of that money provided by the 18:27:17 |
| | federal government in order to facilitate the 18:27:22 |
| | standards development process? 18:27:25 |
| 7 MR. FEE: Objection. Beyond the scope of his 18:24:50 7 | MR. FEE: Objection. Calls for speculation. 18:27:27 |
| | Vague. 18:27:29 |
| 9 THE WITNESS: It's possible that we have. 18:24:54 9 | THE WITNESS: To my knowledge, none of it 18:27:31 |
| | was. 18:27:32 |
| | BY MR. BRIDGES: 18:27:37 |
| 12 MR. FEE: Same objection. 18:24:57 12 | Q. What were the main categories of payments by 18:27:37 |
| - | the federal government to ASTM over the last five 18:27:41 |
| | years? 18:27:46 |
| 15 BY MR. BRIDGES: 18:25:01 15 | MR. FEE: Objection. Vague. 18:27:47 |
| | BY MR. BRIDGES: 18:27:48 |
| 17 times it's occurred? 18:25:06 17 | Q. In other words, what were the payments for 18:27:48 |
| 5 | ASTM to do? 18:27:50 |
| 19 Beyond the scope of his designation. Calls for 18:25:09 19 | MR. FEE: Same objection, plus form. 18:27:52 |
| 20 speculation. 18:25:11 20 | THE WITNESS: I can think of that we would 18:27:53 |
| | sell standards to federal agencies. That would be one 18:27:56 |
| | source of revenue. 18:28:00 |
| | BY MR. BRIDGES: 18:28:01 |
| 24 have to reach a consensus that they want to see an 18:25:24 24 | Q. What other sources of revenue? 18:28:01 |
| 25 ASTM standard included in a regulation. And so I 18:25:28 25 Page 263 | A. I believe that we have a number of federal 18:28:03 Page 265 |

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| 2 1 | employees that participate in ASTM as full voting 18:28:06 members. So they would pay a \$75-per-year fee to be a 18:28:09 member of ASTM. 18:28:14 | 2 | or edits to any version of ASTM standards where the 18:31:13 current ASTM standards have been incorporated by 18:31:25 reference? 18:31:33 |
|------|---|----|--|
| 4 | Q. And you're counting that in the figures that 18:28:16 | 4 | MR. FEE: Objection. It's beyond the scope 18:31:34 |
| 5 | you gave me earlier? 18:28:18 | 5 | of his designation. Compound. Vague. 18:31:35 |
| 6 | A. Yes. 18:28:19 | 6 | THE WITNESS: Because of the openness and 18:31:45 |
| 7 | Q. What other sources of funds from the federal 18:28:20 | 7 | transparency and iterative innovative process that 18:31:49 |
| 8 8 | government have there been for ASTM? 18:28:23 | 8 | ASTM encapsulates, I wouldn't know how to answer that 18:31:53 |
| 9 | A. Right. That's all I'm aware of. That's all 18:28:27 | 9 | question, give you a number. 18:31:56 |
| 10 1 | I'm aware of. We also have certification and training 18:28:33 | 10 | MR. BRIDGES: There's one more exhibit I want 18:32:08 |
| 11 1 | programs, which I don't believe the federal government 18:28:41 | 11 | to find. 18:32:10 |
| 12 i | is too involved in, but we receive a small stipend 18:28:44 | 12 | (Deposition Exhibit 1072 was marked for 18:32:35 |
| 13 1 | from the U.S. Department of Agriculture to assist them 18:28:49 | 13 | identification.) 18:32:35 |
| 14 i | in running a the U.S. bio preferred program. 18:28:53 | 14 | MR. BRIDGES: Mr. Grove, I've handed you 18:32:35 |
| 15 | Q. Anything else? 18:29:00 | 15 | Exhibit 1072. 18:32:37 |
| 16 | A. We run a proficiency testing program, which 18:29:06 | 16 | |
| | the U.S. Department of Defense participates in. So 18:29:08 | 17 | |
| | it's not related to standards, but it's another source 18:29:14 | | style book for how ASTM standards are displayed. 18:32:57 |
| | of revenue from the federal government. 18:29:18 | 19 | |
| 20 | Q. Does ASTM have any means of identifying who 18:29:22 | | follow in participating in the drafting and revision 18:33:15 |
| | the originator was of any particular language in its 18:29:26 | | process of ASTM standards? 18:33:18 |
| | standards? 18:29:33 | 22 | |
| 23 | MR. FEE: Objection. Vague. Compound. To 18:29:34 | 23 | 5 6 1 |
| | the extent it calls for a legal conclusion, I'd also 18:29:43 | | BY MR. BRIDGES: 18:33:34 |
| | object on that basis. 18:29:46 | 25 | |
| | Page 266 | | Page 268 |
| 1 | Go ahead. 18:29:47 | 1 | follow in participating in the drafting and revision 18:33:38 |
| 2 | THE WITNESS: To the extent those are legal 18:29:51 | 2 | process of ASTM standards? 18:33:40 |
| 3 1 | terms, I'm aware of an ASTM standards development 18:29:52 | 3 | MR. FEE: Objection. Vague. 18:33:42 |
| 4 1 | process. I'm not aware of a way to trace origins back 18:29:56 | 4 | THE WITNESS: Generally, yes. 18:33:44 |
| 5 t | to a specific individual. 18:30:02 | 5 | MR. BRIDGES: Where are we on time? 18:34:06 |
| 61 | BY MR. BRIDGES: 18:30:06 | 6 | THE VIDEOGRAPHER: 18 minutes left. 18:34:10 |
| 7 | Q. Is there any strike that. 18:30:06 | 7 | MR. BRIDGES: 18 minutes left. 18:34:13 |
| 8 | How many individuals provide language or 18:30:11 | 8 | (Deposition Exhibit 1073 was marked for 18:35:00 |
| 9 6 | edits to the ASTM standards that have been 18:30:19 | 9 | identification.) 18:35:00 |
| 10 i | incorporated by reference? 18:30:24 | 10 | BY MR. BRIDGES: 18:35:00 |
| 11 | MR. FEE: Objection. Vague. Compound. 18:30:25 | 11 | Q. Mr. Grove, do you recognize Exhibit 1073? 18:35:00 |
| 12 | THE WITNESS: That would be very difficult to 18:30:37 | 12 | A. I do. 18:35:13 |
| 13 0 | calculate. I need to ask are you referring to 18:30:39 | 13 | Q. Does it represent the views of both ASTM and 18:35:16 |
| 14 s | standards that have already been incorporated by 18:30:41 | 14 | ANSI? 18:35:20 |
| 15 1 | reference? 18:30:43 | 15 | MR. FEE: Objection. Compound. Calls for 18:35:23 |
| 16 1 | BY MR. BRIDGES: 18:30:44 | 16 | speculation. Beyond the scope of his designation. 18:35:25 |
| 17 | Q. Yes. 18:30:44 | 17 | THE WITNESS: I believe this is an error. 18:35:30 |
| 18 | A. Presumably, if those standards are being 18:30:47 | 18 | No. I'm not familiar why this page would be stapled 18:35:32 |
| 19 1 | revised by ASTM or re-approved for use, it will have 18:30:49 | 19 | to a presentation. This is a speaker that came before 18:35:36 |
| 20 t | to go through a technical committee. It has to. 18:30:55 | 20 | me on a panel followed by who probably didn't 18:35:39 |
| 21 | That's the process for re-approving or revising 18:30:58 | 21 | provide a written presentation, which happens to be 18:35:44 |
| 22 8 | standards at ASTM. So it would depend on how many 18:31:01 | 22 | stapled to a presentation which begins with the title 18:35:47 |
| 23 | people are on that committee and what percentage 18:31:05 | 23 | page on a presentation that I gave. 18:35:51 |
| | 10.21.07 | 24 | BY MR. BRIDGES: 18:35:54 |
| 24 | voted. 18:31:07 | 24 | |

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| 1 general workshop. That's reflected on the first page. 18:35:56 | 1 MR. BRIDGES: I will check, but if we don't 18:41:09 |
|---|---|
| 2 And then there's a listing of Scott Cooper. Then 18:36:00 | 2 have them, we expect to get them. 18:41:10 |
| 3 there's your name, and then what follows in the 18:36:03 | 3 Q. Can you please explain to me what the purpose 18:41:16 |
| 4 exhibit is a presentation solely by you and not by 18:36:03 | 4 was or what you understood to be the purpose of the 18:41:20 |
| 5 Mr. Cooper; is that correct? 18:36:11 | 5 page with the Bates number ending in -3315? 18:41:23 |
| 6 A. That would be my recollection of events, yes. 18:36:13 | 6 MR. FEE: Objection. It's beyond the scope 18:41:33 |
| 7 Q. And then does that remaining portion starting 18:36:17 | 7 of the designation. Calls for speculation. 18:41:34 |
| 8 after your name reflect the views of ASTM at the time 18:36:20 | 8 THE WITNESS: This represents a project that 18:41:39 |
| 9 of your presentation? 18:36:22 | 9 ASTM staff is undertaking throughout the course of 18:41:42 |
| 10 MR. FEE: Objection. Calls for speculation. 18:36:24 | 10 2015 and I'm sorry. 2014 and 2015. These would be 18:41:47 |
| 11 Beyond the scope of his designation. Compound as 18:36:26 | 11 the items that are contained in the project. 18:41:53 |
| 12 well. 18:36:29 | 12 BY MR. BRIDGES: 18:41:58 |
| 13 You should read the whole thing if he's 18:36:38 | 13Q. Has the project been approved?18:41:58 |
| 14 asking you to verify all the use of ASTM. 18:36:39 | 14 MR. FEE: Objection. Vague. Beyond the 18:41:59 |
| 15 (The witness reviewed Exhibit 1073.) 18:37:01 | 15 scope of his designation. 18:42:03 |
| 16 THE WITNESS: Yes. I believe this, to the 18:37:01 | 16THE WITNESS: Project been approved?18:42:06 |
| 17 best of my recollection, was the general views that 18:37:05 | 17 MR. BRIDGES: Strike that. 18:42:08 |
| 18 ASTM would have on this issue at the time of this 18:37:07 | 18 Q. Is the project underway? 18:42:09 |
| 19 presentation. 18:37:09 | 19 MR. FEE: Objection. Beyond the scope of his 18:42:11 |
| 20 (Deposition Exhibit 1074 was marked for 18:38:01 | 20 designation. 18:42:13 |
| 21 identification.) 18:38:01 | 21 THE WITNESS: So some of these activities may 18:42:16 |
| 22 BY MR. BRIDGES: 18:38:01 | 22 be underway, but we don't believe that we are actively 18:42:18 |
| 23 Q. Mr. Grove, Exhibit 1074 is a series of 18:38:01 | 23 pursuing all of them. 18:42:21 |
| 24 E-mails among you and Katherine Morgan, Len Morrissey 18:38:07 | 24 BY MR. BRIDGES: 18:42:23 |
| 25 and John Pace; is that correct? 18:38:15 Page 270 | 25 Q. Which ones is ASTM not actively pursuing? 18:42:26 Page 272 |
| 1 4 30 - 10 | |
| 1 A. Yes, it is. 18:38:26 | 1 MR. FEE: Same objection. 18:42:31 |
| 1 A. Yes, it is. 18:38:26 2 MR. FEE: While I'm thinking of it, I'm going 18:39:08 | 1MR. FEE: Same objection.18:42:312THE WITNESS: Well, we're taking an18:42:38 |
| | |
| 2 MR. FEE: While I'm thinking of it, I'm going 18:39:08 | 2 THE WITNESS: Well, we're taking an 18:42:38 |
| 2MR. FEE: While I'm thinking of it, I'm going18:39:083 to reserve the right to read and sign.18:39:12 | 2THE WITNESS: Well, we're taking an18:42:383inventory. We don't have great information about the18:42:40 |
| 2MR. FEE: While I'm thinking of it, I'm going18:39:083to reserve the right to read and sign.18:39:124(Deposition Exhibit 1075 was marked for18:39:29 | 2THE WITNESS: Well, we're taking an18:42:383inventory. We don't have great information about the18:42:404full extent of government participation. So we're18:42:45 |
| 2MR. FEE: While I'm thinking of it, I'm going18:39:083to reserve the right to read and sign.18:39:124(Deposition Exhibit 1075 was marked for18:39:295identification.)18:39:29 | 2THE WITNESS: Well, we're taking an18:42:383inventory. We don't have great information about the18:42:404full extent of government participation. So we're18:42:455taking an inventory of how many government reps are18:42:50 |
| 2MR. FEE: While I'm thinking of it, I'm going18:39:083to reserve the right to read and sign.18:39:124(Deposition Exhibit 1075 was marked for18:39:295identification.)18:39:296MR. BRIDGES: I'm handing you an exhibit18:39:29 | 2THE WITNESS: Well, we're taking an18:42:383inventory. We don't have great information about the18:42:404full extent of government participation. So we're18:42:455taking an inventory of how many government reps are18:42:506participating in ASTM technical committees and where.18:42:52 |
| 2MR. FEE: While I'm thinking of it, I'm going18:39:083to reserve the right to read and sign.18:39:124(Deposition Exhibit 1075 was marked for18:39:295identification.)18:39:296MR. BRIDGES: I'm handing you an exhibit18:39:297marked 1075 that consists of pages ASTM003314 to18:39:31 | 2THE WITNESS: Well, we're taking an18:42:383inventory. We don't have great information about the18:42:404full extent of government participation. So we're18:42:455taking an inventory of how many government reps are18:42:506participating in ASTM technical committees and where.18:42:527We're trying to find out more about how federal18:42:56 |
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| 1 | THE VIDEOGRAPHER: This is the end of the 18:53:06 | 1 | ACKNOWLEDGMENT OF DEPONENT | |
|----------------------------------|--|----|--|----------|
| 2 d | leposition of Mr. Jeffrey Grove. We are off the 18:53:08 | 2 | | |
| 3 r | ecord at 18:52. 18:53:13 | 3 | I, JEFFREY GROVE, do hereby certify that I | |
| 4 | (Witness excused.) 18:53:16 | 4 | have read the foregoing pages, to, | |
| 5 | (Deposition concluded at 6:52 p.m.) 18:53:16 | 5 | and that the same is a correct transcription of the | |
| 6 | | 6 | answers given by me to the questions therein | |
| 7 | | 7 | propounded, except for the corrections or changes in | |
| 8 | | | form or substance, if any, noted in the attached | |
| 9 | | 9 | Errata Sheet. | |
| 10 | | 10 | | |
| 11 | | 11 | | |
| 12 | | | DATE SIGNATURE | |
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| | Page 282 | | | Page 284 |
| 1 | CERTIFICATE | | | |
| 2 | I do hereby certify that the aforesaid | | | |
| 3 | testimony was taken before me, pursuant to | | | |
| 4 | notice, at the time and place indicated; that | | | |
| 5 | said deponent was by me duly sworn to tell | | | |
| 6 | the truth, the whole truth, and nothing but | | | |
| 7 | the truth; that the testimony of said | | | |
| 8 | deponent was correctly recorded in machine | | | |
| 9 | shorthand by me and thereafter transcribed | | | |
| 10 | under my supervision with computer-aided | | | |
| | transcription; that the deposition is a true | | | |
| | and correct record of the testimony given by | | | |
| 13 | the witness; and that I am neither of counsel | | | |
| 14 | nor kin to any party in said action, nor | | | |
| 15 | interested in the outcome thereof. | | | |
| 16 | | | | |
| 17 | | | | |
| 10 | | | | |
| 18 | | | | |
| 18 | -0% signatura0% ~ | | | |
| 18 | Nancy J. Martin, KMR, CSR | | | |
| | Nancy J. Martin, KMR, CSR | | | |
| 19 | Nancy J. Martin, KMR, CSR | | | |
| 19 20 21 | Mancy J. Martin, κMR, CSR Dated: March 18, 2015 | | | |
| 19 20 21 | Nancy J. Martin, KMR, CSR | | | |
| 19 20 21 22 | Nancy J. Martin, KMR, CSR | | | |
| 19 20 21 22 23 | Nancy J. Martin, KMR, CSR | | | |
| 19 20 21 22 23 24 | Nancy J. Martin, KMR, CSR | | | |

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EXHIBIT 9

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| 1 | UNITED STATES DIST | TRICT COURT | |
|----|-----------------------------|--------------------|--------|
| 2 | FOR THE DISTRICT C |)F COLUMBIA | |
| 3 | | | |
| | AMERICAN SOCIETY FOR : N | 40. | |
| 4 | TESTING AND MATERIALS : 1 | L:13-cv-01215-TSC- | |
| 5 | d/b/a ASTM : I | DAR | |
| 6 | INTERNATIONAL; : | | |
| 7 | NATIONAL FIRE : | | |
| | PROTECTION : | | |
| 8 | ASSOCIATION, INC.; : | | |
| 9 | and AMERICAN SOCIETY : | | |
| 10 | OF HEATING, : | | |
| 11 | REFRIGERATION, AND : | | |
| 12 | AIR CONDITIONING : | | |
| 13 | ENGINEERS, : | | |
| | Plaintiffs : | | |
| 14 | vs. : | | |
| | PUBLIC.RESOURCE.ORG, : | | |
| 15 | INC., : | | |
| 16 | Defendant : | | |
| 17 | | | |
| | Videotaped deposition | on of JOHN C. | |
| 18 | JAROSZ taken at the law off | fices of Veritext | |
| 19 | Legal Solutions, 1250 I Str | reet NW, | |
| 20 | Washington, DC, commencing | at 10:09 a.m. | |
| 21 | THURSDAY, AUGUST 27, 2015, | before Debbie | |
| 22 | Leonard, Registered Diploma | ate Reporter, | |
| 23 | Certified Realtime Reporter | . | |
| 24 | | | |
| 25 | PAGES 1 - 260 | | |
| | | | |
| | | | Page 1 |

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| 1 | consulting career. | 1 | standards development organization that |
|-----------------|---|------------------|---|
| 2 | BY MR. BRIDGES: | 2 | you've worked on? |
| 3 | Q. In what context? | 3 | A. Again, I'd have to go back and |
| 4 | A. There have been several matters | 4 | look at my records. I can't right now recite |
| 5 | I've had, litigations, that have involved | 5 | any, but there very well could be one or |
| 6 | standard setting organizations and the | 6 | more. |
| 7 | outputs from those organizations. | 7 | Q. Did you review any of your work |
| 8 | Q. What organizations? | 8 | in from earlier copyright cases involving |
| 9 | A. Well, some that come to mind | 9 | standards development organizations in |
| 10 | are ETSI, IEEE, the Blu-ray Association, | 10 | connection with your work in this case? |
| 11 | MPEG, MPEG L.A., the Philips 6C and Philips | 11 | A. Not to the best of my memory, |
| 12 | 3C organizations. Those are among the ones | 12 | no. |
| 13 | that come to mind. | 13 | Q. What background do you have in |
| 14 | Q. And what types of litigation | 14 | the creation of standards by standard |
| 15 | did your work relating to those standard | 15 | development organizations? |
| 16 | setting organizations involve? | 16 | MR. FEE: Objection to form. |
| 17 | MR. FEE: Objection to form. | 17 | THE WITNESS: In the context of |
| 18 | THE WITNESS: It was almost all | 18 | some of my consulting assignments, I |
| 19 | intellectual property litigation, with | 19 | have examined processes undertaken by |
| 20 | probably the bulk of the analyses | 20 | SDOs. |
| 21 | undertaken with regard to patent | 21 | BY MR. BRIDGES: |
| 22 | rights. | 22 | Q. Anything else? |
| 23 | BY MR. BRIDGES: | 23 | A. Nothing else comes to mind. |
| 24 | Q. Do you recall | | I've certainly looked at the output |
| 25 | A. I guess I should there were | 25 | associated with those processes, but there's |
| | Page 26 | | Page 28 |
| 1 | probably some breach of contract matters as | 1 | nothing else that comes to mind. |
| 2 | well. | 2 | Q. What processes undertaken by |
| 3 | Q. Did you work on any matters | 3 | standards development organizations did you |
| 4 | involving copyright law where you became | 4 | examine? |
| 5 | familiar with the work and outputs of | 5 | MR. FEE: Objection. Are you |
| 6 | standards setting organizations before this | 6 | asking prior to the report still? |
| 7 | case? | 7 | MR. BRIDGES: Yes. |
| 8 | A. Probably, but I cannot say that | 8 | MR. FEE: Okay. |
| 9 | with absolute certainty. I've been involved | 9 | THE WITNESS: I'm not quite |
| 10 | in several matters over a course of many | 10 | MR. BRIDGES: Or other than in |
| 11 | years. | 11 | this case. |
| 12 | Q. Can you name any copyright | 12 | MR. FEE: Okay. |
| 13 | matter involving a standards development | 13 | THE WITNESS: I'm not quite |
| 14 | organization that you recall? | 14 | sure what you're asking. I've seen |
| 15 | A. Not now, without going back and | 15 | discussion of the some of the |
| 16 | looking at my records. | 16 | processes of various organizations. |
| 17 | Q. Would they be listed in the | 17 | I'm not I'm not quite sure what |
| 18 | cases attached to Exhibit 1? | 18 | you're asking. Perhaps you could ask |
| 19 | A. That would summarize some of my | 19 | it somewhat differently. |
| 20 | records. The cases that are embodied in my | 20 | BY MR. BRIDGES: |
| 20 | tab 1 are those that led to deposition or | 20 | Q. Well, no. You said, quote, "I |
| $\frac{21}{22}$ | trial testimony. I've been involved in many | $\frac{21}{22}$ | have examined processes undertaken by SDOs." |
| 22 | matters beyond those. | 22 | So my question is, what |
| 23 | Q. But sitting here, you cannot | 23 | processes undertaken by standards development |
| 24 | recall any copyright case involving a | 24 | organizations did you examine? |
| | THE ALL ALL AND A LEASE HEADING A | $\perp \Delta J$ | $\sigma_{zanizations}$ utu you ezaninite! |
| 23 | Page 27 | | Page 29 |

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| 1 | A. It sounds like the same | 1 | manufacturers only. Others include a wider |
|--|---|---|---|
| 2 | question to me. | 2 | array of companies. |
| 3 | Q. Specifically, what processes | 3 | In all instances, though, the |
| 4 | did you examine? | 4 | companies are trying to the standards |
| 5 | A. That still sounds like the same | 5 | setting organizations are trying to develop |
| 6 | question, but let me try to answer it by | 6 | at least some form of consensus sometimes |
| 7 | saying I've looked, for instance, at the | 7 | it's very broad consensus; sometimes it's |
| 8 | mechanisms that ETSI undertook in developing | 8 | more narrow consensus about what would be |
| 9 | standards. So I am familiar generally with | 9 | good for that standards setting organization. |
| 10 | the processes that it follows. Similarly | 10 | Sometimes the SSOs are |
| 11 | with regard to other standard setting | 11 | interested in what's best for the |
| 12 | organizations. | 12 | manufacturers and the ability for them to |
| 13 | Q. What other standard setting | 13 | supply in an interoperable environment. In |
| 14 | organizations? | 14 | some cases, the SSOs are very alert to the |
| 15 | A. Well, I think I identified | 15 | needs of consumers and users of products and |
| 16 | those a few moments ago. Do you want me to | 16 | services that comply with standards. |
| 17 | repeat those? | 17 | Q. You've distinguished between |
| 18 | Q. Well, if are you saying | 18 | standards setting organizations and standard |
| 19 | that, for all of those organizations, you | 19 | development organizations. What is the |
| 20 | examined their processes? | 20 | distinction that you that you identify |
| 21 | A. In some dimension, probably for | 21 | between the two? |
| 22 | most of the organizations, I had at least | 22 | A. I think I said I didn't know if |
| 23 | some knowledge of the process. I can't say | 23 | there is for sure a distinction, but I think |
| 24 | that I investigated in depth all of the | 24 | an SSO is perhaps a broader concept than an |
| 25 | processes for all of the organizations that | 25 | SDO, but I might be wrong on that. |
| | Page 30 | | Page 32 |
| 1 | have been involved in my consulting | 1 | I know the companies I |
| 2 | assignments that are standards oriented. | 2 | the plaintiffs here are SDOs. The |
| | e | | |
| 3 | Q. What do you recall about your | 3 | |
| 3 | | 3 4 | associations are, among other things, in the |
| | investigation of the processes by which | | |
| 4 | | 4 | associations are, among other things, in the business of creating and developing |
| 4 5 | investigation of the processes by which standards development organizations create their standards? | 4 5 | associations are, among other things, in the business of creating and developing standards. |
| 4 5 6 7 | investigation of the processes by which standards development organizations create their standards? A. I should say I SDO is | 4 5 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that |
| 4 5 6 7 8 | investigation of the processes by whichstandards development organizations createtheir standards?A. I should say I SDO isprobably not the right term to use. I should | 4 5 6 7 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that have different constituents that are of interest to them. I don't know for sure that |
| 4 5 6 7 | investigation of the processes by which standards development organizations create their standards? A. I should say I SDO is | 4 5 6 7 8 9 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that have different constituents that are of |
| 4 5 6 7 8 9 | investigation of the processes by whichstandards development organizations createtheir standards?A. I should say I SDO isprobably not the right term to use. I shouldprobably say standards setting organizations. | 4 5 6 7 8 9 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that have different constituents that are of interest to them. I don't know for sure that an SSO is a broader concept than an SDO, but |
| 4 5 6 7 8 9 10 | investigation of the processes by which standards development organizations create their standards? A. I should say I SDO is probably not the right term to use. I should probably say standards setting organizations. There may be a distinction between an SSO and | 4 5 6 7 8 9 10 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that have different constituents that are of interest to them. I don't know for sure that an SSO is a broader concept than an SDO, but it could be. |
| 4 5 6 7 8 9 10 11 | investigation of the processes by which standards development organizations create their standards? A. I should say I SDO is probably not the right term to use. I should probably say standards setting organizations. There may be a distinction between an SSO and an SDO. But, generally, each SSO has a | 4 5 7 8 9 10 11 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that have different constituents that are of interest to them. I don't know for sure that an SSO is a broader concept than an SDO, but it could be. Q. What do you understand to be |
| 4 5 6 7 8 9 10 11 12 | investigation of the processes by which standards development organizations create their standards? A. I should say I SDO is probably not the right term to use. I should probably say standards setting organizations. There may be a distinction between an SSO and an SDO. | 4 5 7 8 9 10 11 12 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that have different constituents that are of interest to them. I don't know for sure that an SSO is a broader concept than an SDO, but it could be. Q. What do you understand to be the constituents of the plaintiffs in this |
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| 4 5 6 7 8 9 10 11 12 13 14 | investigation of the processes by which standards development organizations create their standards? A. I should say I SDO is probably not the right term to use. I should probably say standards setting organizations. There may be a distinction between an SSO and an SDO. But, generally, each SSO has a process that's unique to its organization. | 4 5 7 8 9 10 11 12 13 14 | associations are, among other things, in the business of creating and developing standards. There could be other SSOs that have different constituents that are of interest to them. I don't know for sure that an SSO is a broader concept than an SDO, but it could be. Q. What do you understand to be the constituents of the plaintiffs in this case? MR. FEE: Objection to form. THE WITNESS: I laid that out |
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| 1 | any harms that the plaintiffs have actually | 1 | you just said, quote, "I am not sure that the |
|----------|--|-------|---|
| 2 | suffered to date as a consequence of the | 2 | impact from the past would be close to the |
| 3 | defendant's activities? | 3 | impact that will occur in the future if the |
| 4 | MR. FEE: Objection to form. | 4 | Court finds that there has been no copyright |
| 5 | THE WITNESS: To the extent I | 5 | or trademark infringement." |
| 6 | have, it's embodied in my report. | 6 | A. It's everything laid out in my |
| 7 | You'll see there's a little bit of | 7 | report. I it's really the at the heart |
| 8 | evidence of actual tangible harm to | 8 | of what I did. |
| 9 | date, and there's certainly more | 9 | Q. And please summarize for me |
| 10 | discussion of harm. The tangible | 10 | what data you base that statement on. |
| 11 | evidence I have is reflected in my | 11 | A. That's identified in my report. |
| 12 | report. | 12 | Q. Okay. Show me, please, in the |
| 12 | BY MR. BRIDGES: | 12 | report. |
| | | | - |
| 14 | Q. And what do you understand that | 14 | A. It's all of what's in |
| 15 | evidence to be? | 15 | Exhibit 1. |
| 16 | A. I believe the number of | 16 | Q. No, I want I want the basis |
| 17 | downloads from the Public Resource | 17 | for your statement that the impact from |
| | dissemination have been fairly substantial. | | conduct to date strike that that you're |
| | I believe that the purchase of publications | | not sure that the impact from the conduct to |
| | has declined some at the plaintiffs at the | | date would be close to the impact that will |
| 21 | various plaintiffs. It certainly has not | | occur in the future if the Court find |
| 22 | risen. Those are among the things that come | 22 | makes a certain finding, right? |
| 23 | to mind. | 23 | A. Correct. |
| 24 | I think I discuss the topic in | 24 | Q. So please identify for me |
| 25 | more depth in paragraph, among other thing | 25 | something specific that forms the basis of |
| | Page 62 | | Page 64 |
| 1 | among other places, in paragraph 133 of my | 1 | that statement. |
| 2 | report. | 2 | MR. FEE: Objection. Asked and |
| 3 | Q. Have you been able to quantify | 3 | answered. |
| 4 | any financial losses to plaintiffs as a | 4 | THE WITNESS: Among other |
| 5 | consequence of defendant's activities? | 5 | things, paragraphs 112 through 155. |
| 6 | A. No. | 6 | BY MR. BRIDGES: |
| 7 | Q. Why not? | 7 | Q. So these are the "Costs of |
| 8 | A. Not with any great certainty. | 8 | Losing Copyright Protection"; is that |
| 9 | | 9 | correct? |
| 10 | - • | 10 | |
| | | | |
| 11 | that would allow me to do that. Moreover, I | 11 | section, and then there's some discussion of |
| 12 | am not sure that the impact from the past | | trademark protection as well. |
| | will be close to the impact that will occur | 13 | Q. And those would be the harms |
| 14 | in the future if the Court finds that there | 14 | that you identify that would flow from a |
| 15 | has been no copyright or trademark | 15 | decision by the Court that the plaintiffs |
| 16 | infringement. | 16 | cannot enforce their copyrights against the |
| 17 | Q. Why do you make the statement | 17 | defendant, correct? |
| 18 | you just did? What's your basis for it? | 18 | MR. FEE: Objection to form. |
| 19 | MR. FEE: Objection to form. | 19 | THE WITNESS: What I can say |
| 20 | THE WITNESS: I think there | 20 | I'm sorry. |
| 21 | were a few things in my statement. | 21 | MR. FEE: I just objected to |
| 22 | Which would you like me to expound on? | 22 | form. |
| 23 | BY MR. BRIDGES: | 23 | THE WITNESS: What I can say |
| | Q. Just that sentence. I'd like | 24 | with a reasonable degree of certainty. |
| 124 | | 1 – · | |
| 24 25 | to know what the basis is for the sentence | 25 | BY MR. BRIDGES: |
| 24 | to know what the basis is for the sentence $$_{\mbox{Page 63}}$$ | 25 | BY MR. BRIDGES: Page 65 |

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| 1 | that I've cited, and some of those | 1 | THE WITNESS: point to |
|--|--|--|---|
| 2 | talk about the standard development | 2 | MR. FEE: form. |
| 3 | process and why participants are | 3 | THE WITNESS: any particular |
| 4 | active in the process. So in that | 4 | instances as I sit here now. |
| 5 | regard, I've considered incentives. | 5 | BY MR. BRIDGES: |
| 6 | BY MR. BRIDGES: | 6 | Q. Can you think of any other |
| 7 | Q. What do you understand the | 7 | motivations that the participants in the |
| 8 | incentives to be? | 8 | standards writing process have? |
| 9 | A. Well, for the supply side | 9 | A. I'm sorry. Other than what? |
| 10 | constituents, they're interested in effective | 10 | Q. Other than the incentives you |
| 11 | manufacturing and selling of products that | 11 | referred to earlier of the supply-side |
| 12 | will and services that will be well | 12 | constituents and the demand-side |
| 13 | received in the marketplace; and on the | 13 | constituents. |
| 14 | demand side, the constituents are interested | 14 | A. Nothing else comes to mind, |
| 15 | in products and services that address certain | 15 | although I'm certainly open to the fact that |
| 16 | quality and compatibility issues or problems | 16 | I haven't thought of or expressed all the |
| 17 | and help resolve those. | 17 | incentives. |
| 18 | Q. Do you know who actually | 18 | Q. Well, what other incentives can |
| 19 | creates the text of the standards? | 19 | you think of as you sit here? |
| 20 | MR. FEE: Objection to form. | 20 | A. As I just said, nothing else |
| 21 | THE WITNESS: Are you talking | 21 | comes to mind. |
| 22 | about who actually types in the words? | 22 | Q. What incentives do you |
| 23 | BY MR. BRIDGES: | 23 | understand the plaintiffs to have in |
| 24 | Q. No. | 24 | developing standards? |
| 25 | A. Because I don't know what you | 25 | MR. FEE: Objection to form. |
| | Page 82 | | Page 84 |
| 1 | mean by "creates the text." | 1 | THE WITNESS: I think, |
| 2 | Q. Who actually suggests the | 2 | generally, they want consensus among |
| 3 | words? | 3 | interested parties in how to address a |
| 4 | A. I think a number of | 4 | particular issue or problem that those |
| 5 | constituents do, typically. | 5 | constituents face. |
| 6 | Q. What types of constituents | 6 | They are each non-profit |
| 7 | suggest the words of the standards? | 7 | organizations, so they're not |
| 8 | MR. FEE: Objection to form. | 8 | intending to profit off their |
| 9 | THE WITNESS: I think it's | 9 | activities, but they're certainly |
| 10 | sometimes SDO employees. I think, | 10 | intending to fund their activities |
| 11 | more times than not, it's industry | 11 | going forward. |
| 12 | participants, often supply-side | 12 | BY MR. BRIDGES: |
| 13 | people, sometimes demand-side people. | 13 | Q. What do you understand the |
| 14 | Frequently those people are working | 14 | activities of the standards development |
| | from preexisting standards or similar | 15 | organizations to be in creating the standards |
| 13 | | 16 | at issue in this case? |
| 15 16 | | 10 | |
| 16 | standards and revising those as | | MR. FEE: Objection to form. |
| 16 17 | standards and revising those as appropriate. | 17 | MR. FEE: Objection to form. THE WITNESS: At the very |
| 16 17 18 | standards and revising those as appropriate. So I think a number of people | 17 18 | THE WITNESS: At the very |
| 16 17 18 19 | standards and revising those as appropriate. So I think a number of people have input to the words. | 17 18 19 | THE WITNESS: At the very least, they facilitate the process |
| 16 17 18 19 20 | standards and revising those as appropriate. So I think a number of people have input to the words. BY MR. BRIDGES: | 17 18 19 20 | THE WITNESS: At the very least, they facilitate the process through arranging logistics. They do |
| 16 17 18 19 20 21 | standards and revising those as appropriate. So I think a number of people have input to the words. BY MR. BRIDGES: Q. Do you actually know of | 17 18 19 20 21 | THE WITNESS: At the very least, they facilitate the process through arranging logistics. They do other things, including participate in |
| 16 17 18 19 20 21 22 | standards and revising those as appropriate. So I think a number of people have input to the words. BY MR. BRIDGES: Q. Do you actually know of instances where SDO employees have proposed | 17 18 19 20 21 22 | THE WITNESS: At the very least, they facilitate the process through arranging logistics. They do other things, including participate in discussions, and as I understand |
| 16 17 18 19 20 21 22 23 | standards and revising those as appropriate. So I think a number of people have input to the words. BY MR. BRIDGES: Q. Do you actually know of instances where SDO employees have proposed text as opposed to editing text? | 17 18 19 20 21 22 23 | THE WITNESS: At the very least, they facilitate the process through arranging logistics. They do other things, including participate in discussions, and as I understand it, and create versions of proposed |
| 16 17 18 19 20 21 22 | standards and revising those as appropriate. So I think a number of people have input to the words. BY MR. BRIDGES: Q. Do you actually know of instances where SDO employees have proposed | 17 18 19 20 21 22 | THE WITNESS: At the very least, they facilitate the process through arranging logistics. They do other things, including participate in discussions, and as I understand |

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| 1 | Web sites we gathered ourselves, and I think | 1 | Q. What did you hear about |
|--|--|---|--|
| 2 | the reports and articles, with the exception | 2 | overseas litigation involving Public |
| 3 | of the Bremer articles, we gathered | 3 | Resource? |
| 4 | ourselves. | 4 | A. I think I heard that there was |
| 5 | Q. Do you know why you got no | 5 | a German or a suit in Germany, but I'm not |
| 6 | documents from NFPA, no Bates range documents | 6 | sure that I learned much more than that. I |
| 7 | from NFPA? | 7 | don't recall what status that suit what |
| 8 | MR. REHN: Object to form | 8 | the status of that suit is. |
| 9 | THE WITNESS: I don't know why | 9 | Q. Do you recall anyone disclosing |
| 10 | we did not receive Bates documents | 10 | to you litigation involving NFPA in the |
| 11 | THE REPORTER: Wait. | 11 | United States that pertained to standards and |
| 12 | MR. REHN: Sorry. Object to | 12 | copyright? |
| 13 | the form. Lacks foundation. | 13 | A. It's possible, but I don't |
| 14 | THE WITNESS: I don't know for | 14 | recall any, sitting here right now. |
| 15 | sure that we didn't receive | 15 | Q. Do you recall inquiring about |
| 16 | Bates-stamped documents, but I believe | 16 | public statements of fact that NFPA has made |
| 17 | some of the documents we received were | 17 | regarding copyright and standards in |
| 18 | NFPA documents. | 18 | litigation other than this litigation in the |
| 19 | BY MR. BRIDGES: | 19 | United States? |
| 20 | Q. Do you recall seeing any NFPA | 20 | MR. FEE: Objection to form. |
| 21 | documents that in which NFPA personnel | 21 | THE WITNESS: I do not. |
| 22 | stated that they could not show any harm from | 22 | BY MR. BRIDGES: |
| 23 | the defendant's activities? | 23 | Q. Are you familiar with a case |
| 24 | A. Received any documents that | 24 | called Veeck, V-E-E-C-K? |
| 25 | said that? | 25 | A. I'm familiar with an opinion in |
| | Page 122 | | Page 124 |
| 1 | Q. Uh-huh. | 1 | the Veeck case. |
| 2 | A. Perhaps you would have | 2 | Q. What do you know about that |
| 3 | something that would refresh my memory. I | 3 | opinion? |
| 4 | don't recall, sitting here right now, but | 4 | MR. FEE: Objection. |
| 5 | it's possible. | 5 | I would instruct you not to |
| 6 | Are you talking about | 6 | disclose anything you know about that |
| 7 | historical historically no harm, or are | 7 | opinion that was a result of |
| 8 | you talking about prospectively? | 0 | |
| | | 8 | communications with counsel and that |
| 9 | | 8 9 | communications with counsel and that |
| | Q. Either one. Did you do you recall seeing any internal NFPA documents | | communications with counsel and that did not form the basis of any of the |
| 10 | Q. Either one. Did you do you recall seeing any internal NFPA documents | 9 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the |
| 10 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether | 9 10 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in |
| 10 11 | Q. Either one. Did you do you recall seeing any internal NFPA documents | 9 10 11 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the |
| 10 11 12 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the | 9 10 11 12 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with |
| 10 11 12 13 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. | 9 10 11 12 13 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case |
| 10 11 12 13 14 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony | 9 10 11 12 13 14 15 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my |
| 10 11 12 13 14 15 16 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it | 9 10 11 12 13 14 15 16 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. |
| 10 11 12 13 14 15 16 17 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource | 9 10 11 12 13 14 15 16 17 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: |
| 10 11 12 13 14 15 16 17 18 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after. | 9 10 11 12 13 14 15 16 17 18 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: Q. Why did the Veeck case not form |
| 10 11 12 13 14 15 16 17 18 19 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after. Q. Do you recall learning about | 9 10 11 12 13 14 15 16 17 18 19 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: Q. Why did the Veeck case not form any basis for any of your observations or |
| 10 11 12 13 14 15 16 17 18 19 20 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after. Q. Do you recall learning about any litigation that NFPA had engaged in | 9 10 11 12 13 14 15 16 17 18 19 20 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: Q. Why did the Veeck case not form any basis for any of your observations or conclusions or conclusions here? |
| 10 11 12 13 14 15 16 17 18 19 20 21 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after. Q. Do you recall learning about any litigation that NFPA had engaged in pertaining to standards and copyright? | 9 10 11 12 13 14 15 16 17 18 19 20 21 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: Q. Why did the Veeck case not form any basis for any of your observations or conclusions here? A. I don't know how to answer that |
| 10 11 12 13 14 15 16 17 18 19 20 21 22 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after. Q. Do you recall learning about any litigation that NFPA had engaged in pertaining to standards and copyright? A. I think I heard that there's | 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: Q. Why did the Veeck case not form any basis for any of your observations or conclusions or conclusions here? A. I don't know how to answer that question. I it didn't present any facts |
| 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after. Q. Do you recall learning about any litigation that NFPA had engaged in pertaining to standards and copyright? A. I think I heard that there's some overseas litigation involving Public | 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: Q. Why did the Veeck case not form any basis for any of your observations or conclusions or conclusions here? A. I don't know how to answer that question. I it didn't present any facts that were specific to this case, as far as I |
| 10 11 12 13 14 15 16 17 18 19 20 21 22 | Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether NFPA has suffered any harm from the defendant's activities? A. I don't recall documents on it. There may have been some deposition testimony about past activities, but I don't know if it was activities prior to Public Resource actions here or after. Q. Do you recall learning about any litigation that NFPA had engaged in pertaining to standards and copyright? A. I think I heard that there's some overseas litigation involving Public Resource. Whether that involves NFPA, I | 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | communications with counsel and that did not form the basis of any of the opinions in your report or any of the assumptions that you relied upon in reaching your conclusions. THE WITNESS: I did talk with counsel about that case, and that case didn't form any basis for any of my observations or conclusions here. BY MR. BRIDGES: Q. Why did the Veeck case not form any basis for any of your observations or conclusions or conclusions here? A. I don't know how to answer that question. I it didn't present any facts |

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| 1 | answered. | 1 | A. Not sitting here right now, I |
|----------|---|-----------------|--|
| 2 | THE WITNESS: Again, I read the | 2 | don't. |
| 3 | case. I didn't do any analysis beyond | 3 | Q. Do you know whether ASHRAE took |
| 4 | that of that particular case. | 4 | over development of what became standard 90.1 |
| 5 | BY MR. BRIDGES: | 5 | from any other group or entity? |
| 6 | Q. What steps did you take to | 6 | A. No, I do not. |
| 7 | ascertain what public harms flowed from the | 7 | Q. Have you ever quantified the |
| 8 | Court's decision in the Veeck case? | 8 | value of the contributions made by the |
| 9 | A. Other than reading the case, | 9 | volunteers of the various organizations to |
| 10 | the opinion in the case, I didn't do anything | 10 | the standards at issue in this case? |
| 11 | beyond that to understand the implications of | 11 | MR. FEE: Objection to form. |
| 12 | that holding. | 12 | THE WITNESS: Not other than |
| 13 | Q. You didn't do any investigation | 13 | having some sense of hours or a |
| 14 | as to the economic consequences to any | 14 | limited sense of dollars, but not |
| 15 | entity, industry, or person as a consequence | 15 | beyond that, no. |
| 16 | of the decision in the Veeck case, correct? | 16 | BY MR. BRIDGES: |
| 17 | MR. FEE: Objection to form. | 17 | Q. Can you put a rough dollar |
| 18 | THE WITNESS: I think that's | 18 | value on the time and expenses of the |
| 19 | correct, yes. | 19 | volunteers with respect to any of the |
| 20 | BY MR. BRIDGES: | 20 | standards in this case? |
| 21 | Q. How has the process of | 21 | MR. FEE: Objection to form. |
| 22 | standards development changed in the last 100 | 22 | THE WITNESS: Not sitting here |
| 23 | years, to your knowledge? | 23 | right now. That would entail a little |
| 24 | A. I don't know the specifics, and | 24 | bit of a study. I have not done that. |
| | I don't know that there is one standards | | BY MR. BRIDGES: |
| | Page 130 | | Page 132 |
| 1 | development process. I think there are a | 1 | Q. What what would be required? |
| 2 | variety of processes pursued by a number of | 2 | A. To understand basically the |
| 3 | SSOs or SDOs. I'm sure that there have been | 3 | out-of-pocket expenses incurred and the |
| 4 | changes on the margin. There may have been | 4 | opportunity costs incurred. So among other |
| 5 | larger changes. I just don't know. I have | 5 | things, one would want to look at time |
| 6 | not studied the trend in the standard | 6 | records, have an understanding of |
| 7 | development process over time. | 7 | compensation, have an understanding of the |
| 8 | Q. What changes are you aware of | 8 | activities of those individuals. Those |
| 9 | in the standards development process of NFPA | 9 | are would be among the inputs. |
| 10 | over the past 100 years? | 10 | Q. What changes are you aware of |
| 11 | A. I don't know. I've not studied | | in the distribution of standards in the past |
| 12 | that topic. | 12 | 100 years by the plaintiffs? |
| 13 | Q. What changes are you aware of | 13 | MR. FEE: Objection to form. |
| 14 | in the standards development process of the | 14 | THE WITNESS: I haven't |
| 15 | ASHRAE 90.1 standard? | 15 | investigated that particular issue, |
| 16 | A. I don't know. I've not studied | 16 | but I understand that some of the |
| 17 | that. | 17 | standards today are distributed |
| 18 | Q. How did ASHRAE come to develop | 18 | through the Internet that certainly |
| 19 | the 90.1 standard? | 19 | didn't exist 100 years ago. |
| 20 | A. I think, generally, a need was | 20 | Some of the standards are |
| 20 | identified and a group of constituents | 20 | distributed for free with limitations. |
| 21 22 | convened to derive a standard, but I don't | $\frac{21}{22}$ | I don't know if that was true 100 |
| 22 23 | know the specifics beyond that. | 22 | years ago, but it might have been. |
| 23 24 | | 23 | |
| | Q. Do you know who identified the need? | 24 | I would expect some of the |
| 23 | Page 131 | 23 | copying and dissemination capabilities Page 133 |
| | I age 151 | | 1 age 155 |

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| 1 | are much greater today than they were | 1 | the right to reproduce, copy, or |
|---|--|--|--|
| 2 | in 1915, but I don't know that the | 2 | disseminate those standards but can |
| 3 | general methods of I don't know how | 3 | look at them online. |
| 4 | the general methods of distribution | 4 | BY MR. BRIDGES: |
| 5 | have changed. | 5 | Q. Have you used the reading rooms |
| 6 | BY MR. BRIDGES: | 6 | of any of the plaintiffs? |
| 7 | Q. What changes are you aware of | 7 | A. No, I have not. |
| 8 | in sales trends over the past 20 years? | 8 | Q. Have you reviewed the interface |
| 9 | MR. FEE: Objection to form. | 9 | that the have you reviewed the interfaces |
| 10 | THE WITNESS: I don't have data | 10 | that the plaintiffs offer to persons wishing |
| 11 | going back as far as 20 years ago. I | 11 | to view materials for free online? |
| 12 | have some information on publication | 12 | A. No, I don't think so. |
| 13 | sales, for instance, in tabs 3, 4, and | 13 | Q. Do you know what effect, if |
| 14 | 5. They only that information only | 14 | any, the presence of those free materials on |
| 15 | goes back a few years, however. | 15 | the plaintiffs' Web sites has had on the |
| 16 | BY MR. BRIDGES: | 16 | plaintiffs' revenues? |
| 17 | Q. Did you review any information | 17 | MR. FEE: Objection to form. |
| 18 | earlier than the dates shown in the documents | 18 | THE WITNESS: No, I don't. |
| 19 | at tabs 3, 4, and 5? | 19 | BY MR. BRIDGES: |
| 20 | MR. FEE: Objection. Vague. | 20 | Q. Have you have you |
| 21 | THE WITNESS: It's possible | 21 | investigated that? |
| 22 | that some of the source documents had | 22 | MR. FEE: Same objection. |
| 23 | earlier information, but I don't | 23 | THE WITNESS: I've been |
| 24 | recall that. I would need to look at | 24 | opening I've been open to learning |
| 25 | those source documents. | 25 | about that, but I haven't learned that |
| | Page 134 | | Page 136 |
| | | | |
| 1 | BY MR. BRIDGES: | 1 | there's a direct or indirect effect. |
| $\begin{vmatrix} 1\\2 \end{vmatrix}$ | BY MR. BRIDGES: Q. And those source documents | 1 2 | there's a direct or indirect effect. There might be, but I haven't seen |
| | Q. And those source documents | | |
| 2 | | 2 | There might be, but I haven't seen |
| 2 3 | Q. And those source documents would be within the Bates ranges identified in tab 2 of your report? | 2 3 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: |
| 2 3 4 | Q. And those source documents would be within the Bates ranges identified in tab 2 of your report? | 2 3 4 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you |
| 2 3 4 5 | Q. And those source documentswould be within the Bates ranges identifiedin tab 2 of your report?A. Within the Bates ranges or | 2 3 4 5 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? |
| 2 3 4 5 6 | Q. And those source documents would be within the Bates ranges identified in tab 2 of your report? A. Within the Bates ranges or identified elsewhere in tab 2. For instance, | 2 3 4 5 6 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? MR. FEE: Same objection. |
| 2 3 4 5 6 7 | Q. And those source documents would be within the Bates ranges identified in tab 2 of your report? A. Within the Bates ranges or identified elsewhere in tab 2. For instance, the AS team ASTM audited audited consolidated financial statements, I think, | 2 3 4 5 6 7 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? MR. FEE: Same objection. THE WITNESS: Perhaps you could |
| 2 3 4 5 6 7 8 | Q. And those source documents would be within the Bates ranges identified in tab 2 of your report? A. Within the Bates ranges or identified elsewhere in tab 2. For instance, the AS team ASTM audited audited | 2 3 4 5 6 7 8 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? MR. FEE: Same objection. |
| 2 3 4 5 6 7 8 9 10 | Q. And those source documents would be within the Bates ranges identified in tab 2 of your report? A. Within the Bates ranges or identified elsewhere in tab 2. For instance, the AS team ASTM audited audited consolidated financial statements, I think, may not all be Bates-stamped. I could be wrong on that. But I would look in that set | 2 3 4 5 6 7 8 9 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? MR. FEE: Same objection. THE WITNESS: Perhaps you could read back my answer. BY MR. BRIDGES: |
| 2 3 4 5 6 7 8 9 | Q. And those source documents would be within the Bates ranges identified in tab 2 of your report? A. Within the Bates ranges or identified elsewhere in tab 2. For instance, the AS team ASTM audited audited consolidated financial statements, I think, may not all be Bates-stamped. I could be wrong on that. But I would look in that set of financial documents. | 2 3 4 5 6 7 8 9 10 | There might be, but I haven't seen evidence of that. BY MR. BRIDGES: Q. My question was, have you investigated that? MR. FEE: Same objection. THE WITNESS: Perhaps you could read back my answer. BY MR. BRIDGES: Q. I've heard the answer. It was |
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| 1Q. Yes.1Q. Yes.2A. I think it's less than a3majority for each organization. I'm fairly4certain of that with regard to ASTM. I think5that's true with regard to NFPA. I think6it's true with regard to ASHRAE.7Q. Do you have any better8information than less than a majority9A. Well, I9A. Well, I10Q for each of them?11A. The precise numbers are in the12report. Let's see here. One can figure that13out. You may remember where I summarized the14number of standards. I just don't remember.15It's easy to determine because the data are16all here.17Q. Have you analyzed differences18in sales trends between standards that are at19issue in this case and plaintiffs' other20ata at my disposal.21A. No, I don't think I have those22data at my disposal.23Q. Did you ever ask for those24data?25A. I don't recall. | | | | |
|--|----|---|----|---|
| 3Q.Do you know how many standards3plaintiffs' standards that have been4of each plaintiff are at issue in this case?4incorporated into law and those of5A.How many - I'm sory56standards are at issue?7A.7Q.Yes.7A.8A.I have then hundreds, and I forget, as9that have hose data, and I'm not sure9down. It's in the hundreds, and I forget, as9that each plaintiff knows precisely how many10I sit here right now, precisely the number.11Will look it up. And I was giving you an11asswer that was a cumulation across the three11Q.Did you ask for any data12answer that was a cumulation across the three11Q.Did you ask for any data13answer that was a cumulation across the three1111W.14I am not seeing that number15A.I don't15right now, TIl keep looking.16M.MR. FEE: Objection to form.17A. You may be able to point me19MY.BY MR. BRIDGES:19po you know what19BY MR. BRIDGES:20proportion of plaintiffs' standards at issue versus the total2121a.A. Think i's less than a22a.TI think 's less than a23a.A. Think i's less than a24at stative regard to SHRAE.934is ture with regard to SHRAE. <t< td=""><td>1</td><td></td><td>1</td><td></td></t<> | 1 | | 1 | |
| 4of each plainiff are at issue in this case?4incorporated into law and those of5A. How many I'm sorry6incorporated into law and those of7Q. Yes.7A. I don't think so. I don't8A. I have that number written9think I have those data, and I'm not sure9down. It's in the hundreds, and I forget, as10hink I have those data, and I'm not sure10I stil here right now, precisely the number.10have been incorporated into law.11I will hook it up. And I was giving you an12regarding the distinction between stadards13answer that was a cumulation across the three13incorporated by reference in the law?14I am not seeing that number14incorporated by reference in the law?15regating the distinction between stadards13incorporated by reference in the law?16Q. Do you know what19BY MR. BRIDGES:17Q. You may be able to point me17THE WITNESS: I'm sorry. I18quicker than I recall where it was.19BY MR. BRIDGES:20Q. You said that there's been a reduction13is alse streds earlier in your deposition. I21a. A re you asking me the ratio of20Q. You made observations about22the standards at issue versus the total2123A. I think i's less than a33majority for each of them?314niformation than less than a majority924A. Weil | 2 | submitting it to counsel on June 5th, 2015. | 2 | differences in sales trends between those of |
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| 24 data?24 information did you study to determine any25 A. I don't recall.25 changes in finances of each of the | 22 | data at my disposal. | | BY MR. BRIDGES: |
| 25A. I don't recall.25changes in finances of each of the | 23 | Q. Did you ever ask for those | | Q. My question is, what |
| | 1 | data? | 24 | |
| Page 155 Page 157 | 25 | | 25 | |
| | 1 | Page 155 | | Page 157 |

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| 1 | plaintiffs? | 1 | of certain of the standards. I've |
|----|---|----|---|
| 2 | MR. FEE: Same objection. | 2 | presented that. |
| 3 | THE WITNESS: It's reflected in | 3 | I don't have direct evidence of |
| 4 | paragraph 133 and in the tabs, | 4 | the precise impact historically of |
| 5 | particularly 3, 4, and 5. But the | 5 | defendant's activities on plaintiffs' |
| 6 | tabs are not at the granular level | 6 | financials. |
| 7 | that I think are of interest to you. | 7 | BY MR. BRIDGES: |
| 8 | BY MR. BRIDGES: | 8 | Q. What evidence of any kind do |
| 9 | Q. What do you mean by the | 9 | you have of any kind of impact historically |
| 10 | "granular level" that would be of interest to | 10 | of the defendant's activities on plaintiffs' |
| 11 | me? | 11 | financials? |
| 12 | A. I don't think it breaks out | 12 | MR. FEE: Objection to form. |
| 13 | publications by standard, for instance. | 13 | THE WITNESS: That which is |
| 14 | Q. Does it break out publications | 14 | reported in paragraph 133, that of |
| 15 | by whether a standard has been incorporated | 15 | which is contained in deposition |
| 16 | by reference or not? | 16 | testimony, and that of which I |
| 17 | A. I don't think so. | 17 | summarized in other parts of the |
| 18 | Q. Does it break out by whether a | 18 | report. |
| 19 | standard has been publicly made available by | 19 | BY MR. BRIDGES: |
| 20 | defendant or not? | 20 | Q. So when you're referring to |
| 21 | A. I don't think so. Not in | 21 | deposition testimony, you're referring to the |
| 22 | tabs 3, 4, and 5. | 22 | citations to the footnotes in paragraph 133? |
| 23 | Q. How do you establish causation | 23 | A. No, I don't think it's just |
| 24 | between defendant's activities and any of the | 24 | limited to that. I think there's some other |
| 25 | data that you provide in section in | 25 | deposition transcripts that talk about the |
| | Page 158 | | Page 160 |
| 1 | paragraph 133? | 1 | impact or potential impact of defendant's |
| 2 | MR. FEE: Objection. Calls for | 2 | activities on each one of the plaintiffs. |
| 3 | a legal conclusion. Form. | 3 | Q. Did you make any independent |
| 4 | THE WITNESS: One can and | 4 | assessment of causation of any financial |
| 5 | should look at all evidence available, | 5 | effects on plaintiffs by the defendant's |
| 6 | including circumstantial evidence. I | 6 | activities? |
| 7 | don't have direct information about | 7 | MR. FEE: Objection to form. |
| 8 | the precise impact of defendant's | 8 | Calls for a legal conclusion. |
| 9 | activities, but I have important | 9 | THE WITNESS: What do you mean |
| 10 | information that bears on that issue, | 10 | by the term of "independent assessment |
| 11 | including information that's in | 11 | of causation"? |
| 12 | deposition transcripts. | 12 | BY MR. BRIDGES: |
| 13 | BY MR. BRIDGES: | 13 | Q. You, as an expert, not relying |
| 14 | Q. So my question is, how do | 14 | just on what other people have said or |
| 15 | you do you strike that. | 15 | speculated or thought. |
| 16 | Are your conclusion are you | 16 | MR. FEE: Same objections. |
| 17 | making conclusions in paragraph 133 about the | 17 | Plus compound. |
| 18 | cause of changes in sales of the plaintiffs' | 18 | THE WITNESS: We experts rely |
| 19 | products? | 19 | on other information to draw the |
| 20 | MR. FEE: Objection to form. | 20 | conclusions that we do, and then we |
| 21 | THE WITNESS: Not definitively. | 21 | bring our training to it. So our |
| 22 | I have observations about the | 22 | observations shouldn't be in a vacuum. |
| 23 | magnitude and trend of the downloads | 23 | BY MR. BRIDGES: |
| 24 | of through defendant's sites. I | 24 | Q. But they should be objective, |
| 25 | have some information on the downloads | 25 | correct? |
| | Page 159 | | Page 161 |
| | | | |

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| 1 | A. Yes. | 1 | A. I took all the data |
|--|--|--|---|
| 2 | Q. And that means perhaps not | 2 | MR. FEE: Objection. Form. |
| 3 | relying upon the views of the parties to the | 3 | Objection to form. |
| 4 | lawsuit alone, but doing independent analysis | 4 | THE WITNESS: I took all this |
| 5 | and research, correct? | 5 | data into account. That's why I |
| 6 | MR. FEE: Objection to form. | 6 | reported it here. |
| 7 | THE WITNESS: I think one can | 7 | BY MR. BRIDGES: |
| 8 | and should evaluate and consider the | 8 | Q. And the data that you |
| 9 | views of the parties, but not limited | 9 | identified in the footnotes in |
| 10 | investigation to that. | 10 | paragraph 134 sorry 133? |
| 11 | BY MR. BRIDGES: | 11 | A. Yes, I considered that |
| 12 | Q. So what independent analysis | 12 | information. |
| 13 | and research did you do other than reviewing | 13 | Q. Do you know in what year the |
| 14 | the views and statements of the parties in | 14 | defendant posted the 2008 version of the |
| 15 | this case? | 15 | National Electrical Code on its Web site? |
| 16 | MR. FEE: Objection. Vague. | 16 | A. I don't know with absolute |
| 17 | THE WITNESS: I reviewed and | 17 | certainty. I do know a number of the alleged |
| 18 | summarized the data, as you see in | 18 | activities occurred in late 2012. I don't |
| 19 | 133, that I had at my disposal. I | 19 | know if it's specific to that code or not. |
| 20 | reviewed writings about the impacts. | 20 | Q. Does it matter to your analysis |
| 21 | And I took important | 21 | exactly when the defendant posted the 2008 |
| 22 | information from the fact that the | 22 | National Electrical Code on its Web site or |
| 23 | plaintiffs have brought this lawsuit. | 23 | to Internet Archive? |
| 24 | The plaintiffs don't want this | 24 | A. I would |
| 25 | activity to continue. That is | 25 | MR. FEE: Objection to form. |
| | Page 162 | | Page 164 |
| | | | |
| 1 | revealed preference information that's | 1 | THE WITNESS: I would consider |
| 2 | quite important. | 2 | that information if I had it, but I |
| 2 3 | quite important. BY MR. BRIDGES: | 2 3 | that information if I had it, but I don't have any reason to think that it |
| 2 3 4 | quite important. BY MR. BRIDGES: Q. Tell me about what you mean by | 2 3 4 | that information if I had it, but I don't have any reason to think that it would change any of the conclusions |
| 2 3 4 5 | quite important. BY MR. BRIDGES: Q. Tell me about what you mean by repealed sorry. Strike that. | 2 3 4 5 | that information if I had it, but I don't have any reason to think that it would change any of the conclusions that I drew. |
| 2 3 4 5 6 | quite important. BY MR. BRIDGES: Q. Tell me about what you mean by repealed sorry. Strike that. Tell me what you mean by | 2 3 4 5 6 | that information if I had it, but I don't have any reason to think that it would change any of the conclusions that I drew. BY MR. BRIDGES: |
| 2 3 4 5 6 7 | quite important. BY MR. BRIDGES: Q. Tell me about what you mean by repealed sorry. Strike that. Tell me what you mean by "revealed preference." | 2 3 4 5 6 7 | that information if I had it, but I don't have any reason to think that it would change any of the conclusions that I drew.BY MR. BRIDGES:Q. The timing of when the |
| 2 3 4 5 6 7 8 | quite important. BY MR. BRIDGES: Q. Tell me about what you mean by repealed sorry. Strike that. Tell me what you mean by "revealed preference." A. What people do often provides | 2 3 4 5 6 7 8 | that information if I had it, but I don't have any reason to think that it would change any of the conclusions that I drew. BY MR. BRIDGES: Q. The timing of when the defendant posted certain matters wouldn't |
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| 7 than that. 8 Q. But you did bring the theory of 9 reveal revealed preferences to bear on 10 this case, correct? 11 A. Yes. 12 Q. What other economic theories do 13 you recall bringing to bear on this case? 14 MR. FEE: Objection. Asked and 15 answered. 16 THE WITNESS: Everything that 17 I've 18 MR. FEE: And vague. 19 Go ahead. 20 THE WITNESS: I've learned 21 in my training, both educational 22 training and career training. 23 BY MR. BRIDGES: 24 Q. Can you be more specific than 25 that? 7 to back into it. 8 Q. Well, when would one be able 9 to use sales trends as a way of identifying 10 likely effects of a posting of each standard 11 by the defendant? 12 MR. FEE: Objection. Vague. 13 Compound. 14 THE WITNESS: Maybe; maybe not. 15 BY MR. BRIDGES: 21 Q. Do you associate the posting of 22 standards by defendant with changes in sales 23 BY MR. BRIDGES: 24 Q. Can you be more specific than 25 MR. FEE: Objection to form. | | | | |
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| 14MR. FEE: Objection. Asked and answered.14THE WITNESS: Maybe; maybe not.15answered.15BY MR. BRIDGES:16THE WITNESS: Everything that 1716Q. Why do you say "maybe; maybe not"?18MR. FEE: And vague.18A. I just wouldn't think to do it19Go ahead.19that way, so I don't know what you exactly 2020THE WITNESS: I've learned 21in my training, both educational 2218A. I just wouldn't think to do it21in my training, both educational 222121Q. Do you associate the posting of standards by defendant with changes in sales 2323BY MR. BRIDGES:23volume of the standards that the defendant 242424Q. Can you be more specific than 225MR. FEE: Objection to form.25* * *2you mean by that question.3(Jarosz Exhibit 4 marked for 4414THE WITNESS: I don't know what 24identification.) * * *4Q. You don't understand the 55* * *6A. I do not.7Q. Mr. Jarosz, do you recognize 86A. I do not.8A. It appears to be a summary over 1110MR. FEE: Objection to form.12A. It appears to be a summary over 1414Correlation coefficient here associated with postings.16Q. Based upon the trends that you 1716BY MR. BRIDGES: 1617g. Based upon the trends that you 171 | 13 | you recall bringing to bear on this case? | 13 | |
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| 15the marketplace.15associated with postings.16Q.Based upon the trends that you16BY MR. BRIDGES:17see in this exhibit, can you estimate when17Q.I'm not asking for a specific18you believe it is most likely that the18correlation coefficient. I'm just asking,19defendant first published strike that.19generally, can you correlate the posting of20Based upon the trends that you20standards by defendant with any changes in21see in this Exhibit 4, can you estimate when21sales volumes of the standards that22you believe it is most likely that the22defendant first posted each of the standards23defendant first posted each of the standards23posted with reference to Exhibit 4?24A.I don't know25A.I don't think so, not based25MR. FEE: Objection. Form. | 14 | | 14 | correlation coefficient here |
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| 18 you believe it is most likely that the 19 defendant first published strike that. 20 Based upon the trends that you 21 see in this Exhibit 4, can you estimate when 22 you believe it is most likely that the 23 defendant first posted each of the standards 24 identified here? 25 A. I don't think so, not based 18 correlation coefficient. I'm just asking, 19 generally, can you correlate the posting of 20 standards by defendant with any changes in 21 sales volumes of the standards that 22 defendants has that the defendant has 23 posted with reference to Exhibit 4? 24 A. I don't know 25 MR. FEE: Objection. Form. | 16 | Q. Based upon the trends that you | 16 | BY MR. BRIDGES: |
| 18 you believe it is most likely that the 19 defendant first published strike that. 20 Based upon the trends that you 21 see in this Exhibit 4, can you estimate when 22 you believe it is most likely that the 23 defendant first posted each of the standards 24 identified here? 25 A. I don't think so, not based 18 correlation coefficient. I'm just asking, 19 generally, can you correlate the posting of 20 standards by defendant with any changes in 21 sales volumes of the standards that 22 defendants has that the defendant has 23 posted with reference to Exhibit 4? 24 A. I don't know 25 MR. FEE: Objection. Form. | 17 | | 17 | Q. I'm not asking for a specific |
| defendant first published strike that. Based upon the trends that you see in this Exhibit 4, can you estimate when you believe it is most likely that the defendant first posted each of the standards defendant first posted each of the standards adefendant first posted each of the standards bosted with reference to Exhibit 4? A. I don't think so, not based MR. FEE: Objection. Form. | 18 | | 18 | |
| 20Based upon the trends that you20standards by defendant with any changes in21see in this Exhibit 4, can you estimate when21sales volumes of the standards that22you believe it is most likely that the22defendant first posted each of the standards23defendant first posted each of the standards23posted with reference to Exhibit 4?24identified here?24A.I don't know25A.I don't think so, not based25MR. FEE: Objection. Form. | 1 | | | |
| 21see in this Exhibit 4, can you estimate when 2221sales volumes of the standards that 2223you believe it is most likely that the 2321sales volumes of the standards that 2223defendant first posted each of the standards 2423posted with reference to Exhibit 4? 2424A.I don't know 252525A.I don't think so, not based2526MR. FEE: Objection. Form. | 1 | - | | |
| 22you believe it is most likely that the22defendants has that the defendant has23defendant first posted each of the standards23posted with reference to Exhibit 4?24identified here?24A.I don't know25A.I don't think so, not based25MR. FEE: Objection. Form. | | 1 | | |
| 23defendant first posted each of the standards23posted with reference to Exhibit 4?24identified here?24A.I don't know25A.I don't think so, not based25MR. FEE: Objection. Form. | | | 22 | defendants has that the defendant has |
| 24 identified here?24A. I don't know25A. I don't think so, not based25MR. FEE: Objection. Form. | 1 | | 23 | |
| 25A.I don't think so, not based25MR. FEE: Objection. Form. | | | | - |
| | 24 | | | |
| | | | | |

Veritext Legal Solutions 866 299-5127 JA01547 45 (Pages 174 - 177)

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| 1 | THE WITNESS: I don't recall | 1 | Q. Have you determined in any way |
|----|---|----|---|
| 2 | attempting to do that. And I wouldn't | 2 | the dates at which defendant posted various |
| 3 | necessarily think that the historical | 3 | standards to its Web site or to the Internet |
| 4 | impact would is the end of the | 4 | Archive? |
| 5 | story as to the harm here. | 5 | A. I don't recall doing a separate |
| 6 | BY MR. BRIDGES: | 6 | analysis of that, no. |
| 7 | Q. Is historical impact part of | 7 | Q. How did you learn about the |
| 8 | the story as to the harm here? | 8 | dates at which defendant posted various |
| 9 | A. Yes. | 9 | standards to its Web site or to Internet |
| 10 | Q. What what can you say by | 10 | Archive? |
| 11 | looking at Exhibit 4 about the historical | 11 | A. I had conversations with |
| 12 | impact of the posting of the defendant of | 12 | counsel on that topic, and I may have seen |
| 13 | the plaintiffs' standards by the defendant? | 13 | that information contained in certain |
| 14 | A. I don't know that I can say | 14 | documents like the Complaint, but I don't |
| 15 | much, because I believe the postings largely | 15 | recall. |
| 16 | occurred in late 2012, and I only have one | 16 | Q. Did you rely upon information |
| 17 | period after that. | 17 | regarding those dates from conversations with |
| 18 | Q. If it turns out that | 18 | counsel? |
| 19 | defendant's postings were well before 2012, | 19 | MR. FEE: In arriving at his |
| 20 | would that affect your analysis of the trends | 20 | opinions, you're asking? |
| 21 | in sales data of the plaintiffs' | 21 | MR. BRIDGES: Arriving at his |
| 22 | publications? | 22 | understanding of the facts. |
| 23 | MR. FEE: Objection to form. | 23 | THE WITNESS: I don't know that |
| 24 | Compound. Vague. | 24 | I did, because I don't recall |
| 25 | THE WITNESS: Maybe. I would | 25 | reporting those specific dates |
| | Page 178 | | Page 180 |
| 1 | consider that information in | 1 | anywhere in my report. |
| 2 | conjunction with these data if you | 2 | BY MR. BRIDGES: |
| 3 | wanted me to. | 3 | Q. Do you recall taking specific |
| 4 | BY MR. BRIDGES: | 4 | dates into account in analyzing the effect of |
| 5 | Q. How what what would | 5 | defendant's actions? |
| 6 | change? | 6 | MR. FEE: Objection to form. |
| 7 | A. I don't know. I haven't done | 7 | Vague. |
| 8 | that analysis. | 8 | THE WITNESS: I don't recall |
| 9 | Q. Have you verified the dates on | 9 | one way or the other. |
| 10 | which plaintiffs strike that. | 10 | BY MR. BRIDGES: |
| 11 | Have you verified the dates at | 11 | Q. Do you know how strike that. |
| 12 | which defendant posted the various standards | 12 | Do you know how much revenue |
| 13 | to its Web site or to Internet Archive? | 13 | each plaintiff derives from the standards at |
| 14 | A. I don't | 14 | issue in this case? |
| 15 | MR. FEE: Objection. Vague. | 15 | A. I don't think I know that |
| 16 | THE WITNESS: I don't recall | 16 | precise number. |
| 17 | verifying it. | 17 | Q. Did you did you ever know |
| 18 | And are you asking did I | 18 | that number? |
| 19 | separately go out and determine what | 19 | A. I don't think so. |
| 20 | that date is and see if that was the | 20 | Q. Did you ever know how much |
| 21 | same as what was represented in the | 21 | revenue each plaintiff derives from standards |
| 22 | Complaint, for instance? | 22 | that have been incorporated into law? |
| 23 | BY MR. BRIDGES: | 23 | A. As opposed to those that have |
| 24 | Q. Yes. | 24 | not been incorporated? Is that |
| | A. No, I don't recall doing that. | 25 | Q. Well, I'm I'm asking about |
| 25 | Λ . No, I don't icean donig that. | 25 | |
| 25 | A. 100, 1 don't recan doing that. Page 179 | 25 | Q. Wen, Thi Thi asking about Page 181 |

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| 1 | those standards that have been incorporated | 1 | something just north of 50 percent for |
|---|---|---|---|
| 2 | in the law. I'm asking if you know how much | 2 | ASHRAE. |
| 3 | revenue each plaintiffs derives each | 3 | BY MR. BRIDGES: |
| 4 | plaintiff derives from those standards. | 4 | Q. What do you mean by "if you add |
| 5 | A. I don't | 5 | in memberships"? |
| 6 | MR. FEE: Objection. Form. | 6 | A. I'm not I'm not quite sure |
| 7 | THE WITNESS: think I know | 7 | what you're asking me to define. |
| 8 | that number, and I'm not sure the | 8 | Q. I'm asking you to explain the |
| 9 | plaintiffs know that number. | 9 | phrase that you just used, "if you add in |
| 10 | BY MR. BRIDGES: | 10 | memberships." What did that mean? |
| 11 | Q. Do you know the percentage of | 11 | A. I talked about that in my |
| 12 | revenue that each plaintiff derives from | 12 | report. Membership fees are a fairly good |
| 13 | standards that have been incorporated into | 13 | recollect a fairly good reflection of |
| 14 | law? | 14 | amount that would have been paid for |
| 15 | MR. FEE: Objection to form. | 15 | publications. In other words, publication |
| 16 | THE WITNESS: I don't think I | 16 | fees it let me start this over again. |
| 17 | do, and I don't believe the plaintiffs | 17 | It makes about as much sense to |
| 18 | do. | 18 | become a member of ASHRAE as it is to buy |
| 19 | BY MR. BRIDGES: | 19 | some of the individual publications. As a |
| 20 | Q. Are you aware of any difference | 20 | result, many people choose to become members |
| 21 | in profitability to plaintiffs between those | 21 | rather than just buying the publication, as I |
| 22 | standards that have been incorporated into | 22 | understand it. |
| 23 | law and those standards that have not been | 23 | Q. How did you learn that? |
| 24 | incorporated into law? | 24 | A. Having knowledge of the of |
| 25 | MR. FEE: Objection to form. | 25 | the price difference and through discussions |
| | Page 182 | | Page 184 |
| 1 | THE WITNESS: I don't believe | 1 | with people at ASHRAE. |
| 2 | SO. | 2 | Q. How did you learn about the |
| 3 | BY MR. BRIDGES: | 3 | price difference? |
| 4 | Q. Do you know strike that. | 4 | A. I don't recall how I learned |
| 5 | Are you aware of any difference | 5 | it, but I report it in my report based on |
| 6 | in profitability to plaintiffs between those | 6 | certain documents I've seen. Perhaps I |
| 7 | standards that defendant has posted to the | 7 | |
| | | | learned it from their Web site. |
| 8 | Internet and those standards that defendant | 8 | Q. Did you do any surveys of |
| 89 | | 8 9 | Q. Did you do any surveys of |
| | Internet and those standards that defendant has not posted to the Internet? MR. FEE: Objection to form. | | |
| 9 | has not posted to the Internet? | 9 | Q. Did you do any surveys of ASHRAE members to validate that assumption? |
| 9 10 | has not posted to the Internet? MR. FEE: Objection to form. | 9 10 | Q. Did you do any surveys ofASHRAE members to validate that assumption?A. I'm sorry. Validate what |
| 9 10 11 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe | 9 10 11 | Q. Did you do any surveys ofASHRAE members to validate that assumption?A. I'm sorry. Validate whatassumption? |
| 9 10 11 12 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous | 9 10 11 12 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership |
| 9 10 11 12 13 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs | 9 10 11 12 13 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an |
| 9 10 11 12 13 14 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their | 9 10 11 12 13 14 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is |
| 9 10 11 12 13 14 15 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: | 9 10 11 12 13 14 15 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that |
| 9 10 11 12 13 14 15 16 17 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you | 9 10 11 12 13 14 15 16 17 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than |
| 9 10 11 12 13 14 15 16 17 18 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: | 9 10 11 12 13 14 15 16 17 18 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. |
| 9 10 11 12 13 14 15 16 17 18 19 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you understand to be the percentage of gross revenue from the sale of standards? | 9 10 11 12 13 14 15 16 17 18 19 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. Q. And in your work, did you |
| 9 10 11 12 13 14 15 16 17 18 19 20 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you understand to be the percentage of gross revenue from the sale of standards? MR. FEE: Objection to form. | 9 10 11 12 13 14 15 16 17 18 19 20 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. Q. And in your work, did you assume that? |
| 9 10 11 12 13 14 15 16 17 18 19 20 21 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you understand to be the percentage of gross revenue from the sale of standards? MR. FEE: Objection to form. THE WITNESS: I I've | 9 10 11 12 13 14 15 16 17 18 19 20 21 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. Q. And in your work, did you assume that? A. I didn't assume that. I worked |
| 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you understand to be the percentage of gross revenue from the sale of standards? MR. FEE: Objection to form. THE WITNESS: I I've reported that in my report. My memory | 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. Q. And in your work, did you assume that? A. I didn't assume that. I worked on that under that understanding. |
| 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you understand to be the percentage of gross revenue from the sale of standards? MR. FEE: Objection to form. THE WITNESS: I I've reported that in my report. My memory is that it's something on the order of | 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. Q. And in your work, did you assume that? A. I didn't assume that. I worked on that under that understanding, but |
| 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you understand to be the percentage of gross revenue from the sale of standards? MR. FEE: Objection to form. THE WITNESS: I I've reported that in my report. My memory is that it's something on the order of 66 percent for ASTM and for NFPA. And | 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | Q. Did you do any surveys of ASHRAE members to validate that assumption? A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. Q. And in your work, did you assume that? A. I didn't assume that. I worked on that under that understanding. Q. Oh, it's an understanding, but |
| 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | has not posted to the Internet? MR. FEE: Objection to form. THE WITNESS: I don't believe so. And as with the previous question, I don't think the plaintiffs have that information at their disposal. BY MR. BRIDGES: Q. For each plaintiff, what do you understand to be the percentage of gross revenue from the sale of standards? MR. FEE: Objection to form. THE WITNESS: I I've reported that in my report. My memory is that it's something on the order of | 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | Q. Did you do any surveys of ASHRAE members to validate that assumption A. I'm sorry. Validate what assumption? Q. About purchase of a membership instead of buying the publication. A. I'm not sure that there's an assumption in there. My understanding is that ASHRAE people are of the belief that many people buy membership rather than individual publications. Q. And in your work, did you assume that? A. I didn't assume that. I worked on that under that understanding. Q. Oh, it's an understanding, but |

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| 1 | A. I don't think I know that | 1 | Q. Have you ever had access to any |
|--|---|--|---|
| | number. | | information that I've asked in the last |
| 3 | Q. What percentage of plaintiffs' | 3 | several questions? |
| 4 | operating expenses do you associate with the | 4 | MR. FEE: Objection to form. |
| 5 | plaintiffs' development of standards | 5 | THE WITNESS: I don't believe |
| 6 | generally? | 6 | SO. |
| 7 | A. I don't think I know that | 7 | BY MR. BRIDGES: |
| 8 | number. | 8 | Q. Do you know whether plaintiffs |
| 9 | Q. Do you have any estimates of | 9 | prepare standards through joint sponsorship |
| 10 | any of those numbers that you just said you | 10 | with any other organizations? |
| 11 | don't think you know? | 11 | MR. FEE: Objection. Vague. |
| 12 | MR. FEE: Objection to form. | 12 | THE WITNESS: I think I may |
| 13 | THE WITNESS: Not sitting here | 13 | have seen a reference to that. I |
| 14 | right now. | 14 | don't know the extent to which it |
| 15 | BY MR. BRIDGES: | 15 | occurs, but I wouldn't be surprised to |
| 16 | Q. Did you at one point ever | 16 | be reminded that it does occur. |
| 17 | determine those numbers? | 17 | BY MR. BRIDGES: |
| 18 | A. Not that I recall. | 18 | Q. Are you aware of any, as you |
| 19 | Q. Do you know what percentage of | 19 | sit here? |
| 20 | the staff or employees of each plaintiff has | 20 | A. Not as I sit here right now, |
| 21 | worked on the development of standards at | 21 | but I think I'm aware that it has occurred. |
| 22 | issue in this case? | 22 | Q. Do you know whether plaintiffs |
| 23 | MR. FEE: Objection to form. | 23 | receive grants, revenue, or stipends from |
| 24 | THE WITNESS: I don't think I | 24 | governments that use, reference, or adopt |
| 25 | know that number. | 25 | their standards? |
| | Page 190 | | Page 192 |
| | | | |
| 1 | BY MR. BRIDGES: | 1 | MR. FEE: Objection to form. |
| $\begin{vmatrix} 1\\ 2 \end{vmatrix}$ | BY MR. BRIDGES: O. Do you know what percentage | 1 2 | MR. FEE: Objection to form. THE WITNESS: There are grant |
| 2 | Q. Do you know what percentage | 2 | THE WITNESS: There are grant |
| | | | THE WITNESS: There are grant monies that go to NFPA. I don't know |
| 2 3 4 | Q. Do you know what percentagedo you have an estimate?A. No. | 2 3 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't |
| 2 3 4 5 | Q. Do you know what percentage do you have an estimate?A. No.MR. FEE: Objection to form. | 2 3 4 5 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the |
| 2 3 4 | Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form. THE WITNESS: Not as I sit | 2 3 4 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations. |
| 2 3 4 5 6 | Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form. THE WITNESS: Not as I sit here, no. | 2 3 4 5 6 7 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations. BY MR. BRIDGES: |
| 2 3 4 5 6 7 | Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form. THE WITNESS: Not as I sit here, no. BY MR. BRIDGES: | 2 3 4 5 6 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations. BY MR. BRIDGES: Q. Did you ask any of the |
| 2 3 4 5 6 7 8 9 | Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form. THE WITNESS: Not as I sit here, no. BY MR. BRIDGES: Q. Do you know what percentage of | 2 3 4 5 6 7 8 9 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations. BY MR. BRIDGES: Q. Did you ask any of the plaintiffs about the revenues or expenses |
| 2 3 4 5 6 7 8 9 10 | Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form. THE WITNESS: Not as I sit here, no. BY MR. BRIDGES: Q. Do you know what percentage of the staff or employees of each plaintiff has | 2 3 4 5 6 7 8 9 10 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations. BY MR. BRIDGES: Q. Did you ask any of the plaintiffs about the revenues or expenses they have specifically attributable to the |
| 2 3 4 5 6 7 8 9 10 11 | Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form. THE WITNESS: Not as I sit here, no. BY MR. BRIDGES: Q. Do you know what percentage of the staff or employees of each plaintiff has worked on the development of standards | 2 3 4 5 6 7 8 9 | THE WITNESS: There are grant monies that go to NFPA. I don't know the source of those grants. I don't see a line for grant revenues for the other two organizations. BY MR. BRIDGES: Q. Did you ask any of the plaintiffs about the revenues or expenses they have specifically attributable to the standards that defendant has posted to the |
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| 1 | foundation. | 1 | change in membership sales by ASHRAE over the |
|--|--|--|--|
| 2 | THE WITNESS: I would like to | 2 | past ten years? |
| 3 | understand the facts that you're | 3 | A. I don't think I have data that |
| 4 | positing right now. | 4 | goes as far as ten years ago. I do have |
| 5 | BY MR. BRIDGES: | 5 | information on ASHRAE membership revenue back |
| 6 | Q. Well, we're not going to take | 6 | to 2012. That's summarized in tab 5. |
| 7 | time to go look at a Web site right now, so | 7 | Q. And that membership figure has |
| 8 | I'm asking you based on what you know. | 8 | risen each year since 2012, correct? |
| 9 | Do you have an explanation as | 9 | A. Yes. Slightly each year, it |
| 10 | to why the resource cited in footnote 95 | 10 | has risen. |
| 11 | actually shows that 44 state the 44 states | 11 | Q. Do you draw any conclusions |
| 12 | adopted the International Energy Conservation | 12 | with respect to this case from that trend? |
| 13 | Code? | 13 | A. I don't think so. |
| 14 | MR. FEE: Objection. Lack of | 14 | Q. Have you calculated the |
| 15 | foundation. | 15 | effects the financial effect on the |
| 16 | THE WITNESS: I don't know if | 16 | plaintiffs of the incorporation into law of |
| 17 | your factual representation is | 17 | their standards? |
| 18 | accurate or not, and I don't recall | 18 | MR. FEE: Objection to form. |
| 19 | investigating that particular issue. | 19 | THE WITNESS: No, I don't think |
| 20 | BY MR. BRIDGES: | 20 | I've independently I don't think |
| 21 | Q. Have you made any effort to | 21 | I've separately done that. |
| 22 | determine what resources were expended, | 22 | BY MR. BRIDGES: |
| 23 | incurred, or contributed by parties other | 23 | Q. Are you aware of any data |
| 24 | than ASHRAE in the development of standard | 24 | regarding the financial effect on the |
| 25 | 90.1? | 25 | plaintiffs of the incorporation into law of |
| | Page 206 | | Page 208 |
| 1 | MR. FEE: Objection to form. | 1 | their standards? |
| 2 | THE WITNESS: I generally | 2 | MR. FEE: Same objection. |
| 3 | understand that there were many | 3 | THE WITNESS: I'm aware that |
| 4 | members who participated in that. I | 4 | the plaintiffs benefit greatly by |
| 5 | think I reported earlier in the report | 5 | incorporation by reference, but I |
| 6 | the number of hours and other | 6 | don't know that I've seen a |
| 7 | indications of activity undertaken by | 7 | quantitative study of that topic. |
| 8 | members. | 8 | BY MR. BRIDGES: |
| 9 | BY MR. BRIDGES: | 9 | |
| 10 | | | |
| - | O. My question is, have you made | 10 | Q. What do you understand about the benefits that accrue to plaintiffs by |
| 11 | Q. My question is, have you made any effort to determine what resources were | 10 11 | the benefits that accrue to plaintiffs by |
| 11 12 | any effort to determine what resources were | 11 | the benefits that accrue to plaintiffs by incorporation by reference? |
| 12 | any effort to determine what resources were expended, incurred, or contributed by parties | 11 12 | the benefits that accrue to plaintiffs by incorporation by reference? A. Some of those are laid out in |
| 12 13 | any effort to determine what resources were expended, incurred, or contributed by parties other than ASHRAE and ASHRAE members in the | 11 12 13 | the benefits that accrue to plaintiffs by incorporation by reference?A. Some of those are laid out in my report on pages 19 through 26. I have a |
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| 1 | | | 1 |
|--|--|--|--|
| - | Q. What other benefits do | 1 | a particular period. |
| 2 | plaintiffs gain from incorporation by | 2 | Q. And then you do the same for |
| 3 | reference of their standards? | 3 | NFPA documents, correct? |
| 4 | A. I think that generally covers | 4 | A. Yes. |
| 5 | it. I may be forgetting things that are laid | 5 | Q. What do you calculate as the |
| 6 | out in my report, but that's what covers it, | 6 | dollar value of harm to the to ASTM from |
| 7 | to the best of my memory right now. | 7 | the accesses and downloads that you refer to |
| 8 | Are we at a good point for a | 8 | in paragraph 133? |
| 9 | break? | 9 | A. I haven't calculated that harm. |
| 10 | Q. If you want. Sure. | 10 | Q. Why not? |
| 11 | A. Thanks. | 11 | A. I'm not sure if I can at this |
| 12 | THE VIDEOGRAPHER: Off the | 12 | stage. One estimate would be those number of |
| 13 | record at 3:12. This is the end of | 13 | downloads times the well, actually, no, |
| 14 | media unit number 2. | 14 | let me take that back. I just don't know how |
| 15 | * * * | 15 | to do it. |
| 16 | (Recess from 3:12 p.m. to | 16 | Q. Can you be certain that these |
| 17 | 3:41 p.m.) | 17 | accesses or down and downloads referred to |
| 18 | * * * | 18 | in paragraph 133, in fact, resulted in |
| 19 | THE VIDEOGRAPHER: On the | 19 | economic loss to ASTM? |
| 20 | record at 3:41. This is the beginning | 20 | MR. FEE: Objection to form. |
| 21 | of media unit number 3 in the | 21 | THE WITNESS: Not with absolute |
| 22 | deposition of John Jarosz. | 22 | certainty, but with reasonable |
| 23 | * * * | 23 | certainty I can say some in some |
| 24 | (Jarosz Exhibit 5 marked for | 24 | number of these instances, it's likely |
| 25 | identification.) | 25 | the case that the that the |
| | Page 210 | | Page 212 |
| 1 | * * * | 1 | information would have been obtained |
| 2 | BY MR. BRIDGES: | 2 | from ASHRAE in or ASTM, rather, |
| 3 | Q. Mr. Jarosz, I've handed you | 3 | in through legal means. |
| 4 | Exhibit 5. This is an article that you cited | 4 | BY MR. BRIDGES: |
| | in your report, correct? | 5 | |
| 5 | | | Q. Would that in those |
| 6 | A. Yes, I believe so. | 6 | instances where you say that the information |
| 6 7 | A. Yes, I believe so.Q. Do you recall how this article | _ | instances where you say that the information would have been obtained from ASTM through |
| 6 7 8 | A. Yes, I believe so.Q. Do you recall how this article came to your attention? | _ | instances where you say that the information would have been obtained from ASTM through legal means, can you put a dollar value on |
| 6 7 8 9 | A. Yes, I believe so.Q. Do you recall how this article came to your attention?A. I do not. | 6 7 8 9 | instances where you say that the information would have been obtained from ASTM through legal means, can you put a dollar value on or even an estimate of the increased revenue |
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| 1 | | | |
|--|--|--|--|
| 1 | information? | 1 | more extended use of that document. |
| 2 | A. Not with certainty, because I | 2 | Q. Do you have any evidence about |
| 3 | don't know who those persons were, but I | 3 | wide distribution of plaintiffs' standards as |
| 4 | would expect one alternative would be to | 4 | a consequence of defendant's actions? |
| 5 | obtain it properly, directly from ASTM. | 5 | A. I do not. |
| 6 | Q. Would that have resulted in | 6 | Q. Have you reviewed any studies |
| 7 | more revenue to ASTM? | 7 | that would allow you to establish any |
| 8 | A. It may have. If they're | 8 | connection between the number of accesses or |
| 9 | materials that were taken improperly that | 9 | downloads that Public Resource made possible |
| 10 | would have been paid for, then that would | 10 | and any financial harms to the plaintiffs? |
| 11 | represent a loss of revenue to ASTM. | 11 | MR. FEE: Objection to form. |
| 12 | Q. Do you know whether any of the | 12 | THE WITNESS: I don't think |
| 13 | persons who obtained this information from | 13 | I've seen any study on that, no. |
| 14 | defendant would have paid for the information | 14 | BY MR. BRIDGES: |
| 15 | from ASTM? | 15 | Q. Have you conducted any studies |
| 16 | A. No, not with certainty, because | 16 | that would have allowed you to establish any |
| 17 | I don't know the identity of the downloaders | 17 | connection between the number of accesses or |
| 18 | or the reasons for their downloading. | 18 | downloads that Public Resource made possible |
| 19 | Q. Moreover, those persons might | 19 | and any financial harms to the plaintiffs? |
| 20 | have accessed the standards from ASTM's | 20 | MR. FEE: Objection to form. |
| 21 | reading room for free and with no revenue to | 21 | THE WITNESS: Not other than |
| 22 | ASTM, correct? | 22 | what's contained in my report. |
| 23 | A. You mean in a but-for world? | 23 | BY MR. BRIDGES: |
| 24 | Had they not done what they actually did, | 24 | Q. Please turn to page 45, |
| 25 | alternatively they could have gone to the | 25 | paragraph 107, which spills into page 108. |
| | Page 214 | | Page 216 |
| 1 | C 1' 0 | | |
| 1 | free reading room? | 1 | MR. FEE: Page 108? |
| $\begin{vmatrix} 1\\2 \end{vmatrix}$ | Q. Right. | $\begin{vmatrix} 1\\2 \end{vmatrix}$ | MR. FEE: Page 108? THE WITNESS: I'm sorry. |
| | Q. Right.A. That's a possibility, yes. | | THE WITNESS: I'm sorry. Page 108 or paragraph? |
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| 2 3 4 5 6 | Q. Right. A. That's a possibility, yes. Q. Do you have an understanding as to why persons would want to download a file of a standard instead of viewing it at one of the plaintiffs' reading rooms? A. Not with absolute certainty, | 2 3 4 5 6 | THE WITNESS: I'm sorry. Page 108 or paragraph? BY MR. BRIDGES: Q. I'm sorry. Paragraph strike that. Let me ask you to turn paragraph 107 on pages 45 to 46. |
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| 1 | BY MR. BRIDGES: | 1 | whether plaintiffs have copyright in |
|--|---|--|---|
| 2 | Q. Well, doesn't that sentence at | 2 | rights in their value-added publications? |
| 3 | the bottom of 45 and going on to 46 say that | 3 | MR. FEE: Objection. Vague. |
| 4 | copyright on plaintiffs' standards drive | 4 | THE WITNESS: I would be |
| 5 | sales of "handbooks that provide commentary | 5 | curious to know that, but I'm not sure |
| 6 | on the standards by referring to them"? | 6 | of the significance. I don't think it |
| 7 | A. You haven't read | 7 | would change my conclusions, but I |
| 8 | MR. FEE: Objection. | 8 | would be curious to know that. |
| 9 | Mischaracterizes the document. | 9 | BY MR. BRIDGES: |
| 10 | THE WITNESS: You haven't read | 10 | Q. Do you know whether |
| 11 | the whole sentence. I see that | 11 | incorporation into law drives strike that. |
| 12 | sentence to which you refer. | 12 | Do you know whether |
| 13 | BY MR. BRIDGES: | 13 | incorporation into law of plaintiffs' |
| 14 | Q. Right. I know I haven't read | 14 | standards drives sales of plaintiffs' |
| 15 | the whole sentence, but didn't I fairly | 15 | standards? |
| 16 | capture one part of it, which is the sales | 16 | MR. FEE: Objection to form. |
| 17 | of strike that that copyright on | 17 | Vague. |
| 18 | plaintiffs' standards drives sales of, among | 18 | THE WITNESS: I don't know with |
| 19 | other things, "handbooks that provide | 19 | absolute certainty, but it would make |
| 20 | commentary on standards by referring to | 20 | some sense to me. |
| 21 | them"? | 21 | BY MR. BRIDGES: |
| 22 | MR. FEE: Same objection. | 22 | Q. Is it your understanding that |
| 23 | THE WITNESS: I think you have | 23 | it does? |
| $\frac{23}{24}$ | generally paraphrased it accurately, | 24 | MR. FEE: Same objection. |
| 25 | yes. | 25 | THE WITNESS: It would make |
| 25 | Page 218 | | Page 220 |
| | e | | |
| 1 | - | 1 | |
| 1 | BY MR. BRIDGES: | 1 2 | some sense to me, yes. |
| 2 | BY MR. BRIDGES: Q. And that plaintiffs' copyright | 2 | some sense to me, yes. BY MR. BRIDGES: |
| 2 3 | BY MR. BRIDGES: Q. And that plaintiffs' copyright protection this is the top of strike | 2 3 | some sense to me, yes. BY MR. BRIDGES: Q. Are you aware that, in some |
| 2 3 4 | BY MR. BRIDGES: Q. And that plaintiffs' copyright protection this is the top of strike that. | 2 3 4 | some sense to me, yes. BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the |
| 2 3 4 5 | BY MR. BRIDGES: Q. And that plaintiffs' copyright protection this is the top of strike that. And turning to the top of | 2 3 4 5 | some sense to me, yes. BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the legal status of its code to promote the sale |
| 2 3 4 5 6 | BY MR. BRIDGES: Q. And that plaintiffs' copyright protection this is the top of strike that. And turning to the top of page 46, plaintiffs' copyright protection on | 2 3 4 5 6 | some sense to me, yes. BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the legal status of its code to promote the sale of handbooks? |
| 2 3 4 5 6 7 | BY MR. BRIDGES: Q. And that plaintiffs' copyright protection this is the top of strike that. And turning to the top of page 46, plaintiffs' copyright protection on their standards provides plaintiff with a | 2 3 4 5 6 7 | some sense to me, yes. BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the legal status of its code to promote the sale of handbooks? MR. FEE: Objection to form. |
| 2 3 4 5 6 7 8 | BY MR. BRIDGES: Q. And that plaintiffs' copyright protection this is the top of strike that. And turning to the top of page 46, plaintiffs' copyright protection on their standards provides plaintiff with a competitive advantage with respect to what | 2 3 4 5 6 7 8 | some sense to me, yes. BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the legal status of its code to promote the sale of handbooks? MR. FEE: Objection to form. THE WITNESS: I don't know one |
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| 1 | Can you provide a can you | 1 | Q. What else? |
|--|--|--|--|
| 2 | put a dollar value, even an estimate, on the | 2 | A. That's what comes to mind. |
| 3 | economic benefit that plaintiffs receive from | 3 | Q. Anything else? |
| 4 | incorporation of their standards into law? | 4 | A. Not this moment, no. I guess, |
| 5 | MR. FEE: Objection to form. | 5 | potentially, when I think some more about it, |
| 6 | THE WITNESS: I have not. And | 6 | training and seminars, for instance. |
| 7 | I'm not sure how one would do that, | 7 | Q. Providers of training and |
| 8 | subject to thinking more about it. | 8 | seminars? |
| 9 | BY MR. BRIDGES: | 9 | A. Yes. So that's broader than |
| 10 | Q. At the top of page 46, you say, | 10 | value-added publications, but there are |
| 11 | "The Plaintiffs' copyright protection on | 11 | potentially alternative providers of training |
| 12 | their privately-developed standards provides | 12 | and seminars. |
| 13 | a competitive advantage with regard to the | 13 | Q. In paragraph 109, you say, "In |
| 14 | sale of these value-added publications as the | 14 | addition to direct sales of copyrighted |
| 15 | copyright protection limits the ability of | 15 | materials, the Plaintiffs' materials |
| 16 | others to sell those publications unless they | 16 | associated with their privately-developed |
| 17 | are unwilling [sic] to compensate the | 17 | standards provide a competitive advantage |
| 18 | Plaintiffs for such use." | 18 | with regard to the sale of downstream |
| 19 | MR. FEE: Objection. | 19 | ancillary/complementary services and |
| 20 | Mischaracterizes the statement. | 20 | products." |
| 21 | BY MR. BRIDGES: | 21 | Do you see that? |
| 22 | Q. Is there something unfair about | 22 | A. Yes. That's what I had in |
| 23 | my characterization of that statement? | | mind. |
| 24 | A. I think you read it wrong. You | 24 | Q. And who are the competitors you |
| 25 | read "willing" to read "unwilling" for some | 25 | have in mind in paragraph 109? |
| | Page 222 | | Page 224 |
| 1 | reason. | 1 | A. I don't know particular names, |
| 2 | Q. Oh, I'm sorry. Thank you. | 2 | but at least I don't recall any sitting |
| 3 | I'll restate the sentence. | 3 | right now sitting here right now, but I |
| 4 | "In particular, the Plaintiffs' | 4 | think there are other providers of these |
| 5 | copyright protection on their | 5 | downstream services and products. |
| 6 | privately-developed standards provides a | 6 | Q. And please give me examples of |
| 7 | competitive advantage with regard to the sale | 7 | what you're calling "downstream services and |
| 8 | of these value-added publications as the | 8 | products." |
| 9 | copyright protection limits the ability of | 9 | A. Again, seminars and training, |
| 10 | others to sell those publications unless they | | for instance. |
| 11 | are willing to compensate the Plaintiffs for | 11 | Q. Anything else? |
| 11 | 0 1 | | |
| 12 | such use." | 12 | A. That's what comes to mind right |
| 1 | 0 1 | 12 13 | |
| 12 13 14 | such use." Do you see that statement? A. I do, yes. | 12 | A. That's what comes to mind right now.Q. Turning to paragraph 110, you |
| 12 13 | such use." Do you see that statement? A. I do, yes. Q. And the competitive advantage | 12 13 | A. That's what comes to mind right now.Q. Turning to paragraph 110, you state, "I understand that the ability to |
| 12 13 14 | such use." Do you see that statement? A. I do, yes. Q. And the competitive advantage you've identified there, whom do you | 12 13 14 | A. That's what comes to mind right now. Q. Turning to paragraph 110, you state, "I understand that the ability to control these downstream products and |
| 12 13 14 15 16 17 | such use." Do you see that statement? A. I do, yes. Q. And the competitive advantage you've identified there, whom do you understand to be the competition? | 12 13 14 15 16 17 | A. That's what comes to mind right now. Q. Turning to paragraph 110, you state, "I understand that the ability to control these downstream products and services is particularly important to the |
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| 12 13 14 15 16 17 18 19 20 21 22 23 | such use." Do you see that statement? A. I do, yes. Q. And the competitive advantage you've identified there, whom do you understand to be the competition? A. Other potential providers of these so-called value-added publications. Q. And what when you say "value-added publications," please give me more examples of what types of things fall into that category, as you use the term. | 12 13 14 15 16 17 18 19 20 21 22 23 | A. That's what comes to mind right now. Q. Turning to paragraph 110, you state, "I understand that the ability to control these downstream products and services is particularly important to the Plaintiffs here because the barriers to entry in the marketplace for downstream products, such as training and user manuals, are relatively low. For example, according to Mr. Comstock of ASHRAE, it is relatively easy for unauthorized instructors to read a |
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| 1Q.What else?2A.Nothing else comes to mind3right now.4Q.Would your understanding of5"unauthorized instructors" include persons6who were instructing the public as to what7the standards require?8MR. FEE: Objection to form.9Vague.9Vague.10THE WITNESS: I didn't have11that in mind. I guess that's a12possibility.13BY MR. BRIDGES:14Q. And would it be relatively easy15for unauthorized persons like that to read a16standard and think that they have become17qualified to provide training or guidance on18that standard?19MR. FEE: Objection. Vague.19MR. FEE: Objection. Vague.20BY MR. BRIDGES:21Q. Is that your understanding?22A. According to Mr. Comstock, I23believe that's correct.24Q. What do you believe?25A. I have no reason to doubt him. | | | | |
|--|----|---|----|--|
| 3A. Ido, yes.3independent view?4Q. What do you understand what5it made sense to me.5did you mean by "unauthorized instructors"?6Q. So you put it in your report?7trying to provide services to the marketplace8Q. What independent thought or9for instrace, ASHRAE.9investigation did you do before you put that10Q. What do you understand the10in your report?11the nature of strike that.11MR. FEE: Objection. Vague.12You called them "instructors,"12Compound.13correct.13THE WITNESS: I can't point to14A. Yes.14anything in particular.15Q. Does that mean that you15BY MR. BRIDGES:16envision that these persons are providing16Q. Would a law-school course on17some kind of instruction?17the law and regulation of building18A. Yes.18construction provide instruction to law19Q. What instruction did you have20MR. FEE: Objection. Vague.21in mind when you referred to "unauthorized12Calls for speculation.22in mind when you referred to "unauthorized21Law and regulation?23A. Generally, how best to23I that that, in concept, could occur.24Q. Would your understanding of3Q. Would it be possible to3right now.3Q. Would Would wave analyze some | | | 1 | |
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| 25 A. I have no reason to doubt him. 25 for a law professor to discuss with law | 23 | - | 23 | - |
| 25 A. I have no reason to doubt him. 25 for a law professor to discuss with law | 24 | Q. What do you believe? | 24 | Q. Is that is that fair ground |
| | 25 | A. I have no reason to doubt him. | 25 | for a law professor to discuss with law |
| | 1 | Page 227 | | Page 229 |

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| 1 | likely? | 1 | Q. Do you consider \$100,000 to be |
|--|---|--|--|
| 2 | A. I haven't quantified that, but | 2 | material as an adverse effect on plaintiffs' |
| 3 | I would expect that it's more than | 3 | revenues? |
| 4 | 5 percent would be a reasonable definition of | 4 | MR. FEE: Objection to form. |
| 5 | "expected." | 5 | Compound. |
| 6 | Q. More than 10 percent? | 6 | THE WITNESS: I haven't |
| 7 | A. I don't know. I've not | 7 | considered that question. I don't |
| 8 | quantified that number. | 8 | know the answer to it. |
| 9 | Q. And what amount of an effect on | 9 | BY MR. BRIDGES: |
| 10 | plaintiffs' revenues have you identified as | 10 | Q. Have you considered whether |
| 11 | "material"? | 11 | 50,000 is a material amount as an adverse |
| 12 | A. I haven't | 12 | effect on plaintiffs' revenues? |
| 13 | MR. FEE: Objection to form. | 13 | MR. FEE: Same objections. |
| 14 | THE WITNESS: been able to | 14 | THE WITNESS: Same answer. |
| 15 | quantify the specific effects, so I | | BY MR. BRIDGES: |
| 16 | don't know the amount. | 16 | Q. Starting at page sorry. |
| 17 | BY MR. BRIDGES: | 17 | Strike that. |
| 18 | Q. Well, what I'm not asking | 18 | Starting at paragraph 139, you |
| 19 | for your quantification of a specific effect, | 19 | make several references to Mr. Malamud's |
| 20 | but how large would an effect have to be for | 20 | theory. |
| 21 | to you consider it "a material adverse effect | 21 | A. I'm sorry. To I missed a |
| 22 | on Plaintiffs' remedies"? | 22 | word that you said. References to his what? |
| 23 | MR. FEE: Objection to form. | 23 | Q. To Mr. Malamud's theory |
| 24 | THE WITNESS: I don't know that | 24 | A. Okay. |
| 25 | I have a particular quantitative | 25 | Q T-H-E-O-R-Y. You refer to |
| | Page 242 | 20 | Page 244 |
| 1 | guideline in mind. | 1 | it is some much 120, 140, 144, with the word |
| 1 | | 1 | it in paragraph 139; 140; 144, with the word |
| $\begin{vmatrix} 1\\2 \end{vmatrix}$ | BY MR. BRIDGES: | 2 | it in paragraph 139; 140; 144, with the word "theorized"; 145, "theory"; 146, "theory." |
| | BY MR. BRIDGES: | | "theorized"; 145, "theory"; 146, "theory." |
| 2 | BY MR. BRIDGES: Q. Have you ever are you | 2 | "theorized"; 145, "theory"; 146, "theory." What facts do you have that |
| 2 3 4 | BY MR. BRIDGES: Q. Have you ever are you familiar with audit inquiry letters regarding | 2 3 | "theorized"; 145, "theory"; 146, "theory." What facts do you have that have disproved the theory in paragraph 139? |
| 2 3 4 5 | BY MR. BRIDGES: Q. Have you ever are you familiar with audit inquiry letters regarding litigation? | 2 3 4 5 | "theorized"; 145, "theory"; 146, "theory." What facts do you have that have disproved the theory in paragraph 139? A. Perhaps most important is the |
| 2 3 4 | BY MR. BRIDGES: Q. Have you ever are you familiar with audit inquiry letters regarding litigation? A. Generally, yes. | 2 3 4 5 6 | "theorized"; 145, "theory"; 146, "theory." What facts do you have that have disproved the theory in paragraph 139? A. Perhaps most important is the revealed preference information. If the |
| 2 3 4 5 6 7 | BY MR. BRIDGES: Q. Have you ever are you familiar with audit inquiry letters regarding litigation? A. Generally, yes. Q. And you're familiar with the | 2 3 4 5 6 7 | "theorized"; 145, "theory"; 146, "theory." What facts do you have that have disproved the theory in paragraph 139? A. Perhaps most important is the revealed preference information. If the plaintiffs believed they were better off by |
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| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | BY MR. BRIDGES: Q. Have you ever are you familiar with audit inquiry letters regarding litigation? A. Generally, yes. Q. And you're familiar with the fact that auditors will often specify to those they send the letters to what amounts would be material for purposes of the audit response? A. Yes. Q. So you understand the concept of certain amounts being material to certain companies or entities? A. Yes, for certain purposes. Q. So I'd like to know what amount you have identified as being material as an adverse effect on plaintiffs' revenues for each of the three plaintiffs, please. MR. FEE: Objection. Compound. Asked and answered. THE WITNESS: I have not | $\begin{array}{c} 2\\ 3\\ 4\\ 5\\ 6\\ 7\\ 8\\ 9\\ 10\\ 11\\ 12\\ 13\\ 14\\ 15\\ 16\\ 17\\ 18\\ 19\\ 20\\ 21\\ 22\\ 23\\ \end{array}$ | "theorized"; 145, "theory"; 146, "theory." What facts do you have that have disproved the theory in paragraph 139? A. Perhaps most important is the revealed preference information. If the plaintiffs believed they were better off by lack of copyright protection, they would have pursued such a model. They don't believe they're better off. Moreover, they're expending tremendous resources in bringing and pursuing this litigation to halt the activity at issue. Q. What other facts, if any, do you have that have disproved Mr. Malamud's theory in paragraph 139? A. That's what comes to mind right now. Q. What facts do you have or are you aware of that have disproved Mr. Malamud's theory as you refer to it in paragraph 140? |

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| 1 | new in terms of a theory. | 1 | rest of that paragraph? |
|---|--|--|--|
| 2 | Q. Do you have the same answer | 2 | MR. FEE: Objection. Vague. |
| 3 | with respect to strike that. | 3 | THE WITNESS: I looked at the |
| 4 | What facts do you have | 4 | financial information, and I talked to |
| 5 | strike that. | 5 | people at the various plaintiffs. |
| 6 | What facts are you aware of to | 6 | BY MR. BRIDGES: |
| 7 | disprove to disprove Mr. Malamud's theory | 7 | Q. You talked to people at the |
| 8 | that you refer to in paragraph 144? | 8 | various plaintiffs? |
| 9 | A. Again, it's the same theory | 9 | A. Yes. |
| 10 | that's being referenced, but there's | 10 | Q. What did you do to verify the |
| 11 | additional facts; and that is, the downstream | 11 | truth and accuracy of the things that various |
| 12 | products and services aren't particularly | 12 | plaintiffs said to you in their |
| 13 | substantial to these plaintiffs and don't | 13 | conversations? |
| 14 | appear to be enhanced by a lack of copyright | 14 | MR. FEE: Objection to form. |
| 15 | protection; that is, the plaintiffs have had | 15 | THE WITNESS: I looked at the |
| 16 | copyright protection and have said had | 16 | financial information, and I kept my |
| 17 | some downstream products and services. It's | 17 | eyes and mind open to the information |
| 18 | hard to imagine that elimination of that | 18 | in the rest of the record to determine |
| 19 | copyright protection will enhance that | 19 | if it conflicted with what I learned |
| 20 | business. | 20 | from the company personnel. |
| 21 | Q. It's hard to imagine, but are | 21 | BY MR. BRIDGES: |
| 22 | you aware of any studies to disprove | 22 | Q. Whose financial information did |
| 23 | Mr. Malamud's theory? | 23 | you look at? |
| 24 | A. No. | 24 | A. All three of the plaintiffs. |
| 25 | MR. FEE: Objection. Vague. | 25 | It's summarized in tabs 3, 4, and 5. |
| | Page 246 | | Page 248 |
| 1 | THE WITNESS: I'm sorry. | 1 | Q. Did you look at the financial |
| 2 | BY MR. BRIDGES: | 2 | information of any entities other than the |
| 3 | Q. Have you conducted any studies | 3 | plaintiffs? |
| 4 | to disprove Mr. Malamud's theory? | 4 | A. I looked at Public Resource |
| 5 | MR. FEE: Same objection. | 5 | |
| | | 5 | financial information. |
| 6 | THE WITNESS: Not other than | 6 | Q. Apart from Public Resource and |
| 6 7 | | - | |
| | THE WITNESS: Not other than | 6 | Q. Apart from Public Resource and |
| 7 | THE WITNESS: Not other than what's reflected here in Exhibit 1. | 6 7 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial |
| 7 8 9 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: | 6 7 8 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making |
| 7 8 9 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have | 6 7 8 9 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in |
| 7 8 9 10 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's | 6 7 8 9 10 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? |
| 7 8 9 10 11 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? | 6 7 8 9 10 11 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my |
| 7 8 9 10 11 12 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale | 6 7 8 9 10 11 12 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. |
| 7 8 9 10 11 12 13 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state | 6 7 8 9 10 11 12 13 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business |
| 7 8 9 10 11 12 13 14 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped | 6 7 8 9 10 11 12 13 14 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory |
| 7 8 9 10 11 12 13 14 15 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services | 6 7 8 9 10 11 12 13 14 15 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the |
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| 7 8 9 10 11 12 13 14 15 16 17 18 19 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped opportunity for the Plaintiffs is incorrect." Do you see that? A. Yes, I do. | 6 7 8 9 10 11 12 13 14 15 16 17 18 19 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory in paragraph 145? A. Nothing in particular comes to mind. I understand that there are |
| 7 8 9 10 11 12 13 14 15 16 17 18 19 20 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped opportunity for the Plaintiffs is incorrect." Do you see that? A. Yes, I do. Q. And then you go on and make | 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory in paragraph 145? A. Nothing in particular comes to mind. I understand that there are front-loaded business models, but at DIN, |
| 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped opportunity for the Plaintiffs is incorrect." Do you see that? A. Yes, I do. Q. And then you go on and make some statements for the rest of the | 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory in paragraph 145? A. Nothing in particular comes to mind. I understand that there are front-loaded business models, but at DIN, for instance, but I don't recall undertaking |
| 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped opportunity for the Plaintiffs is incorrect." Do you see that? A. Yes, I do. Q. And then you go on and make some statements for the rest of the paragraph, correct? | 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory in paragraph 145? A. Nothing in particular comes to mind. I understand that there are front-loaded business models, but at DIN, for instance, but I don't recall undertaking an investigation of the downstream activities |
| 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped opportunity for the Plaintiffs is incorrect." Do you see that? A. Yes, I do. Q. And then you go on and make some statements for the rest of the paragraph, correct? A. Yes. Q. What studies did you engage in to determine the facts that you stated in the | 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory in paragraph 145? A. Nothing in particular comes to mind. I understand that there are front-loaded business models, but at DIN, for instance, but I don't recall undertaking an investigation of the downstream activities that they have. |
| 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have you relied upon to criticize Mr. Malamud's theory in paragraph 144? A. Nothing specific comes to mind. Q. In paragraph 145, you state that, "Mr. Malamud's suggestion that the sale of downstream products and services represents an untapped and undeveloped opportunity for the Plaintiffs is incorrect." Do you see that? A. Yes, I do. Q. And then you go on and make some statements for the rest of the paragraph, correct? A. Yes. Q. What studies did you engage in | 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making the assertions that you made in paragraph 145? A. Not in undertaking my assignment here. Q. Did you consider the business models of any entities other than the plaintiffs and the defendant in making the statements criticizing Mr. Malamud's theory in paragraph 145? A. Nothing in particular comes to mind. I understand that there are front-loaded business models, but at DIN, for instance, but I don't recall undertaking an investigation of the downstream activities that they have. Q. Did you undertake any |

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| 1 | A. Yes. It's a different entity | 1 | MR. FEE: Objection. Lack of |
|--|---|--|--|
| 2 | than the SDOs here; but for its purposes, it | 2 | foundation. Vague. |
| 3 | would appear that it's of the belief that | 3 | THE WITNESS: I'm not I'm |
| 4 | that's the optimal path to follow. | 4 | not sure that I understand the concept |
| 5 | MR. BRIDGES: I think I | 5 | of a standard being out of print, so |
| 6 | think we may pause things now and | 6 | maybe you could help me with that. |
| 7 | reserve the remainder of our time. | 7 | BY MR. BRIDGES: |
| 8 | Just a second. Oh, yes. | 8 | Q. Do you know the term "out of |
| 9 | BY MR. BRIDGES: | 9 | print"? |
| 10 | Q. Do you believe that the | 10 | A. Generally, I do, yes. |
| 11 | plaintiffs are harmed when the defendant | 11 | Q. What do you understand it to |
| 12 | posts a standard that has been incorporated | 12 | mean? |
| 13 | by reference let me strike that. | 13 | A. That it's no longer provided in |
| 14 | Do you believe that plaintiffs | 14 | print form. |
| 15 | suffer harm from defendant posting a standard | 15 | Q. All right. So what harm do you |
| 16 | that is not the latest version of the | 16 | understand plaintiffs would suffer if |
| 17 | standard? | 17 | defendants posted a standard that is out of |
| 18 | MR. FEE: Objection. Form. | 18 | print? |
| 19 | Compound. | 19 | MR. FEE: Objection to form. |
| 20 | THE WITNESS: Potentially, it | 20 | THE WITNESS: Potentially, it |
| 21 | could cause confusion in the | 21 | could be the harm similar to outdated |
| 22 | marketplace as to what's the latest | 22 | standards. |
| 23 | standard, and there may be some | 23 | BY MR. BRIDGES: |
| 24 | entities out there that are interested | 24 | Q. In other words, confusion in |
| 25 | in obtaining an earlier standard that | 25 | the marketplace? |
| | Page 254 | | Page 256 |
| 1 | would be obtaining it free rather than | 1 | A. Potential confusion in the |
| 2 | through the legal routes established | 2 | marketplace and potentially providing yes, |
| 3 | by the plaintiffs. | 3 | that that would be one form of it. |
| 4 | BY MR. BRIDGES: | 4 | Q. What other harms do would |
| 5 | Q. Have you done any studies to | 5 | you identify from the defendants posting a |
| 6 | determine what confusion may be likely in the | 6 | standard that is out of print? |
| 7 | marketplace in that regard? | 7 | A. Nothing else comes to mind this |
| 8 | MR. FEE: Objection to form. | 8 | moment, but there could be other things |
| 9 | THE WITNESS: I have not done a | 9 | that that I'm not thinking of right now. |
| 10 | likelihood of confusion study, no. | 10 | O. What harms do you understand |
| 11 | BY MR. BRIDGES: | 11 | plaintiffs would suffer if a condition of a |
| 12 | Q. What research have you done as | 12 | standard being incorporated into law is that |
| 13 | to whether strike that. | 13 | plaintiffs could not forbid other entities |
| 14 | | 14 | from making that law available widely and |
| 1 1 - + | What information do you have | | |
| | What information do you have about what market there is for earlier | 15 | |
| 15 | about what market there is for earlier | 15 16 | freely to the public? |
| 15 16 | about what market there is for earlier versions of standards when there is a newer | 16 | freely to the public? MR. FEE: Objection to form. |
| 15 16 17 | about what market there is for earlier versions of standards when there is a newer version in the market? | 16 17 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. |
| 15 16 17 18 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. | 16 17 18 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. |
| 15 16 17 18 19 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. THE WITNESS: I don't recall | 16 17 18 19 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. THE WITNESS: I don't know. |
| 15 16 17 18 19 20 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. THE WITNESS: I don't recall undertaking specific research on that | 16 17 18 19 20 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. THE WITNESS: I don't know. I've not undertaken that assignment. |
| 15 16 17 18 19 20 21 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. THE WITNESS: I don't recall undertaking specific research on that topic. | 16 17 18 19 20 21 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. THE WITNESS: I don't know. I've not undertaken that assignment. I've not given that particular |
| 15 16 17 18 19 20 21 22 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. THE WITNESS: I don't recall undertaking specific research on that topic. BY MR. BRIDGES: | 16 17 18 19 20 21 22 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. THE WITNESS: I don't know. I've not undertaken that assignment. I've not given that particular question any thought. |
| 15 16 17 18 19 20 21 22 23 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. THE WITNESS: I don't recall undertaking specific research on that topic. BY MR. BRIDGES: Q. What harm do you understand | 16 17 18 19 20 21 22 23 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. THE WITNESS: I don't know. I've not undertaken that assignment. I've not given that particular question any thought. It seems economically to be |
| 15 16 17 18 19 20 21 22 23 24 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. THE WITNESS: I don't recall undertaking specific research on that topic. BY MR. BRIDGES: Q. What harm do you understand plaintiffs would suffer if defendants post a | 16 17 18 19 20 21 22 23 24 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. THE WITNESS: I don't know. I've not undertaken that assignment. I've not given that particular question any thought. It seems economically to be quite similar to the actions that have |
| 15 16 17 18 19 20 21 22 23 | about what market there is for earlier versions of standards when there is a newer version in the market? MR. FEE: Objection to form. THE WITNESS: I don't recall undertaking specific research on that topic. BY MR. BRIDGES: Q. What harm do you understand | 16 17 18 19 20 21 22 23 | freely to the public? MR. FEE: Objection to form. Incomplete hypothetical. Compound. Calls for speculation. THE WITNESS: I don't know. I've not undertaken that assignment. I've not given that particular question any thought. It seems economically to be |

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| | | | | 1 |
|--------------------------------------|--|------------|--|----------|
| 1 | not thought about that particular | | CERTIFICATE | |
| 2 | topic. | 2 I de | b hereby certify that I am a Notary | |
| 3 | MR. BRIDGES: Okay. I think | 3 Public i | n good standing, that the aforesaid | |
| 4 | we'll pause here and reserve the rest | | ny was taken before me, pursuant to at the time and place indicated; that | |
| 5 | of the time for a later visit with | | ponent was by me duly sworn to tell | |
| 6 | you, Mr. Jarosz. | | h, the whole truth, and nothing but | |
| 7 | Kevin, this is in reliance on | | h; that the testimony of said nt was correctly recorded in machine | |
| 8 | an exchange of correspondence between | shortha | nd by me and thereafter transcribed | |
| 9 | Matt and you, I believe. If, for some | | y supervision with computer-aided ption; that the deposition is a true | |
| 10 | reason well, no. I think that's | | rect record of the testimony given by | |
| 11 | all. | | ness; and that I am neither of counsel | |
| 12 | Anything else? | | to any party in said action, nor ed in the outcome thereof. | |
| 13 | MR. FEE: Well, I don't have | 0 | | |
| 14 | any questions. | | TNESS my hand and official seal this y of September, 2015. | |
| 15 | Do you guys have any questions? | 2 | | |
| 16 | MR. REHN: Not at this time. | 3 4 | | |
| 17 | MR. CUNNINGHAM: No. | | <%signature%> | |
| 18 | MR. BRIDGES: Great. Thank | 5 | Debuic devinary, KDR, CRR | |
| 10 | you. | 6 | Notary Public | |
| 20 | THE WITNESS: Thank you. | 7 | | |
| 20 | THE VIDEOGRAPHER: All right. | 8 9 | | |
| 22 | Off the record at 4:31. This ends | 0 | | |
| 23 | media unit number 3 and ends testimony | 1 2 | | |
| 23 | for August 27th, 2015. | 3 | | |
| 24 | * * * | 4 | | |
| 25 | Page 258 | 5 | | Page 260 |
| 1 | (Witness excused.) | | | |
| 2 | (withess excused.) * * * | | | |
| $\begin{vmatrix} 2\\3 \end{vmatrix}$ | (Off the record at 4:31 p.m.) | | | |
| 4 | (On the record at 4.51 p.m.) * * * | | | |
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| 25 | Do 250 | | | |
| | Page 259 | | | |
| | | | 66 (Pages 258 | |

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EXHIBIT 10

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| UNITED STATES DISTRICT COURT | | | | | |
|--|------------------------------|--|--|--|--|
| FOR THE DISTRICT OF COLUMBIA | | | | | |
| AMERICAN SOCIETY FOR TESTING AND MATERIALS dba ASTM INTERNATIONAL, NATIONAL FIRE PROTECTION ASSOCIATION, INC., and AMERICAN SOCIETY OF HEATING, REFRIGERATING AND AIR CONDITIONING ENGINEERS, | : : : | | | | |
| Plaintiffs/ Counter-Defendants, | · : : | | | | |
| ν. | : : No. 1:13-cv-01215-EGS | | | | |
| PUBLIC.RESOURCE.ORG, | • | | | | |
| Defendant/ Counter-Plaintiff. | · : : | | | | |
| | Coos Bay, Oregon | | | | |
| Thursd | ay, November 13, 2014 | | | | |
| 39(b)(6) DEPOSITION OF: | | | | | |
| REBECCA MALAMUD, PUBLIC.RESOURCE.ORG, | | | | | |
| taken pursuant to notice, by counsel for Plaintiffs/ | | | | | |
| Counter-Defendants at Red Lion Inn, 1313 North | | | | | |
| Bayshore Drive, Coos Bay, Oregon, before Jan R. | | | | | |
| Duiven, CSR, FCRR, CCP, Cert | ified Shorthand Reporter | | | | |
| in and for the State of Orego: | n, beginning at 9:00 | | | | |
| a.m., when were present on b | ehalf of the respective | | | | |
| parties: | | | | | |

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| _ | | | a 11-13-2014 | |
|--|--|--|---|----|
| | 62 | | | 64 |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | of any other entities that employ Carl Malamud? A. No. Q. Besides Public.Resource, are you aware of any entities on which Mr. Malamud sits on the board? A. No. Q. Besides Public.Resource, are you aware of any other entities from whom Mr. Malamud has received any compensation in the last three years? A. No. Q. Are you on the board of directors of Public.Resource? A. No. Q. Are you on the board of directors of any entity? A. I don't want to be. No. Q. All right. So I want to talk to you now a little bit about the instructions that you | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | images for Public Resources. Correct? A. Yes. Q. Now, in your answer with regard to the ASTM images, you said you made exact copies to the best of your ability. What do you mean by "to the best of your ability. What do you mean by "to the best of your ability"? A. When as we create the diagrams, we have a proofreading you know, quality control work flow, and I try to catch every mistake, so Q. Would you describe to me how the process actually worked starting with how you received any images from Public.Resource and then ending with how you delivered your work product to Public.Resource? A. Well, the standards documents are posted on Public.Resource.org as triple-keyed HTML and CSS with low-resolution JPEGs. And once it's decided what document is | |
| 19 | received from Mr. Malamud regarding the work that | 19 | set to work on, it's I download those to my | |
| 20 21 | was done for Public.Resource. Okay? A. (Nods.) | 20 21 | computer. And then I separate them into MathML and images that need to be coded in MathML and | |
| 22 | Q. With respect to the work you did for | 22 | images that need to be vectorized we call it. | |
| 23 | Public.Resource, you knew that Public.Resource | 23 | And also on the diagram side, | |
| 24 | wanted Point B to make exact copies of everything that it provided to Point B Studios. Correct? | | especially for purposes of learning, I sort them another level as to areas of difficulty, or if | |
| | | | | |
| | 63 | | | 65 |
| 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | A. Correct. Q. And Mr. Malamud himself asked you to make exact copies of all the images that he provided to you. Right? A. Yes. Q. Did Mr. Malamud ever explain to you | 2 3 4 5 6 7 8 9 10 11 12 13 | there's a lot of repetition in an image that would facilitate creating another graphic quickly, I do that so it you know, it helps with the production of the work flow. And then the MathML images are coded in MathML, mathematical markup language, and at that point do you want me to go on? Q. Yes, please. A. It gets pretty technical. Okay. At that point we use an open source tool called Amaya. Q. Can you spell that, please? A. A-M-A-Y-A. And so the image they're coded. And then we have we have to convert them using an open-source tool called SVG/Math. This is how we get it into the graphic form. And it was a program by Jacques Distler out of University of Texas. And we use that program. It can interpret the MathML and produce a scaleable vector graphic. | 65 |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | A. Correct. Q. And Mr. Malamud himself asked you to make exact copies of all the images that he provided to you. Right? A. Yes. Q. Did Mr. Malamud ever explain to you why he wanted exact copies made of all the images that were provided to you? A. To release it in the public domain. Q. Did he ever tell you anything else about the importance of making the exact copies? A. He emphasized to be accurate. Q. And he told you to make exact copies of every image that was provided to you. Correct? A. Correct. Q. And that includes making exact copies of ASTM images. Correct? A. Yes. Q. And Mr. Malamud also instructed you to make exact copies of NFPA images. Right? A. Yes. Q. And you did in fact make exact copies | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | facilitate creating another graphic quickly, I do that so it you know, it helps with the production of the work flow. And then the MathML images are coded in MathML, mathematical markup language, and at that point do you want me to go on? Q. Yes, please. A. It gets pretty technical. Okay. At that point we use an open source tool called Amaya. Q. Can you spell that, please? A. A-M-A-Y-A. And so the image they're coded. And then we have we have to convert them using an open-source tool called SVG/Math. This is how we get it into the graphic form. And it was a program by Jacques Distler out of University of Texas. And we use that program. It can interpret the MathML and produce a scaleable vector graphic. And then once we have that scaleable vector graphic we open it up in Inkscape and we convert it to outlines and save it as SVG1.1 to | 65 |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | A. Correct. Q. And Mr. Malamud himself asked you to make exact copies of all the images that he provided to you. Right? A. Yes. Q. Did Mr. Malamud ever explain to you why he wanted exact copies made of all the images that were provided to you? A. To release it in the public domain. Q. Did he ever tell you anything else about the importance of making the exact copies? A. He emphasized to be accurate. Q. And he told you to make exact copies of every image that was provided to you. Correct? A. Correct. Q. And that includes making exact copies of ASTM images. Correct? A. Yes. Q. And Mr. Malamud also instructed you to make exact copies of NFPA images. Right? A. Yes. Q. And you did in fact make exact copies | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | facilitate creating another graphic quickly, I do that so it you know, it helps with the production of the work flow. And then the MathML images are coded in MathML, mathematical markup language, and at that point do you want me to go on? Q. Yes, please. A. It gets pretty technical. Okay. At that point we use an open source tool called Amaya. Q. Can you spell that, please? A. A-M-A-Y-A. And so the image they're coded. And then we have we have to convert them using an open-source tool called SVG/Math. This is how we get it into the graphic form. And it was a program by Jacques Distler out of University of Texas. And we use that program. It can interpret the MathML and produce a scaleable vector graphic. And then once we have that scaleable vector graphic we open it up in Inkscape and we | 65 |

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Malamud, Rebecca 11-13-2014

| | | 94 | | | 96 |
|---|--|----|---|---|----|
| 1 | object. Asked and answered. Counsel, can we move | | 1 | A. Yes. | |
| 2 | on? | | 2 | Q without purchasing them from the | |
| 3 | BY MR. FEE: | | 3 | authors. Correct? | |
| 4 | Q. No. Answer the question. Do you have | | 4 | A. Correct. | |
| 5 | anything else? | | 5 | Q. Have you ever had any discussions with | |
| 6 | A. No. | | | Mr. Malamud regarding this lawsuit? | |
| 7 | Q. Okay. So it was your intention to | | 7 | A. Not no. | |
| | make sure that this file conversion process led to | | 8 | Q. Have you ever had any written | |
| | files that the general public could use and make | | | 8 8 | |
| | copies of at their leisure. Correct? | | | lawsuit? | |
| 11 | A. Correct. | | 11 | A. Quite possible. | |
| 12 | Q. And did Mr. Malamud tell you that he | | 12 | Q. Do you recall any written | |
| | intended to make these files available so anybody | | | communications with Mr. Malamud regarding this | |
| 14 | could copy them whenever they wanted to? | | 14 | lawsuit? | |
| 16 | A. He published them on the Internet.Q. In a way that was easily copyable. | | | A. I don't recall any particular conversation. | |
| | Correct? | | 17 | MR. FEE: Would it be all right if | |
| 18 | A. Yes. | | | we take a quick break? | |
| 19 | O. And his intention was to make it | | 19 | MR. STOLTZ: It would. | |
| | available for free so people wouldn't have to | | 20 | THE VIDEOGRAPHER: Okay. Going off | |
| | purchase them? | | | the record 11:18 a.m. | |
| 22 | MR. STOLTZ: Objection. The | | 22 | (Recess: 11:18 a.m. to 11:26 a.m.) | |
| | question lacks foundation. You can answer if you | | 23 | THE VIDEOGRAPHER: We're going back | |
| | know. | | 24 | on the record. The time is 11:26 a.m. Beginning | |
| 25 | BY MR. FEE: | | | disc 3. | |
| | | 95 | | | 97 |
| 1 | Q. Let me re-ask that question. Did he | | 1 | (Deposition Exhibit No. 19 | |
| 2 | ever tell you that one of the benefits of his | | 2 | marked for identification.) | |
| 3 | project was that people will be able to get copies | | 3 | BY MR. FEE: | |
| 4 | of these standards for free and not have to | | 4 | Q. Ms. Malamud, I'm going to hand you | |
| 5 | purchase them? | | 5 | what's been marked as Exhibit 19. It's an email | |
| 6 | A. That wouldn't be exactly what he would | | | | |
| 7 | | | 6 | from Carl Malamud to Rebecca Malamud dated | |
| 1 | say, so | | 7 | January 28th, 2014, at 2:30 p.m., and Bates | |
| 8 | Q. Well, what exactly do you recall? | | 7 8 | January 28th, 2014, at 2:30 p.m., and Bates labeled PRO4234 hmm. | |
| 9 | Q. Well, what exactly do you recall?A. I wouldn't want to surmise what he | | 7 8 9 | January 28th, 2014, at 2:30 p.m., and Bates labeled PRO4234 hmm. (Off-the-record discussion.) | |
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Malamud, Rebecca 11-13-2014

| | | 230 | | | 232 |
|--|--|-----|--|--|-----|
| 1 | A. No. | | 1 | Q. Are you aware of Point B ever | |
| 2 | Q. Do you know who made the decision not | | | receiving any permission from ASHRAE to make | |
| 3 | to do any work on ASHRAE standards? | | | copies of its standards? | |
| 4 | A. I just it just didn't happen. | | 4 | A. No. | |
| 5 | There was no formal decision. | | 5 | Q. And did Public.Resource ever inform | |
| 6 | Q. Was there ever any discussion between | | 6 | you that it had permission from ASHRAE to work on | |
| 7 | | | | its standards? | |
| 8 | standards? | | 8 | A. No. | |
| 9 | A. References in email, but other than | | 9 | MR. ZEE: Thank you. That's all I | |
| 10 | that, no. | | 10 | have. | |
| 11 | Q. Did Public.Resource ever provide any | | 11 | MR. STOLTZ: I have a few questions, | |
| 12 | | | 12 | but, first, I think we need to take a break. | |
| 13 | A. No. | | 13 | THE VIDEOGRAPHER: Okay. Going off | |
| 14 | Q. If you could, Mrs. Malamud, take a | | 14 | the record. 4:20 p.m. | |
| 15 | | | 15 | (Recess: 4:20 p.m. to 4:33 p.m.) | |
| 16 | A. Okay. | | 16 | THE VIDEOGRAPHER: We're going back | |
| 17 | Q. This is an email from Carl Malamud to | | 17 | on the record. The time is 4:33 p.m. | |
| 18 | yourself dated January 4th, 2014, 2:30 p.m. Do | | 18 | | |
| 19 | you see that? | | 19 | EXAMINATION | |
| 20 | A. Correct. | | 20 | BY MR. STOLTZ: | |
| 21 | Q. And the first line of that email says, | | 21 | Q. Okay. Thanks, Ms. Malamud, for | |
| 22 | "Thinking about it, why don't you focus on ASTM | | | your for coming today. I just have a few | |
| 23 | and ASHRAE standards for your next big batch." | | 23 | questions. How often do you talk to Mr. Malamud | |
| 24 | Correct? | | 24 | on the phone, say, in the past three years? | |
| 25 | A. Correct. | | 25 | A. Never. | |
| | | | | | |
| | | 231 | 1 | O Would you say that most of your | 233 |
| 1 | Q. Do you know why Mr. Malamud is asking | 231 | 1 | Q. Would you say that most of your | 233 |
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| 2 3 4 5 6 | Q. Do you know why Mr. Malamud is asking you to focus on ASHRAE standards if A. Because it was we were going to work on it and we worked on ASTM, but did not get into the ASHRAE standards. Q. Why did you not get into the ASHRAE | 231 | 2 3 4 5 | communication is by email? A. Yes. Q. You've testified earlier about the | 233 |
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| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | Q. Do you know why Mr. Malamud is asking you to focus on ASHRAE standards if A. Because it was we were going to work on it and we worked on ASTM, but did not get into the ASHRAE standards. Q. Why did you not get into the ASHRAE standards? A. For for me because the files weren't there, the JPEG, the document hadn't been converted to this point. Q. What was that? A. The document the PDF hadn't been converted to the point where I I can begin work. Q. So was the decision not to work on the ASHRAE PDF your decision? MR. STOLTZ: Objection. Asked and answered. A. In the natural in the work flow, it just didn't happen so BY MR. ZEE: Q. Are you aware of Point B ever asking for permission from ASHRAE to make copies of its standards? | | $ \begin{array}{c} 2 \\ 3 \\ 4 \\ 5 \\ 6 \\ 7 \\ 8 \\ 9 \\ 10 \\ 11 \\ 12 \\ 13 \\ 14 \\ 15 \\ 16 \\ 17 \\ 18 \\ 19 \\ 20 \\ 21 \\ 22 \\ 23 \\ 24 \\ \end{array} $ | communication is by email? A. Yes. Q. You've testified earlier about the steps that you went through to do quality assurance on SVG images. A. Correct. Q. If, in the process of reviewing an SVG image you happened to find a mistake, what would you do? A. I would correct it. Q. And is that true for every SU SVG image that you reviewed as part of the codes project? A. Yes. Q. Can text to speech software read MathML files? A. Yes. Q. Can text to speech software read JPEG files? A. No. There there is an ALT tag in every image in an HTML document and the text is put into this ALT tag, it could read that. But it's generally very minimal. | 233 |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | Q. Do you know why Mr. Malamud is asking you to focus on ASHRAE standards if A. Because it was we were going to work on it and we worked on ASTM, but did not get into the ASHRAE standards. Q. Why did you not get into the ASHRAE standards? A. For for me because the files weren't there, the JPEG, the document hadn't been converted to this point. Q. What was that? A. The document the PDF hadn't been converted to the point where I I can begin work. Q. So was the decision not to work on the ASHRAE PDF your decision? MR. STOLTZ: Objection. Asked and answered. A. In the natural in the work flow, it just didn't happen so BY MR. ZEE: Q. Are you aware of Point B ever asking for permission from ASHRAE to make copies of its | | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | communication is by email? A. Yes. Q. You've testified earlier about the steps that you went through to do quality assurance on SVG images. A. Correct. Q. If, in the process of reviewing an SVG image you happened to find a mistake, what would you do? A. I would correct it. Q. And is that true for every SU SVG image that you reviewed as part of the codes project? A. Yes. Q. Can text to speech software read MathML files? A. Yes. Q. Can text to speech software read JPEG files? A. No. There there is an ALT tag in every image in an HTML document and the text is put into this ALT tag, it could read that. But | 233 |

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| Malallia, Rebecca 11-15-2014 | | | | | |
|------------------------------|--|--|--|--|--|
| 234 | | | | | |
| | | | | | |

| | 25 | * | | 230 |
|--|--|---|--|-----|
| 1 | easier to use than JPEG files for people with | 1 | those. | |
| 2 | disabilities? | 2 | Q. Other than at the very beginning of | |
| 3 | MR. FEE: Objection. Lack of | 3 | the product, what did you do when you encountered | |
| 4 | foundation. Leading. | 4 | logos in the documents? | |
| 5 | BY MR. STOLTZ: | 5 | A. I would leave in the original JPEG | |
| 6 | Q. You can answer. | 6 | scan. | |
| 7 | A. Yes. | 7 | Q. If I could direct your attention to | |
| 8 | Q. You testified about text that would | 8 | the document marked Exhibit 28. It will be the | |
| 9 | appear in diagrams in standards documents. | 9 | second-to-the-last page of that document. The | |
| 10 | Typically how much text appeared in the diagrams | 10 | Bates number PRO24984. At the very bottom of that | |
| 11 | in the standards documents that Point B worked on? | 11 | page, do you see the line that says, page 00201, | |
| 12 | MR. FEE: Objection. Vague. | 12 | SVG logo, Wikimedia Commons? | |
| 13 | A. Usually it would be numbers and | 13 | A. Yes. | |
| 14 | captions, call-outs on the graphic, but sometimes | 14 | Q. Do you know what the word logo refers | |
| 15 | there would be notes underneath the graphic. | 15 | to? | |
| 16 | BY MR. STOLTZ: | 16 | A. I when I first saw it I thought it | |
| 17 | Q. What's the most number of characters | 17 | might be a logo, but it could be a symbol. | |
| 18 | that were in those notes? | 18 | Without seeing the picture, I don't know. | |
| 19 | A. I would say it's anywhere from 100 to | 19 | MR. STOLTZ: Thank you. I have no | |
| 20 | 500 characters. That's just a ballpark figure. | 20 | more questions. | |
| 21 | Q. You testified that some older diagrams | 21 | | |
| 22 | contained flourishes. In what part of the diagram | 22 | EXAMINATION | |
| 23 | were those flourishes? | 23 | BY MR. FEE: | |
| 24 | A. In the usually it has hand-lettered | 24 | Q. That file that you were just | |
| 25 | text. | 25 | referencing, page 0020.SVG-logo, do you still have | |
| _ | | _ | | |
| | 23 | 5 | | 237 |
| | | | | |
| 1 | Q. So was it your practice to where | | that file at Point B? | |
| 2 | | 2 | A. I may. | |
| 3 | 1 | 3 | Q. Now, in response to the testimony you | |
| 4 | rendered in a font? | 4 | gave to your counsel regarding your practice with | |
| 5 | MR. FEE: Objection. Form. | | logos after some initial period, you, I think | |
| 6 | A. Correct. | | testified that you would leave the original JPEG | |
| 7 | BY MR. STOLTZ: | 7 | 8 | |
| 8 | Q. You testified that some images would | | | |
| 9 | | 8 | A. Correct. | |
| | have required interpretation. In those cases, | 9 | Q. And the HTML file was not the original | |
| 10 | have required interpretation. In those cases, what did Point B do with the image? | 9 10 | Q. And the HTML file was not the original file as it was distributed by the standards | |
| 10 11 | have required interpretation. In those cases,what did Point B do with the image?A. I would file it in a folder called | 9 10 11 | Q. And the HTML file was not the original file as it was distributed by the standards provider. Correct? | |
| 10 11 12 | have required interpretation. In those cases,what did Point B do with the image?A. I would file it in a folder called"bad art" while we were working on the diagrams or | 9 10 11 12 | Q. And the HTML file was not the original file as it was distributed by the standards provider. Correct? MR. STOLTZ: Objection to form. | |
| 10 11 12 13 | have required interpretation. In those cases,what did Point B do with the image?A. I would file it in a folder called"bad art" while we were working on the diagrams or sometimes label them in red. That came later | 9 10 11 12 13 | Q. And the HTML file was not the original file as it was distributed by the standards provider. Correct? MR. STOLTZ: Objection to form. Foundation. | |
| 10 11 12 13 14 | have required interpretation. In those cases,what did Point B do with the image?A. I would file it in a folder called"bad art" while we were working on the diagrams or sometimes label them in red. That came laterbecause by filing them in a folder called bad art | 9 10 11 12 13 14 | Q. And the HTML file was not the original file as it was distributed by the standards provider. Correct? MR. STOLTZ: Objection to form. Foundation. A. Correct. | |
| 10 11 12 13 14 15 | have required interpretation. In those cases, what did Point B do with the image? A. I would file it in a folder called "bad art" while we were working on the diagrams or sometimes label them in red. That came later because by filing them in a folder called bad art I would have to remove them in order that they | 9 10 11 12 13 14 15 | Q. And the HTML file was not the original file as it was distributed by the standards provider. Correct? MR. STOLTZ: Objection to form. Foundation. A. Correct. BY MR. FEE: | |
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| 10 11 12 13 14 15 16 17 | have required interpretation. In those cases, what did Point B do with the image? A. I would file it in a folder called "bad art" while we were working on the diagrams or sometimes label them in red. That came later because by filing them in a folder called bad art I would have to remove them in order that they were still in the standard document. Q. So if you had placed a file in the | 9 10 11 12 13 14 15 16 17 | Q. And the HTML file was not the original file as it was distributed by the standards provider. Correct? MR. STOLTZ: Objection to form. Foundation. A. Correct. BY MR. FEE: Q. So the files that were created by Public.Resource or the files that were created | |
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| | 242 | | 24 | 44 |
|--|---|--|--|----|
| 2 3 4 5 6 7 8 9 10 11 12 13 14 | beyond the scope of the redirect. A. It's not exactly my words. BY MR. FEE: Q. Okay. What were your exact words, can you say you remember? MR. STOLTZ: Objection. Asked and answered. BY MR. FEE: Q. How is my description wrong? A. Broader access to public safety standards. Q. Are you aware that at least ASTM's standards are available for free on the Internet to the extent that they've been incorporated by reference by any federal regulation? | 2 3 4 5 6 7 7 8 9 10 11 12 13 14 15 | State of Oregon)) ss. County of Lane) I, Jan R. Duiven, CSR, FCRR, CCP, a Certified Shorthand Reporter for the State of Oregon, certify that the witness was sworn and the transcript is a true record of the testimony given by the witness; that at said time and place I reported all testimony and other oral proceedings in the matter; that the foregoing transcript consisting of 243 pages, contains a full, true and correct transcript of the proceedings reported by me to the best of my ability on said date. If any of the parties or the witness requested review of the transcript at the time of the proceedings, correction pages have been inserted. | 14 |
| 16 17 18 19 | MR. STOLTZ: Objection. Still beyond the scope of the redirect. A. I am not a lawyer and it's outside a bit of the scope of my expertise, but eventually it's it's not free. BY MR. FEE: Q. The ASTM standards in its reading room | 16 17 18 19 20 21 22 23 24 25 | CSR seal this 24th day of November, 2014, in the City of Eugene, County of Lane, State of Oregon. Jan R. Duiven, CSR, FCRR, CCP CSR No. 96-0327 Expiration Date: September 14, 2017 | |
| 1 2 3 4 5 6 6 7 7 8 9 9 100 111 122 13 14 15 16 17 7 18 19 20 21 | zd3 room. MR. FEE: I have no other questions. MR. REHN: Nothing for me. THE VIDEOGRAPHER: Anything further? MR. ZEE: Nothing further. THE VIDEOGRAPHER: Okay. We're going off the record. (The deposition concluded at 4:50 p.m.) | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 | I, REBECCA MALAMUD, do hereby acknowledge I have read and examined the foregoing pages of testimony, and the same is a true, correct and complete transcription of the testimony given by me, and any changes or corrections, if any, appear in the attached errata sheet signed by me. | 45 |
| 21 22 23 24 25 | | 21 22 23 24 25 | | |

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Malamud, Rebecca 11-13-2014

| | 246 | |
|---|-----|--|
| MR. MITCH STOLTZ ELECTRONIC FRONTIER FOUNDATION 815 Eddy Street San Francisco, California 94109 415/436-9333 In Re: ASTM International. v. Public.Resource.Org Dear Mr. Stoltz, Enclosed please find your copy of the deposition of REBECCA MALAMUD, along with the original signature page. As agreed, you will be responsible for contacting the witness regarding signature. Within 30 days of December 1, 2014, please forward errata sheet and original signed signature page to counsel present. If you have any questions, please do not hesitate to call. Thank you. Yours, Jan R. Duiven, CSR, FCRR, CCP Reporter/Notary cc: Original transcript All Counsel cz: Original transcript All Counsel | | |
| | 247 | |
| Capital Reporting Company 1821 Jefferson Place, Northwest Third Floor Washington, D.C. 20036 (202)857-3376 E R R A T A S H E E T Case Name: ASTM International. v. Public.Resource.Org Witness Name: REBECCA MALAMUD Deposition Date: November 13, 2014 Page No. Line No. Change/Reason for Change 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 Signature Date Date | 247 | |

EXHIBIT 11 (FILED UNDER SEAL)

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EXHIBIT 12

| 1 | UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA |
|-----|---|
| 2 | |
| 3 | AMERICAN SOCIETY FOR TESTING AND) Case No. MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS |
| 4 | NATIONAL FIRE PROTECTION) ASSOCIATION, INC.; and) |
| 5 | AMERICAN SOCIETY OF HEATING,) REFRIGERATING, AND) |
| 6 | AIR-CONDITIONING ENGINEERS, INC.,) |
| 7 | Plaintiffs,) |
| 8 | vs.) |
| 9 | |
| 10 | PUBLIC.RESOURCE.ORG, INC.,) |
| | Defendant.) |
| 11 |) |
| 12 | AND RELATED COUNTERCLAIMS.) |
| |) |
| 13 | |
| 7 4 | RULE 30(B)(6) VIDEOTAPED DEPOSITION OF AMERICAN |
| 14 | SOCIETY OF HEATING, REFRIGERATING, AND AIR-CONDITIONING |
| 1 5 | ENGINEERS, INC. |
| 15 | DV AND TUDOUCU ITC DECIONEE |
| 16 | BY AND THROUGH ITS DESIGNEE, |
| 10 | STEPHANIE REINICHE |
| 17 | SIEPHANIE REINICHE |
| 18 | MONDAY, MARCH 30, 2015 |
| 10 | 9:10 a.m. |
| 19 | 5°±0° a.m. |
| 20 | VERITEXT LEGAL SOLUTIONS |
| 20 | 1075 PEACHTREE STREET |
| 21 | SUITE 3625 |
| | ATLANTA, GEORGIA |
| 22 | |
| 23 | Reported By: |
| 24 | SHARON A. GABRIELLI, CCR B-2002 |
| 25 | Job No. 2035289 |
| - | |
| | |
| | Page 1 |

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| 1 | | | |
|--|--|--|---|
| | A I moved from Michigan to Georgia. 09:21 | 1 | · · · · · · · · · · · · · · · · · · · |
| 2 | Q And what was your first job that you took 09:29 | 2 | |
| | once you moved to Georgia? 09:23 | 3 | |
| 4 | A ASHRAE. 09:25 | 4 | Ç |
| 5 | Q Okay. Did you move to Georgia to work at 09:26 | | to? 09:23 |
| | ASHRAE? 09:28 | 6 | 6 |
| 7 | A No. 09:29 | 7 | |
| 8 | Q Okay. And when was it that you started 09:29 | 8 | |
| | working at ASHRAE? 09:21 | 9 | |
| 10 | | | ASHRAE, other than senior manager of standards? 09:24 |
| 11 | | 11 | |
| | 5 | 12 | |
| 13 | 510, | | ASHRAE? 09:21 |
| | 1 | 14 | |
| | | 15 | |
| 16 | | | standards have you played? 09:21 |
| - | 1 | 17 | Å |
| 18 | | | standards at ASHRAE. 09:26 |
| 19 | | 19 | |
| | | 20 | c |
| 21 | | | reviewing all the documentation for membership, 09:22 |
| 22 | - | | overseeing the documentation for public reviews, could 09:27 |
| | | | be change proposals, could be minutes, the publication 09:24 |
| 24 | | | drafts, editing and reviewing those, working with the 09:20 |
| 25 w | was about procedures and process, and so just legal 09:23 Page 18 | 25 | appeals. 09:27 Page 20 |
| 1 b | background and ability to to write and things like 09:27 | 1 | Q And when you say you oversee the 09:25 |
| | that. 09:29 | | documentation for membership and for public reviews and 09:29 |
| 3 | Q And what how long were you a procedures 09:24 | | change proposals and publication drafts, what does that 09:23 |
| 4 a | administrator at ASHRAE for? 09:20 | | entail? 09:26 |
| 5 | A I want to say until December 2004. 09:27 | 5 | A It can entail well, making sure that the 09:28 |
| 6 | Q And were you promoted at that time? 09:24 | 6 | document for membership, that the documentation is all 09:22 |
| | A Yes. 09:25 | | |
| 7 | | 7 | complete, meaning every all the, you know, parts are 09:25 |
| | O And what was what position were you 09:26 | | complete, meaning every all the, you know, parts are 09:25 filled out, everything is properly signed. And it 09:29 |
| 8 | Q And what was what position were you 09:26 promoted to? 09:29 | 8 | filled out, everything is properly signed. And it 09:29 |
| 8 9 p | promoted to? 09:29 | 8 9 | filled out, everything is properly signed. And it09:29could involve talking with the chairs of project09:23 |
| 8 9 p 10 | promoted to? 09:29 A Standards administrator. 09:20 | 8 9 10 | filled out, everything is properly signed. And it09:29could involve talking with the chairs of project09:23committees to help them make sure their committee is09:29 |
| 8 9 p 10 11 | promoted to? 09:29 A Standards administrator. 09:20 Q And how long did you hold the title of 09:26 | 8 9 10 | filled out, everything is properly signed. And it 09:29 could involve talking with the chairs of project 09:23 committees to help them make sure their committee is 09:29 balanced. 09:24 |
| 8 9 p 10 11 12 s | promoted to? 09:29 A Standards administrator. 09:20 Q And how long did you hold the title of 09:26 standards administrator for? 09:22 | 8 9 10 11 12 | filled out, everything is properly signed. And it 09:29 could involve talking with the chairs of project 09:23 committees to help them make sure their committee is 09:29 balanced. 09:24 |
| 8 9 p 10 11 12 s 13 | promoted to? 09:29 A Standards administrator. 09:20 Q And how long did you hold the title of 09:26 standards administrator for? 09:22 A I think it was about three years. 09:24 | 8 9 10 11 12 13 | filled out, everything is properly signed. And it 09:29 could involve talking with the chairs of project 09:23 committees to help them make sure their committee is 09:29 balanced. 09:24 Q What do you mean by making sure the project 09:27 committees are balanced? 09:20 |
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| 8 9 p 10 11 12 s 13 14 15 | promoted to? 09:29 A Standards administrator. 09:20 Q And how long did you hold the title of 09:26 standards administrator for? 09:22 A I think it was about three years. 09:24 Q And were you promoted after three years? 09:21 A Yes. 09:23 | 8 9 10 11 12 13 14 15 | filled out, everything is properly signed. And it 09:29 could involve talking with the chairs of project 09:23 committees to help them make sure their committee is 09:29 balanced. 09:24 Q What do you mean by making sure the project 09:27 committees are balanced? 09:20 A Under our ANSI rules, our committees have to 09:22 be balanced, meaning for nonsafety standards, no more 09:25 |
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| 3 particular standards? 99:25 4 A They can be yes. 99:26 5 C Q Okay. 09 us how the of the top of your 09:27 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:20 5 Lead the interest categories for the '0.1 standards? 09:22 5 Lead the interest categories for the '0.1 standards? 09:22 5 Lead the interest categories for the '0.1 standards? 09:22 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.1 standards? 09:23 5 Lead the interest categories for the '0.2 standard leave categories (0.2 standa | 1 A For which standard? 09:21 | 1 A For which part of the process? After 09:29 |
|---|---|---|
| 4AThey can be, yes.09:264ASo for membership applications, there is an09:275QQQSo for membership applications, there is an09:20So for membership applications, there is an09:207ALean list some of them, but 1 wouth have to09:26So for membership applications, there is an09:278I can list some of them, but 1 wouth have to09:289a signature at the bottom and their voting status, what 09:359QNaw,09:229a signature at the bottom and their voting status, what 09:351There's compliance, industry, utility,09:2210they would like to be on that committee.09:391There's a bias/conflict of interest form,09:3213list five years, other organizations that they're been 09:305AHould need to look at the application that09:2713list five years, other organizations that they're been 09:315ANould need to look at the application that09:2814A doen through the ASHRAE website which gives there' 09:366QWhat - what kind of op econs in that 19:0209:2819a doen through the ASHRAE website which gives there' 09:361BA code of look at out application, free, weblic which gives there' 09:3619list that - what all of 09:306QA code of look at the op of person.09:29221AA building code person; that type of person.09:202QAxy would that be some | c C | 2 membership? 09:22 |
| 5QOkay. Do you know the - off the top of your 09:275application form that would list theyou know, what 09:206AI can list some of them, but I would have to 09:266project committee they'r applying for, ther name 0:248ATracer's compliance, indisary, utility, 09:229a signature at the bottom and their voting status, what 09:359QOkay.09:219a signature at the bottom and their voting status, what 09:301There's a bias/conflict of interest form, 09:321There's a bias/conflict of interest form, 09:321g and what does what are the those 09:2713Interves to would a 09:295would fail into the compliance category?09:22146how the dimition to give you an eacer person, the 09:2815any public statements they would have male in regards 09:389QOkay.09:2914A cload in where they you know, their 09:369QWhen you say someone who's involved in codes. 09:2015A cload official09:371AA code official09:2720212A code official09:272222Page10Max what well down for would be command of their soles which gives their 09:38212QOkay. So that would that would encompass 09:272324Q3A code official09:272324QA rey ou the person who makes sure that all of 09:364A chaiding code person: thype of yearson< | 3 particular standards? 09:25 | 3 Q Let's talk about membership applications. 09:23 |
| 5 head the interest categories for the 90.1 standards? 9920 7 A 1 Can list some of them, but 1 would have to 9926 8 constrained to verify they all correct. 09:28 9 Q Okay. 0922 9 A Obay. 0922 9 A Obay. 0922 9 A Obay. 0922 1 A There's compliance, industry, utility, 09:22 1 Obay would like to be on that committee. 09:39 1 Derversh and the they would have - then there is 09:33 2 Q And what does - what are the - those 09:27 3 categories 7. Excuss me, let me rephrase. 09:25 5 would fail into the compliance category? 09:22 5 would fail into the compliance category? 09:22 1 S have since do to look at the application that 09:26 1 S have since do to look at the application that 09:26 1 S have since do finding and the application that 09:26 1 S have since do finding a category? 09:22 1 R And then there's a biographical record that 09:34 1 S have since do finding a category 09:27 3 categories 0.01 Categ | 4 A They can be, yes. 09:26 | 4 A So for membership applications, there is an 09:27 |
| 7AI can list some of them, but I would have to 09:267what interest category they believe they should be09:278look at <i>a</i> noster to verify they're all correct.09:280Ckay.09:228categorized. And then they would have - dhen there is 09:339Ahttps://withing.09:2210they would like to be on that committee.09:391CA and what does - what are the - those09:2713there so that committee.09:392QAnd what does - what are the - those09:2713there so the solar conflict of interest form.09:323Vant - what kind does - what are the - phase congort?09:2213that free years, other organizations that they're been09:304What - what kind of a person would a -09:2914involved with, who pays their way to participate, and09:345AHoulding code person: the op:2615And then thee's a biographical record that09:367start difficitor.09:2714In during like that, whether - orbit committee.09:382AA code official.09:2714In during like that, whether - orbit committee.09:383QA code official.09:2714QA go us there a biographical record that of 09:305M. Could be.09:2714A code official.09:376A could be, compliance, congulare?09:2814QA spout here's a biographical record that of 09:306 </td <td>5 Q Okay. Do you know the off the top of your 09:27</td> <td>5 application form that would list the you know, what 09:20</td> | 5 Q Okay. Do you know the off the top of your 09:27 | 5 application form that would list the you know, what 09:20 |
| 8 look at a roster to verify hey're all correct. 09:28 9 Q Okay. 09:22 1 general, and 1 think user. 09:21 1 general, and 1 think user. 09:21 2 Q And what does - what are the - those 09:27 3 categories? Excuss me, let me rephrase. 09:25 3 categories? Excuss me, let me rephrase. 09:25 4 What - what kind of a person would a - 09:29 5 woold fall into the compliance category? 09:22 9 involved in codes would be a campliance person. 09:26 1 that, too, is signed. 09:34 1 surved with, who pays their way to participate, and 09:34 1 star five years, other organizations that they've been 09:30 1 and then there's a hiographical record that 09:36 1 of the yould have mode in regards 09:38 1 of to the particular standard they've applying for, and 09:34 1 star too, is signed. 09:34 1 star too is signed. 09:34 2 obackground, like where they - you know, their degress 09:33 2 obackground, like where they - you know, their degress 09:33 2 do that would have to obe and 09:26 2 do Qiay. So that would - that would encompass 09:27 3 method in a government position, then, would be under 09:21 3 method is a government position, then, would be under 09:21 4 who that is the name of the starff person thom 09:30 1 specific position? 09:32 3 work, what they do. Withou looking at an 09:26 3 work, what they do. Withou look at the 09:27 4 with the site fields are filled out? 09:37 4 who have a specific position for person 09:32 4 who have a specific position for person 09:32 4 who have a specific position for person 09:33 4 who have a specific position for person 09:33 4 who have a specific position for person 09:37 4 with malway schecked the - the forms? 09:37 4 | 6 head the interest categories for the 90.1 standards? 09:20 | 6 project committee they're applying for, their name, 09:24 |
| 9QQ kay.09:229 a signature at the bottom and their voting status, what 09:359AThere's compliance, industry, utily,09:2210 they would like to be on that committee.09:392QAnd what does what are the those09:2712 which gives background on where they've worked for the 09:363categories? Excuse me, let me rephrase.09:2912 which gives background on where they've work of or the 09:304What what kind of a person would a09:2914 movoled with, who pays their way to participate, and 09:345AI would ineed to look at the application that 09:2614 movoled with, who pays their way to participate, and 09:346A code official.09:279AA code official.09:2710L09:2711ACould be.09:2612AA code official.09:2713Last fuel years.09:3214AA building code person; that type of person.09:2015QA could be.09:2614ALaw (10 + 20 + 20 + 20 + 20 + 20 + 20 + 20 + | 7 A I can list some of them, but I would have to 09:26 | 7 what interest category they believe they should be 09:27 |
| 0AThere's compliance, industry, utility,09:2210they would like to be on that committee.09:391general, and I think user.09:2111There's a bias/conflict of interest for the 09:362QAnd what doeswhat are thethose09:2713last five years, other organizations that they've been09:303Vexald hard to a person would a -09:2914involved with, who pays their way to participate, and 09:3115any public statements they would have made in regards09:305AI would need to look at the application that 09:2615any their standard they're applying for, and 09:3115any public statements they would have made in regards09:386Acode official.09:2716and then there's a bias/complex.09:38211Acode official.09:272318And then there's a bias/complex.09:363QA code official.09:272324QAre you the person who makes ure that all of 09:364AA cold be.09:2624QAre you the person who makes ure that all of 09:365QQOkay. So that would that would encompass 09:271A1A lavar a starff person that des 70:375ME, CUNINGHAM.Object to form.09:281A lavar a starff person that des 70:376MA, Culd heed, do sing and other starff and over the yeas.09:3217MB, CUNINGHAM.Object to form.0 | 8 look at a roster to verify they're all correct. 09:28 | 8 categorized. And then they would have then there is 09:33 |
| 0AThere's compliance, industry, utility,09:2210they would like to be on that committee.09:391general, and I think user.09:2111There's a bias/comflict of interest from.09:322Q. And what does what are the - those09:2713last five years, other organizations that they've been09:303Watar what kind of a person would a -09:2213last five years, other organizations that they've been09:305M I would need to look at the application that09:2613last five years, other organizations that they've been09:345A I would need to look at the applicating ceptorson.09:2010look at the does their weight and they're applying for, and09:316when you say someone who's involved in codes.09:2010look at the application?09:321Inter what kind of role do you mean by that?09:2220look are inder weight and they?09:362Q. O code official.09:2723like what.09:36233Q. A code -09:292222like what.09:364A Could be.09:2624Q Are you the person who makes ure that all of 09:36255Q. Okay. So that would - that would encompass 09:271A Thave a staff person that does that, but 09:316check these dorms?09:321her harmo of the person on 09:307THE WITNESS.Woold have to look at 09:201A Thave a staff person that d | 9 Q Okay. 09:22 | 9 a signature at the bottom and their voting status, what 09:35 |
| 1general, and I think user.09:212QAnd what does — what are the — those09:273categories? Excuse me, letter rephrase.09:294What – what kind of a person would a –09:295would need to look at the application that 09:2613 last five years, other organizations that they've been 09:305A lowoid need to look at the application that 09:2614 involved with, who pays their way to participate, and 09:346Nake – what kind of person would a –09:226A code official.09:277A code official.09:278A code official.09:279A code official.09:279A code official.09:279A code official.09:271A code official.09:271A lawe official.09:271A code official.09:271A lawe official.09:271A code official.09:271A lawe official.09:271A lawe official.09:271A lawe official.09:271A lawe official.09:271A lawe official.09:272Q kay. So that would – that would encompass.09:212Q kay. So that would – that would encompass.09:273there's a question, then law a staff person that does that, but 09:3121A lawe a staff legion?3there's a question, then law a staff person wold sa. <td< td=""><td>· ·</td><td></td></td<> | · · | |
| 2QQ and what does what are the those09:273categories? Excuse me, let me rephrase.09:294What what kind of a person would a 09:29135A loodd need to look at the application that 09:26135A loodd need to look at the application that 09:26146sexter definitions to for examples, comebody that's7shows the definition to give you an exact person.09:289wolved in codes would he a compliance person.09:2010When you say someone who's involved in codes, 09:201811Nath code afficial.09:2712A A code official.09:2713Q A code09:2914A A building code person.09:2015Q O Kay, So that would that would encompas09:2716A Could be.09:2617MR. CUNINGHAM: Object to frm.09:2816or the start official go under: onepliance?09:2717MR. CUNINGHAM: Object to frm.09:2816or the start official go under: onepliance?09:2717Matthat bit Bisten Life depends on where that 09:2016mother would he dends on where that 09:2017M. Kuthay So that would that would encompass18Nath there would he destart person who: 09:3019Mattina Shingles.10Q Adi si there: a question; the name of the person who: 09:3714Wonk what they deve would hee to onepliance:15M. Kuthay Kethy wohene | | |
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| 9work, what they do. Without looking at an09:269AKatrina Shingles.09:300individual, I can't tell you for sure that09:2010QAnd is there does Katrina Shingles have a09:361they would go under compliance.09:2111specific position?09:312Q(BY MR. BECKER) Okay. What other categories 09:2412AShe's a secretary.09:323could a government official go under, other than09:2513QIs there a specific position for the person09:384compliance?09:2814who has always checked the the forms?09:325ADepending on the it depends on what the09:2915AIt's been a secretary or an administrative09:376definitions to tell you for sure.09:2417QAnd you said there's also a committee that09:377definitions would be as part of the09:2819AYes. There's a staff liaison, and then there 09:300application.09:2020is in addition to that, and then there is09:341QThe membership application?09:2122could be up to two oversight committees.09:302AYes, sir.09:2223QAnd you said that the process has changed.09:332AYes, sir.09:2123QAnd you said that the process has changed.09:332AYes, sir.09:2725 <td>7 the roster to see how a government employee 09:20</td> <td>7 A It's varied over the years. 09:35</td> | 7 the roster to see how a government employee 09:20 | 7 A It's varied over the years. 09:35 |
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| 10QAnd is there does Katrina Shingles have a09:361they would go under compliance.09:2111specific position?09:312Q(BY MR. BECKER) Okay. What other categories 09:2412AShe's a secretary.09:323could a government official go under, other than09:2513QIs there a specific position for the person09:384compliance?09:2814who has always checked the the forms?09:325ADepending on the it depends on what the09:2915AIt's been a secretary or an administrative09:376definitions to tell you for sure.09:2417QAnd you said there's also a committee that09:377definitions would be as part of the09:2819AYes. There's a staff liaison, and then there09:300application.09:2020is in addition to that, and then there is09:342AYes, sir.09:212could be up to two oversight committees.09:302AYes, sir.09:2223QAnd you said that the process has changed.09:332AYes, sir.09:2123QAnd you said that the process has changed.09:333QYou also said that one of your jobs is to09:2123QAnd you said that the process has changed.09:333QYou also said that one of your jobs is to09:2124When did the | | |
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| 2 A Yes, sir. 09:22 22 could be up to two oversight committees. 09:30 3 Q You also said that one of your jobs is to 09:21 23 Q And you said that the process has changed. 09:33 4 make sure that documentation is complete. What does 09:24 24 When did the process change? 09:37 5 that involve? 09:27 25 A This year. 09:30 | 0 application. 09:20 | 20 is in addition to that, and then there is 09:34 |
| 3 Q You also said that one of your jobs is to 09:21 23 Q And you said that the process has changed. 09:33 4 make sure that documentation is complete. What does 09:24 24 When did the process change? 09:37 5 that involve? 09:27 25 A This year. 09:30 | 1 Q The membership application? 09:21 | 21 depending the process has changed slightly. There 09:37 |
| 4 make sure that documentation is complete. What does09:2424 When did the process change?09:375 that involve?09:2725 A This year.09:30 | 2 A Yes, sir. 09:22 | 22 could be up to two oversight committees. 09:30 |
| 5 that involve? 09:27 25 A This year. 09:30 | 3 Q You also said that one of your jobs is to 09:21 | 23 Q And you said that the process has changed. 09:33 |
| | 4 make sure that documentation is complete. What does 09:24 | 24 When did the process change? 09:37 |
| • | 5 that involve? 09:27 | 25 A This year. 09:30 |
| | | |

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| 1 A Not exactly. A a standard could become a 10:03 | 1 subcommittees, the chair and the vice chair standards 10:18 |
|---|---|
| 2 code, because 90.1 is a standard and it could be the 10:05 | 2 committee and the board the board ExO to standards. 10:12 |
| 3 code. It depends on whoever is wanting to make the 10:08 | 3 And then I'm the staff liaison for that group, other 10:18 |
| 4 code or make the rule. 10:01 | 4 staff attend, but they they just talk about the 10:12 |
| 5 Q And what does the policy, procedures and 10:04 | 5 issues about the subcommittees and then, you know, 10:15 |
| 6 interpretation subcommittee do? 10:08 | 6 strategic planning; that type of thing. 10:18 |
| 7 A They review proposals for new projects, new 10:09 | 7 Q So the committee members that are part of the 10:14 |
| 8 standards or guideline projects to be developed by 10:04 | 8 standards committee, are these all ASHRAE employees? 10:18 |
| 9 ASHRAE. They are the body that reviews any proposed 10:07 | 9 A No. 10:11 |
| 10 changes to any of the procedures related to standards 10:01 | 10 Q Are any of them ASHRAE employees? 10:13 |
| 11 and interprets the any of our rules.10:05 | 11 A No, just me as a staff liaison, and then 10:15 |
| 12 And then the other thing is they form 10:01 | 12 another staff person that does the minutes. 10:18 |
| 13 interpretation sub interpretation committees when an 10:04 | 13 Q So these are are these members of 10:11 |
| 14 interpretation request is submitted on a standard that 10:07 | 14 industry? 10:16 |
| 15 we don't have a standing standard project committee 10:09 | 15 A They're they're balanced as well. The 10:19 |
| 16 for. 10:02 | 16 board has slightly different interest categories that 10:12 |
| 17 Q I'm sorry, just to back up a moment. Do you 10:09 | 17 they use. There are they're members they're 10:15 |
| 18 know how it is that standards become codes? 10:03 | 18 they are members of ASHRAE, but they're from all over. 10:19 |
| 19MR. CUNNINGHAM: Object to form.10:00 | 19 MR. CUNNINGHAM: Could I just ask, are 10:13 |
| 20THE WITNESS: It either they're10:02 | 20 we talking about the project committee here? 10:14 |
| 21 proposed into a code and the code accepts 10:05 | 21 Are we talking about the executive committee? 10:16 |
| 22 them, or a local jurisdiction decides to use 10:07 | 22 Are we talking about the previous questions? 10:18 |
| 23 a standard and that's and use that as 10:02 | 23 MR. BECKER: The standards committee as 10:19 |
| 24 their code. 10:04 | 24 a whole. 10:10 |
| 25 Q (BY MR. BECKER) And when you say "they're 10:08 Page 46 | 25 MR. CUNNINGHAM: The standards 10:11 Page 48 |
| 1 proposed into a code and the code accepts them," do you 10:00 | 1 committee. 10:12 |
| 2 mean that a that something like NFPA might make a 10:02 | 2 MR. BECKER: Yeah. 10:13 |
| 3 code, and they're proposed into that code that NFPA has 10:08 | 3 MR. CUNNINGHAM: For a specific 10:13 |
| 4 made? 10:02 | 4 standard? I just wanted to make sure we're 10:14 |
| 5 A So NFPA references 90.1, and that becomes 10:03 | 5 clear here. 10:15 |
| 6 part of whatever I can't remember the number of the 10:06 | 6 Q (BY MR. BECKER) How many standards 10:11 |
| 7 NFPA code that references 90.1, but that becomes part 10:09 | 7 committees are there? 10:12 |
| 8 of that code. If they through their process, it 10:02 | 8 A There's project committees, and those overdo 10:13 |
| 9 gets accepted. 10:08 | 9 the standards, but the standards committee is one. 10:17 |
| 10 Q And what does the international liaison or 10:04 | 10 Q There's just one standards committee? 10:19 |
| 11 intersociety subcommittee do? 10:08 | 11 A With the right, with the subcommittees. 10:11 |
| 12 A They're dealing with relationships between us 10:00 | 12 Q And what's the difference between the 10:17 |
| 13 and sometimes other standards developers, but the 10:02 | 13 projects committees and the standards committees? 10:19 |
| 14 majority of their work is in the is in the oversight 10:06 | 14 A A project committee is the one that is is 10:11 |
| 15 of the development of international standards. 10:10 | 15 the group that's responsible for writing the standard. 10:13 |
| 16 Q What involvement does ASHRAE have in the 10:15 | 16 Standards committee is an over oversight committee. 10:18 |
| 17 development of international standards? 10:17 | 17 THE COURT REPORTER: "Is an oversight"? 10:15 |
| 18 A We are the secretariat for several of the 10:19 | 18 THE WITNESS: Yes. 10:19 |
| 19 international standards organization technical 10:15 | 19 Q (BY MR. BECKER) And are any ASHRAE employees 10:13 |
| 20 committees. We are also the secretariat for the U.S. 10:18 | 20 members of the project committees? 10:16 |
| 21 TAG, which is the technical advisory groups within the 10:11 | 21 A No. 10:18 |
| 22 U.S. 10:16 | 22 Q Are the members of the project committees 10:13 |
| 22 U.S. 10:16 | |
| 22 0.5. 10.10 23 Q And, finally, you mentioned the executive 10:11 | 23 people from various interest categories 10:19 |
| | |
| 23 Q And, finally, you mentioned the executive 10:11 | 23 people from various interest categories 10:19 |

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| 1 A V 1012 | 1 discharge Contribution of the 10.17 |
|--|---|
| 1 A Yes. 10:16 | 1 this when we first tried to started trying 10:15 |
| 2 Q And are the project committee membership 10:16 | 2 to schedule my deposition. I'm guessing 10:19 |
| 3 memberships balanced based off of those interest 10:11 | 3 February. 10:11 |
| 4 categories? 10:14 | 4 Q (BY MR. BECKER) And have you reviewed the 10:14 |
| 5 A Yes. Whatever interest categories the 10:16 | 5 topics of examination that's starting on page 4? 10:16 |
| 6 project committee has, then they're balanced based on 10:18 | 6 A Yes. 10:13 |
| 7 the number of project committees. That doesn't mean, 10:12 | 7 Q And you're aware that you are here as a 10:17 |
| 8 you know, if there's 30 people and you have five 10:14 | 8 30(b)(6) designee for ASHRAE with regards to particular 10:19 |
| 9 interest categories, there's six in each. It means no 10:17 | 9 topics of examination? 10:16 |
| 10 more than 50 percent in one interest interest 10:14 | 10 A Yes. 10:17 |
| 11 category. 10:17 | 11 Q And that means that that you are expected 10:17 |
| 12 Q So why is it that these people who are not 10:13 | 12 to prepare and be knowledgeable as to those particular 10:10 |
| 13 ASHRAE employees participate in the project committees? 10:10 | 13 topics, correct? 10:13 |
| 14 MR. CUNNINGHAM: Object to form. 10:16 | 14 A Yes. 10:14 |
| 15 THE WITNESS: I would say because either 10:18 | 15 Q And those topics are, topic number 1, "The 10:16 |
| they really like that topic, it may affect 10:10 | 16 process and activities of developing the works at 10:11 |
| you know, it may be because it affects 10:14 | 17 issue, including participation of government and 10:14 |
| something that they do in their business. 10:16 | 18 private sector personnel in standards development." 10:17 |
| 19 They may be in the in the code arena and 10:18 | 19 A Yes. 10:10 |
| 20 they want to make sure it's written so that 10:13 | 20 Q And did you prepare for that topic? 10:11 |
| you can adopt it in code. It could be a 10:16 | 21 A Yes. 10:13 |
| number of reasons why they choose to 10:18 | 22 Q And have you been using your knowledge of 10:17 |
| 23 participate. 10:10 | 23 that topic in the answers that you had given me earlier 10:19 |
| Q (BY MR. BECKER) And why is it that they'd 10:16 | 24 today concerning the standards committee and project 10:13 |
| 25 want to participate for a standard that would be 10:18 Page 50 | 25 committee? 10:18 Page 5 |
| 1 adopted into code? 10:12 | 1 A Yes. 10:19 |
| 2 MR. CUNNINGHAM: Object to form. 10:14 | 2 Q And have you been using your knowledge with 10:11 |
| 3 THE WITNESS: My my guess would be 10:17 | 3 regards to that topic as it applies to the other 10:13 |
| 4 that, you know, it's going to affect their 10:18 | 4 answers that you've provided me about the ASHRAE's 10:16 |
| 5 their business somehow or the you know, or 10:12 | |
| | 5 operations? 10:19 |
| 6 the jurisdiction in which they work. 10:16 | 5 operations? 10:19 6 A Yes. 10:10 |
| the jurisdiction in which they work. 10:16 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:12 | * |
| · · | 6 A Yes. 10:10 |
| 7 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:12 | 6AYes.10:107QAnd the other topics that you have prepared10:10 |
| 7 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:12 8 you what's been previously marked as Exhibit 1076. 10:13 9 This is Defendant Public.Resource.Org's Amended Notice 10:19 | 6 A Yes. 10:10 7 Q And the other topics that you have prepared 10:10 8 for today include topic number 2, correct? 10:12 |
| 7 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:12 8 you what's been previously marked as Exhibit 1076. 10:13 9 This is Defendant Public.Resource.Org's Amended Notice 10:19 10 of Rule 30(b)(6) Deposition of American Society of 10:13 | 6AYes.10:107QAnd the other topics that you have prepared10:108for today include topic number 2, correct?10:129AFor the copyright?10:11 |
| 7 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:12 8 you what's been previously marked as Exhibit 1076. 10:13 9 This is Defendant Public.Resource.Org's Amended Notice 10:19 10 of Rule 30(b)(6) Deposition of American Society of 10:13 11 Heating, Refrigeration, and Air-Conditioning Engineers, 10:18 | 6AYes.10:107QAnd the other topics that you have prepared10:108for today include topic number 2, correct?10:129AFor the copyright?10:1110QFor topic number 2, "All elements of the10:12 |
| 7 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 10:12 8 you what's been previously marked as Exhibit 1076. 10:13 9 This is Defendant Public.Resource.Org's Amended Notice 10:19 10 of Rule 30(b)(6) Deposition of American Society of 10:13 11 Heating, Refrigeration, and Air-Conditioning Engineers, 10:18 12 Inc. And this document had been previously introduced 10:18 | 6AYes.10:107QAnd the other topics that you have prepared10:108for today include topic number 2, correct?10:129AFor the copyright?10:1110QFor topic number 2, "All elements of the10:1211chain of title of copyright ownership, including10:15 |
| 7Q(BY MR. BECKER)Ms. Reiniche, I'm handing10:128you what's been previously marked as Exhibit 1076.10:139This is Defendant Public.Resource.Org's Amended Notice10:1910of Rule 30(b)(6) Deposition of American Society of10:1311Heating, Refrigeration, and Air-Conditioning Engineers, 10:1812Inc. And this document had been previously introduced10:1813in Mr. Comstock's deposition.10:13 | 6AYes.10:107QAnd the other topics that you have prepared10:108for today include topic number 2, correct?10:129AFor the copyright?10:1110QFor topic number 2, "All elements of the10:1211chain of title of copyright ownership, including10:1512copyright authorship and ownership of component parts10:19 |
| 7Q(BY MR. BECKER)Ms. Reiniche, I'm handing10:128you what's been previously marked as Exhibit 1076.10:139This is Defendant Public.Resource.Org's Amended Notice10:1910of Rule 30(b)(6) Deposition of American Society of10:1311Heating, Refrigeration, and Air-Conditioning Engineers,10:1812Inc. And this document had been previously introduced10:1813in Mr. Comstock's deposition.10:1314AOkay.10:16 | 6AYes.10:107QAnd the other topics that you have prepared10:108for today include topic number 2, correct?10:129AFor the copyright?10:1110QFor topic number 2, "All elements of the10:1211chain of title of copyright ownership, including10:1512copyright authorship and ownership of component parts10:1913of the works at issue in this case"?10:13 |
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14 (Pages 50 - 53)

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| 1 A Do you mean everyone on the rester, or do you 10.42 | 1 Q And would that have meant that the the 10:58 |
|--|--|
| A Do you mean everyone on the roster, or do you 10:42 | |
| 2 mean just project committee? 10:45 | 2 records for the 2007 edition of 90.1 would have been 10:52 |
| 3 Q For everyone on the roster. 10:40 | 3 destroyed at the time of the 2010 publishing? 10:59 |
| 4 A For yes, for everyone on the roster. 10:44 | 4 A If they were destroyed, then yes. 10:52 |
| 5 Q And so are there people outside of the 10:40 | 5 Q You had mentioned before the term "continuous 10:59 |
| 6 project committee that would be contributing text to 10:43 | 6 maintenance change." What does that mean? 10:53 |
| 7 Standard 90.1 at that time? 10:46 | 7 A Standard 90.1 is on continuous maintenance, 10:56 |
| 8 A Yes. 10:48 | 8 so anyone at any time can propose a change to the 10:59 |
| 9 Q And would all of the people who were 10:40 | 9 standard. It could be a project committee member or 10:53 |
| 0 contributing text to Standard 90.1 at that time be 10:43 | 10 the public. If it's the public, then there's a 10:56 |
| 1 listed on these pages of the roster? 10:46 | 11 continuous maintenance change proposal form that gets 10:51 |
| 2 A No. 10:48 | 12 submitted. 10:54 |
| 3 Q So what other people would have been 10:49 | 13 Q And similarly, for the continuous maintenance 10:56 |
| 4 contributing text to Standard 90.1 at that time? 10:42 | 14 change proposal forms, would those also have been 10:51 |
| 5 A Commenters on draft goes out for comment 10:46 | 15 destroyed? 10:54 |
| 6 and those who submitted a continuous maintenance change 10:40 | 16 A They could have been destroyed. 10:56 |
| 7 proposal. 10:43 | 17 Q Who would know whether or not these documents 10:52 |
| 8 Q And where does excuse me. 10:44 | 18 for the 2010 prior editions of ASHRAE Standard 90.1 10:55 |
| 9 Does ASHRAE keep lists of commenters? 10:53 | 19 were or were not destroyed? 10:50 |
| 0 A We have lists of commenters. For this year, 10:58 | 20 MR. CUNNINGHAM: I'm going to object 10:54 |
| 1 I don't know, because our record retention policy 10:54 | 21 that the line of questioning about document 10:56 |
| 2 wouldn't require us to keep records this far back. 10:56 | 22 retention policy is outside the scope of the 10:58 |
| 3 Q What was the ASHRAE's record retention 10:59 | 23 30(b)(6) topics. 10:52 |
| 4 policy? 10:52 | 24 You can answer. 10:54 |
| 5 A We follow the ANSI policy of keeping records 10:53 | 25 THE WITNESS: Okay. I would I 10:57 |
| Page 58 | 2 |
| 1 back to the last prior revisions. 10:50 | 1 there is a log of files that we keep that are 10:53 |
| 2 Q And what is the last prior revision for 10:50 | 2 at Iron Mountain. I have access to those 10:54 |
| 3 Standard 90.1? 10:50 | 3 logs, can find out what's there. I would not 10:54 |
| 4 A 2013. 10:50 | 4 know what was or was not destroyed unless I 10:54 |
| 5 Q So does that mean that ASHRAE would not have 10:51 | 5 brought every single box back from Iron 10:54 |
| 6 records for the 2010 addition of 90.1? 10:51 | 6 Mountain, assuming they are all labeled 10:54 |
| 7 A Not necessarily. We if they're 10:51 | 7 correctly. 10:54 |
| 8 electronic, we probably still have them. There may be 10:51 | 8 Q (BY MR. BECKER) Ms. Reiniche, looking at 10:54 |
| 9 some in paper format that are in Iron Mountain. I 10:51 | 9 Exhibit 1119 on page 2, where it says that ASHRAE was 10:55 |
| 0 can't guarantee that all the prior stuff is still 10:51 | 10 ordered to produce lists of project committee members, 10:55 |
| 1 there, especially if it's not in electronic format. 10:51 | 11 does Exhibit 1120 provide that list of project 10:55 |
| 2 Q And what is Iron Mountain? 10:51 | 12 committee members for Standard 90.1? 10:55 |
| 3 A It's an off-site storage facility. 10:51 | 13 MR. CUNNINGHAM: Objection to form. 10:55 |
| 4 Q And does the your same answer that you 10:51 | 14 THE WITNESS: This is only at one point 10:55 |
| 5 don't necessarily have records as to the 2007 and 2004 10:51 | 15 in time, so this isn't every single one. 10:55 |
| 6 edition of Standard 90.1 also apply? 10:51 | 16 This is at one point. 10:55 |
| 7 A That would be correct. Some if it's 10:51 | 17 Q (BY MR. BECKER) But would it provide that 10:55 |
| 8 electronic, then we probably still have it. But if 10:51 | 18 for that one point in time? 10:55 |
| · · · · · · · · · · · · · · · · · · · | 19 A Yes. 10:55 |
| 9 it's paper, it may or may not still be at Iron 10:51 | |
| 9 it's paper, it may or may not still be at Iron 10:51 0 Mountain. 10:51 | 20 U MS. Kenniche. Ein handing von what has been 10.50 |
| 0 Mountain. 10:51 | 20 Q Ms. Reiniche, I'm handing you what has been 10:56 21 marked as Exhibit 1121 10:56 |
| 0 Mountain. 10:51 1 Q At what point would ASHRAE have destroyed 10:52 | 21 marked as Exhibit 1121 10:56 |
| 0 Mountain.10:511QAt what point would ASHRAE have destroyed10:522these documents for Standard 20 90.1 2010 edition,10:52 | 21 marked as Exhibit 1121 10:56 22 A Okay. 10:56 |
| 0 Mountain.10:511QAt what point would ASHRAE have destroyed10:522these documents for Standard 20 90.1 2010 edition,10:523if it had done so?10:52 | 21 marked as Exhibit 1121 10:56 22 A Okay. 10:56 23 Q which reads "ASHRAE Roster." Could you 10:56 |
| 0 Mountain.10:511QAt what point would ASHRAE have destroyed10:522these documents for Standard 20 90.1 2010 edition,10:52 | 21 marked as Exhibit 1121 10:56 22 A Okay. 10:56 |

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| 1 THE WITNESS. To any brands day it is 11.01 | 1 A Ma 11.07 |
|--|--|
| 1 THE WITNESS: To my knowledge, it is 11:01 | 1 A No. 11:07 |
| 2 probably something we keep it's a if it 11:04 | 2 Q Why is that? 11:07 |
| 3 was entered in the database. At the time, we 11:06 | 3 A They just aren't using it there may have 11:07 |
| 4 had the database that tracks them. And 11:09 | 4 been one way back when they did everything in paper, 11:07 |
| 5 provided there's not an issue with the 11:01 | 5 but we don't use a Task Sheet 9 now. 11:07 |
| 6 database, then it would be kept. 11:04 | 6 (Exhibit 1133 marked for identification.) 11:08 |
| 7 Q (BY MR. BECKER) And what database are you 11:05 | 7 Q (BY MR. BECKER) I'm handing you what's been 11:08 |
| 8 referring to? 11:06 | 8 marked as Exhibit number 1133. This is Bates number 11:08 |
| 9 A We have a continuous maintenance change 11:07 | 9 ASHRAE0002469. Could you tell me what this document 11:08 |
| 10 proposal access database. 11:09 | 10 is? 11:08 |
| 11 Q And do you know when ASHRAE first started 11:02 | 11 A These are proposals received for continuous 11:08 |
| 12 using that database? 11:05 | 12 maintenance of ASHRAE Standard 90.1 2004 dated as of 11:08 |
| 13 A Around 2003. 11:08 | 13 January 4th, 2005. 11:08 |
| 14 Q What kind of information does that database 11:04 | 14 Q For both Exhibit 1132 and 1133, it appears 11:08 |
| 15 contain? 11:07 | 15 that the dates that the proposals were received 11:08 |
| 16 A What you see in this report, which is the 11:07 | 16 excuse me, let me say that again. 11:08 |
| 17 proposer, the number, proposal date, when it was 11:00 | 17 For Exhibits 1132 and 1133, it appears that 11:08 |
| 18 received. And then there there will be a date that 11:03 | 18 the date of the document in the top right corner is 11:08 |
| 19 isn't shown on here that tells when the committee would 11:07 | 19 subsequent to the year of the standard itself; is that 11:09 |
| 20 have responded so that we can close out the proposal. 11:01 | 20 correct? 11:09 |
| 21 Q And does the database also contain the 11:06 | 21 A You mean 11:09 |
| 22 content of the proposal itself? 11:00 | 22 Q Let me clarify. For for Exhibit 1132, 11:09 |
| 23 A No. 11:02 | 23 that exhibit pertains to Standard 90.1 2001, but the 11:09 |
| Q Where would someone find the content of the 11:04 | 24 document itself is from January 5th, 2004; is that 11:09 |
| 25 proposal itself? 11:07 Page 66 | 25 correct? 11:09 Page 68 |
| 1 A If it was when we were saving 11:09 | 1 A That's correct. 11:05 |
| 2 electronically, then there will be a what we call a 11:03 | 2 Q And why is that? 11:05 |
| 3 task sheet that we save on our network drive where 11:06 | 3 A That would have been at the one-year mark 11:07 |
| 4 they're saved. And then if not, it's in paper. It 11:09 | 4 well, they have 13 months to to respond to 11:02 |
| 5 would have been sent to Iron Mountain. 11:03 | 5 continuous maintenance change proposals within a year, 11:05 |
| 6 Q And what would be the title of the document 11:06 | 6 so this would have been printed prior to their January 11:07 |
| 7 that would have this one of these proposals in it? 11:09 | 7 2004 meeting, because we would want to know what the 11:01 |
| 8 A On the network drive? 11:05 | 8 status of the continuous maintenance change proposals 11:05 |
| 9 Q Yeah. 11:06 | 9 were at that time. 11:10 |
| 10 MR. CUNNINGHAM: Object to form. 11:09 | 10 Q The proposals that were reflected here, would 11:11 |
| 11 THE WITNESS: It's probably Task Sheet 6 11:01 | 11 those be if made effective, would those be made 11:16 |
| 12 would be the title. 11:05 | |
| 12 would be the title. 11.03 | 12 effective in Standard 90.1 2001 or in a later version? 11:15 |
| | 12 effective in Standard 90.1 2001 or in a later version?11:1513 A A later version.11:10 |
| 13 Q (BY MR. BECKER) And what does are there 11:06 | |
| 13Q(BY MR. BECKER)And what does are there11:0614other task sheets?11:03 | 13 A A later version. 11:10 |
| 13Q(BY MR. BECKER)And what does are there11:0614other task sheets?11:0315AYes.11:04 | 13AA later version.11:1014QSo the proposals reflected in Exhibit 1132,11:19 |
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| 13 Q (BY MR. BECKER) And what does are there 11:06 14 other task sheets? 11:03 15 A Yes. 11:04 16 Q And what are the other task sheets? 11:05 17 A There's a Task Sheet 1 for new projects; Task 11:08 18 Sheet 2 that was membership; Task Sheet 3 is title, 11:02 19 purpose and scope change. I don't believe we have a 4; 11:07 20 a Task Sheet 5, which is public review; Task Sheet 7, 11:02 | 13AA later version.11:1014QSo the proposals reflected in Exhibit 1132, 11:1915would those, if they had been enacted, be enacted into11:1316Standard 90.1 2004?11:1817AYes.11:1018(Exhibit 1134 marked for identification.)11:1219Q(BY MR. BECKER) I'm handing you what's been11:1020marked as Exhibit 1134, Bates number ASHRAE0022821.11:1121Could you tell me what this document is, please?11:19 |
| 13 Q (BY MR. BECKER) And what does are there 11:06 14 other task sheets? 11:03 15 A Yes. 11:04 16 Q And what are the other task sheets? 11:05 17 A There's a Task Sheet 1 for new projects; Task 11:08 18 Sheet 2 that was membership; Task Sheet 3 is title, 11:02 19 purpose and scope change. I don't believe we have a 4; 11:07 20 a Task Sheet 5, which is public review; Task Sheet 7, 11:02 21 which is publication; and Task Sheet 8, which is 11:07 22 appeals. And Task Sheet 10 might there might be a 11:03 | 13AA later version.11:1014QSo the proposals reflected in Exhibit 1132,11:1915would those, if they had been enacted, be enacted into11:1316Standard 90.1 2004?11:1817AYes.11:1018(Exhibit 1134 marked for identification.)11:1219Q(BY MR. BECKER) I'm handing you what's been11:1020marked as Exhibit 1134, Bates number ASHRAE0022821.11:1121Could you tell me what this document is, please?11:1922AThis is the form to comment on a public11:12 |
| 13 Q (BY MR. BECKER) And what does are there 11:06 14 other task sheets? 11:03 15 A Yes. 11:04 16 Q And what are the other task sheets? 11:05 17 A There's a Task Sheet 1 for new projects; Task 11:08 18 Sheet 2 that was membership; Task Sheet 3 is title, 11:02 19 purpose and scope change. I don't believe we have a 4; 11:07 20 a Task Sheet 5, which is public review; Task Sheet 7, 11:02 21 which is publication; and Task Sheet 8, which is 11:07 22 appeals. And Task Sheet 10 might there might be a 11:03 23 Task Sheet 10 now. We might have switched the 11:07 | 13AA later version.11:1014QSo the proposals reflected in Exhibit 1132,11:1915would those, if they had been enacted, be enacted into11:1316Standard 90.1 2004?11:1817AYes.11:1018(Exhibit 1134 marked for identification.)11:1219Q(BY MR. BECKER) I'm handing you what's been11:1020marked as Exhibit 1134, Bates number ASHRAE0022821.11:1121Could you tell me what this document is, please?11:1922AThis is the form to comment on a public11:1223review draft for an addendum to 90.1 2004.11:17 |

18 (Pages 66 - 69)

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| 1 | A Yes. 11:12 | 1 | A This is a document to submit a continuous 11:11 |
|--|---|----------------------------------|---|
| 2 | Q What is the significance of the copyright 11:12 | 2 | maintenance change proposal. 11:16 |
| 3 r | elease? 11:12 | 3 | Q Does this document contain a copyright 11:10 |
| 4 | MR. CUNNINGHAM: Object to form. 11:12 | 4 | release as well? 11:14 |
| 5 | THE WITNESS: It the significance of 11:12 | 5 | A Yes. 11:15 |
| 6 | it is when the commenter submits their 11:12 | 6 | Q Could you please mark on the page where the 11:12 |
| 7 | comments, they are giving ASHRAE the 11:12 | | copyright release is? 11:16 |
| 8 | nonexclusive rights to use whatever material 11:12 | | (Witness complied with the request of counsel.) 11:13 |
| 9 | they submit in their comments to change or 11:12 | 9 | (····································· |
| 10 | modify the standard and then ASHRAE owns the 11:12 | 10 | 1 |
| 10 | copyright, and they don't. 11:12 | 11 | |
| 11 | | 11 | |
| | | | |
| 13 | you mind elaborating on the reason for your 11:12 | | marked with a number 1 and number 2; is that correct? 11:19 |
| 14 | objection? 11:12 | 14 | |
| 15 | MR. CUNNINGHAM: It calls for a legal 11:12 | 15 | |
| 16 | conclusion. 11:12 | | this form? 11:19 |
| 17 | Q (BY MR. BECKER) Why does ASHRAE include the 11:12 | | - |
| | opyright release in this document? 11:12 | 18 | THE WITNESS: Actually, I think we 11:11 |
| 19 | MR. CUNNINGHAM: Object to form. 11:12 | 19 | , , |
| 20 | THE WITNESS: We include it so that we 11:12 | 20 | send it in or they could put an electronic 11:14 |
| 21 | can include the material in in the 11:12 | 21 | signature in. I just think there's a 11:17 |
| 22 | document that they're commenting on without 11:12 | 22 | signature line that we missed when we made 11:18 |
| 23 | having to get copyright permission; because 11:13 | 23 | the form. 11:10 |
| 24 | they're giving it, we don't have to go back. 11:13 | 24 | Q (BY MR. BECKER) So this form should have 11:13 |
| 25 | They're giving it when they sign it. 11:13 | 25 | a a signature line below the first copyright 11:14 |
| | Page 70 | | Page 72 |
| 1 | Q (BY MR. BECKER) Does ASHRAE believe that it 11:10 | | release, but it does not? 11:10 |
| | when the copyright if somebody signs this form? 11:11 | 2 | |
| 3 | A Yes. 11:16 | 3 | |
| 4 | Q Would ASHRAE accept a form like this if it 11:12 | 4 | ASHRAE, would ASHRAE reject it if someone had not 11:19 |
| 5 h | ad not been signed and dated? 11:16 | 5 | signed below the first copyright release? 11:13 |
| 6 | A No. 11:18 | 6 | A On this one, we would have allowed either the 11:17 |
| 7 | Q Do you know of any instance in which ASHRAE 11:11 | 7 | electronic signature if they printed it with the 11:10 |
| 8 h | as accepted a form like this if it has not been signed 11:14 | 8 | electronic or if they had signed it, because the 11:11 |
| 9 a | nd dated? 11:17 | 9 | language was the same. 11:14 |
| 10 | A No. 11:18 | 10 | Q Would ASHRAE accept this document if someone 11:19 |
| 11 | Q Do you have any reason to believe that this 11:11 | 11 | had not typed in their name where it says "I, insert 11:14 |
| 12 d | locument produced by ASHRAE is not an authentic 11:13 | 12 | name"? 11:10 |
| 13 d | locument? 11:16 | 13 | A If if they did not sign it and did not 11:10 |
| 14 | A No. 11:16 | 14 | insert their name, we would not accept it. 11:13 |
| 15 | Q And are you familiar with this document 11:11 | 15 | - |
| 15 | hrough your work at ASHRAE? 11:13 | | is the copyright release in 1134 the same as the 11:12 |
| | A Yes. 11:16 | | copyright release the first copyright release in 11:10 |
| | A 165. 11.10 | | |
| 16 tl 17 | | | 1135? 11:13 |
| 16 th 17 18 | Q Is this one of the documents that you review? 11:19 | 18 | 1135? 11:13 A There is missing oh. no. I just can't read 11:10 |
| 16 th 17 18 19 | QIs this one of the documents that you review? 11:19AYes.11:13 | 18 19 | A There is missing oh, no, I just can't read 11:10 |
| 16 th 17 18 19 20 (1 | QIs this one of the documents that you review? 11:19AYes.11:13Exhibit 1135 marked for identification.)11:16 | 18 19 20 | A There is missing oh, no, I just can't read 11:10 right. No, they're the same. 11:17 |
| 16 th 17 18 19 20 (1 21 | QIs this one of the documents that you review?11:19AYes.11:13Exhibit 1135 marked for identification.)11:16Q(BY MR. BECKER) I'm handing you what has11:19 | 18 19 20 21 | A There is missing oh, no, I just can't read 11:10 right. No, they're the same. 11:17 Q And comparing the first and second copyright 11:12 |
| 16 th 17 18 19 20 (1 21 22 b | Q Is this one of the documents that you review? 11:19 A Yes. 11:13 Exhibit 1135 marked for identification.) 11:16 Q (BY MR. BECKER) I'm handing you what has 11:19 een marked as Exhibit 1135, Bates number 11:12 | 18 19 20 21 22 | AThere is missing oh, no, I just can't read 11:10right. No, they're the same.11:17QAnd comparing the first and second copyright 11:12release in 1135, can you say what the differences11:16 |
| 16 th 17 18 19 20 (1 21 22 b 23 A | Q Is this one of the documents that you review? 11:19 A Yes. 11:13 Exhibit 1135 marked for identification.) 11:16 Q (BY MR. BECKER) I'm handing you what has 11:19 ween marked as Exhibit 1135, Bates number 11:12 ASHRAE0022819. Do you recognize this document? 11:15 | 18 19 20 21 22 23 | AThere is missing oh, no, I just can't read 11:10right. No, they're the same.11:17QAnd comparing the first and second copyright 11:12release in 1135, can you say what the differences11:16between those two are?11:10 |
| 16 th 17 18 19 20 (1 21 22 b | Q Is this one of the documents that you review? 11:19 A Yes. 11:13 Exhibit 1135 marked for identification.) 11:16 Q (BY MR. BECKER) I'm handing you what has 11:19 een marked as Exhibit 1135, Bates number 11:12 | 18 19 20 21 22 | A There is missing oh, no, I just can't read 11:10 right. No, they're the same. 11:17 Q And comparing the first and second copyright 11:12 release in 1135, can you say what the differences 11:16 between those two are? 11:10 MR. CUNNINGHAM: I'm just going to 11:11 |

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| 1 for itself here. 11:14 | 1 Q 1136. 11:22 |
|--|--|
| 2 THE WITNESS: The the only difference 11:11 | 2 A Yes. 11:25 |
| 3 is one we allow electronic signature, and the 11:12 | 3 Q And which is the same as the copyright 11:26 |
| 4 other is just a hand is a handwritten 11:15 | 4 releases on Exhibit 1135; is that correct? 11:20 |
| 5 signature. 11:10 | 5 A That's correct. 11:25 |
| 6 Q (BY MR. BECKER) Thank you. 11:11 | 6 Q And Exhibit 1137 says that it was revised on 11:21 |
| 7 (Exhibit 1136 marked for identification.) 11:14 | 7 January 30th, 2006 on the back of the document; is that 11:26 |
| 8 Q (BY MR. BECKER) I'm handing you what's been 11:12 | 8 correct? 11:20 |
| 9 marked as Exhibit 1136, Bates number ASHRAE0022823. Do 11:14 | 9 A That's correct. 11:21 |
| 10 you recognize this document? 11:10 | 10 (Exhibit 1138 marked for identification.) 11:28 |
| 11 A Yes. 11:12 | 11 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 11:27 |
| 12 Q And what is this document? 11:13 | 12 you what's been marked as Exhibit 1138, Bates number 11:27 |
| 13 A This is the the form to comment on a 11:14 | 13 ASHRAE0022820. Do you recognize this document?11:21 |
| 14 public review draft standard guideline or addendum. 11:17 | 14 A Yes. 11:26 |
| 15 THE COURT REPORTER: Can we go off the 11:10 | 15 Q And what is this document? 11:27 |
| 16 record a second? 11:14 | 16 A This is the form to submit a proposed change 11:28 |
| 17 THE VIDEOGRAPHER: Going off the record 11:17 | 17 to an ASHRAE standard under continuous maintenance. 11:21 |
| 18 at 11:19. 11:18 | 18 Q And does this document contain the same two 11:27 |
| 19 (Recess taken.) 11:27 | 19 copyright releases that were featured in the previous 11:20 |
| 20 THE VIDEOGRAPHER: Going on the record 11:28 | 20 exhibit, 1137? 11:24 |
| 21 at 11:22. 11:28 | 21 A Yes. 11:29 |
| 22 Q (BY MR. BECKER) Ms. Reiniche, looking again 11:26 | 22 Q And at the bottom of the page, does this 11:22 |
| 23 on at Exhibit 1136, if you look at the second page 11:26 | 23 document show that it was revised on March 9th, 2007? 11:24 |
| 24 of the exhibit, could you tell me what the significance 11:22 | 24 A Yes. 11:25 |
| 25 of the date on the second page is? 11:27 Page 74 | 25 (Exhibit 1139 marked for identification.) 11:21 Page 76 |
| | |
| 1 A That was when we were we must have made a 11:23 | 1 Q (BY MR. BECKER) I'm handing you what's been 11:26 |
| 2 revision. So if we changed anything, even if it's one 11:23 | 2 marked as Exhibit 1139. This is Bates number 11:26 |
| 3 word, we put a new revision date on a form. 11:23 | 3 ASHRAE0022814. Do you recognize this document? 11:20 |
| 4 Q And returning to Exhibit 1135, is that also 11:23 | 4 A Yes. 11:24 |
| 5 what "revised 1/30/2006" means at the bottom of that 11:23 | 5 Q Could you tell me what this document is? 11:24 |
| 6 document? 11:23 | 6 A This is an Application for Project Committee 11:26 |
| 7 A Yes. 11:23 | 7 Organizational Representative Membership form. 11:27 |
| 8 Q And returning to Exhibit 1134 at the back of 11:23 | 8 Q Does this document include a copyright 11:27 |
| 9 that document where it says "REV 03-01-2004," is that 11:23 | 9 release under section 6? 11:20 |
| 10 also what that date means? 11:23 | 10 A Yes. 11:22 |
| 11 A Yes. 11:24 | 11 Q Apart from referring to ASHRAE standard or 11:24 |
| 12 Q Thank you. 11:24 | 12 guideline project committee, does this copyright 11:20 |
| 13 (Exhibit 1137 marked for identification.) 11:24 | 13 release under section 6 of Exhibit 1139 appear the same 11:24 |
| 14 Q (BY MR. BECKER) Handing you what's been 11:24 | 14 as the copyright the first copyright release in 11:22 |
| 15 marked as Exhibit 1137. This is ASHRAE Bates number 11:24 | 15 Exhibit 1138? 11:23 |
| 16 0022825. Do you recognize this document? 11:24 | 16 MR. CUNNINGHAM: Object to form. 11:26 |
| 17 A Yes. 11:24 | 17 THE WITNESS: Actually, it differs. 11:20 |
| 18 Q And what is this document? 11:24 | 18 Q (BY MR. BECKER) How does it differ? 11:22 |
| 19 A This is a form for commenting on a public 11:24 | 19 A There's additional language included in 11:24 |
| 20 review draft to an ASHRAE standard, guideline or 11:24 | 20 Exhibit 1139. 11:29 |
| 21 addendum. 11:24 | 21 Q And could you tell me what that excuse me, 11:21 |
| 22 Q And does this document also contain the same 11:24 | 22 could you tell me what that additional language is? 11:24 |
| 23 copyright release excuse me, the same two copyright 11:24 | A In the third sentence down, it adds, "to any 11:29 |
| 24 releases that had appeared on the previous exhibit? 11:24 | 24 contributions I make to documents prepared by or for 11:24 |
| 25 A Which one? 11:25 | 25 such committee for ASHRAE publication." And and 11:28 |
| Page 75 | Page 77 |

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| 1 then the rest is all the same. 11:22 | 1 A No. 11:32 |
|---|--|
| 2 Q Could you tell me on what date Exhibit 1139 11:21 | 2 Q Does ASHRAE ordinarily keep a document that 11:38 |
| 3 was revised? 11:21 | 3 would look like this in its redacted form? 11:36 |
| 4 A October 2009. 11:23 | 4 A Actually, I I would correct. If it was 11:30 |
| 5 (Exhibit 1140 marked for identification.) 11:31 | 5 redacted, it was probably because it had contact or 11:32 |
| 6 Q (BY MR. BECKER) Handing you what's been 11:35 | 6 contact information of the individual on here, and that 11:36 |
| 7 marked as Exhibit 1140. Do you recognize this 11:35 | 7 would have been why it would have been redacted. 11:38 |
| 8 document? 11:32 | 8 (Exhibit 1142 marked for identification.) 11:35 |
| 9 A Yes. 11:32 | 9 Q (BY MR. BECKER) I'm handing you what's been 11:34 |
| 10 Q Could you tell me what this document is? 11:32 | 10 marked as Exhibit 1142. This is ASHRAE Bates number 11:35 |
| 11 A This is the ASHRAE Standard Guideline Project 11:34 | 11 0001618. With the exception of the different Bates 11:39 |
| 12 Committee Application for Individual Membership. 11:38 | 12 numbers, does this document appear to you to be 11:33 |
| 13 Q And does this Exhibit 1140 include a 11:31 | 13 identical to the previous exhibit, Exhibit 1141? 11:36 |
| 14 copyright release under section 5? 11:34 | 14 A Yes. 11:32 |
| 15 A Yes. 11:36 | 15 (Exhibit 1143 marked for identification.) 11:32 |
| 16 Q Could you tell me if this copyright release 11:30 | 16 Q (BY MR. BECKER) I'm handing you what's been 11:38 |
| 17 differs in any way from the copyright release on 11:35 | 17 marked as Exhibit 1143. Could you tell me what this 11:30 |
| 18 Exhibit 1139? 11:30 | 18 document is? 11:35 |
| 19MR. CUNNINGHAM: Object to form.11:33 | 19 A This is the Form for Continuous Maintenance 11:36 |
| 20 THE WITNESS: The only difference is 11:31 | 20 Change Proposal. 11:39 |
| 21 that on form 1139, it says "elected as an 11:34 | 21 Q And do you recognize this document? 11:30 |
| 22 organizational member" versus 1140, which is 11:30 | 22 A Yes. 11:32 |
| 23 "as a member." 11:33 | 23 Q And could you tell me when this document was 11:37 |
| 24 Q (BY MR. BECKER) Are Exhibits 1139 and 11:32 | 24 last revised? 11:30 |
| 25 Exhibits 1140 documents that individuals are required 11:35 Page 78 | 25 A January 30th, 2006. 11:31 Page 80 |
| 1 to fill out in order to obtain membership with ASHRAE? 11:30 | 1 Q And does this document have the same two 11:37 |
| 2 A For project committees, yes. 11:37 | 2 copyright releases as in Exhibit 1135? 11:37 |
| 3 (Exhibit 1141 marked for identification.) 11:30 | 3 A Yes. 11:37 |
| 4 Q (BY MR. BECKER) I'm handing you what's been 11:30 | 4 (Exhibit 1144 marked for identification.) 11:37 |
| 5 marked as Exhibit 1141. Do you recognize this 11:31 | 5 Q (BY MR. BECKER) I'm handing you what's been 11:38 |
| 6 document? 11:36 | 6 marked as Exhibit 1144. Do you recognize this 11:38 |
| 7 A Yes. 11:39 | 7 document? 11:38 |
| 8 Q Could you tell me what this document is? 11:30 | 8 A Yes. 11:38 |
| 9 A This document is language includes our 11:33 | 9 Q Could you tell me what it is? 11:38 |
| 10 copyright information for electronic or or the 11:37 | 10 A This is the Form for Commenting in a Public 11:38 |
| 11 signing. 11:31 | 11 Review Draft ASHRAE Standard, Guideline or Addendum. 11:38 |
| 12 Q Does this document, Exhibit 1141, include the 11:36 | 12 Q And looking at the second page of this 11:38 |
| 13 same two copyright releases that were seen in Exhibit 11:33 | 13 document, could you tell me the date on which it was 11:38 |
| 14 1135? 11:39 | 14 revised? 11:38 |
| | 15 A March 1st, 2004. 11:38 |
| 15 MR. CUNNINGHAM: Object to form. 11:38 | 15 A March 1st, 2004. 11:38 |
| 15MR. CUNNINGHAM: Object to form.11:3816THE WITNESS: There's a few "and"s11:36 | 15AMatch 18, 2004.11.3616QAnd does this document have the same11:38 |
| - | |
| 16 THE WITNESS: There's a few "and"s 11:36 | 16 Q And does this document have the same 11:38 |
| 16THE WITNESS: There's a few "and"s11:3617missing in the in in 1141 that are in11:38 | 16QAnd does this document have the same11:3817copyright release as Exhibit 1134?11:38 |
| 16 THE WITNESS: There's a few "and"s 11:36 17 missing in the in in 1141 that are in 11:38 18 1135. And in 1141, the signature line is 11:30 | 16QAnd does this document have the same11:3817copyright release as Exhibit 1134?11:3818AYes.11:39 |
| 16THE WITNESS: There's a few "and"s11:3617missing in the in in 1141 that are in11:38181135. And in 1141, the signature line is11:3019included, which is not in 1135. But other11:35 | 16QAnd does this document have the same11:3817copyright release as Exhibit 1134?11:3818AYes.11:3919(Exhibit 1145 marked for identification.)11:39 |
| 16THE WITNESS: There's a few "and"s11:3617missing in the in in 1141 that are in11:38181135. And in 1141, the signature line is11:3019included, which is not in 1135. But other11:3520than that, they're the same.11:38 | 16QAnd does this document have the same11:3817copyright release as Exhibit 1134?11:3818AYes.11:3919(Exhibit 1145 marked for identification.)11:3920Q(BY MR. BECKER) Handing you what's been11:39 |
| 16THE WITNESS: There's a few "and"s11:3617missing in the in in 1141 that are in11:38181135. And in 1141, the signature line is11:3019included, which is not in 1135. But other11:3520than that, they're the same.11:3821Q(BY MR. BECKER) Thank you.11:3222Does this document appear to be redacted to11:3523you?11:38 | 16QAnd does this document have the same11:3817copyright release as Exhibit 1134?11:3818AYes.11:3919(Exhibit 1145 marked for identification.)11:3920Q(BY MR. BECKER) Handing you what's been11:3921marked as Exhibit 1145. This is Bates number11:3922ASHRAE0001606. Could you do you recognize this11:3923document?11:39 |
| 16THE WITNESS: There's a few "and"s11:3617missing in the in in 1141 that are in11:38181135. And in 1141, the signature line is11:3019included, which is not in 1135. But other11:3520than that, they're the same.11:3821Q(BY MR. BECKER) Thank you.11:3222Does this document appear to be redacted to11:3523you?11:3824AYes.11:38 | 16QAnd does this document have the same11:3817copyright release as Exhibit 1134?11:3818AYes.11:3919(Exhibit 1145 marked for identification.)11:3920Q(BY MR. BECKER) Handing you what's been11:3921marked as Exhibit 1145. This is Bates number11:3922ASHRAE0001606. Could you do you recognize this11:3923document?11:3924AYes.11:39 |
| 16THE WITNESS: There's a few "and"s11:3617missing in the in in 1141 that are in11:38181135. And in 1141, the signature line is11:3019included, which is not in 1135. But other11:3520than that, they're the same.11:3821Q(BY MR. BECKER) Thank you.11:3222Does this document appear to be redacted to11:3523you?11:38 | 16QAnd does this document have the same11:3817copyright release as Exhibit 1134?11:3818AYes.11:3919(Exhibit 1145 marked for identification.)11:3920Q(BY MR. BECKER) Handing you what's been11:3921marked as Exhibit 1145. This is Bates number11:3922ASHRAE0001606. Could you do you recognize this11:3923document?11:39 |

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| 1 A This is the Form for Commenting on a Public 11:39 | 1 A This is the Form for Commenting on a Public 11:43 |
|--|---|
| 2 Review Draft ASHRAE Standard, Guideline or Addendum. 11:32 | 2 Review Draft ASHRAE Standard, Guideline or Addendum. 11:43 |
| 3 Q And could you tell me the date on which this 11:37 | 3 Q Looking at the second page of this document, 11:43 |
| 4 was revised? 11:39 | 4 could you tell me when this document was revised? 11:43 |
| 5 A March 1st, 2004. 11:33 | 5 A January 30th, 2006. 11:43 |
| 6 Q And does this include the same copyright 11:34 | 6 Q Does this document under section 2, 11:43 |
| 7 release that was in the previous exhibit, 1144? 11:36 | 7 "Copyright Release," have the same two copyright 11:43 |
| 8 A Yes. 11:46 | 8 releases that were in Exhibit 1135? 11:43 |
| 9 (Exhibit 1146 marked for identification.) 11:41 | 9 A In the first paragraph, in in the third 11:44 |
| 10 Q (BY MR. BECKER) I'm handing you what's been 11:49 | 10 line down, instead of saying "the standard," like we 11:44 |
| 11 marked as Exhibit 1146. Do you recognize this 11:40 | 11 see in Exhibit 1135, in Exhibit 1148, it says "this 11:44 |
| 12 document? 11:44 | 12 standard." 11:44 |
| 13 A Yes. 11:44 | 13 (Exhibit 1149 marked for identification.) 11:44 |
| 14 MR. BECKER: And this just for the 11:47 | 14 Q (BY MR. BECKER) I'm handing you what's been 11:44 |
| 15 record, this document is Bates number 11:49 | 15 marked as Exhibit 1149. Do you recognize this 11:44 |
| 16 ASHRAE0001600. 11:41 | 16 document? 11:44 |
| 17 Q (BY MR. BECKER) Could you tell me what this 11:45 | 17 A Yes. 11:44 |
| 18 document is? 11:47 | 18 Q Could you tell me what this document is? 11:44 |
| 19 A This is the Form for Submittal of a Proposed 11:48 | 19 A This is the Form for Commenting on a Public 11:45 |
| 20 Change to ASHRAE Standard Under Continuous Maintenance. 11:41 | 20 Review Draft, ASHRAE Standard, Guideline or Addendum. 11:45 |
| 21 Q Could you could you tell me the 11:47 | 21 MR. BECKER: For the record, I'll just 11:45 |
| 22 significance of the date in the bottom left-hand 11:49 | 22 state that this is Bates number 11:45 |
| 23 corner? 11:43 | 23 ASHRAE0001610. 11:45 |
| A That would have been the date it was revised. 11:43 | 24 Q (BY MR. BECKER) Looking at the back of the 11:45 |
| 25 Q Does this document include the same copyright 11:43 | 25 document, could you tell me the date on which this was 11:45 |
| Page 82 | Page 84 |
| 1 release under section 1 as was in Exhibit 1134? 11:41 | 1 revised? 11:45 |
| 2 A With the exception of splitting up a 11:41 | 2 A January 30th, 2006. 11:45 |
| 3 sentence, it's exactly the same. There's an "and" in 11:41 | 3 Q Does this document, Exhibit 1149, have the 11:45 |
| 4 1134 between "proposals" and "I understand" and "I 11:41 | 4 same copyright releases as in the previous exhibit, 11:45 |
| 5 understand" that is not in 1146. 11:42 | 5 1148? 11:45 |
| 6 (Exhibit 1147 marked for identification.) 11:42 | 6 A Yes. 11:45 |
| 7 Q (BY MR. BECKER) I'm handing you what's been 11:42 | 7 (Exhibit 1150 marked for identification.) 11:45 |
| 8 marked as Exhibit 1147. This is Bates number 11:42 | 8 Q (BY MR. BECKER) I'm handing you what's been 11:46 |
| 9 ASHRAE0001604. Do you recognize this document? 11:42 | 9 marked as Exhibit 1150. This is Bates number 11:46 |
| 10 A Yes. 11:42 | 10 ASHRAE0001605. Do you recognize this document? 11:46 |
| 11 Q Could you tell me what this document is? 11:42 | 11 A Yes. 11:46 |
| 12 A This is a Continuous Maintenance Submittal 11:42 | 12 Q And could you tell me what this document is? 11:46 |
| 13 form. 11:42 | 13 A This is the Form for Submittal of a Proposed 11:46 |
| 14 Q And could you tell me when this document was 11:42 | 14 Change to an ASHRAE Standard Under Continuous 11:46 |
| 15 revised? 11:42 | 15 Maintenance. 11:46 |
| 16 A January 30th, 2006. 11:42 | 16 Q And could you tell me, looking at the bottom 11:46 |
| 17 Q Does this document include the same two 11:42 | 17 right-hand corner, the date on which this was revised? 11:46 |
| 18 copyright copyright releases as in Exhibit 1135? 11:42 | 18 A March 9th, 2007. 11:46 |
| 19 A Yes. 11:43 | 19 Q And does Exhibit 1150 have the same two 11:46 |
| 20 (Exhibit 1148 marked for identification.) 11:43 | 20 copyright releases as Exhibit 1135? 11:46 |
| 21 Q (BY MR. BECKER) I'm handing you what's been 11:43 | 21 A With the exception of an "and" that's in 11:47 |
| 22 marked as Exhibit 1148. Do you recognize this 11:43 | 22 paragraph in the second paragraph of 1135, where 11:47 |
| 23 document? 11:43 | 23 it's between "proposals" and "I understand," it's the 11:47 |
| 24 A Yes. 11:43 | 24 same. 11:47 |
| 25 Q Could you tell me what this document is? 11:43 | 25 (Exhibit 1151 marked for identification.) 11:47 |
| | |

22 (Pages 82 - 85)

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| 1 Q (BY MR. BECKER) I'm handing you what has 11:48 | 1 MR. BECKER: For the record, I'll note 11:57 |
|--|--|
| 2 been marked as Exhibit 1151. Do you recognize this 11:40 | 2 that this is Bates number ASHRAE0001612. 11:58 |
| 3 document? 11:42 | 3 Q (BY MR. BECKER) Are users of the ASHRAE 11:56 |
| 4 A Yes. 11:42 | 4 website required to fill in their name into the box 11:58 |
| 5 Q Could you tell me what this document is? 11:43 | 5 that says "Name of whoever is logged in to comment 11:54 |
| 6 A This is an Application for Project Committee 11:45 | 6 would be entered here"? 11:57 |
| 7 Organizational Representative Membership. 11:47 | 7 MR. CUNNINGHAM: Objection to form. 11:59 |
| 8 Q And looking at the bottom left-hand corner, 11:41 | 8 THE WITNESS: In order to comment, any 11:52 |
| 9 could you tell me the date on which this was revised? 11:45 | 9 member of the public would have to enter 11:55 |
| 10 A October 2009. 11:48 | 10 their name as it would appear above that line 11:58 |
| 11 Q Comparing the copyright release excuse me. 11:40 | 11 and hit "I agree" in order to comment in the 11:50 |
| 12 Is there a copyright release under Exhibit 11:45 | 12 online comment database. 11:54 |
| 13 excuse me, section 6 of Exhibit 1151? 11:47 | 13 Q (BY MR. BECKER) Could you tell me who checks 11:55 |
| 14 A Yes. 11:41 | 14 that box for names? 11:58 |
| 15 Q And comparing that copyright release on 11:43 | 15 A You can't go forward. If you click "I do not 11:51 |
| 16 Exhibit 1151 with the copyright release on 11:47 | 16 agree," you cannot submit a comment. 11:53 |
| 17 Exhibit 1139, can you tell me if they are identical? 11:42 | 17 Q If does somebody check whatever names are 11:56 |
| 18 A They are identical. 11:41 | 18 put in there to make sure that they match with the 11:50 |
| 19 Q Thank you. 11:46 | 19 person who's submitting the comments? 11:53 |
| 20 (Exhibit 1152 marked for identification.) 11:48 | 20 A Do you mean can I physically tell if you were 11:58 |
| 21 Q (BY MR. BECKER) Handing you Exhibit 1152, 11:41 | 21 signed in as somebody else and put their name in there? 11:52 |
| 22 Bates number ASHRAE0001616. Do you recognize this 11:43 | 22 Q Yes. 11:56 |
| 23 document? 11:49 | 23 A I cannot physically tell that. 11:58 |
| 24 A Yes. 11:49 | 1 5 5 |
| | |
| 25 Q Could you tell me what this document is? 11:43 Page 86 | 25 and I put in my name as just the letter Z and clicked 11:56 Page 8 |
| 1 A This is the ASHRAE Standard Guideline Project 11:44 | 1 "I agree," would it allow me to proceed? 11:53 |
| 2 Committee Application for Individual Membership. 11:47 | 2 A No. 11:56 |
| 3 Q And could you tell me the date on which this 11:56 | 3 Q And how does it stop me from proceeding? 11:57 |
| 4 was revised? 11:57 | 4 A There is a name where you see "Name of 11:50 |
| 5 A October 2009. 11:58 | 5 whoever is logged in to comment would be entered here," 11:53 |
| 6 Q Comparing the excuse me. 11:52 | 6 the system generates the letters for example, for 11:56 |
| 7 Is there a copyright release at section 5 of 11:59 | 7 mine, it would say Mrs. Stephanie R-E-I-N, is where it 11:51 |
| 8 Exhibit 1152? 11:52 | 8 ends up stop it goes to a certain amount of 11:55 |
| 9 A Yes. 11:54 | 9 characters. That's what I enter there and hit "I 11:58 |
| 10 Q Comparing the copyright release on section 5 11:56 | 10 agree." 11:51 |
| 11 of Exhibit 1152 with the copyright release from 11:58 | 11 Q So it might not allow you to enter your full 11:53 |
| 12 Exhibit 1151, could you tell me if there are any 11:52 | 12 name? 11:56 |
| 13 differences between the two? 11:56 | 13 A Correct. You have to enter whatever it shows 11:56 |
| 14 A The difference is on 1151, it's for an 11:55 | 14 above there, because it's you know, it's got so 11:58 |
| | |
| 15 organizational member; and 1152, it's a member. 11:59 | 15 many the coding is such to so many characters. 11:52 |
| 16 Q Thank you. 11:56 | 16 Q And where would it show the person's name? 11:57 |
| 17 (Exhibit 1153 marked for identification.) 11:56 | 17 A Where you see "Name of whoever is logged in 11:59 |
| 18 Q (BY MR. BECKER) I'm handing you what's been 11:58 | 18 to comment would be entered here," their name would 11:52 |
| 19 marked as Exhibit 1153. Do you recognize this11:54 | 19 appear there. 11:56 |
| | 20 Q Okay. Does this Exhibit 1153 include a 11:56 |
| 20 document? 11:50 | 21 |
| | 21 copyright release? 11:56 |
| | 21 copyright release? 11:56 22 A Yes. 11:57 |
| 21 A Yes. 11:51 | |
| 21AYes.11:5122QCould you tell me what this document is?11:54 | 22 A Yes. 11:57 |
| 21AYes.11:5122QCould you tell me what this document is?11:5423AThis is how you would enter a comment on the11:55 | 22AYes.11:5723QAnd is that the second paragraph on11:51 |

23 (Pages 86 - 89)

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| 1 Q And does this copyright release on 11:52 | 1 A No. 11:53 |
|--|---|
| 2 Exhibit 1153 appear identical to the second copyright 11:55 | 2 MR. CUNNINGHAM: Object to the form on 11:55 |
| 3 release on Exhibit 1135? 11:50 | 3 that. 11:56 |
| 4 A Other than the fact you can't do the "I, 11:53 | 4 Q (BY MR. BECKER) Does ASHRAE see a difference 11:5 |
| 5 insert name," it starts with "I, hereby," it's the 11:56 | 5 between copyright releases and copyright assignments? 11:54 |
| 6 same. 11:50 | 6 MR. CUNNINGHAM: Object to the form. 11:57 |
| | 5 |
| 7 (Exhibit 1154 marked for identification.) 11:53 | 7 THE WITNESS: No. 11:58 |
| 8 Q (BY MR. BECKER) I'm handing you what's been 11:50 | 8 Q (BY MR. BECKER) Do you see a difference 11:51 |
| 9 marked as Exhibit 1154. Do you recognize this 11:50 | 9 between copyright releases and copyright assignments? 11:52 |
| 10 document? 11:54 | 10 MR. CUNNINGHAM: Object insofar as it's 11:56 |
| 11 A Yes. 11:56 | 11 outside the scope. 11:59 |
| 12 MR. BECKER: For the record, this is 11:58 | 12 THE WITNESS: No. 11:51 |
| 13Bates number ASHRAE0022827.11:59 | 13 Q (BY MR. BECKER) Is there any way in which 11:56 |
| 14 Q (BY MR. BECKER) Could you tell me what this 11:53 | 14 someone who contributed text to Standards 90.1 or to 11:58 |
| 15 document is? 11:54 | 15 the 1993 ASHRAE handbook would have given copyright 12:03 |
| 16 A This is the where you would go to log in 11:54 | 16 rights to ASHRAE, other than through the copyright 12:04 |
| 17 at the online comment database, and it shows me as 11:50 | 17 releases that we have discussed today? 12:09 |
| 18 being logged in, because my name appears, 11:53 | 18 MR. CUNNINGHAM: Object to form. 12:03 |
| 19 Mrs. Stephanie C. R-E-I-N. 11:57 | 19 THE WITNESS: Do you mean because their 12:08 |
| 20 Q And does this document, Exhibit 1154, include 11:59 | 20 company submitted they took language from 12:01 |
| 21 a copyright release? 11:54 | 21 a different document and put it in there? 12:03 |
| 22 A Yes. 11:55 | 22 Q (BY MR. BECKER) I mean, does ASHRAE believe 12:0 |
| 23 Q And is this copyright release identical to 11:56 | 23 that it owns the copyright in contributions to 12:08 |
| 24 the copyright release in Exhibit 1153? 11:58 | 24 Standard 90.1 or to the 1993 ASHRAE handbook by virtue 12:05 |
| 25 A Yes. 11:59 | 25 of any copyright assignments or releases, other than 12:00 |
| Page 90 | |
| 1 Q Ms. Reiniche, do you know when this copyright 11:50 | 1 those that we have discussed today? 12:04 |
| 2 release was first added to the ASHRAE website? 11:57 | 2 A No. 12:08 |
| | |
| 3 A It would have been when we started the online 11:54 | 3 Q And does ASHRAE believe that it owns 12:09 |
| 3AIt would have been when we started the online11:544comment database, which was around 2005 no, I'm11:56 | 3QAnd does ASHRAE believe that it owns12:094copyright in contributions to Standards 90.1 or to the12:02 |
| | · · |
| 4 comment database, which was around 2005 no, I'm 11:56 | 4 copyright in contributions to Standards 90.1 or to the 12:02 |
| 4 comment database, which was around 2005 no, I'm11:565 sorry, around 2008.11:57 | 4 copyright in contributions to Standards 90.1 or to the 12:025 1993 handbook by virtue of any other means, other than 12:06 |
| 4 comment database, which was around 2005 no, I'm11:565 sorry, around 2008.11:576QAnd for the online comment database, has it11:54 | 4 copyright in contributions to Standards 90.1 or to the 12:02 5 1993 handbook by virtue of any other means, other than 12:06 6 those copyright releases that we have discussed today? 12:01 |
| 4 comment database, which was around 2005 no, I'm 11:56 5 sorry, around 2008. 11:57 6 Q And for the online comment database, has it 11:54 7 always required individuals to enter their name and 11:58 | 4 copyright in contributions to Standards 90.1 or to the 12:02 5 1993 handbook by virtue of any other means, other than 12:06 6 those copyright releases that we have discussed today? 12:01 7 A No. 12:05 |
| 4 comment database, which was around 2005 no, I'm 11:56 5 sorry, around 2008. 11:57 6 Q And for the online comment database, has it 11:54 7 always required individuals to enter their name and 11:58 8 click "I agree" 11:53 | 4 copyright in contributions to Standards 90.1 or to the 12:02 5 1993 handbook by virtue of any other means, other than 12:06 6 those copyright releases that we have discussed today? 12:01 7 A No. 12:05 8 MR. CUNNINGHAM: I'm going to object 12:08 |
| 4 comment database, which was around 2005 no, I'm11:565 sorry, around 2008.11:576 Q And for the online comment database, has it11:547 always required individuals to enter their name and11:588 click "I agree"11:539 A Yes.11:54 | 4 copyright in contributions to Standards 90.1 or to the 12:02 5 1993 handbook by virtue of any other means, other than 12:06 6 those copyright releases that we have discussed today? 12:01 7 A No. 12:05 8 MR. CUNNINGHAM: I'm going to object 12:08 9 insofar as the last few questions called for 12:09 |
| 4 comment database, which was around 2005 no, I'm11:565 sorry, around 2008.11:576 Q And for the online comment database, has it11:547 always required individuals to enter their name and11:588 click "I agree"11:539 A Yes.11:5410 Q in order to gain access?11:55 | 4 copyright in contributions to Standards 90.1 or to the 12:02 5 1993 handbook by virtue of any other means, other than 12:06 6 those copyright releases that we have discussed today? 12:01 7 A No. 12:05 8 MR. CUNNINGHAM: I'm going to object 12:08 9 insofar as the last few questions called for 12:09 10 legal conclusions. 12:01 |
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| 4 comment database, which was around 2005 no, I'm 11:56 5 sorry, around 2008. 11:57 6 Q And for the online comment database, has it 11:54 7 always required individuals to enter their name and 11:58 8 click "I agree" 11:53 9 A Yes. 11:54 10 Q in order to gain access? 11:55 11 Ms. Reiniche, I will represent to you that we 11:59 12 have now produced before you as exhibits all of the 11:51 13 blank copyright releases that ASHRAE has produced to 11:55 | 4copyright in contributions to Standards 90.1 or to the12:0251993 handbook by virtue of any other means, other than12:066those copyright releases that we have discussed today?12:017ANo.12:058MR. CUNNINGHAM: I'm going to object12:089insofar as the last few questions called for12:0910legal conclusions.12:0111MR. BECKER: I think that we can stop12:0112for lunch here, if that works for the rest of12:0313you.12:05 |
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| 1 | Now, Ms. Reiniche, I'm handing you what's 13:05 | 1 publication. If they need to make more changes, it 13:06 |
|--|--|--|
| 2 | been marked as Exhibit 1155. It's Bates number 13:09 | 2 will go back to the public review process. 13:08 |
| 3 | ASHRAE0001598. So, Ms. Reiniche, my sincere apologies. 13:07 | 7 3 Q So in this process that you were describing, 13:01 |
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| 7 | document? 13:04 | 7 the document. 13:01 |
| 8 | A Yes. 13:04 | 8 Q And the process that you just described, is 13:01 |
| 9 | | 9 that the process that's used for ASHRAE Standard 90.1? 13:06 |
| 10 | | 10 A It would have when it was started. The 13:02 |
| | ASHRAE Standard or Guideline Project Committee. 13:01 | 11 difference there's a little difference now because 13:04 |
| 12 | , and the second s | 12 it's on continuous maintenance. 13:06 |
| | a copyright assignment? 13:06 | 13 Q And what what does that difference mean? 13:08 |
| 13 | | |
| | | * |
| 15 | | 15 four-year rotating cycle, so one basically, roughly 13:04 |
| | this document if that changes any of your answers 13:01 | 16 one-third of the committee would roll off every four 13:08 |
| | earlier today? 13:05 | 17 years, so they're not everyone is not coming off at 13:01 |
| 18 | , | 18 the same time. And new members will be added, so 13:04 |
| 19 | | 19 they're added continuously, typically once a year. 13:07 |
| 20 | Ms. Reiniche, could you walk me through at a 13:07 | 20 Then instead of the full draft going out, 13:02 |
| 21 | high level how ASHRAE standard standards are 13:00 | 21 their addenda are issued to go out for public review 13:07 |
| 22 | created? 13:03 | 22 and comment. They'd either come from stuff that has 13:00 |
| 23 | A Sure. So it starts with a title, purpose and 13:03 | 23 been generated by the committee or through a continuous 13:03 |
| 24 | scope being submitted for consideration to be approved. 13:08 | 24 maintenance change proposal. And then the rest of the 13:05 |
| 25 | That would have been approved by the procedures, policy 13:03 | 25 process would follow the same way. 13:07 |
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| 8 | 8 members, people would submit the membership 13:02 | 8 volunteers or are they employees of ASHRAE? 13:07 |
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25 (Pages 94 - 97)

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| 190.1 was developed in, I think, 1975. They probably13:052didn't have all the subcommittees that we have now, but13:013would have went through the approving bodies up through13:044the board that way.13:075QAnd would there have been a project committee13:076as well for for the original 90.1?13:097AYes.13:018QAnd during that process, did staff members13:099draft any of the text for 90.1?13:1510AFrom the beginning?13:1011QYeah.13:1212ANot unless they were making the edits to13:1313because of conformity and or conflicts or things13:1614like that.13:1915QAnd would staff members have contributed any13:1216text to subsequent versions of 90.1?13:1817AIn the same way, either in the discussions,13:1018if there's a conflict or stuff doesn't or through13:1319the editing and review of the material.13:1720QAnd does ASHRAE have any record of that?13:1721AIf it was done it would have been done via13:1722email, at the time email started.90.1 started before13:10 | 1 Q (BY MR. BECKER) And by "the codes," are you 13:18 2 referring to the standards that have been enacted into 13:19 3 regulation? 13:14 4 A That and and the international codes, the 13:14 5 codes spelled by NFPA, IAPMO. 13:19 6 Q Are there any other reasons why why 13:13 7 individuals who are not employees of ASHRAE participate 13:16 8 in the ASHRAE development standard development 13:19 9 process? 13:13 10 MR. CUNNINGHAM: Object to form. 13:14 11 THE WITNESS: I'm sure there are. I 13:15 12 just that's not a question I ask when 13:16 13 people apply for membership. 13:19 14 Q (BY MR. BECKER) Does ASHRAE draw draft 13:11 15 model laws or ordinances? 13:14 16 16 A Where we would start with the drafting for 13:16 17 17 the law, is that what you mean? 13:11 18 13 18 Q Does ASHRAE oversee the drafting of model 13:12 19 |
|--|--|
| 23 the Internet, so if the if if the records still 13:15 | 23 Register; things like that. 13:15 |
| 24 existed, it would have been in paper format. 13:10 | 24 Q And what's the purpose of submitting comments 13:16 |
| 25 Q What is ASHRAE's purpose in creating these 13:11 Page 98 | 25 in for things that are coming out in legislation and 13:19 Page 100 |
| 1 standards? 13:14 2 A It's to the purpose is to advance the 13:16 | 1 regulation as you're describing? 13:11 2 A The purpose is to to typically, you 13:14 |
| 3 building sciences. We have a long mission statement, 13:12 | 3 want stuff that's been done through consensus process 13:19 |
| 4 but that's essentially what it is. 13:16 | 4 and has the expertise, so that may be a reason. 13:13 |
| 5 Q Does ASHRAE's mission statement reflect its 13:15 | 5 Another reason may be to make it consistent language 13:17 |
| 6 purposes in in developing these standards? 13:18 | 6 with what's already out there in our standards or 13:10 |
| 7 A I would say yes. 13:13 | 7 others; that type of thing. 13:14 |
| 8 Q And how does ASHRAE advance the building 13:16 | 8 Q When you say "you want stuff that's been done 13:15 |
| 9 sciences? 13:19 | 9 through the consensus process," who is "you" in that 13:10 |
| 10 A I would well, I would say through the 13:12 | 10 sentence? 13:14 |
| 11 development of the the standards that affect, you 13:15 | 11 A ASHRAE. 13:15 |
| 12 know, the energy efficiency of buildings, indoor air 13:18 | 12 Q ASHRAE. Okay. 13:15 |
| 13 quality, indoor environmental quality. I'm sure 13:12 | 13 And why is it that ASHRAE wants things that 13:18 |
| 14 there's other things that we create, courses and books 13:15 | 14 have been done through the consensus process? 13:11 |
| 15 that are outside the standards development process that 13:18 | A Because the the proper experts are 13:14 participating in the development of those documents, 13:17 |
| 16 we do as well. 13:11 17 Q And why is it that individuals who are not 13:10 | 16 participating in the development of those documents, 13:17 17 it's it's been vetted in the industry, people have 13:10 |
| 18 employees of ASHRAE participate in the standard design 13:16 | 18 had a chance to comment. We've tried to reach 13:13 |
| 19 process? 13:19 | 19 resolution so, you know, an equal amount of people are 13:17 |
| 20 MR. CUNNINGHAM: Object to form. 13:13 | 20 unhappy. 13:10 |
| 21 THE WITNESS: I would say because for 13:14 | 21 Q And you referred to an interest in expertise 13:14 |
| 22 various reasons it could affect their 13:18 | 22 in the process of drafting legislation and regulation. 13:18 |
| 23 company. Maybe they want to make the world a 13:10 | 23 Does that also reflect ASHRAE's interest in in 13:13 |
| 24 better place, maybe it affects the codes. It 13:13 | 24 having expertise reflected in that process? 13:17 |
| 25 varies. It depends on the individuals. 13:16 Page 99 | 25 MR. CUNNINGHAM: Object to the form. 13:19 Page 101 |

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| 1 THE WITNESS. I'm not sure what you 12:11 | 1 the next number for a standard. There are a couple 13:19 |
|---|--|
| 1 THE WITNESS: I'm not sure what you 13:11 2 mean. 13:12 | 1 |
| | 2 when they're tied together; for example, 90.1 has a 13:19 |
| 3 Q (BY MR. BECKER) Okay. Just a moment ago, 13:13 4 you said the purpose is to "typically, you want 13:16 | 3 90.2 and a 90.4, because they cover it's energy 13:19 4 efficiency, but they cover a certain building type. 13:19 |
| | |
| 5 stuff that's been done through consensus process and 13:10 | 5 Q And when referring to these standards, if 13:19 |
| 6 has the expertise, so that may be a reason." So what 13:13 | 6 they were referred to in, say, regulation, would it 13:19 |
| 7 did you mean by "has expertise" there? 13:18 | 7 need to say ASHRAE 90.1 or could the regulation simply 13:19 |
| 8 A So if you're writing, for example, something 13:12 | 8 say 90.1 and would people know what that was referring 13:19 |
| 9 on how to create a widget, you want the people that 13:14 | 9 to? 13:19 |
| 10 know how to create a widget, the information coming 13:18 | 10 MR. CUNNINGHAM: Object to the form. 13:19 |
| 11 from that versus someone who has in legislation may 13:11 | 11 MR. FEE: Same objection. 13:19 |
| 12 have a marketing degree that doesn't understand how to 13:16 | 12 THE WITNESS: If you're within ASHRAE, 13:19 |
| 13 create that widget. 13:18 | 13 you will know ASHRAE 90.1. If you just said 13:19 |
| 14 Q And so for air-conditioning or heating, you 13:19 | 14 90.1, I would probably want you to say 13:19 |
| 15 would want somebody who has expertise in that area, 13:13 | 15 ANSI/ASHRAE Standard 90.1 and the year, so 13:19 |
| 16 rather than necessarily a legislator or a regulator who 13:17 | 16 you know which document they're talking 13:19 |
| 17 doesn't have expertise in that area; is that correct? 13:11 | 17 about. 13:19 |
| 18 A We would want the information to come through 13:15 | 18 Q (BY MR. BECKER) Would that be the correct 13:19 |
| 19 stuff that had been done by the expert to be reflected, 13:17 | 19 way to cite the ASHRAE 90.1 standard?13:19 |
| 20 that would be correct. 13:11 | 20 MR. FEE: Objection, form. 13:20 |
| 21 Q And why is that important to have it come 13:12 | 21 THE WITNESS: I would include the title. 13:20 |
| 22 from an expert? 13:14 | 22 The first reference you make as well still 13:20 |
| 23 A Because they're the ones that understand how 13:15 | 23 makes it clear. 13:20 |
| 24 to make that product or how to construct that building 13:17 | 24 Q (BY MR. BECKER) Yeah. So people should say 13:20 |
| 25 or how to make something more energy efficient; that 13:10 Page 102 | 25 ANSI/ASHRAE Standard 90.1? 13:20 Page 104 |
| 1 type of thing. 13:13 | 1 MR. FEE: Same objection. 13:20 |
| 2 Q Is there technical expertise that's necessary 13:14 | 2 THE WITNESS: They should say 13:20 |
| | |
| 3 in order to understand that subject? 13:17 | 3 ANSI/ASHRAE Standard 90.1, energy efficiency 13:20 |
| 3 in order to understand that subject?13:174MR. CUNNINGHAM: Object to the form.13:19 | ANSI/ASHRAE Standard 90.1, energy efficiency 13:20 for oh, I just lost the blank my for 13:20 |
| - | |
| 4 MR. CUNNINGHAM: Object to the form. 13:19 | 4 for oh, I just lost the blank my for 13:20 |
| 4MR. CUNNINGHAM: Object to the form.13:195THE WITNESS: It depends on what you're13:156writing. But I don't think you can do it13:167just with just looking at something. You13:19 | 4 for oh, I just lost the blank my for 13:20 5 buildings not except for residential 13:20 |
| 4MR. CUNNINGHAM: Object to the form.13:195THE WITNESS: It depends on what you're13:156writing. But I don't think you can do it13:167just with just looking at something. You13:198have to have some knowledge.13:12 | 4 for oh, I just lost the blank my for 13:20 5 buildings not except for residential 13:20 6 buildings or something. 13:20 7 Q (BY MR. BECKER) Thank you. 13:20 8 Referring back to Exhibit 1155, on the back 13:21 |
| 4MR. CUNNINGHAM: Object to the form.13:195THE WITNESS: It depends on what you're13:156writing. But I don't think you can do it13:167just with just looking at something. You13:198have to have some knowledge.13:129Q(BY MR. BECKER) So for to make it13:13 | 4 for oh, I just lost the blank my for 13:20 5 buildings not except for residential 13:20 6 buildings or something. 13:20 7 Q (BY MR. BECKER) Thank you. 13:20 8 Referring back to Exhibit 1155, on the back 13:21 9 of that exhibit, Bates number ASHRAE0001599, it refers 13:21 |
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| 4MR. CUNNINGHAM: Object to the form.13:195THE WITNESS: It depends on what you're13:156writing. But I don't think you can do it13:167just with just looking at something. You13:198have to have some knowledge.13:129Q(BY MR. BECKER) So for to make it13:1310concrete for Standard 90.1, is that a standard that13:1511would require technical expertise in order to know what 13:1912its contents were and what should be enacted into law?13:1613MR. CUNNINGHAM: Object to the form.13:1914THE WITNESS: You need to understand13:1215how all of 90.1. It does help to have13:1516technical expertise in engineering. Whether13:1319would still venture on the side of yes.13:1720Q(BY MR. BECKER) How does one identify a13:1021particular ASHRAE standard? Is there is there a13:1422particular naming convention that ASHRAE uses for its13:1923standards?13:11 | 4for oh, I just lost the blank my for13:205buildings not except for residential13:206buildings or something.13:207Q(BY MR. BECKER) Thank you.13:208Referring back to Exhibit 1155, on the back13:219of that exhibit, Bates number ASHRAE0001599, it refers13:2110to interest categories; is that correct?13:2111AThat's correct.13:2112QAnd it has a an interest category that13:2213includes user; is that correct?13:2214AThat's correct.13:2215QAnd within the user interest category is a13:2216subcategory for a user government; is that correct?13:2217AThat's correct.13:2218QAnd that's for a representative of a13:2220AThat would be correct.13:2221QAnd this document by the the date on the13:2222bottom left-hand corner, does that mean that this13:2223document was last revised on March 5th, 2001?13:22 |

27 (Pages 102 - 105)

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| 1 And if you refer to Exhibit 1151, please. 13:22 | 1 with the Department of Energy with senior leadership 13:24 |
|---|---|
| 2 A Okay. 13:23 | 2 within ASHRAE. 13:29 |
| 3 Q This also has, under section 5, a listing of 13:23 | 3 And document 1157 appears to be a draft, 13:22 |
| 4 check boxes for interest categories; is that correct? 13:23 | 4 because since it's not signed, I can't say it's the 13:21 5 official one, but a Draft Manager and up of Update tending 12:24 |
| 5 A That's correct. 13:23 6 O And for SSPC 90.1, those categories include 13:23 | 5 official one, but a Draft Memorandum of Understanding 13:24 6 Between the Department of Energy and ASHRAE. 13:27 |
| 6 Q And for SSPC 90.1, those categories include 13:23 7 compliance, designer, general interest, industry, user 13:23 | 1 65 |
| 8 and utility; is that correct? 13:23 | 7 Q And does it appear to you that this draft, 13:22 8 the Exhibit 1157, was the attachment to Exhibit 1156? 13:20 |
| 9 A That's correct. 13:23 | 9 A Well, I would say it probably is the exhibit, 13:20 |
| 10 Q And if you turn to the next page, Bates 13:23 | 10 but since the document doesn't have a a thing that 13:24 |
| 11 number ASHRAE0001614, that includes a the 13:23 | 11 says DOEMOU.doc on it, I would have to assume that it 13:29 |
| 12 definitions of these interest categories; is that 13:23 | 12 is the same one. 13:25 |
| 13 correct? 13:23 | 13 Q I'll I'll represent that that it is 13:25 |
| 14 A That's correct. 13:23 | 14 the the attachment. 13:27 |
| 15 Q And for compliance, would that category 13:23 | 15 Could you tell me what what is the purpose 13:22 |
| 16 include regulators? 13:23 | 16 of the Department of Energy Memorandum of Understanding 13:24 |
| 17 A If you if you include them as federal 13:24 | 17 with ASHRAE? 13:20 |
| 18 officials, then yes. 13:24 | 18 A Its its basic purpose is to talk about 13:21 |
| 19 Q And who makes the determination for these 13:24 | 19 ways that we're going to work together or towards 13:24 |
| 20 particular interest categories? 13:24 | 20 goals. 13:28 |
| 21 A Do you mean who decides which interest 13:24 | 21 Q And does ASHRAE have a history of working 13:25 |
| 22 category a person belongs in? 13:24 | 22 together with the Department of Energy? 13:27 |
| 23 Q Yes. 13:24 | 23 A Yes. 13:21 |
| 24 A The applicant suggests which interest 13:24 | 24 Q How long has ASHRAE been working with the 13:21 |
| 25 category they belong in, then the chair of the of 13:24 | 25 Department of Energy? 13:27 |
| Page 106 | Page 108 |
| 1 the project committee will review that information, 13:23 | 1 MR. CUNNINGHAM: Object to the form. 13:22 |
| 2 look at all their applicable paperwork, and then decide 13:26 | 2 THE WITNESS: I would probably say since 13:22 |
| 3 if that's correct. 13:29 | 3 at least 90.1 has been as part of adopted 13:24 |
| 4 They may say no and put them in a different 13:21 | 4 into EPAct as the minimum energy efficiency 13:26 |
| 5 interest category. And then SPLS will look at that 13:24 | 5 for commercial buildings. 13:21 |
| 6 recommendation, and they could look at the same 13:20 | 6 Q (BY MR. BECKER) Do you have any idea when 13:23 |
| 7 paperwork and determine that they're still not in the 13:22 | 7 approximately when that would have been? 13:24 |
| 8 correct interest category and move them into a 13:26 | 8 A I would I want to say '99, but I'm I 13:32 |
| 9 different one. 13:28 | 9 need to check. 13:36 |
| 10 Q And so has it happened that people have been 13:28 | 10 Q What's the the what what is the 13:38 |
| 11 moved from one interest category to a different one? 13:20 | 11 purpose of ASHRAE's work with the Department of Energy? 13:33 |
| 12 A Yes. 13:27 | 12 MR. CUNNINGHAM: Object to the form. 13:32 |
| 13 (Exhibit 1156 and Exhibit 1157 marked for 13:28 | 13 THE WITNESS: To to advance the 13:38 14 mission of ASUBAE which is now known 12:20 |
| 14 identification.) 13:21 | 14 mission of ASHRAE, which is, you know, 13:30 |
| 15 Q (BY MR. BECKER) I'd like to hand you what's 13:21 | 15 advance the art of building sciences. 13:32 |
| 16 been marked as 1 Exhibits 1156 and Exhibits 1157. 13:23 | 16 Q (BY MR. BECKER) And for for Exhibit 13:37 |
| Exhibit 1156 is Bates number ASHRAE0026227. And then 13:27 Exhibit 1157 is Bates number ASHRAE0026229. 13:23 | |
| 18 Exhibit 1157 is Bates number ASHRAE0026229.13:2319 Do you recognize these documents,13:24 | 18 the recipients for this email; is that correct? 13:34 19 A That's correct. 13:38 |
| 20 Ms. Reiniche? 13:26 | 20 Q And you're listed among the recipients for 13:39 |
| 20 Ms. Remine? 15:20 21 A Yes. 13:27 | 20 Q And you're instea among the recipients for 15:59 21 the the email that's further down in the chain in 13:32 |
| | |
| 22 Q And could you tell me what these documents 13:21 23 are? 13:23 | 22 on that exhibit; is that correct?13:3823 A That's correct.13:39 |
| 25 are? 15:25 24 A Document 1156 is an email conversation 13:26 | 23 A That's correct. 13:39 24 Q On Exhibit 1157, section 2, it refers to 13:38 |
| 25 regarding a meeting that's that was going to occur 13:21 | 27 Q OII EAHIOR 1157, Section 2, It fefets to 15.50 |
| 1 20 regarding a mooting that 5 – that was going to been 13.21 | 25 promoting and supporting implementation of Δ SHR Δ F = 13.34 |
| Page 107 | 25 promoting and supporting implementation of ASHRAE 13:34 Page 109 |

28 (Pages 106 - 109)

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| 1 standards through training programs, including 13:37 | 1 the Department of Energy? 12:21 |
|---|--|
| | 1 the Department of Energy? 13:31 |
| 2 self-directed learning, building code interaction and 13:30 | 2 A No. 13:32 |
| 3 ASHRAE chapter oriented training. 13:33 | 3 Q And section 10 refers to "Advancing and 13:34 |
| 4 What is the Department of Energy's role in 13:36 | 4 supporting the professional development of DOE 13:36 |
| 5 that? 13:38 | 5 personnel by facilitating membership, attendance, and 13:39 |
| 6 A They Department of Energy provides 13:39 | 6 active participation at the local and society levels of 13:33 |
| 7 training not only ASHRAE, but other code bodies' codes, 13:33 | 7 ASHRAE, especially as a member of technical committees 13:37 |
| 8 so it would be supported through software development, 13:30 | 8 and standard project committees, and by providing a 13:30 |
| 9 maybe at the DOE level, they give trainings on what's 13:35 | 9 venue for publication of research and practice." 13:33 |
| 10 in 90.1; things like that. 13:30 | 10 What kind of publication is this referring 13:36 |
| 11 Q Does the Department of Energy provide funding 13:33 | 11 to? 13:37 |
| 12 to ASHRAE? 13:37 | 12 A They're talking about research publication. 13:31 |
| 13 A No. 13:37 | 13 If the DOE does research, they're publishing it 13:34 |
| 14 Q Does the Department of Energy provide any 13:30 | 14 somewhere. It's not referring to standards. 13:37 |
| 15 funds to ASHRAE? 13:34 | 15 Q Does ASHRAE publish DOE research? 13:30 |
| 16 A I suppose if someone is a a member and the 13:38 | 16 A Not that I'm aware of. 13:36 |
| 17 Department of Energy pays their membership fees to 13:32 | 17 Q With regards to section 13, do you know what 13:32 |
| 18 ASHRAE to be a member of ASHRAE, then yes, but it goes 13:34 | 18 they are referring to with regards to counter-terrorism 13:38 |
| 19 to membership. 13:37 | 19 design features? 13:35 |
| 20 Q On the second page of Exhibit 1157, 13:36 | 20 A No. 13:30 |
| 21 subsection 5 says, "Cooperating in promoting of 13:32 | 21 Q Do you know what under under section 13:34 |
| 22 ANSI/ASHRAE standards adoption in the International 13:36 | 22 14, the DOE Energy Efficient Building Systems Regional 13:38 |
| 23 Standards Organization (ISO) standards." 13:39 | 23 Innovation Cluster Initiative is? 13:35 |
| 24 What is that referring to? 13:32 | 24 A I don't think that exists anymore, but 13:30 |
| 25 A That must have been that would have been a 13:35 | 25 there's been a collaborative where they've worked 13:32 |
| Page 110 | Page 112 |
| 1 new thing added. The Department of Energy hasn't done 13:37 | 1 together, and they just they talk about research and 13:34 |
| 2 anything that I'm aware of to promote the adoption of 13:30 | 2 things like that. 13:37 |
| 3 ASHRAE ANSI/ASHRAE standards in ISO. 13:32 | 3 Q Was the Memorandum of Understanding Between 13:31 |
| 4 Q And for section 8, where it refers to 13:38 | 4 the DOE and ASHRAE, Exhibit 1157, eventually signed by 13:34 |
| 5 "Cooperating and promotion of ANSI/ASHRAE standards 13:30 | 5 both ASHRAE and the Department of Energy? 13:34 |
| 6 adoption in building codes," what does that refer to? 13:36 | 6 A I need to go back and check to see if it was 13:37 |
| 7 A That could be supporting proposals that would 13:33 | 7 signed. 13:30 |
| 8 have been submitted to adopt 90.1 in in the 13:39 | 8 Q How would you characterize the relationship 13:32 |
| 9 international code, because that's the federal minimum, 13:33 | 9 between the Department of Energy and ASHRAE? 13:34 |
| 10 and they would have provided supporting testimony, 13:37 | 10 A I mean, they work we work together. 13:32 |
| 11 probably. 13:30 | 11 That's probably on not all not all of these 13:35 |
| 12 Q When you say "they would have provided 13:31 | 12 projects, but I mean some things. 13:30 |
| 13 supporting testimony, probably," is that the Department 13:33 | 13 Q You mentioned that someone from the 13:30 |
| 14 of Energy that would provide that? 13:36 | 14 Department of Energy would testify on behalf of ASHRAE 13:33 |
| 15 A A a staff member from the Department of 13:37 | 15 in terms of getting the Standard 90.1 adopted as a 13:38 |
| 16 Energy. 13:30 | 16 building code. How does ASHRAE benefit from having 13:38 |
| 10 DIGEY. 13.30 | 17 90.1 endorsed by the DOE? 13:32 |
| | |
| 17 Q Okay. Are there any other ways that ASHRAE, 13:31 | |
| Q Okay. Are there any other ways that ASHRAE, 13:31 18 ANSI and the Department of Energy have cooperated in 13:39 | 18 MR. CUNNINGHAM: Object to the 13:35 |
| 17QOkay. Are there any other ways that ASHRAE,13:3118ANSI and the Department of Energy have cooperated in13:3919promoting these standards adoption in building codes?13:33 | 18MR. CUNNINGHAM: Object to the13:3519characterization of prior testimony.13:36 |
| Q Okay. Are there any other ways that ASHRAE, 13:31 ANSI and the Department of Energy have cooperated in 13:39 promoting these standards adoption in building codes? 13:33 A I'm not aware of ANSI promoting standards 13:30 | 18MR. CUNNINGHAM: Object to the13:3519characterization of prior testimony.13:3620THE WITNESS: They don't testify on13:30 |
| Q Okay. Are there any other ways that ASHRAE, 13:31 ANSI and the Department of Energy have cooperated in 13:39 promoting these standards adoption in building codes? 13:33 A I'm not aware of ANSI promoting standards 13:30 adoption in building codes, other than it's an 13:34 | 18MR. CUNNINGHAM: Object to the13:3519characterization of prior testimony.13:3620THE WITNESS: They don't testify on13:3021behalf of ASHRAE. They testify on behalf of13:31 |
| Q Okay. Are there any other ways that ASHRAE, 13:31 ANSI and the Department of Energy have cooperated in 13:39 promoting these standards adoption in building codes? 13:33 A I'm not aware of ANSI promoting standards 13:30 adoption in building codes, other than it's an 13:34 ANSI/ASHRAE standard going through their process. They 13:39 | 18MR. CUNNINGHAM: Object to the13:3519characterization of prior testimony.13:3620THE WITNESS: They don't testify on13:30 |
| Q Okay. Are there any other ways that ASHRAE, 13:31 ANSI and the Department of Energy have cooperated in 13:39 promoting these standards adoption in building codes? 13:33 A I'm not aware of ANSI promoting standards 13:30 adoption in building codes, other than it's an 13:34 | 18MR. CUNNINGHAM: Object to the13:3519characterization of prior testimony.13:3620THE WITNESS: They don't testify on13:3021behalf of ASHRAE. They testify on behalf of13:31 |
| Q Okay. Are there any other ways that ASHRAE, 13:31 ANSI and the Department of Energy have cooperated in 13:39 promoting these standards adoption in building codes? 13:33 A I'm not aware of ANSI promoting standards 13:30 adoption in building codes, other than it's an 13:34 ANSI/ASHRAE standard going through their process. They 13:39 | 18MR. CUNNINGHAM: Object to the13:3519characterization of prior testimony.13:3620THE WITNESS: They don't testify on13:3021behalf of ASHRAE. They testify on behalf of13:3122the Department of Energy.13:34 |

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| 1 a one code.13:391 within ASHRAE?13:432 Q And are the IECC and Standard 90.1 the same?13:322 A Yes.13:433 A They are not exactly the same.13:363 Q And is that located in Washington, D.C.?134 Q And how do they differ?13:394 A Yes.13:435 A I would have to look at the versions and the 13:325 Q And what is why is it that ASHRAE has a Tagent and the same?13:43 | |
|--|------------------|
| 3AThey are not exactly the same.13:363QAnd is that located in Washington, D.C.?134QAnd how do they differ?13:394AYes.13:43 | 1 |
| 4 Q And how do they differ? 13:39 4 A Yes. 13:43 | 3:43 |
| | .43 |
| 5 A 1 would have to look at the versions and the 15.52 5 Q And what is why is it that ASHKAE has a | 12.42 |
| 6 comparisons. In some instances, 90.1 would be more 13:35 6 separate department for government affairs that's 1 | 3:44 |
| | 5.44 |
| 7 stringent; in other, IECC. 13:30 7 located in Washington, D.C.? 13:44 8 Q On balance, would you characterize the IECC 13:30 8 A So they can it's easier to talk to people 13:44 | 1 |
| 9 as being more stringent than ASHRAE 90.1 or vice versa? 13:34 9 on the hill. It's been there as long as I've been 13:44 | |
| 10 A They have a different process. The IECC, 13:41 10 there. 13:44 | * |
| 11 while it's a consensus process, is not an ANSI 13:45 11 MR. BECKER: All right. Let's take a 13:4 | 14 |
| 12 consensus process, so it's comparing apples to oranges. 13:49 12 break. 13:44 | |
| 13 Q What does ASHRAE do to educate governments 13:46 13 THE VIDEOGRAPHER: Going off the record | 13:44 |
| 14 and government officials about its work? 13:49 14 at 13:44. 13:44 | 13.44 |
| 15 A It has a staff person and/or leadership talk 13:42 15 (Recess taken.) 13:53 | |
| | 13:56 |
| 16to the staff on the hill about what our process is,13:4916THE VIDEOGRAPHER: Going on the record17what standards we have, certification programs, classes13:4417at 13:56.13:56 | 15.50 |
| 17at 15.5015.5018and things like that.13:4418Q(BY MR. BECKER) Ms. Reiniche, are you aw | vare 13.56 |
| 19 Q And are there particular staff people who 13:45 19 if DOE employees are on the 90.1 policy committee? | 13:56 |
| | 13:56 |
| 20AYes.13:4020A90:1 policy committee?10:1 mean on the21AYes.13:4021 project committee?13:56 | 5.50 |
| 21AFes.15.4021project committee.15.5022QAnd what individuals are these?13:4122QProject committee, excuse me.13:56 | |
| 22 Q Find what individuals are desc. 13:47 22 Q Find et committee, excuse inc. 15:50 23 A Mark Ames and Doug Read. And Jeff Littleton 13:45 23 A Yes. 13:56 | |
| 251113:4924QThey are?13:56 | |
| 25 Q And you say ASHRAE has leadership that talks 13:49 25 A There is a staff person on there, yes. 13:56 | |
| Page 114 | Page 116 |
| 1 to staff on the hill. Is that Jeff Littleton? 13:42 1 Q And have DOE employees been on the 90.1 | 13:53 |
| 2 A The it it could be Jeff, it could be 13:45 2 project committee committee in the past? 13 | 3:57 |
| 3 whoever is the president for that given given 13:40 3 A Yes. 13:59 | |
| 4 society year or vice president that society year. It 13:43 4 Q Okay. And so DOE employees provide they | 13:50 |
| 5 depends on the year, it depends on who they're talking 13:47 5 contribute to the development of 90.1; is that correct? | 13:50 |
| 6 to. 13:42 6 MR. FEE: Objection to form. 13:54 | |
| 7 Q And what are Mr. Ames' and Mr. Read's 13:42 7 THE WITNESS: They participate in the 13 | 3:55 |
| 8 positions at ASHRAE? 13:47 8 process. I'm not aware of any draft 13:57 | |
| 9 A Well, Mr Mark's title is senior manager 13:49 9 language. 13:50 | |
| 10 of government affairs. Doug's title was director. He13:4610 (Exhibit 1158 marked for identification.)13:5 | |
| 11 has retired.13:4311Q(BY MR. BECKER) Ms. Reiniche, I'm handing | g 13:52 |
| | 13:53 |
| 13 just director or director of government affairs? 13:49 13 document with Bates number ASHRAE0005856. It's 1 | |
| 14 A Director of government affairs. 13:42 14 "Marketing Task Force Report." 13:58 | |
| 15 Q Are there other employees of ASHRAE who work 13:48 15 A Okay. 13:50 | |
| 16 with or who did work with Mr. Ames and Mr. Read on 13:43 16 Q Are you familiar with this document, 13:3 | 53 |
| 17 government affairs?13:4817 Ms. Reiniche?13:55 | |
| 18AThey have a secretary or an administrative13:4118AYes.13:59 | |
| | 3:50 |
| | 3:53 |
| 21 Scarborough. He deals with local.13:4221 presented to the project committee on priorities on | |
| 22 Q Is that a local government that he works 13:40 22 trying to get things out in the marketplace. 13:5 | |
| | 13:53 |
| 24 A Yeah, the grassroots chapters within ASHRAE. 13:44 24 what Chris Mathis's position is at ASHRAE? | 13:56 |
| 25 Q So is government affairs its own department 13:49 25 A He is not a staff member at ASHRAE. 13 | 3:50 Page 117 |

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| 1 what portion of 90.1 it was commented on or, you know, 14:11 | 1 Q And is that are you one of the recipients 14:12 |
|---|---|
| 2 how it was developed, that type of thing. 14:16 | 2 of this email? 14:17 |
| 3 Q And then two pages later on ASHRAE0003506, it 14:14 | 3 A Yes. 14:19 |
| 4 then has "Recommendations," and then parentheses 14:10 | 4 Q And what is this email? 14:14 |
| 5 "repeated." And the first three recommendations are 14:14 | 5 A This is an email on having a discussion about 14:16 |
| 6 "Make it free, make it beautiful, and make it 14:17 | 6 DOE comparing the IECC and 90.1 as equivalent. 14:14 |
| 7 electronic." 14:10 | 7 Q At the bottom of near the bottom of the 14:18 |
| 8 Do you understand this as referring to ASHRAE 14:15 | 8 page, Ryan Colker writes, "Folks, we are seeing some 14:13 |
| 9 90.1? 14:17 | 9 indications from DOE that they are beginning to see the 14:18 |
| 0 A Yes. 14:17 | 10 IECC and 90.1 as equivalent (i.e., states can be in 14:11 |
| 1 Q Three pages later on ASHRAE0003509, it says, 14:17 | 11 compliance if they adopt the IECC without the reference 14:11 |
| 2 "Paradigm Shift Issues." And then it says, "Decide if 14:15 | |
| | 12 to 90.1.) As you can guess, this could have 14:14 |
| 3 we want to continue to live in this code minimum 14:19 | 13 significant impact on the future of 90.1." 14:10 |
| 4 world." And "code minimum" is underlined. 14:12 | 14 What did Mr. Colker mean by that? 14:17 |
| 5 Do you know what this is referring to with 14:16 | 15 MR. CUNNINGHAM: Object to form. 14:10 |
| 6 the term "code minimum world"? 14:18 | 16 THE WITNESS: That he's concerned that 14:13 |
| 7 A That means, you know, a minimum level for 14:15 | 17 if it's found to be equivalent, that it could 14:17 |
| 8 your the development of in 90.1, energy 14:17 | 18 mean that the IECC would be referenced in 14:19 |
| 9 efficiency, or do you want to go beyond the code. 14:12 | 19EPAct instead of 90.1.14:13 |
| 0 Q I'm sorry, what do you mean by "go beyond the 14:14 | 20 Q (BY MR. BECKER) And who is Ryan Colker? 14:17 |
| 1 code"? 14:17 | 21 A Well, at that time, he was the manager of 14:16 |
| A Maybe towards the towards the development 14:18 | 22 government affairs for ASHRAE. 14:18 |
| 3 of green standards or green codes. 14:10 | 23 Q Do you know if Mr. Colker is still at ASHRAE? 14:17 |
| 4 Q And how do green standards and green codes 14:14 | 24 A He is not. 14:20 |
| 5 differ from Standard 90.1? 14:16 Page 126 | 25 Q Do you know when he left ASHRAE? 14:20 Page 128 |
| A Green codes and green standards typically are 14:14 | 1 A I want to say sometime in 2010. 14:25 |
| 2 not cost cost cost justified, where you can 14:16 | 2 Q And Doug Read responded to Ryan Colker by 14:25 |
| 3 propose doing some technology technological thing 14:12 | 3 saying, "I echo Ryan's concern. I suggest we take a 14:21 |
| 4 that's expensive that, you know, a normal building 14:16 | 4 stance and clearly delineate the differences and 14:25 |
| 5 person wouldn't want to put you know, building owner 14:11 | 5 differentiate ourselves from the ICEC. Doug." 14:28 |
| 6 wouldn't want to put in their building versus a 14:14 | 6 Did do you think that Mr. Read meant the 14:25 |
| 7 minimum, which is not only is it energy efficient, but 14:18 | 7 IECC? 14:28 |
| 8 it's cost cost effective. 14:11 | 8 A Yes. 14:20 |
| 9 THE COURT REPORTER: A building owner 14:12 | 9 Q And has ASHRAE taken a stance and clearly 14:22 |
| 0 would want to put in their building? 14:13 | 10 delineated the differences between ASHRAE Standard 90.1 14:28 |
| 1 THE WITNESS: Would not want to put in 14:17 | 11 and the IECC? 14:24 |
| 2 their building. 14:17 | 12 A We have not done a comparison between the two 14:27 |
| 3 Q (BY MR. BECKER) At the bottom of that page, 14:17 | 13 line for line, no. 14:23 |
| 4 it says, "How long will we have our EPAct advantage?" 14:18 | 14 Q Was that what ASHRAE was considering doing, 14:26 |
| 5 What is ASHRAE's EPAct advantage? 14:12 | 15 was doing a line-for-line comparison between the IECC 14:29 |
| 6 A That were referenced in the EPAct over 14:17 | |
| | 16 and ASHRAE Standard 90.1? 14:25 |
| 7 another minimum energy efficient commercial building 14:12 | 16 and ASHRAE Standard 90.1? 14:25 17 A They discussed it. 14:27 |
| 7 another minimum energy efficient commercial building 14:12 8 code. 14:15 | |
| | 17 A They discussed it. 14:27 |
| 8 code. 14:15 | 17AThey discussed it.14:2718QHas ASHRAE done anything else to14:20 |
| 8 code. 14:15 9 (Exhibit 1160 marked for identification.) 14:13 | 17AThey discussed it.14:2718QHas ASHRAE done anything else to14:2019differentiate Standard 90.1 from the IECC in the minds14:25 |
| 8 code. 14:15 9 (Exhibit 1160 marked for identification.) 14:13 0 Q (BY MR. BECKER) I'm handing you what's been 14:13 | 17AThey discussed it.14:2718QHas ASHRAE done anything else to14:2019differentiate Standard 90.1 from the IECC in the minds14:2520of the public?14:22 |
| 8 code. 14:15 9 (Exhibit 1160 marked for identification.) 14:13 0 Q (BY MR. BECKER) I'm handing you what's been 14:13 1 marked as Exhibit 1160. This is Bates number 14:14 | 17AThey discussed it.14:2718QHas ASHRAE done anything else to14:2019differentiate Standard 90.1 from the IECC in the minds14:2520of the public?14:2221MR. CUNNINGHAM: Object to the form.14:24 |
| 8 code. 14:15 9 (Exhibit 1160 marked for identification.) 14:13 0 Q (BY MR. BECKER) I'm handing you what's been 14:13 1 marked as Exhibit 1160. This is Bates number 14:14 2 ASHRAE0025561. 14:10 | 17AThey discussed it.14:2718QHas ASHRAE done anything else to14:2019differentiate Standard 90.1 from the IECC in the minds14:2520of the public?14:2221MR. CUNNINGHAM: Object to the form.14:2422THE WITNESS: I am not aware we've done14:28 |
| 8 code. 14:15 9 (Exhibit 1160 marked for identification.) 14:13 0 Q (BY MR. BECKER) I'm handing you what's been 14:13 1 marked as Exhibit 1160. This is Bates number 14:14 2 ASHRAE0025561. 14:10 3 A Okay. 14:15 | 17AThey discussed it.14:2718QHas ASHRAE done anything else to14:2019differentiate Standard 90.1 from the IECC in the minds14:2520of the public?14:2221MR. CUNNINGHAM: Object to the form.14:2422THE WITNESS: I am not aware we've done14:2823anything in the eyes of the public. We've14:21 |

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| 1 used to develop the two documents, but it's 14:29 | 1 MR. BECKER: It has not been asked. 14:27 |
|---|--|
| 2 not been, like, you know, a press release or 14:21 | 2 MR. CUNNINGHAM: Okay. I are you 14:27 |
| 3 something like that. 14:25 | 3 is your position here that someone who, by 14:27 |
| 4 Q (BY MR. BECKER) Was ASHRAE concerned that if 14:23 | - |
| 5 the IECC and ASHRAE's Standard 90.1 were seen as 14:20 | 5 essentially speaks for ASHRAE, such that you 14:27 |
| 6 equivalent, it would mean that there would be less 14:25 | 6 can ask Ms. Reiniche to interpret their 14:27 |
| 7 incorporation of standard ASHRAE Standard 90.1 into 14:20 | 7 their documents? 14:27 |
| 8 laws and regulations throughout the United States? 14:26 | 8 MR. BECKER: Well, if Ms. Reiniche has 14:27 |
| 9 A It would depend on if the EPAct changed. 14:23 | 9 an understanding of what this might mean, 14:27 |
| 10 If if the reference changed. That's possible. 14:26 | 10 particularly because of her senior role with 14:27 |
| Q Would that mean that if if the EPAct 14:20 | 11 regards to the development of these standards 14:27 |
| 12 changed 14:23 | 12 and so forth, then I would hope that 14:28 |
| A If the reference in the EPAct was changed 14:23 | 13 Ms. Reiniche can provide that information. 14:28 |
| 14 from 90.1 to the IECC. 14:26 | 14 I think that a document such as this 14:28 |
| Q Then that would mean there would be less 14:22 | 15 discussing ASHRAE 90.1 2010 falls well within 14:28 |
| 16 adoption of Standard 90.1 into the laws and regulations 14:25 | 16 topic number 1 that she's been designated on. 14:28 |
| 7 of jurisdictions in the United States? 14:20 | 17 Q (BY MR. BECKER) I'm sorry, Ms. Reiniche. 14:28 |
| 8 A It's possible, yes. 14:24 | 18 Let's see. I asked why do you think there was a 14:28 |
| 9 Q And was ASHRAE concerned about that? 14:26 | 19 distinction between this growing period and mature 14:28 |
| A If if that changed, they were. They were 14:23 | 20 maturity period for Standard 90.1? 14:28 |
| 21 concerned if it changed, yes. 14:29 | 21 MR. CUNNINGHAM: Same objection. 14:28 |
| Q Did it change? 14:21 | 22 THE WITNESS: I think because the 14:29 |
| 23 A No. 14:23 | 23 growing period, there's one time frame where 14:29 |
| Q Did the DOE ever publicly weigh the option of 14:22 | 24 I think they pulled residential out. I think 14:29 |
| 25 changing the EPAct to IECC instead of ASHRAE 90.1? 14:22 Page 130 | 25 at one time it included residential. It does 14:29 Page 132 |
| 1 age 150 | |
| 1 A Not that I'm aware of, there hasn't been 14:22 | 1 not include low-rise residential. 1999 would 14:23 |
| 2 anything published where they were going to do that. 14:25 | 2 have been when we started continuous 14:28 |
| 3 (Exhibit 1161 marked for identification.) 14:21 | 3 maintenance. 14:21 |
| 4 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 14:29 | 4 Without seeing Mr. Skalko's notes on 14:23 |
| 5 you what's been marked as Exhibit 1161. This is Bates 14:20 | 5 this, but based on my knowledge, I think that 14:26 |
| 6 number ASHRAE0005677. Do you recognize this document? 14:25 | 6 these periods are times that in the 14:29 |
| 7 A Yes. 14:29 | 7 maturity period shows greater energy savings, 14:23 |
| 8 Q Could you tell me what this document is? 14:24 | 8 and that's what he's trying to demonstrate in 14:27 |
| 9 A This is a presentation given by Stephen 14:27 | 9 that timeline. 14:20 |
| 10 Skalko, who is the chair of 90.1, at a conference on 14:21 | 10 Q (BY MR. BECKER) Do you know who Mr. Steven 14:2 |
| 1 energy codes 2010. 14:27 | 11 V. Skalko is? 14:23 |
| 2 THE COURT REPORTER: Say that again. 14:27 | 12 A Yes. 14:25 |
| 3 "Who is the chair of 90.1," and 14:27 | 13 Q And who is he? 14:25 |
| 4 THE WITNESS: It's at given at an 14:27 | 14 A He is the past chair of 90.1. I think he 14:26 |
| energy codes conference in 2010 at in 14:24 | 15 started after the 2010 version published. 14:23 |
| 16 Charlotte, North Carolina. 14:28 | 16 Q And do you have any idea how long Mr. Skalko 14:32 |
| Q (BY MR. BECKER) On page 3 of this document, 14:23 | 17 has been a member of ASHRAE? 14:30 |
| 18 Bates number ASHRAE0005679, it says at the top, 14:29 | 18 A I would have to look in the ASHRAE records, 14:32 |
| 19 "Standard 90.1 Timeline," and it delineates between the 14:25 | 19 but he's been a member longer than I've been there, so 14:35 |
| 20 growing period from 1970 to 1999, and then the maturity 14:22 | 20 over 11 years. 14:38 |
| 21 period from 1999 to 2010. What does that mean? 14:20 | 21 Q And for as long as you know, has Mr. Skalko 14:32 |
| 22 MR. CUNNINGHAM: Object to the form. 14:22 | 22 worked on ASHRAE 90.1? 14:36 |
| 23 Matt, do we know if the Steven person, do we 14:23 | 23 A Yes. 14:32 |
| 24 know if he's an ASHRAE staff member? Do 14:28 | 24 Q And would you say that Mr. Skalko is is 14:32 |
| 25 we was that asked at any point? 14:21 Page 131 | 25 would you say that Mr. Skalko knows a good deal about 14:39 Page 133 |

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| 1 ASHRAE Standard 90.1? 14:36 | 1 I don't know why they would choose to do that. I mean, 14:38 |
|--|---|
| 2 A Yes. 14:38 | 2 my my guess is their goals are the same as ours, 14:31 |
| 3 MR. FEE: Objection to form. 14:38 | 3 energy efficient buildings in the United States. So I 14:36 |
| 4 (Exhibit 1162 marked for identification.) 14:34 | 4 would assume they would enter MOUs with whatever 14:38 |
| 5 Q (BY MR. BECKER) I'm handing you what's been 14:34 | 5 organizations would help them reach that goal. 14:32 |
| 6 marked as Exhibit 1162. This is Bates number 14:35 | 6 Q How is it that ASHRAE 90.1 came to be 14:35 |
| 7 ASHRAE0026233. Do you recognize this document? 14:34 | 7 incorporated into EPAct? 14:30 |
| 8 A Yes. 14:38 | 8 MR. CUNNINGHAM: Object to form. 14:36 |
| 9 Q And could you tell me what this document is? 14:39 | 9 THE WITNESS: I am not positive on how 14:37 |
| 10 A This is a Memorandum of Understanding between 14:31 | 10 that came about. I would have to check. 14:39 |
| 11 the Department of Energy and ASHRAE. It's not dated, 14:34 | 11 Q (BY MR. BECKER) Did ASHRAE staff meet with 14:39 |
| 12 but I would guess it's sometime in 2007 time frame, 14:35 | 12 the Department of Energy to help facilitate the 14:36 |
| 13 because that's when Terry Townsend was president of 14:39 | 13 incorporation of ASHRAE Standard 90.1 into EPAct? 14:31 |
| 14 ASHRAE. 14:34 | * |
| | 14 A I have I'll have to go back and double 14:36 |
| 15 Q And is this a signed copy of the Memorandum 14:35 | 15 check in my records to see. 14:39 |
| 16 of Understanding between the DOE and ASHRAE? 14:39 | 16 Q Would it be customary for ASHRAE staff to 14:30 |
| 17 A Yes. 14:34 | 17 meet with members of the Department of Energy prior to 14:37 |
| 18 Q Has ASHRAE had multiple Memorandums of 14:35 | 18 the incorporation of ASHRAE Standard 90.1 into EPAct? 14:32 |
| 19 Understanding with the Department of Energy?14:30 | 19 A It would be customary for ASHRAE staff with 14:38 |
| 20 A Yes. 14:32 | 20 ASHRAE volunteer leadership to go to when they were 14:32 |
| 21 Q When did ASHRAE first start having 14:34 | 21 requesting that type of thing.14:36 |
| 22 Memorandums of Understanding with the Department of 14:39 | 22 (Exhibit 1163 marked for identification.) 14:39 |
| 23 Energy? 14:32 | 23 Q (BY MR. BECKER) I'm handing you what's been 14:32 |
| A After EPAct was when 90.1 was made a 14:34 | 24 marked as Exhibit 1163. This is Bates number 14:33 |
| 25 reference in EPAct. 14:38 | 25 ASHRAE0024558. Do you recognize this document? 14:38 |
| Page 134 | Page 136 |
| 1 Q Could you remind me of when that was? 14:30 | 1 A Yes. 14:36 |
| 2 A I think it was '99. 14:32 | 2 Q And what is this document? 14:39 |
| 3 Q Okay. 14:34 | 3 A This is a presentation that would have been 14:30 |
| 4 A Around that time frame. 14:34 | 4 made by the D.C. office to tech council and the chapter 14:32 |
| 5 Q Was that soon after EPAct? 14:35 | 5 technology and transfer committee. I think that's what 14:33 |
| 6 A I would have to look. 14:31 | 6 CTTC stands for. And it would have been made in at 14:36 |
| 7 Q Has ASHRAE ASHRAE and the DOE continued to 14:36 | 7 the ASHRAE meeting in Albuquerque, New Mexico, on 14:41 |
| 8 enter into memorandums of understanding to the present 14:33 | 8 June 26, 2010. 14:47 |
| 9 day? 14:36 | 9 Q And what is the purpose of this document, to 14:42 |
| 10 A Yes. 14:37 | 10 your understanding? 14:44 |
| | 11 A The purpose of this document is for the D.C. 14:45 |
| | |
| 12 A It it varies. It depended it depends 14:32 | |
| 12 | 12 office just to let the CTCC [sic] and tech council know 14:49 |
| 13 on who's at who's in charge at the Department of 14:35 | 13 what they've been doing in D.C. 14:44 |
| 14 Energy. We were just working on a new one. I'm not 14:38 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:45 |
| 14 Energy. We were just working on a new one. I'm not14:3815 positive if it's signed yet.14:33 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:48 |
| 14 Energy. We were just working on a new one. I'm not 14:38 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:45 |
| 14 Energy. We were just working on a new one. I'm not14:3815 positive if it's signed yet.14:33 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:48 |
| 14 Energy. We were just working on a new one. I'm not 14:38 15 positive if it's signed yet. 14:33 16 Q Is this typically an annual event? 14:37 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:4816says, "High-Performance Building Congressional Caucus14:45 |
| 14 Energy. We were just working on a new one. I'm not 14:38 15 positive if it's signed yet. 14:33 16 Q Is this typically an annual event? 14:37 17 A Not always annual. Sometimes it's every 14:34 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:4816says, "High-Performance Building Congressional Caucus14:4517Coalition," in parentheses, "ask your representative to14:49 |
| 14 Energy. We were just working on a new one. I'm not14:3815 positive if it's signed yet.14:3316 Q Is this typically an annual event?14:3717 A Not always annual. Sometimes it's every14:3418 couple of years.14:36 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:4816says, "High-Performance Building Congressional Caucus14:4517Coalition," in parentheses, "ask your representative to14:4918join."14:43 |
| 14 Energy. We were just working on a new one. I'm not 14:38 15 positive if it's signed yet. 14:33 16 Q Is this typically an annual event? 14:37 17 A Not always annual. Sometimes it's every 14:34 18 couple of years. 14:36 19 Q And is it sometimes an annual event, though? 14:37 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:4816says, "High-Performance Building Congressional Caucus14:4517Coalition," in parentheses, "ask your representative to14:4918join."14:4319What is that referring to?14:44 |
| 14 Energy. We were just working on a new one. I'm not 14:38 15 positive if it's signed yet. 14:33 16 Q Is this typically an annual event? 14:37 17 A Not always annual. Sometimes it's every 14:34 18 couple of years. 14:36 19 Q And is it sometimes an annual event, though? 14:37 20 A Sometimes. 14:39 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:4816says, "High-Performance Building Congressional Caucus14:4517Coalition," in parentheses, "ask your representative to14:4918join."14:4319What is that referring to?14:4420AThere is a high-performance building caucus14:45 |
| 14 Energy. We were just working on a new one. I'm not 14:38 15 positive if it's signed yet. 14:33 16 Q Is this typically an annual event? 14:37 17 A Not always annual. Sometimes it's every 14:34 18 couple of years. 14:36 19 Q And is it sometimes an annual event, though? 14:37 20 A Sometimes. 14:39 21 Q And why would the why would the leadership 14:32 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:4816says, "High-Performance Building Congressional Caucus14:4517Coalition," in parentheses, "ask your representative to14:4918join."14:4319What is that referring to?14:4420AThere is a high-performance building caucus14:4521coalition that meets in D.C. It deals with high14:40 |
| 14 Energy. We were just working on a new one. I'm not 14:38 15 positive if it's signed yet. 14:33 16 Q Is this typically an annual event? 14:37 17 A Not always annual. Sometimes it's every 14:34 18 couple of years. 14:36 19 Q And is it sometimes an annual event, though? 14:37 20 A Sometimes. 14:39 21 Q And why would the why would the leadership 14:32 22 of the Department of Energy reflect or change whether 14:33 | 13 what they've been doing in D.C. 14:44 14 Q On the third page of Bates number 14:45 15 ASHRAE0024560 titled "Participation Coalitions," it 14:48 16 says, "High-Performance Building Congressional Caucus 14:45 17 Coalition," in parentheses, "ask your representative to 14:49 18 join." 14:43 19 What is that referring to? 14:44 20 A There is a high-performance building caucus 14:45 21 coalition that meets in D.C. It deals with high 14:40 22 performance buildings. Beyond that would be beyond 14:44 |
| 14 Energy. We were just working on a new one. I'm not 14:38 15 positive if it's signed yet. 14:33 16 Q Is this typically an annual event? 14:37 17 A Not always annual. Sometimes it's every 14:34 18 couple of years. 14:36 19 Q And is it sometimes an annual event, though? 14:37 20 A Sometimes. 14:39 21 Q And why would the why would the leadership 14:32 22 of the Department of Energy reflect or change whether 14:33 23 ASHRAE would enter into a memorandum memorandum of 14:38 | 13 what they've been doing in D.C.14:4414QOn the third page of Bates number14:4515ASHRAE0024560 titled "Participation Coalitions," it14:4816says, "High-Performance Building Congressional Caucus14:4517Coalition," in parentheses, "ask your representative to14:4918join."14:4319What is that referring to?14:4420AThere is a high-performance building caucus14:4521coalition that meets in D.C. It deals with high14:4022performance buildings. Beyond that would be beyond14:4423the minimum code.14:47 |

35 (Pages 134 - 137)

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| developers that are in part of it. It might even be in 14:41 here, it tells you. There's a there's a long list. 14:46 | |
|--|--|
| 2 here, it tells you. There's a there's a long list. 14:46 | 1 A Yeah, about I'm not sure they still meet 14:47 |
| | 2 or how often they still meet. I think it was about 14:40 |
| 3 I don't have that memorized. I don't know if it oh, 14:41 | 3 once a month. 14:42 |
| 4 if you turn to page that says ASHRAE0024575, that 14:47 | 4 Q Do they meet individually with the members of 14:49 |
| 5 shows you who's on the high what groups are involved 14:45 | 5 Congress or as a larger group? 14:41 |
| 6 in the high-performance building congressional caucus 14:40 | 6 A If they're doing it as the high-performance 14:45 |
| 7 at that time. It includes the representatives and then 14:45 | 7 building congressional caucus, they're meeting as a 14:48 |
| 8 the different standards developers that are involved. 14:47 | 8 group. If they're advancing something within their 14:41 |
| 9 Q The code chairs and members that are listed 14:44 | 9 organization, then the supporting coalition would 14:44 |
| 10 on that page you just referenced, are these all members 14:46 | 10 probably be meeting individual with representatives. 14:47 |
| 11 of Congress? 14:49 | 11 Q On page ASHRAE0024568, it says, 14:45 |
| 12 A Yes. 14:40 | 12 "Legislation," with an image of the capitol building, 14:43 |
| 13 Q What's the purpose of participation in the 14:47 | 13 and then it says, "ASHRAE Washington, D.C." 14:48 |
| 14 high-performance building congressional caucus? 14:40 | 14 A Um-hmm. 14:43 |
| 15 A It's really pro promoting doing things for 14:43 | 15 Q Then on the following page it says, "American 14:43 |
| 16 high-performance buildings, so stretch codes, green 14:47 | 16 Clean Energy and Security Act, HR 2454 a/k/a 14:46 |
| 17 standards, pushing the envelope to make things even 14:41 | 17 Waxman-Markey, sets national building code energy 14:42 |
| 18 more energy efficient than the minimum code.14:49 | 18 efficiency targets." 14:49 |
| 19 Q And is this for the purpose of influencing 14:42 | 19Then two bullet points down it says, "Uses14:42 |
| 20 these members of Congress so as to have them 14:46 | 20 ASHRAE 90.1-2004 and" E "IECC 2006 as baselines." 14:45 |
| 21 incorporate these standards into the law? 14:41 | 21 Does ASHRAE advocate for the use of earlier 14:48 |
| 22 MR. CUNNINGHAM: Object to the form. 14:47 | 22 versions of 90.1 in Standard excuse me, in in 14:45 |
| THE WITNESS: Not that I'm aware of. 14:48 | 23 laws or regulations? 14:44 |
| 24 Q (BY MR. BECKER) What's the purpose of having 14:40 | 24AThat's not what this refers to.14:44 |
| 25 the members of Congress involved? 14:41 | 25 Q What does that refer to? 14:46 |
| Page 13 | 8 Page 140 |
| 1 A Education. 14:44 | 1 A This refers to as part of EPAct the 14:48 |
| 2 Q And what is the benefit of educating the 14:45 | 2 Department of Energy is required to determine how much 14:41 |
| 3 members of Congress? 14:48 | 3 more energy efficient 90.1 and when they're talking 14:45 |
| 4 A So they understand things when things do come 14:49 | 4 about the IECC 2006, they're talking about the 14:49 |
| 5 before them when they're making a decision of what to 14:42 | 5 residential code. That's where that falls in there. 14:44 |
| 6 incorporate into law. 14:44 | 6 And they want to do it set it at a 14:48 |
| 7 Q So it's to help them with their decisions 14:46 | 7 baseline, so each consecutive every three years. So 14:41 |
| 8 to as to what to incorporate into reference into the 14:49 | 8 for example, 90.1-2007 has to be more energy efficient 14:44 |
| 9 law? 14:42 | 9 than so much more energy efficient than 90.1-2004 14:49 |
| 10 A Correct. 14:43 | 10 They measure that. If it's not more energy efficient, 14:44 |
| 11 Q And how does the high-performance building 14:49 | 11 then they wouldn't adopt that. And then for 90.1-2010. 14:49 |
| 12 congressional caucus and the supporting coalition 14:44 | 12 They are just taking a baseline target to measure the 14:40 |
| 13 educate these members of Congress on issues related to 14:40 | 13 amount of energy efficiency so that it's not in flux 14:43 |
| 14 incorporating these excuse me, incorporating 14:46 | 14 and cause market confusion.14:48 |
| 15 standards into the law? 14:40 | 15 And the same with the IECC. That's but 14:40 |
| 16MR. CUNNINGHAM: Object to the14:43 | 16 the IECC refers only to the residential, not to 14:42 |
| 17 characterization of the prior testimony. 14:45 | 17 commercial in this instance. 14:46 |
| 18 THE WITNESS: They my recollection 14:47 | 18 Q Does ASHRAE 90.1-2004 refer only to 14:44 |
| | 19 residential and not commercial in this instance? 14:49 |
| 19 from the presentations made by the D.C. 14:49 | 20 A No, 90.1-2004 is commercial. There's two 14:41 |
| | |
| 19from the presentations made by the D.C.14:49 | 21 codes in that reference, two different codes. 14:44 |
| 19from the presentations made by the D.C.14:4920office was that they they have a lunch,14:42 | 21 codes in that reference, two different codes.14:4422QSo in this instance, if you had a a14:47 |
| 19from the presentations made by the D.C.14:4920office was that they they have a lunch,14:4221they sit there and they talk, sometimes they14:45 | |
| 19from the presentations made by the D.C.14:4920office was that they they have a lunch,14:4221they sit there and they talk, sometimes they14:4522have an educational session; things like14:47 | 22 Q So in this instance, if you had a a 14:47 |
| 19from the presentations made by the D.C.14:4920office was that they they have a lunch,14:4221they sit there and they talk, sometimes they14:4522have an educational session; things like14:4723that.14:40 | 22QSo in this instance, if you had a a14:4723commercial building, then ASHRAE 90.1-2004 would be the14:4124baseline standard and not be IECC 2006?14:4825ANo.14:43 |

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| 1 Q How am I mistaken? 14:45 | 1 the but we explained that once you as you get 14:50 |
|--|--|
| 2 A What this proposed legislation was, was to 14:48 | 2 above when you're going between the 30 and the 50 14:53 |
| 3 set the baseline for which the DOE uses to make the 14:43 | 3 percent, it gets more and more difficult to have 14:55 |
| 4 determination on whether or not the next version of 14:47 | 4 cost-effective equipment and things like that and in 14:58 |
| 5 90.1 is more energy efficient. So this was proposing 14:40 | 5 there. So it it wasn't put in the law. 14:52 |
| 6 to use 90.1-2004 as the benchmark for each subsequent 14:44 | 6 Q On page ASHRAE0024581, it says, "Additional 14:58 |
| 7 version of 90.1. 14:48 | 7 Washington office activities." And it says for the 14:56 |
| 8 And then and that's only commercial. And 14:40 | 8 third major bullet point, "Building code adoptions," 14:56 |
| 9 then the IECC is for residential. They're referenced 14:43 | 9 and then under that, "Standard 90.1 and Standard 14:50 |
| 10 as the residential. What's being advocated here is 14:48 | 10 189.1/IGCC promotion." 14:54 |
| 11 that you use the IECC 2006 as the baseline for each 14:41 | 11 Does this mean that the Washington office was 14:50 |
| 12 subsequent version of the IECC for residential moving 14:46 | 12 engaged in promoting the adoption of Standard 90.1 into 14:54 |
| 13 forward as for energy efficiency. 14:49 | 13 building codes? 14:50 |
| 14 Q Okay. Does the IECC itself refer to 14:42 | 14 A I don't remember. And without seeing it, if 14:55 |
| 15 commercial buildings or is it only for residential 14:49 | 15 he he didn't have notes with it, so I don't think it 14:59 |
| 16 buildings? 14:42 | 16 was at a building code level. I think that's something 14:52 |
| A There there's different I-codes within the 14:46 | 17 they were talking about expanding in the grassroots. 14:57 |
| 18 IECC. So there's the IRC, which is residential, but 14:40 | 18 That was not done at that time.14:52 |
| 9 it's part of the whole body of codes. So the IECC for 14:43 | 19 Q So that's something is that something 14:53 |
| 20 residential is just the energy efficiency stuff for 14:40 | 20 that's done in at this time? 14:55 |
| 21 residential home residential stuff. 14:44 | A We have started a grassroots program to reach 14:51 |
| Q On the following page, it says, "American 14:55 | 22 out when we are made aware of references to to 14:53 |
| 23 Clean Energy Leadership Act, S.1462." It says, 14:58 | 23 different standards. And we could ask volunteers in 14:58 |
| 24 "Introduced by Senator Jeff Bingaman, D-NM. Updates 14:51 | 24 those jurisdictions to go. 14:52 |
| 25 national building energy codes and standards at least 14:58 Page 142 | 25 Q And when you say "a grassroots program," who 14:53 Page 14 |
| 1 every three years to achieve target energy savings of," 14:51 | 1 is involved in the grassroots program? 14:57 |
| 2 and then it four bullet points down from that, it 14:55 | 2 A It's it's the individual ASHRAE chapters 14:50 |
| 3 says, "If DOE determines ASHRAE's future revised model 14:50 | 3 within each state, and then each you know, there's 14:52 |
| 4 codes will not meet targets, DOE will propose or 14:55 | 4 multiple chapters within a state. So whoever is 14:55 |
| 5 establish a modified code or standard that meets the 14:58 | 5 closest to wherever the decision is being made. 14:58 |
| 6 above targets. Uses 90.1-2004 as baseline for 14:50 | 6 Q And so this is the grassroots program 14:52 |
| 7 commercial buildings IECC 2006 for residential." 14:56 | 7 works to advocate for building code adoptions 14:59 |
| 8 When it references "Uses 90.1-2004 as 14:59 | 8 adoptions of Standard 90.1 into building codes 14:54 |
| 9 baseline for commercial buildings," is that in the same 14:53 | 9 MR. CUNNINGHAM: Objection. 14:58 |
| 0 capacity as the reference on the prior page that you 14:56 | 10 Q (BY MR. BECKER) in states and local 14:59 |
| 11 were just referring to? 14:59 | 11 governments? 14:51 |
| 2 A Yes. One is a bill proposed in the House; 14:51 | 12 MR. CUNNINGHAM: Objection, 14:52 |
| 3 one is a bill proposed in the Senate. 14:54 | 13 mischaracterization of prior testimony. 14:53 |
| 4 Q Did the Department of Energy propose or 14:53 | 14 THE WITNESS: It could include Standard 14:54 |
| 5 establish a modified code or a standard that met the 14:56 | 15 90.1. It could include any other our 14:56 |
| 6 above targets on page ASHRAE0024570? 14:50 | 16other standards as well.14:59 |
| A This is this proposed language is not 14:58 | 17 Q (BY MR. BECKER) And at the bottom of this 14:54 |
| 8 in in law at this particular time. This was this 14:51 | 18 page, it says, "Empowering chapters to engage state and 14:56 |
| 19 was talking about what was being proposed at this point 14:55 | 19 local policy-makers." Do you know what that 14:59 |
| 20 in time in 2010. 14:50 | 20 references? 14:52 |
| 21 Q What was the outcome? 14:53 | 21 A That's referencing what I was talking about, 14:53 |
| A I don't I don't think they set I don't 14:56 | 22 the grassroots, and encouraging local chapters to talk 14:55 |
| 23 believe that they set targets, because it's as part 14:59 | 23 to their state and local policy makers. 14:51 |
| 24 of the these codes, it has to be cost effective. 14:56 | 24 Q And on the next page, it says, "Opportunities 14:55 |
| 25 And as ASHRAE explained and I'm not sure if it's 14:51 Page 143 | 25 for individual member participation. Contact state and 14:59 Page 14 |

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| 1 marked as Exhibit 1174. Could you places tall ma what 15:42 | |
|---|--|
| 1 marked as Exhibit 1174. Could you please tell me what 15:42 | 1 A Yes. 15:44 |
| 2 this document is? 15:42 | 2 Q Can you tell me what this document is? 15:44 |
| 3 A This is a subset, I think, of another email 15:42 | 3 A This document is the letter that gets sent to 15:46 |
| 4 exchange related to Exhibit 1170 where Mark indicates 15:43 | 4 the project committee that shows the public review 15:49 |
| 5 that this correction was made by Jim Calm. 15:43 | 5 comments for BSR/ASHRAE/IESNA Addenda S, T, and X to 15:43 |
| 6 (Exhibit 1175 marked for identification.) 15:44 | 6 ANSI/ASHRAE/IESNA Standard 90.1-2007. 15:45 |
| 7 Q (BY MR. BECKER) I'm handing you what's been 15:44 | 7 Q And if you look at the sixth, seventh, 15:40 |
| 8 marked as Exhibit 1175. Do you recognize this 15:44 | 8 eighth, ninth, and I believe tenth page of this 15:47 |
| 9 document? 15:45 | 9 document, are those copyright releases on all of those 15:51 |
| 10 A Yes. 15:45 | 10 pages I mentioned? 15:59 |
| 11 Q And could you tell me what this document is? 15:45 | 11 A Yes. 15:57 |
| 12 A This is a Certificate of Registration with 15:45 | 12 Q And who are those copyright releases from? 15:57 |
| 13 the United States Copyright Office for the 1993 ASHRAE 15:45 | 13 A Larry Spielvogel. 15:50 |
| 14 Handbook: Fundamentals Inch-Pound Edition. 15:45 | 14 Q Do you know who Larry Spielvogel is? 15:54 |
| 15 Q What is the 1999 ASHRAE Handbook: 15:45 | 15 A Yes. 15:58 |
| 16 Fundamentals? 15:45 | 16 Q Who is Mr. Spielvogel? 15:58 |
| 17 A It covers a variety of topics. I would have 15:45 | 17 A He is an ASHRAE member. 15:50 |
| 18 to look at the inside cover to tell you every topic 15:45 | 18 Q Has Mr. Spielvogel ever been an employee of 15:52 |
| 19 that it covers. 15:45 | 19 ASHRAE? 15:57 |
| 20 Q What's the purpose of the 1993 ASHRAE 15:45 | 20 A No. 15:57 |
| 21 Handbook: Fundamentals? 15:45 | 21 Q Do Mr. Spielvogel's proposed contributions 15:50 |
| 22 A It's a it's a tool for engineers to use 15:45 | 22 appear in this document? 15:54 |
| 23 when they're working with the topics covered in that 15:45 | 23 A Actually, yes. 15:56 |
| 24 book. 15:45 | 24 O And where is that? 15:59 |
| 25 Q Is the 1993 ASHRAE Handbook: Fundamentals 15:45 | 25 A Under on the page labeled ASHRAE0013966, 15:51 |
| Page 158 | Page 160 |
| 1 referenced in ASHRAE Standard 90.1? 15:46 | 1 under 4 "Comment (Proposed Text)," it says, "Do not 15:52 |
| 2 A I would have to look. 15:46 | 2 approve and do not publish this addendum." 15:52 |
| 3 (Exhibit 1176 marked for identification.) 15:46 | 3 Q So these are his contributions, then, as to $15:52$ |
| 4 Q (BY MR. BECKER) I'm handing you what's been 15:46 | 4 say "Do not approve and do not publish this addendum" 15:52 |
| 5 marked as Exhibit 1176. This is Bates number 15:46 | |
| J marked as EAHOR 1170. THIS IS DATES HUIHDEL 13.40 | 5 that he's referring to? 15:52 |
| 6 ASHRAE0001592. Could you do you recognize this 15:46 | 5 that he's referring to?15:526AThat is correct.15:52 |
| | 6 A That is correct. 15:52 |
| 6 ASHRAE0001592. Could you do you recognize this 15:467 document? 15:46 | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:52 |
| 6 ASHRAE0001592. Could you do you recognize this15:467 document?15:468 A Yes.15:46 | 6 A That is correct. 15:52 |
| 6 ASHRAE0001592. Could you do you recognize this15:467 document?15:468 A Yes.15:469 Q And could you please tell me what it is?15:46 | A That is correct. 15:52 Q If you turn to the page ASHRAE0013973, is 15:52 8 that another signed copyright release on that page? 15:53 |
| 6 ASHRAE0001592. Could you do you recognize this 15:46 7 document? 15:46 8 A Yes. 15:46 9 Q And could you please tell me what it is? 15:46 10 A Well, the first page labeled ASHRAE001592 is 15:47 | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and 15:53 |
| 6 ASHRAE0001592. Could you do you recognize this15:467 document?15:468 A Yes.15:469 Q And could you please tell me what it is?15:46 | A That is correct. 15:52 Q If you turn to the page ASHRAE0013973, is 15:52 8 that another signed copyright release on that page? 15:53 9 A Yes. 15:53 |
| ASHRAE0001592. Could you do you recognize this 15:46 document? 15:46 A Yes. 15:46 Q And could you please tell me what it is? 15:46 A Well, the first page labeled ASHRAE001592 is 15:47 the certification Certificate of Registration with 15:47 the United States Copyright Office for ANSI/ASHRAE/IES 15:47 | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and 15:5311also had the the name of the individual inserted?15:5312AYes.15:53 |
| 6ASHRAE0001592. Could you do you recognize this15:467document?15:468AYes.15:469QAnd could you please tell me what it is?15:4610AWell, the first page labeled ASHRAE001592 is15:4711the certification Certificate of Registration with15:4712the United States Copyright Office for ANSI/ASHRAE/IES15:4713Standard 90.1-2010 IP Edition.15:47 | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and 15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:53 |
| 6ASHRAE0001592. Could you do you recognize this15:467document?15:468AYes.15:469QAnd could you please tell me what it is?15:4610AWell, the first page labeled ASHRAE001592 is15:4711the certification Certificate of Registration with15:4712the United States Copyright Office for ANSI/ASHRAE/IES15:4713Standard 90.1-2010 IP Edition.15:4714For the page labeled ASHRAE0001594, that is15:47 | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and 15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:5314AJames Calm.15:53 |
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| 6 ASHRAE0001592. Could you do you recognize this 15:46 7 document? 15:46 8 A Yes. 15:46 9 Q And could you please tell me what it is? 15:46 10 A Well, the first page labeled ASHRAE001592 is 15:47 11 the certification Certificate of Registration with 15:47 12 the United States Copyright Office for ANSI/ASHRAE/IES 15:47 13 Standard 90.1-2010 IP Edition. 15:47 15 the Certificate of Registration with the United States 15:47 15 the Certificate of Registration with the United States 15:47 16 Copyright Office for ANSI/ASHRAE/IESNA 15:47 17 Standard 90.1-2007 IP Edition. 15:47 18 For the page labeled ASHRAE001596, this is 15:47 18 For the page labeled ASHRAE001596, this is 15:47 19 the Certificate of Registration with the United States 15:47 19 the Certificate of Registration with the United States 15:47 | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and 15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:5314AJames Calm.15:5315QAnd what is Mr. Calm's relationship to15:5316ASHRAE, if any?15:5317AHe's a member of ASHRAE.15:5318QAnd has Mr. Calm ever been an employee of15:5319ASHRAE?15:53 |
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| 6 ASHRAE0001592. Could you do you recognize this 15:46 7 document? 15:46 8 A Yes. 15:46 9 Q And could you please tell me what it is? 15:46 10 A Well, the first page labeled ASHRAE001592 is 15:47 11 the certification Certificate of Registration with 15:47 12 the United States Copyright Office for ANSI/ASHRAE/IES 15:47 13 Standard 90.1-2010 IP Edition. 15:47 14 For the page labeled ASHRAE0001594, that is 15:47 15 the Certificate of Registration with the United States 15:47 16 Copyright Office for ANSI/ASHRAE/IESNA 15:47 17 Standard 90.1-2007 IP Edition. 15:47 18 For the page labeled ASHRAE001596, this is 15:47 19 the Certificate of Registration with the United States 15:47 19 the Certificate of Registration with the United States 15:47 19 the Certificate of Registration with the United States 15:47 20 Copyright Office for ANSI/ASHRAE/IESNA 15:48 21 St | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:5314AJames Calm.15:5315QAnd what is Mr. Calm's relationship to15:5316ASHRAE, if any?15:5317AHe's a member of ASHRAE.15:5318QAnd has Mr. Calm ever been an employee of15:5320ANo.15:5321QAnd Mr. Calm's contribution on the following15:53 |
| 6 ASHRAE0001592. Could you do you recognize this 15:46 7 document? 15:46 8 A Yes. 15:46 9 Q And could you please tell me what it is? 15:46 10 A Well, the first page labeled ASHRAE001592 is 15:47 11 the certification Certificate of Registration with 15:47 12 the United States Copyright Office for ANSI/ASHRAE/IES 15:47 13 Standard 90.1-2010 IP Edition. 15:47 14 For the page labeled ASHRAE0001594, that is 15:47 15 the Certificate of Registration with the United States 15:47 16 Copyright Office for ANSI/ASHRAE/IESNA 15:47 17 Standard 90.1-2007 IP Edition. 15:47 18 For the page labeled ASHRAE001596, this is 15:47 19 the Certificate of Registration with the United States 15:47 19 the Certificate of Registration with the United States 15:47 20 Copyright Office for ANSI/ASHRAE/IESNA 15:48 21 Standard 90.1-2004 IP IP Edition. 15:48 22 (Exhibit 1177 marked | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:5314AJames Calm.15:5315QAnd what is Mr. Calm's relationship to15:5316ASHRAE, if any?15:5317AHe's a member of ASHRAE.15:5318QAnd has Mr. Calm ever been an employee of15:5320ANo.15:5321QAnd Mr. Calm's contribution on the following15:5322page, is that "Disapprove proposed revisions in15:53 |
| 6 ASHRAE0001592. Could you do you recognize this 15:46 7 document? 15:46 8 A Yes. 15:46 9 Q And could you please tell me what it is? 15:46 10 A Well, the first page labeled ASHRAE001592 is 15:47 11 the certification Certificate of Registration with 15:47 12 the United States Copyright Office for ANSI/ASHRAE/IES 15:47 13 Standard 90.1-2010 IP Edition. 15:47 14 For the page labeled ASHRAE0001594, that is 15:47 15 the Certificate of Registration with the United States 15:47 16 Copyright Office for ANSI/ASHRAE/IESNA 15:47 17 Standard 90.1-2007 IP Edition. 15:47 18 For the page labeled ASHRAE001596, this is 15:47 19 the Certificate of Registration with the United States 15:47 19 the Certificate of Registration with the United States 15:48 21 Standard 90.1-2004 IP IP Edition. 15:48 22 (Exhibit 1177 marked for identification.) 15:48 23 Q | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:5314AJames Calm.15:5315QAnd what is Mr. Calm's relationship to15:5316ASHRAE, if any?15:5317AHe's a member of ASHRAE.15:5318QAnd has Mr. Calm ever been an employee of15:5320ANo.15:5321QAnd Mr. Calm's contribution on the following15:5322page, is that "Disapprove proposed revisions in15:5323Addendum S"?15:54 |
| 6 ASHRAE0001592. Could you do you recognize this 15:46 7 document? 15:46 8 A Yes. 15:46 9 Q And could you please tell me what it is? 15:47 10 A Well, the first page labeled ASHRAE001592 is 15:47 11 the certification Certificate of Registration with 15:47 12 the United States Copyright Office for ANSI/ASHRAE/IES 15:47 15:47 13 Standard 90.1-2010 IP Edition. 15:47 14 For the page labeled ASHRAE0001594, that is 15:47 15 the Certificate of Registration with the United States 15:47 16 Copyright Office for ANSI/ASHRAE/IESNA 15:47 17 Standard 90.1-2007 IP Edition. 15:47 18 For the page labeled ASHRAE001596, this is 15:47 19 the Certificate of Registration with the United States 15:47 19 the Certificate of Registration with the United States 15:47 19 the Certificate of Registration with the United States 15:48 12 Standard 90.1-2004 IP IP Edition. 15:48 13 <t< td=""><td>6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:5314AJames Calm.15:5315QAnd what is Mr. Calm's relationship to15:5316ASHRAE, if any?15:5317AHe's a member of ASHRAE.15:5318QAnd has Mr. Calm ever been an employee of15:5320ANo.15:5321QAnd Mr. Calm's contribution on the following15:5322page, is that "Disapprove proposed revisions in15:53</td></t<> | 6AThat is correct.15:527QIf you turn to the page ASHRAE0013973, is15:528that another signed copyright release on that page?15:539AYes.15:5310QAnd in that instance, has it been signed and15:5311also had the the name of the individual inserted?15:5312AYes.15:5313QAnd who is that individual?15:5314AJames Calm.15:5315QAnd what is Mr. Calm's relationship to15:5316ASHRAE, if any?15:5317AHe's a member of ASHRAE.15:5318QAnd has Mr. Calm ever been an employee of15:5320ANo.15:5321QAnd Mr. Calm's contribution on the following15:5322page, is that "Disapprove proposed revisions in15:53 |

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| 1 for time at the time. 16:58 | 1 our Standard 188 posted on company websites 16:57 |
|--|---|
| 2 Q (BY MR. BECKER) How did you know that she 16:50 | 2 without seeking permission from me first to 16:51 |
| 3 was that Ms. Ramspeck was referring to 16:52 | 3 post it after the public review period has 16:53 |
| 4 Public.Resource.Org when she said "Did you know that 16:56 | 4 ended. And I've sent letters to ask them to 16:56 |
| 5 there has been a big increase in the number of 16:59 | 5 remove it, and they are removed. 16:58 |
| 6 copyrighted docs beginning in January"? 16:51 | 6 Q (BY MR. BECKER) Is ASHRAE aware of 16:56 |
| 7 A Because I knew about the SMACNA things, and 16:57 | 7 infringement or potential infringement on file-sharing 16:59 |
| 8 so staff was watching to see what copyrighted documents 16:52 | 8 websites of ASHRAE standards? 16:53 |
| 9 were out there, if they belonged to ASHRAE. 16:56 | 9 MR. CUNNINGHAM: Same objection. 16:55 |
| 10 Q And so there was sufficient discussion of 16:56 | 10 THE WITNESS: I'm not aware of those. 16:57 |
| 11 Public.Resource.Org in February of 2013 that without 16:59 | 11 MR. BECKER: We can take a break here. 16:57 |
| 12 even referencing Public.Resource.Org, you knew that 16:54 | 12 THE VIDEOGRAPHER: Going off the record 16:50 |
| 13 Ms. Ramspeck was referring to Public.Resource.Org? 16:58 | 13 at 16:58. 16:52 |
| 14 MR. CUNNINGHAM: Objection to the form. 16:51 | 14 (Recess taken.) 17:19 |
| 15 THE WITNESS: At that time, we would 16:55 | 15 THE VIDEOGRAPHER: Going on the record 17:24 |
| 16 have discussed Public.Resource.Org, and I 16:56 | 16 at 17:24. 17:26 |
| 17 would have known that's what she was 16:59 | 17 Q (BY MR. BECKER) Ms. Reiniche, could you 17:25 |
| 18 referring to. 16:51 | 18 please refer again to Exhibits 1175 and 1176. Those 17:26 |
| 19 Q (BY MR. BECKER) What is the purpose of the 16:59 | 19 are the certificates of registration from the copyright 17:22 |
| 20 IPRPC? 16:52 | 20 office. 17:27 |
| 21 MR. FEE: Objection, lack of 16:54 | 21 A Okay. 17:28 |
| 22 foundation. 16:55 | 22 Q Ms. Reiniche, does ASHRAE claim to be the 17:20 |
| 23 MR. CUNNINGHAM: Objection. 16:56 | 23 author of standard of the editions of Standard 90.1 17:24 |
| 24 THE WITNESS: It's it's dealing with 16:59 | 24 that are listed in Exhibit 1176? 17:20 |
| 25 intellectual property mostly, things or 16:52 | 25 MR. CUNNINGHAM: Objection to the 17:27 |
| Page 190 | Page 192 |
| 1 things like patents and some, I guess, quasi 16:56 | 1 form. 17:27 |
| 2 legal things. 16:56 | 2 THE WITNESS: Yes. 17:28 |
| 3 Q (BY MR. BECKER) How much of the discussion 16:56 | 3 Q (BY MR. BECKER) And does ASHRAE claim to be 17:2 |
| 4 in IPRPC relates to Public.Resource.Org? 16:56 | 4 the author of the 1993 ASHRAE Handbook: Fundamentals as 17:2 |
| 5 MR. FEE: Objection to form. 16:56 | 5 listed in Exhibit 1175? 17:28 |
| 6 THE WITNESS: On the items I have either 16:56 | 6 MR. CUNNINGHAM: Same objection. 17:21 |
| 7 seen in email or when I've been able to 16:56 | 7 THE WITNESS: Yes. 17:27 |
| 8 participate remotely on their calls, minimal. 16:56 | 8 Q (BY MR. BECKER) Is ASHRAE the sole author of 17:28 |
| 9 Q (BY MR. BECKER) Is ASHRAE concerned about 16:57 | 9 these works? 17:20 |
| 10 alleged copyright infringement by other entities other 16:57 | 10 MR. CUNNINGHAM: Same objection. 17:20 |
| 11 than Public.Resource.Org? 16:57 | 11 THE WITNESS: It's the members of the 17:27 |
| 12 MR. CUNNINGHAM: Objection to scope and 16:57 | 12 project committee as as part of their 17:29 |
| 13 to the form. 16:57 | 13 membership that agreed to write the document 17:23 |
| 14 THE WITNESS: Of course. We don't we 16:57 | 14 and and have it attributed to ASHRAE. 17:25 |
| 15 don't allow other people to post copyrighted 16:57 | 15 Q (BY MR. BECKER) And the members of the 17:29 |
| 16 material or anywhere else. If when we're 16:57 | 16 project committee are not employees of ASHRAE, correct? 17:20 |
| 17 made aware of it, we ask for it to be 16:57 | 17 A That's correct. 17:23 |
| 18 removed. 16:57 | 18 Q And so what is the basis for ASHRAE's claim 17:28 |
| 19 Q (BY MR. BECKER) Where has ASHRAE seen 16:57 | 19 that it's the author of these works? 17:21 |
| | 20 MR. CUNNINGHAM: Objection to the form, 17:25 |
| 20 infringement of its standards? 16:57 | 21 calls for a legal conclusion. 17:26 |
| - | |
| 21 MR. CUNNINGHAM: Same objection. 16:57 | |
| 21MR. CUNNINGHAM: Same objection.16:5722THE WITNESS: I'm I'm not privy to16:57 | 22 THE WITNESS: As a basis of the signed 17:20 |
| 21 MR. CUNNINGHAM: Same objection. 16:57 22 THE WITNESS: I'm I'm not privy to 16:57 23 every single time. I don't it's not 16:57 | 22THE WITNESS: As a basis of the signed17:2023copyright assignments that all the members17:22 |
| 21MR. CUNNINGHAM: Same objection.16:5722THE WITNESS: I'm I'm not privy to16:57 | 22 THE WITNESS: As a basis of the signed 17:20 |

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| 1 and that the members that submit change or 17:21 | 1 A These are the minutes from the 90.1 meeting 17:38 |
|--|--|
| 2 the public that submits change proposals sign 17:26 | 2 for sure from Saturday, January 24th, 2004. Then 17:34 |
| 3 when they submit a change proposal. 17:29 | 3 from and it also includes the minutes from the 17:31 |
| 4 Q (BY MR. BECKER) Has ASHRAE ever compensated 17:24 | 4 meeting on Sunday, January January 25th, 2004. Hang 17:35 |
| 5 any of the members of the project committee for the 17:26 | 5 on. They usually have more than another meeting. 17:35 |
| 6 sale of any of the works at issue? 17:23 | 6 And from Monday, January 26, 2004. 17:30 |
| 7 A No. 17:26 | 7 Q And could you please turn to page 8? 17:33 |
| 8 Q Ms. Reiniche, is the project committee for 17:27 | 8 A 8? 17:39 |
| 9 Standard 90.1 in charge of the selection and 17:23 | 9 Q Yes. Section 10 on page 8 includes the 17:39 |
| 10 arrangement of the content of Standard 90.1? 17:28 | 10 marketing task force ad hoc subcommittee update. And 17:30 |
| 11 A Yes. 17:28 | 11 it says in the second and third sentence, it says, "The 17:39 |
| 12 Q Is anybody else responsible for the selection 17:23 | 12 discussion included the question of who is the customer 17:33 |
| 13 and arrangement of standard of the content of 17:27 | 12 discussion included the question of who is the customer 17:55 13 for Standard 90.1. Chris stated that the subcommittee 17:37 |
| 14 Standard 90.1? 17:23 | 14 has one customer that it has failed to fulfill the 17:32 |
| | 15 needs of, and that is the Department of Energy, DOE." 17:37 |
| 15 A The selection of the content, no. The 17:24 | |
| 16 arrangement, they're not going to change the order, but 17:20 | 16 Does ASHRAE consider the Department of Energy 17:33 |
| 17 the formatting in terms of, you know, the two-column 17:22 | 17 to be a customer? 17:35 |
| 18 format, it could switch from one to two column after 17:26 | 18 A It would be one customer. 17:38 10 (F. bible 1004 me led for it betification) 17:21 |
| 19 public review is done by public our publications 17:20 | 19 (Exhibit 1194 marked for identification.) 17:31 |
| 20 department. 17:23 | 20 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:38 |
| 21 Q And who made the decision to switch it from 17:24 | 21 you a document that has been marked as Exhibit 1194. 17:30 |
| 22 one column to two column? 17:28 | 22 This is Bates number ASHRAE0006892. Can you tell me 17:34 |
| 23 A That would have been Steve Comstock would 17:21 | 23 what this document is? 17:33 |
| 24 have decided to I believe the standard was 17:24 | A This document is an ASHRAE 90.1 questionnaire 17:34 |
| 25 originally one column. When they go out for public 17:27 Page 194 | 25 summary combined compiled by Valerie Block, the 17:38 Page 196 |
| v | |
| 1 review, we put it in one column, because it's easier 17:20 | 1 chair of the 90.1 marketing committee. 17:33 |
| 2 for people to read one column, you know, and we don't 17:22 | 2 Q And can you tell me what the purpose of this 17:32 |
| 3 have to mess with the formatting. 17:25 | 3 questionnaire summary was? 17:35 |
| 4 Then because of the length, I believe they 17:29 | 4 A The purpose of of the questionnaire or the 17:36 |
| 5 switched to a two-column format for publication. 17:21 | 5 summary summary? 17:39 |
| 6 And and that's that's why they did it, so the 17:24 | 6 Q Of the summary itself. 17:31 |
| 7 your printed copy isn't, you know, 3 inches thick 17:29 | 7 A It was to give information to the committee 17:32 |
| 8 versus an inch and a half thick. 17:24 | 8 on what the opinions of the users of the standard 17:37 |
| 9 Q So when you say two-column format, you mean 17:27 | 9 were. 17:31 |
| 10 the text appears in two columns on the page, as opposed 17:28 | 10 Q And which committee was that? 17:32 |
| 11 to just being a single column on the page? 17:23 | 11 A 90.1. 17:33 |
| 12 A That's correct. 17:25 | 12 (Exhibit 1195 marked for identification.) 17:38 |
| 13 Q And is that the only change in arrangement 17:23 | 13 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:38 |
| 14 that's performed by ASHRAE staff? 17:27 | 14 you what's been marked as Exhibit 1195. Bates labeled 17:30 |
| 15 A By publications, they might correct the 17:20 | 15 ASHRAE0024267. Do you recognize this document? 17:35 |
| 16 numbering of a section if the committee changed 17:23 | 16 A This is yes. 17:30 |
| 17 something and the numbering was off, but it's just to 17:25 | 17 Q And can you tell me what this document is? 17:32 |
| 18 make it format correctly for on the publication 17:28 | 18 A This is a document where the president of 17:39 |
| 19 side. 17:23 | 19 ASHRAE was asking for the committee on utilities and 17:38 |
| 20 (Exhibit 1193 marked for identification.) 17:24 | 20 energy to consider a building energy labeling program 17:33 |
| 21 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:30 | 21 that was being developed by ASHRAE. This is the 17:38 |
| 22 you what's been marked as Exhibit 1193. This is Bates 17:31 | 22 building energy quotient, but it's not it's not a 17:36 |
| 22 you what's been marked as Exhibit 1155. This is bates 17.51 23 number ASHRAE0001628. Do you recognize this document? 17:37 | 23 90.1 tool. 17:31 |
| | 24 (Exhibit 1196 marked for identification.) 17:34 |
| | 25 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 17:34 |
| 25 Q Can you tell me what this document is? 17:35 Page 195 | |
| | |

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| 1 year substic hear mended as Earlibit 1106 A SUD AE Dates 17.25 | |
|---|---|
| 1 you what's been marked as Exhibit 1196, ASHRAE Bates 17:35 | 1 meeting with different organizations in Washington, 17:41 |
| 2 number 0024287. Do you recognize this document? 17:39 | 2 D.C. 17:41 |
| 3 A Yes. 17:30 | 3 Q And when you say what would have been an 17:41 |
| 4 Q And could you tell me what this document is? 17:32 | 4 ASHRAE leadership meeting with different organizations 17:41 |
| 5 A This is a letter from who would have been 17:34 | 5 in Washington, D.C., do you mean it was a meeting that 17:41 |
| 6 the president of ASHRAE at the time in 2009, Gordon 17:38 | 6 did occur? 17:41 |
| 7 Holness, to President Obama talking about as we're 17:33 | 7 A Yes. 17:41 |
| 8 working towards energy efficiency, where we have agreed 17:31 | 8 Q Is it clear to you who the participants of 17:42 |
| 9 to try to the project committee to be 30 percent 17:35 | 9 this meeting would have been? 17:42 |
|) more energy efficient from 2004, version of 17:31 | 10 MR. FEE: Can I see this document before 17:42 |
| Standard 90.1 to the 2010 version. 17:34 | 11 you get into this any further? 17:42 |
| 2 And it also mentions our Building Energy 17:39 | 12 Okay. 17:42 |
| 8 Quotient BEQ program that provides people with energy 17:32 | 13 THE WITNESS: Well, I can tell from the 17:42 |
| 4 use of buildings and to ask that the while they're 17:36 | 14 ASHRAE side, based on this email, that Lynn 17:42 |
| 5 implementing the executive order, that they look at 17:35 | 15 Bellenger, Ron Jarnigan, Tom Watson, Jeff 17:43 |
| 5 considering using the building EQ program. 17:38 | 15Denenger, Kon Jamgan, Tom Watson, Jen17.4316Littleton, Doug Read, and Mark Ames would17:43 |
| 7 (Exhibit 1197 marked for identification.) 17:39 | 17 have been at these meetings. Some of them I 17:43 |
| | 17 nave been at these meetings. Some of them 1 17:43 18 can it appears from this that OSTP had 17:43 |
| | |
| | |
|) recognize this document? 17:37 | 20 Q (BY MR. BECKER) That's fine if you 17:43 |
| A Yes. 17:30 | 21 A I mean, I would have to I mean, some of 17:43 |
| Q And can you tell me what this document is? 17:31 | 22 them I can tell that you know, who was there, I can 17:43 |
| A This is an ASHRAE Facts and Stats document 17:35 | 23 tell which organizations were there, but some I can 17:43 |
| that D.C. folks would leave with congressional staff 17:39 | 24 tell by the way the notes were written who was there, 17:43 |
| 5 members. 17:37 Page 198 | 25 and some I cannot. I can if it would be easier, I 17:44 Page 20 |
| | |
| Q And what was the purpose of leaving this with 17:37 | 1 can tell you what organizations appears. 17:44 |
| 2 congressional staff members? 17:30 | 2 Q Yes, if you could say which organizations. 17:46 |
| A Just to give you a give them information 17:31 | 3 A So and this my recollection of the 17:40 |
| about what ASHRAE is, what our expertise is in, and 17:33 | 4 leadership meetings, typically it's more more than 17:46 |
| 5 about our standards, our research program, 17:30 | 5 one meeting, so they weren't all in one meeting 17:48 |
| 5 publications, continuing education; just ASHRAE as a 17:33 | 6 together, so these would have been notes from all of 17:40 |
| | o together, so these would have been notes from an of 17.40 |
| 7 whole. 17:37 | 7 their meetings. 17:42 |
| | |
| 3 (Exhibit 1198 marked for identification.) 17:39 | 7 their meetings.17:428So they would have talked with the EPA,17:45 |
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| 1 standards at issue here. 18:03 | 1 if we could get comp copies to send to HUD to 18:01 |
|--|--|
| 2 THE WITNESS: This email relates to 18:06 | 2 consider it, and Mark indicated that's 18:04 |
| 3 Standard 161-2007. That's indoor air quality 18:08 | 3 probably very likely. 18:07 |
| 4 for commercial aircrafts. And it's about a 18:04 | 4 And then they ask for the where to 18:00 |
| 5 congressional committee considering an FAA 18:09 | 5 send it, to Rhonda from Rhonda Dickerson, 18:03 |
| 6 reauthorization bill and wants to know if 18:01 | 6 who I'm assuming is from HUD. And instead of 18:08 |
| 7 if the members of 161 are supportive of this 18:06 | 7 using the paper comment paper format, they 18:02 |
| 8 bill. 18:01 | 8 sent a PDF copy that indicating it wasn't 18:08 |
| 9 Q (BY MR. BECKER) And in the top email, 18:05 | 9 to be distributed outside of the HUD 18:12 |
| 10 Mr. Weber's communication, he says, "Ladies and 18:01 | 10 manufacturing housing consensus committee and 18:15 |
| 11 Gentlemen, below is an email from Ryan Colker, manager 18:06 | 11 not to reprint without ASHRAE permission. 18:18 |
| 12 of government affairs in the ASHRAE Washington office. 18:09 | 12 Q (BY MR. BECKER) You are a recipient of this 18:13 |
| 13 ASHRAE is encouraging legislators to adopt ASHRAE 18:03 | 13 email; is that correct? 18:15 |
| 14 Standard 161-2007 and intends on sending the attached 18:07 | 14 A Yes. 18:17 |
| 15 letter early next week. Ryan would like to make the 18:03 | 15 Q What does HUD stand for? 18:10 |
| 16 SSPC aware of the intentions and would like to know if 18:07 | 16AHousing Urban Development.18:14 |
| 17 their organizations are willing to support the 18:01 | 17 Q And is that a federal agency? 18:17 |
| 18 adoption." 18:04 | 18 A Yes. 18:11 |
| 19 Is one of the roles of government ASHRAE's 18:09 | 19 Q Is it common for ASHRAE to provide copies of 18:10 |
| 20 government affairs office in Washington, D.C., to 18:02 | 20 ASHRAE standards to members of government when they are 18:16 |
| 21 encourage legislators to adopt ASHRAE standards? 18:06 | 21 considering incorporating that standard into 18:10 |
| 22 A If it's relevant to a bill that the 18:01 | 22 legislation or regulation? 18:14 |
| 23 legislature is is drafting.18:08 | A If it's been requested, we typically will 18:17 |
| 24 Q Does that include encouraging legislators to 18:01 | 24 provide a copy for them to review, yes. 18:10 |
| 25 adopt ASHRAE Standard 90.1? 18:04 Page 210 | 25 Q And that would be a complimentary copy, 18:13 Page 212 |
| | |
| 1 A If it's related to a legislation that they're 18:07 | 1 correct? 18:11 |
| 2 creating. 18:00 | 2 A That is correct. 18:11 |
| 3 Q So if for clarity, if the if standard 18:01 | 3 (Exhibit 1208 marked for identification.) 18:11 |
| 4 ASHRAE 90.1 is related to the legislation that's being 18:09 | 4 Q (BY MR. BECKER) Ms. Reiniche, I'm handing 18:11 |
| 5 created, then the Washington office of ASHRAE might 18:03 | 5 you what's been marked as Exhibit 1208. This has been 18:11 |
| 6 encourage the adoption of Standard 90.1 into that 18:08 | 6 produced as ASHRAE0024209. Do you recognize this 18:12 |
| 7 legislation? 18:03 | 7 document? 18:12 |
| 8 A Yes, in consultation with ASHRAE leadership 18:05 | 9 MD CUNNINCHAM, Object to this decomment 19:12 |
| 0 and these with relevant to she is all amounties 19.00 | 8 MR. CUNNINGHAM: Object to this document 18:12 |
| 9 and those with relevant technical expertise. 18:09 | 9 as it also appears to relate to standards 18:12 |
| 10 (Exhibit 1207 marked for identification.) 18:09 | 9as it also appears to relate to standards18:1210other than those that are at issue in this18:12 |
| 10 (Exhibit 1207 marked for identification.) 18:09 11 Q (BY MR. BECKER) I'm handing you what's been 18:07 | 9as it also appears to relate to standards18:1210other than those that are at issue in this18:1211case.18:12 |
| 10 (Exhibit 1207 marked for identification.) 18:09 11 Q (BY MR. BECKER) I'm handing you what's been 18:07 12 marked as Exhibit 1207. Could you please take a moment 18:08 | 9as it also appears to relate to standards18:1210other than those that are at issue in this18:1211case.18:1212THE WITNESS: Yes, I recognize the18:12 |
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| 1 CERTIFICATE | |
|---|----------|
| 2 STATE OF GEORGIA: | |
| | |
| COUNTY OF FULTON: | |
| 3 | |
| I, SHARON A. GABRIELLI, HEREBY CERTIFY | ' that |
| 4 the foregoing deposition was taken down by me in | |
| | |
| stenotype, and the questions and answers thereto were | |
| 5 transcribed by means of computer-aided transcription, | |
| and that the foregoing represents a true and correct | |
| 6 transcript of the testimony given by said witness. | |
| | |
| I FURTHER CERTIFY that I am not kin or | |
| 7 counsel to the parties in the case; am not in the | |
| regular employ of counsel for any of said parties; nor | |
| 3 am I in any way financially interested in the result of | |
| said case. | |
| | |
| 9 IN WITNESS WHEREOF, I have hereunto set my | |
| hand this 10th day of April, 2015 | |
|) | |
| | |
| | - |
| SHARON A. GABRIELLI, RPR | |
| CCR-B-2002 | |
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EXHIBIT 13

JA01602

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| 1 | UNITED STATES DISTRICT COURT |
|-----|---|
| | FOR THE DISTRICT OF COLUMBIA |
| 2 | |
| _ | AMERICAN SOCIETY FOR : Case No. |
| 3 | TESTING AND MATERIALS d/b/a: 1:13-cv-01215-PSC-DAR |
| | ASTM INTERNATIONAL; : |
| 4 | : |
| - | NATIONAL FIRE PROTECTION : |
| 5 | ASSOCIATION, INC.; and |
| c | |
| 6 | AMERICAN SOCIETY OF : |
| 7 | HEATING, REFRIGERATING, : AND AIR-CONDITIONING : |
| / | ENGINEERS, INC. |
| 8 | Plaintiffs, |
| 0 | |
| 9 | vs. : |
| 2 | : |
| 10 | PUBLIC.RESOURCE.ORG, INC., : |
| _ • | Defendant. |
| 11 | : |
| | AND RELATED COUNTERCLAIMS. : |
| 12 | : |
| 13 | |
| 14 | Videotaped 30(b)(6) deposition |
| 15 | of American Society for Testing & Materials, |
| 16 | through DANIEL SMITH, held in the offices of |
| 17 | Veritext Philadelphia, 1801 Market Street, |
| 18 | Ten Penn Center, Suite 1800, Philadelphia, |
| 19 | Pennsylvania 19103, commencing at 10:43 a.m., |
| 20 | July 24, 2015, before Linda Rossi Rios, a |
| 21 | Federally Approved RPR, CCR and Notary |
| 22 | Public. |
| 23 | |
| 24 | |
| 25 | PAGES 1 - 292 |
| | |
| | Page 1 |
| | Veritext Legal Solutions |

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| | | | 1 |
|--|---|--|---|
| 1 | giving your best testimony today? | 1 | technical committee? |
| 2 | A. No. | 2 | A. A group of experts that develop |
| 3 | Q. Mr. Smith, what do you do for a | 3 | standards. |
| 4 | living? | 4 | Q. And who are those experts? |
| 5 | A. I work for ASTM International. | 5 | A. Volunteers. |
| 6 | Q. And when you say you work for | 6 | Q. And are they only volunteers? |
| 7 | ASTM International, what do you mean? | 7 | MR. FEE: Objection. Vague. |
| 8 | A. I'm the vice | 8 | THE WITNESS: For the most part |
| 9 | MR. FEE: Objection. Vague. | 9 | from my knowledge, they're all |
| 10 | You can answer. | 10 | volunteers. |
| 11 12 | THE WITNESS: I'm the vice | 11 | BY MR. BECKER: |
| 12 13 | president of technical committee | 12 13 | Q. How does a technical committee |
| 13 14 | operations. BY MR. BECKER: | 13 14 | go about developing standards as you say? |
| 14 | Q. And what is technical committee | 14 | A. They use our consensus process.Q. What is the consensus process? |
| 16 | operations? | 16 | A. It's two levels of voting |
| 17 | A. It's a division within ASTM. | 17 | starting with the subcommittee and then the |
| 18 | Q. What does technical committee | 18 | main committee. |
| 19 | mean? | 19 | O. What's the difference between a |
| 20 | A. Technical committees develop | 20 | subcommittee and a main committee? |
| 21 | standards. | 21 | A. A subcommittee is typically |
| 22 | Q. When you say "standards," what | 22 | smaller with a more narrow interest. A main |
| 23 | do you mean by that? | 23 | committee has broader interest. |
| 24 | A. Consensus standards. | 24 | Q. So within a technical |
| 25 | Q. By "consensus standards," what | 25 | committee, then, there is is there just |
| | Page 14 | | Page 16 |
| 1 | do you mean by that? | 1 | one main committee? |
| 2 | A. Documents. | 2 | A. A main committee is a technical |
| 3 | Q. Any documents? | 3 | committee. |
| 4 | A. Specifications, test methods, | 4 | Q. And are there numerous |
| 5 | practices, guides, classifications and | 5 | subcommittees? |
| 6 | terminology. | 6 | A. Yes. |
| 7 | Q. Does the term "standards" have | 7 | Q. And how many subcommittees on |
| 8 | any specific meaning to you? | 8 | average? |
| 9 | MR. FEE: Objection. Vague. | 9 | A. It varies. |
| 10 | THE WITNESS: I'm not sure what | 10 | Q. Could you give me a range by |
| 11 | you mean by that. | 11 | which it might vary? |
| 12 | BY MR. BECKER: | 12 | A. The best of my knowledge, maybe |
| 13 | Q. Can you define what a standard | 13 | from 3 to 40, 50. |
| 14 | | | () When you say there is a |
| | is? | 14 | Q. When you say there is a |
| 15 | A. Just what I said previously, | 15 | consensus process that involves voting in the |
| 16 | A. Just what I said previously, it's a test method, a specification, a | 15 16 | consensus process that involves voting in the subcommittee and then voting at the main |
| 16 17 | A. Just what I said previously, it's a test method, a specification, a practice, a guide, classification or | 15 16 17 | consensus process that involves voting in the subcommittee and then voting at the main committee level, can you elaborate on that |
| 16 17 18 | A. Just what I said previously, it's a test method, a specification, a practice, a guide, classification or terminology. | 15 16 17 18 | consensus process that involves voting in the subcommittee and then voting at the main committee level, can you elaborate on that process? |
| 16 17 18 19 | A. Just what I said previously,it's a test method, a specification, apractice, a guide, classification orterminology.Q. And you say that the technical | 15 16 17 18 19 | consensus process that involves voting in the subcommittee and then voting at the main committee level, can you elaborate on that process? MR. FEE: Objection. Vague. |
| 16 17 18 19 20 | A. Just what I said previously, it's a test method, a specification, a practice, a guide, classification or terminology. Q. And you say that the technical committees develop standards. How do | 15 16 17 18 19 20 | consensus process that involves voting in the subcommittee and then voting at the main committee level, can you elaborate on that process? MR. FEE: Objection. Vague. THE WITNESS: They vote on |
| 16 17 18 19 20 21 | A. Just what I said previously, it's a test method, a specification, a practice, a guide, classification or terminology. Q. And you say that the technical committees develop standards. How do actually, let me back up. | 15 16 17 18 19 20 21 | consensus process that involves voting in the subcommittee and then voting at the main committee level, can you elaborate on that process? MR. FEE: Objection. Vague. THE WITNESS: They vote on standards so the folks on that |
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| 16 17 18 19 20 21 22 23 | A. Just what I said previously, it's a test method, a specification, a practice, a guide, classification or terminology. Q. And you say that the technical committees develop standards. How do actually, let me back up. What is a technical committee? A. I'm not sure how to answer | 15 16 17 18 19 20 21 22 23 | consensus process that involves voting in the subcommittee and then voting at the main committee level, can you elaborate on that process? MR. FEE: Objection. Vague. THE WITNESS: They vote on standards so the folks on that committee will vote on whether or not they agree or not agree with the |

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| 1Q. Is that agree or don't agree on 2 the content of a draft standard or the finalized standard?1average? 22the content of a draft standard or the finalized standard?1average?4A. A draft standard.2A. It varies, but it could be anywhere from 3 to 30 approximately.6bit and could you walk me through how a standard is developed at ASTM?7MR FEE: Objection. Lack of foundation.7standard is developed at ASTM?7MR FEE: Objection. Lack of foundation.9by - it starts typically with a task group.9THE WITNESS: From my10Q. And what does the task group.10does.12A. They'll develop the content of t free draft.13Q. How is a task group initially14Q. And who composes the task14formed?15group?15Formed by a group of16mR. FEE: Objection. Vague.17a revision to a standard.17THE WITNESS: The task group.19wo. Do the ASTM members and - excuse18typically made up of volunteers who10a revision to a standard.21Q. Are - is everyone in a task21nonmembers of ASTM who compose task groups22group an ASTM member?22Do the ASTM members and - excuse23A. No, not necessarily.23MR. FEE: Objection. Calls for24Q. In what situations would individuals who are not members of ASTM?125other say that differently?2Wold think they would have a | | | |] |
|---|----|---|----|---|
| 3finalized standard?3anywhere from 3 to 30 approximately.4A. A draft standard.9Q. And you suid that the task group develops the content or the original6bit and could you walk me through how af draft of a standard. Is that correct?7standard is developed at ASTM?78A. It varies, but it could be89by - it starts typically with a task group911do?712A. M what does the task group912A. They'll develop the content of1213the draft.1214Q. And who composes the task1415group?1616MR. FEE: Objection. Vague.1717THE WITNESS: The task group.1918typically made up of volunteers who1919wish to serve on the task group.1920BY MR. BECKER:20Do the ASTM members and21Q. In what situations would2322group an ASTM member?2323A. No, not necessarily.2324Q. In what situations would2425THE WITNESS: Th not sure what34you mean by that. Could you repeat35BY MR. BECKER:36BY MR. BECKER:67Q. Let's see. Are let me back78up just a moment.79Are any members of the task710group also members of ASTM ve11< | 1 | | | - |
| 4A.A draft standard.4Q.And you said that the task5Q.Could we just back up a little5group develops the content or the original7standard is developed at ASTM?7MR. FEE: Objection. Lack of8A.It varies, but it could be8foundation.9by it starts typically with a task group.9THE WITNESS: From my10Q.And what does the task group.9THE WITNESS: From my11do?1002A.12A.They'll develop the content of12BY MR. BECKER:13the draft.13Q.How is a task group initially14Q.And who composes the task13Q.15group?10ormed?arevision to a standard.16MR. FEE: Objection. Vague.18Q.Do the compose task17THE WITNESS: The task group.19monmebers and - excuse18typically made up of volunteers who10ormed standard.19w. No. not necessarily.20Do the ASTM members and21Q. Are is everyone in a task21monmebres of ASTM who compose task groups22group an ASTM member?22molt huistions would23A. No. not necessarily.23MR. FEE: Objection. Calls for34you mean by that. Could you repeat3BY MR. BECKER:35that or say that differently?1would think they would have a variety | 1 | | 2 | |
| 5 Q. Could we just back up a little 5 group develops the content or the original 6 bit and could you walk me through how a 6 draft of a standard. Is that correct? 7 MR. FEE: Objection. Lack of 9 by - it starts typically with a task group 9 10 Q. And what does the task group 9 11 do? 11 12 A. They'll develop the content of 12 13 the draft. 12 14 Q. And what dow tho composes the task 14 15 group? 16 7 THE WITNESS: The task group is 17 16 MR. FEE: Objection, Vague. 17 17 THE WITNESS: The task group. 19 18 typically made up of volunteers who 10 0. Do the ASTM members and 12 Q. In what situations would 24 29 Do the ASTM members and 23 A. No, not necessarily. 23 MR. FEE: Objection to form. 24 24 Q. In what situations would 24 speculation. 25 25 moment. 29 MR | | | 3 | |
| 6 bit and could you walk me through how a 6 draft of a standard. Is that correct? 7 standard is developed at ASTM? 7 MR. FEE: Objection. Lack of 9 by it starts typically with a task group. 9 THE WITNESS: From my 10 Q. And what does the task group. 9 THE WITNESS: From my 12 A. They'll develop the content of 12 BY MR. BECKER: 13 13 the draft. 13 Q. How is a task group initially 14 Q. And who composes the task 14 formed? 15 group? 15 A. It's formed by a group of 16 MR. FEE: Objection. Vague. 17 a revision to a standard. 17 THE WITNESS: The task group. 19 me. 20 BY MR. BECKER: 20 Do the ASTM members and - excuse 21 Q. Are - is everyone in a task 21 nonnembers of ASTM 22 group an ASTM member? 22 generally have the same or similar interests? 23 A. No, not necessarily. 24 speculation. 24 Q. In what situations would 24 speculation. < | | | 4 | |
| 7 standard is developed at ASTM? 7 MR. FEE: Objection. Lack of 8 A. It varies, but it could be 8 foundation. 9 by -it starts typically with a task group 9 THE WITNESS: From my 10 Q. And what does the task group 10 experience, that's what a task group 11 do? 11 does. 12 A. They'll develop the content of 12 BY MR. BECKER: 13 the draft. 13 Q. How is a task group initially 14 Q. And who composes the task 14 formed? 15 group? A. It's formed by a group of outneters who want to develop a standard or 16 MR. FEE: Objection. Vague. 16 volunteers who want to develop a standard or 17 THE WITNESS: The task group? 19 me. 20 D the ASTM members and 0. Do the ASTM members and 11 21 Q. Are - is everyone in a task 21 nonmembers of ASTM 22 23 A. No, not necessarily. 23 MR. FEE: Objection to form. 23 MR. FEE: Objection to form. 24 Q. In what situations would | 5 | | 5 | |
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| 1 | Q. And in what other ways? | 1 | outside of ASTM. |
|---|---|--|---|
| 2 | A. Through a meeting. | 2 | BY MR. BECKER: |
| 3 | Q. And in what other ways? | 3 | Q. Do you know how drafts of |
| 4 | A. None other come to mind at this | 4 | the of ASTM standards were exchanged |
| 5 | point. | 5 | between task group members prior to the |
| 6 | Q. Are there any differences in | 6 | introduction of the online collaboration area |
| 7 | how a task group would develop a draft of a | 7 | by ASTM? |
| 8 | standard today versus how they might have | 8 | A. My guess would be through mail |
| 9 | developed a draft of a standard in the 1970s | 9 | and fax. |
| 10 | or 1980s? | 10 | Q. Do you know if that mail and |
| 11 | MR. FEE: Objection. Lack of | 11 | fax of drafts was facilitated by ASTM? |
| 12 | foundation. Calls for speculation. | 12 | MR. FEE: Objection. Vague. |
| 13 | You can answer. | 13 | THE WITNESS: I would imagine |
| 14 | THE WITNESS: Just from common | 14 | that some of them would have been |
| 15 | sense, we wouldn't have had our Web | 15 | facilitated by ASTM and others would |
| 16 | tools, they wouldn't have been able to | 16 | not have been. |
| 17 | use our Web tools or our virtual | 17 | BY MR. BECKER: |
| 18 | meeting technology in the '70s. | 18 | Q. Prior to the introduction of |
| 19 | BY MR. BECKER: | 19 | the online collaboration area, were there |
| 20 | Q. Do you know how task groups | 20 | specific forms that task group members were |
| 21 | developed drafts in the 1970s and 1980s? | 21 | made to fill out when drafting drafts of ASTM |
| 22 | A. I don't know firsthand, but my | 22 | standards? |
| 23 | guess is they would have done it at meetings. | 23 | MR. FEE: Objection to form. |
| 24 | Q. When did ASTM first provide the | 24 | THE WITNESS: I believe we had |
| 25 | online collaboration areas for the use by | 25 | forms starting in about 2003 on our |
| | Page 22 | | Page 24 |
| | | | 1 1 1 1 1 1 1 1 1 1 |
| 1 | task groups? | 1 | membership applications that required |
| $\begin{vmatrix} 1\\2 \end{vmatrix}$ | task groups? A. Guessing, it was sometime | $\begin{vmatrix} 1\\2 \end{vmatrix}$ | membership applications that required members to assign all rights to ASTM. |
| 2 | A. Guessing, it was sometime | 2 | members to assign all rights to ASTM. |
| 2 3 | A. Guessing, it was sometime probably in the early 2000s roughly. | 2 3 | members to assign all rights to ASTM. BY MR. BECKER: |
| 2 3 4 | A. Guessing, it was sometimeprobably in the early 2000s roughly.Q. How long have you been at ASTM | 2 3 4 | members to assign all rights to ASTM. BY MR. BECKER: Q. So the membership, the forms on |
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| 1 | | | |
|--|---|--|---|
| 1 | Q. And when was the language that | 1 | work item registration forms for ASTM? |
| 2 | you say concerns assignments of rights | 2 | A. No. |
| 3 | introduced to the work item form? | 3 | Q. And those individuals I |
| 4 | A. I think it was in about 2003, | 4 | described a moment ago, do they fill out |
| 5 | '04, '05, somewhere in there. | 5 | collaboration forms for ASTM? |
| 6 | Q. So somewhere in the 2003 to | 6 | A. Yes. |
| 7 | 2005 period, you're not certain precisely | 7 | Q. They do. Are they required to |
| 8 | when? | 8 | fill out collaboration forms for ASTM in |
| 9 | A. I believe so. | 9 | order to participate in the development of a |
| 10 | Q. But it didn't exist on those | 10 | draft of a standard? |
| 11 | forms prior to at earliest 2003? | 11 | MR. FEE: Objection. Vague. |
| 12 | A. That's correct. | 12 | THE WITNESS: Yes. |
| 13 | Q. Who fills out a work item form? | 13 | BY MR. BECKER: |
| 14 | A. A member. | 14 | Q. From approximately what year |
| 15 | Q. Is it only ASTM members who | 15 | forward have individuals who are members of |
| 16 | fill out work item forms? | 16 | ASTM task groups but not themselves members |
| 17 | A. If a member would ask a staff | 17 | of ASTM been required to fill out |
| 18 | person to help facilitate filling out a form, | 18 | collaboration forms in order to participate |
| 19 | they may do that. | 19 | in the drafting of an ASTM standard? |
| 20 | Q. What is a collaboration form? | 20 | A. To my knowledge, since the |
| 21 | A. The collaboration, if a member | 21 | beginning. |
| 22 | wants to initiate a collaboration area, they | 22 | Q. When you say "since the |
| 23 | have to go through an online process to | 23 | beginning," what do you mean? |
| 24 | initiate it. | 24 | A. When we had when we created |
| 25 | Q. Just so I understand, is that | 25 | the form. |
| 23 | Page 26 | 25 | Page 28 |
| 1 | to create the online collaboration area that | 1 | Q. So that would be approximately |
| 2 | you had described earlier as being a location | 2 | 2003, you're saying? |
| 3 | online provided by ASTM where members of a | 3 | A. Yes. |
| 4 | task group could go to help develop the draft | 4 | Q. Were individuals who were |
| 5 | for a standard? | 5 | members of task groups but not themselves |
| 6 | A. Yes. | 6 | members of ASTM required to fill out any |
| 7 | Q. And so the collaboration form | 7 | forms in order to participate in the drafting |
| 8 | was only introduced after the collaboration | 8 | of an ASTM standard prior to 2003? |
| 9 | areas had been provided by ASTM to its | 9 | A. Not to my knowledge. |
| 10 | members? | 10 | O. Is there any means by which |
| 11 | A. Yes. | 11 | ASTM claims that individuals who are who |
| 12 | Q. And when, again, did you say | 12 | were members of task groups but not |
| 12 | that that was? | 12 | themselves members of ASTM have assigned any |
| 10 | | 14 | copyrights that they might have in the drafts |
| | A I think it was about 2003 | 1 - + | of the standards that were created and |
| 14 | A. I think it was about 2003. Dependence who are members of task | 15 | |
| 14 15 | Q. People who are members of task | 15 | |
| 14 15 16 | Q. People who are members of task groups for developing standards but are not | 16 | eventually published through ASTM to ASTM? |
| 14 15 16 17 | Q. People who are members of task groups for developing standards but are not themselves ASTM members, do they fill out | 16 17 | eventually published through ASTM to ASTM? MR. FEE: Objection. Calls for |
| 14 15 16 17 18 | Q. People who are members of task groups for developing standards but are not themselves ASTM members, do they fill out membership applications for ASTM? | 16 17 18 | eventually published through ASTM to ASTM? MR. FEE: Objection. Calls for a legal conclusion. Instruct you not |
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| 14 15 16 17 18 19 20 | Q. People who are members of task groups for developing standards but are not themselves ASTM members, do they fill out membership applications for ASTM? A. No. Q. And those individuals who I | 16 17 18 19 20 | eventually published through ASTM to ASTM? MR. FEE: Objection. Calls for a legal conclusion. Instruct you not to disclose any communications you might have had with counsel regarding |
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| 1foundation. Calls for speculation.1contributed original contents to the drafts2THE WITNESS: I don't know.5of ASTM standards but were not themselves3BY MR. BECKER:3members of ASTM thereby transferred their4Q. Do you know any specific5standards that this form was used in65standards that this form was used in6a legal conclusion. To the extent7A. I don't know offhand, no. No7you shouldn't disclose any8specifics.8communications you had with counsel9Q. Does ASTM retain the signed9regarding the subject matter. If you10copies that it receives of this Participation10have independent information that you11and Acknowledgement Form?11can share, go ahead and answer with12A. I'm not sure.12THE WITNESS: I'm not aware of14Participation and Acknowledgement Forms have14any formal forms that we used prior to15been signed and returned to ASTM?16BY MR. BECKER:10and returned to ASTM?16BY MR. BECKER:20and returned to ASTM?20means by which individuals such as those tha19and Acknowledgement Forms have been signed19I just described in my previous question21MR. FEE: Objection. Calls for21ASTM?22speculation.22MR. FEE: Same objection and23THE WITNESS: No.23instruction.24 </th <th></th> <th></th> <th></th> <th></th> | | | | |
|---|----|--|----|---|
| 3 THE WITNESS: I think I'I 3 A. I don't know for sure, but I 4 answer it by just saying the purpose 4 would guess it has been. 6 or this form is for when an individual 6 Q. And what's your basis for 6 guess it has been. 7 A. I vaguely remember instances 8 BY MR. BECKER: 8 where we would have to use this. 9 Q. So this document is not 9 Q. And what instances were those? 10 contributes original material to an ASTM 11 Q. What other information do you 12 standard draft? 12 recollect in conjunction with those instances 14 the extent it calls for a legal 15 form as you describe it? 16 15 conclusion. 16 THE WITNESS: This form would 17 can remember is members intersets in 16 THE WITNESS: This form would 17 can remember is members intersets in 18 18 MK BECKER: 18 bringing forward documents that they 20 ware you beinging document form in 2 A. I don't know. 23 Q. Do you have any guess ato 24 Pagra 8 </td <td></td> <td></td> <td></td> <td></td> | | | | |
| 4 answer it by just saying the purpose of this form is for when an individual 4 would guess it has been. 5 of this form is for when an individual 5 Q. And what syour basis for guessing that it has been? 7 make it into an ASTM standard. 8 BY MR. BECKER: 9 Q. So this document is not required of every member of a task group who standard draft? 7 A. I vaguely remember information do you 10 contributes original material to an ASTM standard draft? 9 Q. So this document is not standard draft? 9 Q. Must other information do you 11 conclusion. 10 R. FEE: Objection. Vague. To the extent it calls for a legal 11 6 THE WITNESS: The ooly thing I 15 conclusion. 11 can remember is members interested in having become ASTM 16 THE WITNESS: This form would 16 THE WITNESS: The ooly thing I 17 can remember is members interested in the standard. 2 Q. Pior to the introduction of 21 water this form was last used by ASTM? 2 Q. Pior to the introduction of 23 Q. Do you have any guess as to 2 Q. Pior to the introduction of 24 What yeart fills form was used in 1 | | | 2 | |
| 5of this form is for when an individual5 Q^- And what's your basis for6wants to bring a document into ASTM to6guessing that it has been?7make it into an ASTM standard.7A. I vaguely remember instances8BY MR, BECKER:8where we would have to use this.9Q. So this document is not9Q. And what instances were those?10required of every member of a task group who10A. I can't remember.11contributes original material to an ASTM11Q. What other information do you12standard draft?11Q. What other information do you13standard draft?13where you believe that you had to use this14the extent it calls for a legal14form as you describe it?15conclusion.16THE WITNESS: The only thing I16THE WITNESS: This form would16THE WITNESS: The only thing I17not be.18biringing forward documents that they18BY MR. BECKER:21Used by ASTM?20A. I don't know.22Q. Prior to the introduction of23Do you have any guess as to23itch having become ASTM24what year this form was used in1contributed original contents to the drafts2THE WITNESS: I don't know.1contributed original contents to the drafts2THE WITNESS: I tho't know.2of ASTM standards but were not themselves24What year this form was used in </td <td>3</td> <td></td> <td>3</td> <td></td> | 3 | | 3 | |
| 6 wants to bring a document into ASTM to make it into an ASTM standard. 6 guessing that it has been? 7 make it into an ASTM standard. 7 A. I vaguely remember instances 9 Q. So this document is not 9 Q. And what instances were those? 10 required of every member of a task group who 10 A. I can't remember. 12 standard draft? 12 Q. Mat other information do you 13 MR.FEE: Objection. Vague. To 13 where you believe that you had to use this 14 the extent it calls for a legal 14 form as you describe it? 15 conclusion. 15 MR.FEE: Objection. Vague. 16 17 not be. 17 can remember is members interested in 18 BY MR. BECKER: 18 BY MR.BECKER: 18 20 New its form was lused by ASTM? 21 BY MR.BECKER: 23 Q. Do you have any guess as to 23 24 what year this form was lused by ASTM? 24 Whit Standards but were not themselves 25 standard stath this form was used in 5 MR.FEE: Objection. Lack of 20, Drovot know any specific 3 | 4 | | 4 | ÷ |
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| 10 required of every member of a task group who 10 Â. I can't remember. 11 contributes original material to an ASTM 11 Q. What other information do you 13 MR. FEE: Objection. Vague. To 13 where you believe that you had to use this 14 the extent it calls for a legal 14 form as you describe it? 16 THE WITNESS: This form would 16 THE WITNESS: The only thing I 17 not be. 17 can remember is members interested in 18 BY MR. BECKER: 18 bringing forward documents that they 19 Q. When is the last time, to your 20 standard. 21 used by ASTM? 22 Q. Pior to the introduction of 23 used by ASTM? 23 the Participation and Acknowledgement Form in 24 what year this form was last used by ASTM? 25 which ASTM had members of task groups who 24 Page 38 foundation. Calls for speculation. 1 contributed original contents to the drafts 25 standards that this form was used in 5 fASTM standards but were not themselves 3 mebers of ASTM thereby tr | | BY MR. BECKER: | 8 | where we would have to use this. |
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| 12 standard draft? 12 recolect in conjunction with those instances where you believe that you had to use this the extent it calls for a legal 13 MR. FEE: Objection. Vague. 13 14 the extent it calls for a legal 14 15 conclusion. 15 16 THE WITNESS: This form would 16 17 not be. 17 18 BY MR. BECKER: 18 19 Q. When is the last time, to your 19 20 knowledge, that this form, Exhibit 1284, was 18 21 used by ASTM? 24 22 A. I don't know. 22 23 Q. Do you have any guess as to 24 24 what year this form was last used by ASTM? 24 25 MR. FEE: Objection. Lack of 29 26 Do you have any sprecific 2 3 standards that this form was used in 5 4 Q. Do you know any specific 2 6 ASTM standards but were not themselves 5 specifics. 9 Q. Doy ou know any specific 4 6 conjunction with? 6 | 10 | required of every member of a task group who | 10 | A. I can't remember. |
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| 1 | BY MR. BECKER: | 1 | THE WITNESS: Not at this time. |
|---|--|---|---|
| 2 | Q. I'm simply asking because you | 2 | BY MR. BECKER: |
| 3 | say you're not aware any formal forms that | 3 | Q. The basic understanding that |
| 4 | are used prior to 2003. So I'm asking if | 4 | you just described, how is that basic |
| 5 | there were any informal means by which ASTM | 5 | understanding documented? |
| 6 | believes that individuals transferred their | 6 | MR. FEE: Objection. Again, |
| 7 | copyright to ASTM prior to 2003? | 7 | instruct you not to disclose |
| 8 | MR. FEE: Objection. Calls for | 8 | communications with counsel on that |
| 9 | a legal conclusion. You shouldn't | 9 | subject, but if you have other |
| 10 | disclose your communications with | 10 | information, you can go ahead and |
| 11 | counsel on this subject, but if you | 11 | disclose that. |
| 12 | have other information, you can answer | 12 | THE WITNESS: I'm not sure what |
| 13 | about that. | 13 | you mean by "documented." |
| 14 | THE WITNESS: I don't believe | 14 | BY MR. BECKER: |
| 15 | we didn't feel like we needed any | 15 | Q. Are there any documents that |
| 16 | formal, any formal assignment paper. | 16 | reflect the basic understanding that you just |
| 17 | BY MR. BECKER: | 17 | described concerning the reasons for |
| 18 | Q. Why didn't ASTM feel like it | 18 | individuals contributing in the drafting of |
| 19 | needed any formal assignment paper? | 19 | ASTM standards? |
| 20 | MR. FEE: Objection. Calls for | 20 | A. No, we didn't feel like |
| 21 | a legal conclusion. You shouldn't | 21 | documentation was needed. |
| 22 | disclose any communication you had | 22 | Q. Does ASTM have any documents to |
| 23 | with counsel regarding the subject, | 23 | support its position that there was a basic |
| 24 | but if you have any other information | 24 | understanding between the members who |
| 25 | that's responsive, you can answer | 25 | excuse me, let me rephrase that. |
| | Page 42 | | Page 44 |
| 1 | about that. | 1 | Does ASTM have any documents to |
| 2 | THE WITNESS: Because we felt | 2 | support its position that there was a basic |
| 3 | that there was a basic understanding, | 3 | understanding between the individuals who |
| | there is a basic understanding today | | |
| 4 | there is a busic understanding today | 4 | drafted ASTM standards and ASTM that the |
| 45 | and there's been a basic understanding | 4 5 | drafted ASTM standards and ASTM that the copyright in those standards were to belong |
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| 5 | and there's been a basic understanding | 5 | copyright in those standards were to belong |
| 5 6 | and there's been a basic understanding for as long as ASTM has been around | 5 6 | copyright in those standards were to belong to ASTM? |
| 5 6 7 | and there's been a basic understanding for as long as ASTM has been around that the reason they come to the table | 5 6 7 | copyright in those standards were to belong to ASTM? MR. FEE: Objection. Instruct |
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| 1 | BY MR. BECKER: | 1 | THE WITNESS: Not at this time. |
|--|---|--|--|
| 2 | Q. I'm simply asking because you | 2 | BY MR. BECKER: |
| 3 | say you're not aware any formal forms that | 3 | Q. The basic understanding that |
| 4 | are used prior to 2003. So I'm asking if | 4 | you just described, how is that basic |
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| 8 | MR. FEE: Objection. Calls for | 8 | communications with counsel on that |
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| 12 | have other information, you can answer | 12 | THE WITNESS: I'm not sure what |
| 13 | about that. | 13 | you mean by "documented." |
| 14 | THE WITNESS: I don't believe | 14 | BY MR. BECKER: |
| 15 | we didn't feel like we needed any | 15 | Q. Are there any documents that |
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| | Page 42 | | Page 44 |
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| 2 | THE WITNESS: Because we felt | 2 | support its position that there was a basic |
| 3 | that there was a basic understanding, | 3 | understanding between the individuals who |
| 4 | there is a basic understanding today | 4 | drafted ASTM standards and ASTM that the |
| 5 | and there's been a basic understanding | 5 | copyright in those standards were to belong |
| 6 | for as long as ASTM has been around | 6 | to ASTM? |
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| 8 | is for the sole purpose of developing | 8 | you not to disclose communications |
| 9 | an ASTM standard that will receive a | 9 | with councel on that subject. If |
| 10 | | | with counsel on that subject. If |
| 110 | logo, and that will be copyrighted and | 10 | you're aware of other documents, you |
| 10 | logo, and that will be copyrighted and be distributed. Our members buy the | 10 11 | |
| | | | you're aware of other documents, you |
| 11 | be distributed. Our members buy the | 11 | you're aware of other documents, you can go ahead and respond with respect |
| 11 12 | be distributed. Our members buy the resulting standards from ASTM. We've | 11 12 | you're aware of other documents, you can go ahead and respond with respect to them. |
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| 11 12 13 14 15 16 17 18 19 20 | be distributed. Our members buy the resulting standards from ASTM. We've never, that I can recall, have had a member or a nonmember take issue with ASTM selling the resulting copyrighted standard to them and to others. I believe that the reason they come to the table is because they want they're there for the sole purpose of having a standard that will have an | 11 12 13 14 15 16 17 18 19 20 | you're aware of other documents, you can go ahead and respond with respect to them. THE WITNESS: I'm not aware of any documents. BY MR. BECKER: Q. Just a moment ago you were describing the reasons why people participate in the drafting of ASTM standards. Could you describe some of the incentives for individuals to participate in the drafting of |
| 11 12 13 14 15 16 17 18 19 20 21 | be distributed. Our members buy the resulting standards from ASTM. We've never, that I can recall, have had a member or a nonmember take issue with ASTM selling the resulting copyrighted standard to them and to others. I believe that the reason they come to the table is because they want they're there for the sole purpose of having a standard that will have an ASTM logo on it. | 11 12 13 14 15 16 17 18 19 20 21 | you're aware of other documents, you can go ahead and respond with respect to them. THE WITNESS: I'm not aware of any documents. BY MR. BECKER: Q. Just a moment ago you were describing the reasons why people participate in the drafting of ASTM standards. Could you describe some of the incentives for individuals to participate in the drafting of ASTM standards? |
| 11 12 13 14 15 16 17 18 19 20 21 22 | be distributed. Our members buy the resulting standards from ASTM. We've never, that I can recall, have had a member or a nonmember take issue with ASTM selling the resulting copyrighted standard to them and to others. I believe that the reason they come to the table is because they want they're there for the sole purpose of having a standard that will have an ASTM logo on it. BY MR. BECKER: | 11 12 13 14 15 16 17 18 19 20 21 22 | you're aware of other documents, you can go ahead and respond with respect to them. THE WITNESS: I'm not aware of any documents. BY MR. BECKER: Q. Just a moment ago you were describing the reasons why people participate in the drafting of ASTM standards. Could you describe some of the incentives for individuals to participate in the drafting of ASTM standards? MR. FEE: Objection. Lack of |
| 11 12 13 14 15 16 17 18 19 20 21 22 23 | be distributed. Our members buy the resulting standards from ASTM. We've never, that I can recall, have had a member or a nonmember take issue with ASTM selling the resulting copyrighted standard to them and to others. I believe that the reason they come to the table is because they want they're there for the sole purpose of having a standard that will have an ASTM logo on it. BY MR. BECKER: Q. Anything else? | 11 12 13 14 15 16 17 18 19 20 21 22 23 | you're aware of other documents, you can go ahead and respond with respect to them. THE WITNESS: I'm not aware of any documents. BY MR. BECKER: Q. Just a moment ago you were describing the reasons why people participate in the drafting of ASTM standards. Could you describe some of the incentives for individuals to participate in the drafting of ASTM standards? MR. FEE: Objection. Lack of foundation. You can answer. |

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| 1 | a company or an individual would be | 1 | you might think are responsive to |
|-----|---|----------|--|
| 2 | interested in having an ASTM standard | 2 | that. If you have other information, |
| 3 | that they could say their product or | 3 | you can go ahead and answer. |
| 4 | service is in compliance with. | 4 | THE WITNESS: My understanding |
| 5 | BY MR. BECKER: | 5 | is that the members join as |
| 6 | Q. Are there any other reasons? | 6 | individuals, and that when they come |
| 7 | MR. FEE: Objection. | 7 | to an ASTM meeting, they're |
| 8 | THE WITNESS: I'm sure there are | 8 | contributing their own knowledge to |
| 9 | other reasons, I just can't think of | 9 | the ASTM standard. |
| 10 | any right now. | 10 | BY MR. BECKER: |
| 11 | BY MR. BECKER: | 11 | Q. When you say that's your |
| 12 | Q. Does ASTM have any forms by | 12 | understanding, is that also ASTM's |
| 13 | which companies have assigned any copyrights | 13 | understanding? |
| 14 | that they may have in the draft standards to | 14 | A. Yes. |
| 15 | ASTM? | 15 | MR. FEE: Same objections. |
| 16 | MR. FEE: Objection. To the | 16 | THE WITNESS: Yes. |
| 17 | extent it calls for a legal | 17 | MR. FEE: And instructions. |
| 18 | conclusion, I instruct you not to | 18 | BY MR. BECKER: |
| 19 | disclose communications with counsel | 19 | Q. When you say "members join as |
| 20 | on this subject, but if you have any | 20 | individuals," does this also include |
| 21 | documents to identify, go ahead. | 21 | individuals who are government employees? |
| 22 | THE WITNESS: I'm not aware of | 22 | A. Yes. |
| 23 | any. | 23 | Q. Does ASTM believe that |
| 24 | BY MR. BECKER: | 24 | government employees who are acting within |
| 25 | Q. Does ASTM distinguish between | 25 | the scope of their employment by the federal |
| | Page 46 | | Page 48 |
| 1 | companies and individuals in the in its | 1 | government join as individuals when they join |
| 2 | understanding of the granting of copyright | 2 | ASTM? |
| 3 | rights to ASTM? | 3 | MR. FEE: Objection. Calls for |
| 4 | MR. FEE: Objection. Vague. To | 4 | a legal conclusion. Calls for |
| 5 | the extent I understand it, I think it | 5 | speculation. Instruct you not to |
| 6 | calls for a legal conclusion. To the | 6 | disclose communications with counsel |
| 7 | extent you think that requires you to | 7 | on this subject, but you can answer if |
| 8 | disclose any communication from | 8 | you have other information. |
| 9 | counsel, you shouldn't do so. If you | 9 | THE WITNESS: I'm not sure what |
| 10 | understand you have non-privileged | 10 | the individual members believe. I |
| 11 | information that is responsive, go | 11 | believe our committees believe that |
| 12 | ahead and provide it. | 12 | the input they get on the standards |
| 13 | THE WITNESS: I'm not sure what | 13 | are from that individual, the |
| 14 | you mean by that question. | 14 | individual knowledge that they're |
| 15 | BY MR. BECKER: | 15 | providing, not necessarily a company |
| 16 | Q. Let me rephrase. If an | 16 | or a government position. |
| 17 | individual fills out a form that ASTM | 17 | BY MR. BECKER: |
| 18 | believes assigns a copyright to ASTM but that | 18 | Q. And what's your basis for |
| 19 | individual is employed by a company and is | 19 | believing that that is what the members of |
| 20 | acting in the scope of employment, does ASTM | 120 | the committee believe? |
| 21 | believe that a copyright is granted to it? | 21 | A. Just my experience. |
| 22 | MR. FEE: Objection. Calls for | 22 | Q. What experience are you |
| 23 | a legal conclusion. Calls for | 23 | referring to? |
| 1-0 | - | | • |
| 23 | speculation. You shouldn't disclose | 24 | A. My experience with working with |
| | speculation. You shouldn't disclose any communications with counsel that | 24 25 | A. My experience with working with technical committees. |
| 24 | - | | |

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| 1 | experience in sitting in the meetings | 1 | you mean by "differently." |
|--|--|--|---|
| 2 | and observing the individual members | 2 | BY MR. BECKER: |
| 3 | contribute to the development of the | 3 | Q. Is there a specific |
| 4 | standards. | 4 | classification that's given to government |
| 5 | BY MR. BECKER: | 5 | employees who participate in the development |
| 6 | Q. What about those contributions | 6 | of standards under ASTM? |
| 7 | of those members gave you that impression? | 7 | A. They're given a classification |
| 8 | MR. FEE: Objection. Calls for | 8 | just as all other members are. |
| 9 | a legal conclusion. Compound. | 9 | Q. And what is that classification? |
| 10 | THE WITNESS: I'm not thinking | 10 | A. It could either be a producer, |
| 11 | of any one example. I'm just thinking | 11 | user, general interest, depending upon the |
| 12 | over time in all of my different | 12 | scope of the committee. |
| 13 | committees and all the different | 13 | Q. Would a federal government |
| 14 | meetings that I've attended, to me it | 14 | employee count as a producer? |
| 15 | appears that people are contributing | 15 | A. I can't think of a situation |
| 16 | off the cuff spontaneously in the | 16 | where they would be. |
| 17 | development of the standard. | 17 | Q. Would a federal government |
| 18 | BY MR. BECKER: | 18 | employee count as a user? |
| 19 | Q. When they participate, do | 19 | A. They may. |
| 20 | members of the federal government use their | 20 | Q. Would a federal government |
| 21 | federal government issued e-mail addresses? | 21 | employee count as a general interest member? |
| 22 | MR. FEE: Objection. Compound. | 22 | A. They may. |
| 23 | Calls for speculation. | 23 | Q. In what circumstances might a |
| 24 | THE WITNESS: They may or they | 24 | federal government employee count as a user |
| 25 | may not. | 25 | versus a general interest member? |
| | Page 54 | | Page 56 |
| 1 | BY MR. BECKER: | 1 | A. It depends on the scope of the |
| 2 | Q. What is it about off-the-cuff | 2 | committee. |
| 3 | or spontaneous contributions that you think | 3 | Q. Could you give some examples? |
| 4 | means that these individuals are | 4 | A. On my road and paving |
| 5 | participating in their individual capacity | 5 | committee, federal highway would be |
| 6 | and not as federal government employees? | 6 | considered a user. |
| 7 | MR. FEE: Objection. Calls for | 7 | MR. FEE: We've been going quite |
| 8 | a legal conclusion. | 8 | some time. I asked to have a short |
| 9 | THE WITNESS: Just my belief | 9 | break. We're going to take a break |
| 10 | based on what I'm observing that I | 10 | now, no question pending. |
| 11 | think it's a very spontaneous | 11 | MR. BECKER: We can take a |
| 12 | conversation, people providing | 12 | break. |
| 13 | contributions based on what they | 13 | VIDEOGRAPHER: Time is now |
| 14 | believe, not necessarily what their | 14 | 11:48. We're going off the video |
| 15 | company believes. | 15 | record. |
| 16 | | 16 | |
| 16 | BY MR. BECKER: | 10 | |
| 16 17 | BY MR. BECKER: Q. Are individuals who | 17 | (A recess was taken.) |
| | | | (A recess was taken.) |
| 17 | Q. Are individuals who | 17 | (A recess was taken.) |
| 17 18 | Q. Are individuals who participate excuse me. | 17 18 | |
| 17 18 19 | Q. Are individuals who participate excuse me. Are federal government | 17 18 19 | VIDEOGRAPHER: The time is now |
| 17 18 19 20 | Q. Are individuals who participate excuse me. Are federal government employees who participate in ASTM committees | 17 18 19 20 | VIDEOGRAPHER: The time is now 12:02. We're back on the video |
| 17 18 19 20 21 | Q. Are individuals who participate excuse me. Are federal government employees who participate in ASTM committees or task groups classified differently than | 17 18 19 20 21 | VIDEOGRAPHER: The time is now 12:02. We're back on the video record. |
| 17 18 19 20 21 22 | Q. Are individuals who participate excuse me. Are federal government employees who participate in ASTM committees or task groups classified differently than other individuals who participate in those committees or task groups? | 17 18 19 20 21 22 | VIDEOGRAPHER: The time is now 12:02. We're back on the video record. BY MR. BECKER: |
| 17 18 19 20 21 22 23 | Q. Are individuals who participate excuse me. Are federal government employees who participate in ASTM committees or task groups classified differently than other individuals who participate in those | 17 18 19 20 21 22 23 | VIDEOGRAPHER: The time is now 12:02. We're back on the video record. BY MR. BECKER: Q. Mr. Smith, do you have any |

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| 1 | of the questions we've discussed so far | 1 | |
|----------|---|----------|---|
| 2 | today? | 2 | (Exhibit 1285, Intellectual |
| 3 | A. Relative to our members' | 3 | Property Policy of ASTM, Bates |
| 4 | awareness that they're assigning copyrights | 4 | ASTM103277 - ASTM103284, was marked |
| 5 | to ASTM, I believe you had asked that | 5 | for identification.) |
| 6 | question prior to 2003. | 6 | |
| 7 | Q. Yes. | 7 | BY MR. BECKER: |
| 8 | A. ASTM also has an Intellectual | 8 | Q. I'm handing you what's been |
| 9 | Property Policy that makes our members aware | 9 | marked as Exhibit 1285. Is this the |
| 10 | of that as well. | 10 | Intellectual Property Policy of ASTM that you |
| 11 | Q. And when was ASTM's | 11 | had just mentioned? |
| 12 | Intellectual Property Policy first | 12 | A. Yes, I believe this is a |
| 13 | instituted? | 13 | version of it. |
| 14 | A. I'm not sure, but I believe it | 14 | Q. Are there multiple versions of |
| 15 | was in the '90s. | 15 | the ASTM intellectual property policy? |
| 16 | Q. Is there anything else other | 16 | A. I believe there were at least |
| 17 | than ASTM's Intellectual Property Policy that | 17 | two or three. |
| 18 | you believe contributes to ASTM's belief that | 18 | Q. This says it was approved on |
| 19 | there was an understanding that the copyright | 19 | April 28, 1999. Correct? |
| 20 | of individuals who participated in the | 20 | A. It does say that. |
| 21 | drafting of ASTM standards was owned by ASTM? | 21 | Q. It says that at the top of the |
| 22 | MR. FEE: Objection. Asked and | 22 | first page and at the bottom of the last |
| 23 | answered. Are you asking him to | 23 | page. Is that correct? |
| 24 | repeat all the other things he | 24 | A. That's correct. |
| 25 | mentioned before or are you excluding | 25 | MR. FEE: Objection. It says |
| 20 | Page 58 | | Page 60 |
| 1 | those? | 1 | adopted on the last page, not |
| 2 | MR. BECKER: Were there other | 2 | approved. |
| 3 | things that he mentioned before? | 3 | BY MR. BECKER: |
| 4 | MR. FEE: Oh, yeah. I'll be | 4 | Q. And for the record, this is the |
| 5 | honest. Actually I shouldn't say | 5 | document Bates number ASTM 103277 to |
| 6 | that. But you're asking him to list | 6 | ASTM 103284 titled: "INTELLECTUAL PROPERTY |
| 7 | everything he can think of now again? | 7 | POLICY OF ASTM." It says at the top of page |
| 8 | MR. BECKER: In terms of | 8 | Bates number ASTM103277 "Approved 28 |
| 9 | documents. | 9 | April 1999." Is that correct? |
| 10 | MR. FEE: Oh, documents. | 10 | A. Yes. |
| 11 | MR. BECKER: I don't think there | 11 | Q. Was this the first edition of |
| 12 | was anything else, was there? | 12 | the Intellectual Property Policy of ASTM? |
| 13 | MR. FEE: Your prior question | 12 | A. I believe there was one prior |
| 14 | wasn't limited to documents, that's | 14 | to this. |
| 15 | why I said that. | 14 | Q. Do you know when the |
| 16 | THE WITNESS: Is it before 2003? | 16 | Intellectual Property Policy of ASTM that |
| 17 | BY MR. BECKER: | 17 | existed prior to this was created? |
| 18 | Q. Yes. | 17 | A. No. |
| 19 | A. I'm not aware of any other | | |
| 20 | documents. | 19 20 | Q. Do you have any idea? |
| 20 21 | Q. Is there anything else that you | | A. I think it was at some point in |
| 21 22 | | 21 | the '90s. Maybe mid '90s, but I'm not sure. |
| 1.1. | have to add to your earlier testimony other | 22 | Q. Does ASTM have any record of an |
| | then your montion of the ID Deliev? | 1 2 2 | |
| 23 | than your mention of the IP Policy? | 23 | Intellectual Property Policy prior to this |
| 23 24 | A. I can't think of anything at | 24 | one, Exhibit 1285? |
| 23 | | | |

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| approved standard with a logo on it that's copyrighted. Q. Did Mr. Thomas identify any basis for his belief that copyright assignment from ASTM members was a very basic understanding, as you described it, that ASTM members had with the purpose of developing an Page 94 ASTM standard? A. Can you explain? Q. Let me rephrase that. Did Mr. Thomas identify any basis for his belief that ASTM members had an understanding that their drafts would be that the copyright for their drafts would be held by ASTM? A. I think his basis was on the fact that we've never had a member that has really questioned, that we can recall, or challenged ASTM copyrighting something. Another basis being that we sell our standards from us. Jim Thomas has provided the ther amifications potentially could be. the wast to maintain our low entry for How it could affect our business model and what the ramifications potentially could be. How we want to maintain our low entry for participation, \$75 membership, no meeting thet we can support our operations. And the members, based on the presentations that I've MR. FEE: Objection. Asked and | | | | |
|--|----|---|----|---|
| 3A. I asked Jim about any memory 43referring to your previous statement that you 44that he has relative to assignments of 5copyright.6MR. FEE: Objection. Compound.7A. Pretty much what I've explained 86MR. FEE: Objection. Compound.7A. Pretty much what I've explained 96MR. FEE: Objection. Compound.8to you relative to formally getting 96MR. FEE: Objection. Compound.9to you relative to our 117The WITNESS: Jim has told me 99to you releative to our 128MR. FEE: Objection.10from 2003 to the present relative to our 1310Nembers has 911renewal forms, membership application forms, 1410Developing has 1512copyright assignment from our members was a 15P. Yes.16Q. And when you met with Jim 1613and our staff have had, he sole purpose they 177Thomas on Tuesday, did he say that the fact 18that ASTM sells standards to its members is a 1914Statadarding, as you described i, that ASTM 19pasifi what the fact 18that by ASTM members, that their 2015a. Can you explain? 2A. Can you explain? 21members had an understanding that 215A. Can you explain? 321members had an member that has 316fact that we've never had a member that has 310117for their drafts would be held by ASTM? 321 <td>1</td> <td>- · ·</td> <td>1</td> <td></td> | 1 | - · · | 1 | |
| 4that he has relative to assignments of 54attributed to Jim Thomas, were all of those statements from Jim Thomas, were all of those statements and the proves of assignment for ASTM members was a very basic that were and an understanding that that were are copyright assemint for our members had an understanding that that were frafts would be held by ASTM statements and so moures approved to their drafts would be held by ASTM statements and and that were are copyright assemint. A Did thin the meeting was that we can recall, or their drafts would be held by ASTM statements and and drafting presentations at different committed their d | 2 | Thomas when you met with him then? | 2 | • |
| 5copyright.5statements from Jim Thomas?6Q. And what did he say?6MR. FEE: Objection. Compound.7A. Pretty much what I've explained7THE WTINESS: Jim has told me8to you relative to formally getting9presentations.9documentation from our members on assignment0BY MR. BECKER:11renewal forms, membership application forms,10BY MR. BECKER:12collaboration area. And then prior to that,11Q. When you spoke with Jim Thomas13jim's recollection and feelings were that0on Tuesday, did he say that the fact14copyright assignment from our members had15A. Yes.15very basic understanding that our members hat16Q. And when you met with Jim16com to an ASTM meeting is to develop a15A. Yes.15and our staff have had, the sole purpose they17Thomas on Tuesday, did he say that the fact16opyrighted.20that by ASTM standard's to its members is a20opyrighted.21A. He had indicated that the fact21A. Can you explain?3members had an understanding that2A. Can you explain?3members had an understanding that3Q. Let me rephrase that. Did44Mr. Thomas identify any basis for his belief55that ASTM members had an understanding that22A. Can you explain?33met rafts would be held by ASTM?< | 3 | A. I asked Jim about any memory | 3 | referring to your previous statement that you |
| 6 Q And what did he say?6MR. FEE: Objection. Compound. THE WTINESS: Im has told me7A. Pretty much what Ive explained7THE WTINESS: Im has told me8to your elaive to formally getting9as and I have seen Jim do these9documentation from our members on assignment10From 2003 to the present relative to our10from 2003 to the present relative to our10BY MR. BECKER:11renewal formo our members was a11Q. When you spoke with Jim Thomas12colpright assignment from our members was a15A. Yes.16and our staff have had, the sole purpose they15A. Yes.16and our staff have had, the sole purpose they16Q. And when you met with Jim17rome to an ASTM member is is to develop a3ts is for why there may be an understanding18standard that's going to result in an ASTM18that ta ASTM sells standards to to ur19approved standard with a logo on it that's19basis for why there may be an understanding as you described it, that ASTM20Did MT. Thomas identify any21that we late standards back to our21ASTM standard?1members hat we are copyright de by ASTM23A. Thimk his basis was on the for their drafts would be held by ASTM?33A. I think his basis was on the fact that we've never had a member that as31G. Did Jim Thomas any1032Another basis being that we san ever prighting something.33< | 4 | that he has relative to assignments of | 4 | attributed to Jim Thomas, were all of those |
| 7A.Pretty much what I've explained7THE WITNESS: Jim has told me8to you relative to formally gettingand I have seen Jim do these9documentation form our members on assignment10from 2003 to the present relative to our11renewal forms, membership application forms,12collaboration area. And then prior to that,13Jim's recollection and feelings were that14copyright assignment from our members was a15very basic understanding that our members had16and our staff have had, the sole purpose they17come to an ASTM meeting is to develop a18standard that's going to result in an ASTM19approved standard with a logo on it that's20copyrighted.21Q. Did Mr. Thomas identify any22basis for his belief that copyright23assigmment from ASTM members was a very basic24understanding, as you described it, that ASTM25members had with the purpose of developing an26Page 9427A. Can you explain?3Q. Let me rephrase that. Did4Mr. Thomas identify any basis for his belief5that ASTM standard?6THE WITNESS: I can't think of7Therafts would be held by ASTM?8A. I think his basis was on the9G. Did Jim Thomas any10really questioned, that we can recall, or11challenged ASTM copyrighting something.12Anot He | 5 | copyright. | 5 | statements from Jim Thomas? |
| 8 to you relative to formally getting 8 and I have seen Jim do these 9 documentation from our members on assignment 7 10 from 2003 to the present relative to our 11 11 renewal forms, membership application forms, 10 BY MR, BECKER: 11 renewal forms, membership application forms, 11 0 When you spoke with Jim Thomas 12 copyright assignment from our members was a 11 Q. When you spoke with Jim Thomas 15 very basic understanding that our members had 16 Q. And when you met with Jim 17 come to an ASTM meeting is to develop a 15 A. Yes. 18 standard that's going to result in an ASTM 18 that ASTM members, that the fact 13 assignment from ASTM members was a very basic 20 that WASTM members, that their 21 Q. Did Mr. Thomas identify any 22 A. He had indicated that the fact 23 assignment from ASTM members was a very basic 21 that we sell the standards back to our 24 understanding, as you described it, that ASTM 22 that the standard bro our 24 A. Can you explain? 2 | 6 | Q. And what did he say? | 6 | MR. FEE: Objection. Compound. |
| 9documentation from our members on assignment 109presentations.10from 2003 to the present relative to our10BY MR. BECKER:11renewal forms, membership application forms, copyright assignment from our members was a very basic understanding that our members had and our staff have had, the sole purpose they rome to an ASTM meeting is to develop a ecopyrighted.10BY MR. BECKER:12our staff have had, the sole purpose they copyrighted.17Thomas on Tuesday, did he say that a member has never challenged the copyright assertions by A. Yes.13and our staff have had, the sole purpose they copyrighted.17Thomas on Tuesday, did he say that the fact that ASTM sells standards to its members is is tabasis for his belief that copyright assignment from ASTM members was a very basic understanding, as you described it, that ASTM remebers had with the purpose of developing an Page 9416A. He had indicated that the fact that we sell the standards back to our reage 941ASTM standard? a. Can you explain?1members that we are copyrighting the material that ASTM members had an understanding fith that MSTM?13Q. Let me rephrase that. Did their drafts would be held by ASTM? for their drafts would be held by ASTM?14A. Think his basis was on the fact that we've never had a member that has to really questioned, that we can recall, or that MSECKER:29Q. Did you ask Jim Thomas any questions when you met with him on Tuesday?10really questioned, that we can recall, or that the ramifications potentially could be.13 </td <td>7</td> <td>A. Pretty much what I've explained</td> <td>7</td> <td>THE WITNESS: Jim has told me</td> | 7 | A. Pretty much what I've explained | 7 | THE WITNESS: Jim has told me |
| 9documentation from our members on assignment 109presentations.10from 2003 to the present relative to our10BY MR. BECKER:11renewal forms, membership application forms, come to an ASTM members was a11Q. When you spoke with Jim Thomas12colpyright assignment from our members was a13in ever challenged the copyright assertions by14ASTM?14ASTM?15very basic understanding that our members had15A. Yes.16and our staff have had, the sole purpose they15A. Yes.17come to an ASTM meeting is to develop a15A. Yes.18standard that's going to result in an ASTM19basis for why there may be an understanding20copyrighted.20that dropyright2021Q. Did Mr. Thomas identify any23that by ASTM members, is probably a real good indication23thast from ASTM members was a very basic24members is probably a real good indication24Mr. Thomas identify any basis for his belief24members that we are copyrighting the material25that ASTM members had an understanding from our Page 9424MR. FEE: Objection. Vague.26their drafts would be held by ASTM?7members say anything27A. Can you explain?214MR. FEE: Objection. Vague.36their drafts would be held by ASTM?7any questions thin in asked him37their drafts would be held by ASTM?7any questions. | 8 | to you relative to formally getting | 8 | and I have seen Jim do these |
| 10 from 2003 to the present relative to our 10 BY MR. BECKER: 11 renewal forms, membership application forms, 11 Q. When you spoke with Jim Thomas 13 Jim's recollection and feelings were that 11 Q. When you spoke with Jim Thomas 14 control totat, 11 ASTM 15 A. Yes. 15 16 and our staff have had, the sole purpose they 15 A. Yes. 17 come to an ASTM meeting is to develop a 16 that ASTM standards to its members is a 18 standard that's going to result in an ASTM 19 paproved standard with a logo on it that's 19 approved standard with a logo on it that's 10 basis for his belief that copyright 21 Q. Did Mr. Thomas identify any 20 that SATM standards back to our 23 asignment from ASTM members thad an understanding many ou explain? 10 members is probably a real good indication 25 that ASTM standard? 1 members that we are copyrighting the material 3 Q. Let me rephrase that. Did 10 members had an understanding that 4 their drafts would be hed by ASTM? 7 any | 9 | | 9 | presentations. |
| 11constraintQ.When you spoke with Jim Thomas12collaboration area. And then prior to that,intime recollection and feelings were thatintime recollection and feelings were that14copyright assignment from our members was aintime recollection and feelings were thatintime recollection and feelings were that16and our staff have had, the sole purpose theyintime recollection and the sole purpose theyintime recollection and the sole purpose they17copyrightintime recollection and the sole purpose theyintime recollection and the sole purpose they19approved standard with a logo on it that'sintime recollection and the sole purpose20copyrighted.intime recollection and the sole purposeintime recollection and the sole purpose21Q. Did Mr. Thomas identify anyintime recollection and the purpose of developing an members had with the purpose of developing an members had with the purpose of developing an real with the purpose of developing an real with the purpose of developing an real would be - that the copyright3Q. Let me rephrase that. Didintime rephrase that. Did4Mr. Thomas identify any basis for his beliefinter drafts would be - that the copyright5A. I think his basis was on theinter drafts would be - that the copyright6Heir drafts would be - dual would be recole by ASTM?inter drafts would be heil by ASTM?8A. I think his basis was on theinter drafts would be - dual would be recole that that has10really questioned, that we call orinter drafts would be recole that that has< | 10 | - | 10 | BY MR. BECKER: |
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| 9fact that we've never had a member that has really questioned, that we can recall, or really questioned, that we can recall, or9Q. Did you ask Jim Thomas any questions when you met with him on Tuesday?11challenged ASTM copyrighting something. 12Another basis being that we sell our standards and our members are some of our 1311A. No, I don't think I asked him any questions. I think the meeting was13standards and our members are some of our 1413biggest customers, so they're buying the standards from us. Jim Thomas has provided 1614And I don't know if it was more of a discussion, I don't think we had I had questions. I mean, I didn't need to ask questions. I mean, I didn't need to ask questions. It was a discussion.18what the ramifications potentially could be. 1918Q. A moment ago you referred to 1920how we want to maintain our low entry for 21 participation, \$75 membership, no meeting 2311Do individuals have to pay ASTM 22 a fees, and we sell our resulting standards so 2324members, based on the presentations that I've 2424MR. FEE: Objection. Asked and | 7 | for their drafts would be held by ASTM? | 7 | anything else specific that he said. |
| 10really questioned, that we can recall, or10questions when you met with him on Tuesday?11challenged ASTM copyrighting something.11A. No, I don't think I asked him12Another basis being that we sell our12any questions. I think the meeting was13standards and our members are some of our13basically to discuss copyright assignment.14biggest customers, so they're buying the14And I don't know if it was more of a15standards from us. Jim Thomas has provided15discussion, I don't think we had I had16numerous presentations at different committee16questions. I mean, I didn't need to ask17meetings announcing about this lawsuit and17questions. It was a discussion.18what the ramifications potentially could be.18Q. A moment ago you referred to19How it could affect our business model and19the \$75 fee. Do ASTM members excuse me,20how we want to maintain our low entry for21Do individuals have to pay ASTM22fees, and we sell our resulting standards so22a fee to participate in the standard drafting23that we can support our operations. And the23process?24members, based on the presentations that I've24MR. FEE: Objection. Asked and | 8 | A. I think his basis was on the | 8 | BY MR. BECKER: |
| 11challenged ASTM copyrighting something.12Another basis being that we sell our13standards and our members are some of our14biggest customers, so they're buying the15standards from us. Jim Thomas has provided16numerous presentations at different committee17meetings announcing about this lawsuit and18what the ramifications potentially could be.19How it could affect our business model and20how we want to maintain our low entry for21participation, \$75 membership, no meeting22fees, and we sell our resulting standards so23that we can support our operations. And the24members, based on the presentations that I've24members, based on the presentations that I've | 9 | fact that we've never had a member that has | 9 | Q. Did you ask Jim Thomas any |
| 12 Another basis being that we sell our 13 standards and our members are some of our 14 biggest customers, so they're buying the 15 standards from us. Jim Thomas has provided 16 numerous presentations at different committee 17 meetings announcing about this lawsuit and 18 what the ramifications potentially could be. 19 How it could affect our business model and 20 how we want to maintain our low entry for 21 participation, \$75 membership, no meeting 22 fees, and we sell our resulting standards so 23 that we can support our operations. And the 24 members, based on the presentations that I've | 10 | really questioned, that we can recall, or | 10 | questions when you met with him on Tuesday? |
| 13 standards and our members are some of our 14 biggest customers, so they're buying the 15 standards from us. Jim Thomas has provided 16 numerous presentations at different committee 17 meetings announcing about this lawsuit and 18 what the ramifications potentially could be. 19 How it could affect our business model and 20 how we want to maintain our low entry for 21 participation, \$75 membership, no meeting 22 fees, and we sell our resulting standards so 23 that we can support our operations. And the 24 members, based on the presentations that I've | 11 | challenged ASTM copyrighting something. | 11 | A. No, I don't think I asked him |
| 14biggest customers, so they're buying the 1514And I don't know if it was more of a15standards from us. Jim Thomas has provided 1615discussion, I don't know if it was more of a16numerous presentations at different committee 1716questions. I mean, I didn't need to ask17meetings announcing about this lawsuit and 1816questions. I mean, I didn't need to ask18what the ramifications potentially could be. 1918Q. A moment ago you referred to19How it could affect our business model and 2019the \$75 fee. Do ASTM members excuse me, 2020how we want to maintain our low entry for 2121Do individuals have to pay ASTM22fees, and we sell our resulting standards so 2322a fee to participate in the standard drafting 2324members, based on the presentations that I've24MR. FEE: Objection. Asked and | 12 | Another basis being that we sell our | 12 | any questions. I think the meeting was |
| 15 standards from us. Jim Thomas has provided 16 numerous presentations at different committee 17 meetings announcing about this lawsuit and 18 what the ramifications potentially could be. 19 How it could affect our business model and 20 how we want to maintain our low entry for 21 participation, \$75 membership, no meeting 22 fees, and we sell our resulting standards so 23 that we can support our operations. And the 24 members, based on the presentations that I've | 13 | standards and our members are some of our | 13 | basically to discuss copyright assignment. |
| 16numerous presentations at different committee16questions. I mean, I didn't need to ask17meetings announcing about this lawsuit and17questions. It was a discussion.18what the ramifications potentially could be.18Q. A moment ago you referred to19How it could affect our business model and19the \$75 fee. Do ASTM members excuse me,20how we want to maintain our low entry for20let me rephrase.21participation, \$75 membership, no meeting21Do individuals have to pay ASTM22fees, and we sell our resulting standards so22a fee to participate in the standard drafting23that we can support our operations. And the23process?24members, based on the presentations that I've24MR. FEE: Objection. Asked and | 14 | biggest customers, so they're buying the | 14 | And I don't know if it was more of a |
| 17 meetings announcing about this lawsuit and 18 what the ramifications potentially could be. 19 How it could affect our business model and 20 how we want to maintain our low entry for 21 participation, \$75 membership, no meeting 22 fees, and we sell our resulting standards so 23 that we can support our operations. And the 24 members, based on the presentations that I've 17 questions. It was a discussion. 18 Q. A moment ago you referred to 19 the \$75 fee. Do ASTM members excuse me, 20 let me rephrase. 21 Do individuals have to pay ASTM 22 a fee to participate in the standard drafting 23 process? 24 MR. FEE: Objection. Asked and | 15 | standards from us. Jim Thomas has provided | 15 | discussion, I don't think we had I had |
| 18 what the ramifications potentially could be. 19 How it could affect our business model and 20 how we want to maintain our low entry for 21 participation, \$75 membership, no meeting 22 fees, and we sell our resulting standards so 23 that we can support our operations. And the 24 members, based on the presentations that I've 18 Q. A moment ago you referred to 19 the \$75 fee. Do ASTM members excuse me, 20 let me rephrase. 21 Do individuals have to pay ASTM 22 a fee to participate in the standard drafting 23 that we can support our operations that I've 24 MR. FEE: Objection. Asked and | 16 | numerous presentations at different committee | 16 | questions. I mean, I didn't need to ask |
| How it could affect our business model and how we want to maintain our low entry for participation, \$75 membership, no meeting fees, and we sell our resulting standards so that we can support our operations. And the members, based on the presentations that I've that we can support our operations that I've | 17 | | 17 | - |
| How it could affect our business model and how we want to maintain our low entry for participation, \$75 membership, no meeting fees, and we sell our resulting standards so that we can support our operations. And the members, based on the presentations that I've How it could affect our business model and that we can support our operations. And the members, based on the presentations that I've MR. FEE: Objection. Asked and | 18 | what the ramifications potentially could be. | 18 | Q. A moment ago you referred to |
| 20how we want to maintain our low entry for participation, \$75 membership, no meeting 2220let me rephrase.21participation, \$75 membership, no meeting 2221Do individuals have to pay ASTM 2223that we can support our operations. And the 2423process?24MR. FEE: Objection. Asked and | 19 | | 19 | |
| 21participation, \$75 membership, no meeting21Do individuals have to pay ASTM22fees, and we sell our resulting standards so22a fee to participate in the standard drafting23that we can support our operations. And the23process?24members, based on the presentations that I've24MR. FEE: Objection. Asked and | 20 | how we want to maintain our low entry for | 20 | |
| 22fees, and we sell our resulting standards so22a fee to participate in the standard drafting23that we can support our operations. And the23process?24members, based on the presentations that I've24MR. FEE: Objection. Asked and | | • | | - |
| 23that we can support our operations. And the 2423process?24members, based on the presentations that I've24MR. FEE: Objection. Asked and | | | | |
| 24 members, based on the presentations that I've 24 MR. FEE: Objection. Asked and | | - | | |
| | | | | * |
| | | seen, have embraced that concept. | | - |
| · · · | | | | Page 97 |

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| 1 | THE WITNESS: They have to pay | 1 | A. No. |
|----|--|----|---|
| 2 | \$75 to be a member, but they don't | 2 | Q. When was that meeting? |
| 3 | have to pay \$75 to participate. So an | 3 | A. That meeting was yesterday. |
| 4 | individual can participate without | 4 | Q. So Mr. Pace provided no |
| 5 | paying ASTM. | 5 | information to you on the subject of |
| 6 | BY MR. BECKER: | 6 | copyright by individuals to ASTM? |
| 7 | Q. What are the differences that | 7 | A. No. |
| 8 | individuals who are members of ASTM enjoy in | 8 | MR. FEE: Objection. Vague. |
| 9 | their participation in the standard drafting | 9 | BY MR. BECKER: |
| 10 | process versus individuals who are not | 10 | Q. A moment ago you referred to |
| 11 | members? | 11 | presentations by Jim Thomas. Can you give |
| 12 | MR. FEE: Objection. Vague. | 12 | any specific can you tell me about any |
| 13 | THE WITNESS: They get to | 13 | specific presentations by Jim Thomas that you |
| 14 | free volume of standards and they get | 14 | think address issues of copyright ownership |
| 15 | to vote. When it's on the ballots, | 15 | by ASTM? |
| 16 | they get to cast votes. Nonmembers do | 16 | A. I can't recall any |
| 17 | not. | 17 | presentations that he did specific on that |
| 18 | BY MR. BECKER: | 18 | subject. |
| 19 | Q. When you say "on the ballots," | 19 | Q. What presentations were you |
| 20 | what ballots are you referring to? | 20 | referring to? |
| 21 | A. On the technical standards. | 21 | A. At ASTM conferences where we |
| 22 | Q. Are those ballots for voting up | 22 | have breakfast meetings with all of the |
| 23 | or down on the revision or creation of | 23 | individuals attending that meeting, are |
| 24 | particular standards? | 24 | invited to a breakfast meeting. And we hold |
| 25 | A. Correct. | 25 | them in four different committee weeks; in |
| | Page 98 | | Page 100 |
| 1 | Q. Have you had any other | 1 | January, April, May and June of every year. |
| 2 | communications with Jim Thomas about your | 2 | I've heard Jim Thomas talk about what I said |
| 3 | deposition today other than the meeting you | 3 | at those breakfast meetings. |
| 4 | had with him on Tuesday? | 4 | Q. Do you recall on what dates |
| 5 | A. No. | 5 | Mr. Thomas spoke about those issues at |
| 6 | Q. And have you had any | 6 | breakfast meetings? |
| 7 | communications with Marge Cassidy in | 7 | A. I can't provide specific dates. |
| 8 | preparation for your deposition today other | 8 | Q. Do you have general dates as in |
| 9 | than the meeting that you had with her? | 9 | this year, last year or the year prior? |
| 10 | A. No. | 10 | A. I believe it was this year was |
| 11 | Q. You said you met with John | 11 | mentioned. And it was probably last year as |
| 12 | Pace, the vice president of publications, as | 12 | well. |
| 13 | well in preparation for your deposition | 13 | Q. Do you recall Mr. Thomas |
| 14 | today. Correct? | 14 | mentioning anything on this subject prior to |
| 15 | A. Uh-huh. | 15 | last year? |
| 16 | Q. What did you discuss with | 16 | A. I can't say for sure. |
| 17 | Mr. Pace? | 17 | Q. Are these breakfast meetings |
| 18 | A. Any knowledge that he would | 18 | recorded in any way? |
| 19 | have relative to the assignment of copyright | 19 | A. No. |
| 20 | from our members. | 20 | Q. Are there any minutes kept of |
| 21 | Q. What did Mr. Pace say? | 21 | the breakfast meetings? |
| 22 | A. He didn't provide any input. | 22 | A. No, but we have annual our |
| 23 | He didn't have any knowledge. | 23 | annual meeting we may have minutes from |
| 24 | Q. Did you discuss any other | 24 | our annual meeting, but I'm not sure. I |
| 25 | issues with Mr. Pace at that meeting? | 25 | think we might have slides actually, |
| | Page 99 | - | Page 101 |
| | | | |

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| 1 | presentation slides that are available for | 1 | helped create the electronic version of the |
|----|---|----|---|
| 2 | our annual meetings. | 2 | forms that appear on the ASTM Web site. Is |
| 3 | Q. You said you also meet with | 3 | that what you're saying? |
| 4 | Phil Lively, the vice president of | 4 | MR. FEE: Objection. Compound. |
| 5 | technology. Is that correct? | 5 | THE WITNESS: I'm not sure what |
| 6 | A. Yes. | 6 | exactly you mean by that, but |
| 7 | Q. When did you meet with him? | 7 | essentially he was able to accomplish |
| 8 | A. I met with Phil yesterday. | 8 | getting the language up onto the |
| 9 | Q. What did you speak with Phil | 9 | screens so that the members can |
| 10 | Lively about yesterday? | 10 | acknowledge the statement during the |
| 11 | A. About copyright assignments for | 11 | process. |
| 12 | members to ASTM. | 12 | BY MR. BECKER: |
| 13 | Q. And what did Phil Lively tell | 13 | Q. Did Mr. Lively draft any of the |
| 14 | you? | 14 | language on the membership application or |
| 15 | A. About his involvement and help | 15 | renewal forms or any of the other forms that |
| 16 | with having the language that we talked about | 16 | you're describing? |
| 17 | earlier on the membership application screens | 17 | MR. FEE: Objection. Compound. |
| 18 | and the membership renewal screens and the | 18 | THE WITNESS: I don't believe |
| 19 | collaboration area screen and the work item | 19 | SO. |
| 20 | registration screens. | 20 | BY MR. BECKER: |
| 21 | Q. When you say, "the language | 21 | Q. What did Mr. Lively tell you |
| 22 | that we talked about earlier," are you | 22 | about the work that he did related to |
| 23 | referring to language that ASTM believes | 23 | copyright assignments? |
| 23 | assigns copyright from individuals to ASTM? | 23 | A. Just that he could remember |
| 25 | MR. FEE: Objection. Calls for | 25 | helping with putting the information up on |
| | Page 102 | 20 | Page 104 |
| 1 | a legal conclusion. | 1 | the Web screens, and he could remember when |
| 2 | THE WITNESS: The language that | 2 | he was a staff manager back in the very |
| 3 | we talked about that is on the | 3 | beginning time, I think it was early '80s |
| 4 | membership applications, yes. That | 4 | when he was a staff manager, and kind of |
| 5 | the members acknowledge when they're | 5 | reiterating what I had previously said about |
| 6 | either registering a work item or | 6 | there being an understanding that our members |
| 7 | joining as a new member or renewing | 7 | understand that their contributions to ASTM, |
| 8 | their membership or opening up a | 8 | is well understood that we're going to |
| 9 | collaboration area that assigns all of | 9 | copyright that material. |
| 10 | their past, present and future | 10 | Q. Did Mr. Lively provide any |
| 11 | contributions to ASTM standards | 11 | basis for his statement that there was an |
| 12 | into ASTM standards to ASTM. | 12 | understanding in the early '80s that ASTM |
| 13 | BY MR. BECKER: | 13 | would copyright the material provided by |
| 14 | Q. What was Mr. Lively's | 14 | individuals that was incorporated into the |
| 15 | involvement in the language that you are | 15 | standard drafts? |
| 16 | referring to? | 16 | A. Can you repeat that question? |
| 17 | MR. FEE: Objection. Vague. | 17 | Q. Yes. Did Mr. Lively provide |
| 18 | THE WITNESS: He helped us with, | 18 | any basis for his statement that there was an |
| 19 | from a technology standpoint, getting | 19 | understanding in the early '80s that ASTM |
| 20 | that language up onto our Web site, | 20 | would copyright the material provided by |
| 21 | onto the screens. | 21 | individuals that was incorporated into the |
| 22 | BY MR. BECKER: | 22 | standard drafts? |
| 23 | Q. So you're saying that | 23 | A. No. I think it was just his |
| 24 | Mr. Lively was involved in the Mr. Lively | 24 | belief just as it was my belief. |
| 25 | did not draft the language, but Mr. Lively | 25 | Q. Did you discuss anything else |
| | Page 103 | | Page 105 |
| | | | |

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| 1of any organizations typically sign up for organizational memberships?1answered.2organizational memberships?3THE WITNESS: No. Organizations4Beyond the scope of his designation.4participate on technical committees.5THE WITNESS: I don't know.6Q. What's the difference between6BY MR. BECKER:6Q. What's the difference between7Q. Can organizational members be7what you just suid and an organizational8members of technical committees?8member designating an individual to9A. Yes. As a matter -9participate on technical committees on its10MR. FEE: There's no question11MR. FEE: Objection.11Parding.11MR. FEE: Objection.12BY MR. BFCKR:12Mischaracterizes his testimony to the13Q. Im sorry, what were you about13extent it purports to summarize it.14to say?14You can answer.15A. I believe all organizational15THE WITNESS: A organizational16members are members for ASTM?18designates a member, an employee to be a a member executed copyright assignments for ASTM?16member seecuted copyright assignments for applications that we talked about earlier, if they're involved in a assignment, and if they registered a work to tenchical committee, when to any to organizational members sign up for111through the renewal applications that we to usay representative of that organizational sana a | | | | |
|--|----|---|----|---|
| 3MR, FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: 1 don't know. 63designate a member, an employee to participate on technical committees. 56BY MR, BECKER: 06Q. What's the difference between what you just said and an organizational members of technical committees? 977Q. Can organizational members be members of technical committees? 9888members of technical committees? 9811pending. 911MR, FEE: Objection.12BY MR, BECKER: 13121413Q. Tm sorry, what were you about 14131314to say?14You can answer.15A. I believe all organizational members are members of technical committees. 161616members an employee to be a member to represent it on a technical committee.17Q. Have any organizational 171018executed copyright assignments for a collaboration area, they would make an a signment. Full weighter and work assignment. 1616through the membership a acollaboration area, they would make an a signment and if they registered a work 410through the renewal applications that we takked about earlier, if they're involved in a collaboration area, they would make an a signment.16Q. So those are the same - the si on dividual members, when si organizational members when si organizational members, when si organizational members, when si organizational members, when si organizational members, when si organizational memb | 1 | of any organizations typically sign up for | 1 | answered. |
| 4Beyond the scope of his designation. THE WITNESS: I don't know.4purticipate on technical committees.5BY MR. BECKER:6Q. What's the difference between7Q. Can organizational members be members of technical committees?88members of technical committees?99A. Yes. As a matter participate on technical committees on its10MR. FEE: There's no question1011pending.1112BY MR. BECKER:1213Q. I'm sorry, what were you about1314to say?1415A. I believe all organizational1516members of technical committees.1717Q. Have any organizational members1718executed copyright assignments for ASTM?1819A. Not to my knowledge. I'm1921Q. Yes. Have any organizational2221Q. Yes. Have any organizational2222Q. When you say the organization23ASTM?24A. Through the membership24A. Through the membership25assignment, and if they registered a work26timm, they would make an assignment.27taked about earlier, if they're involved in a an embership?3asoliboration area, they would make an assignment, and if they registered a work4taked about earlier, if they're involved in a sant eassignment.5organizational members.7Q. How do organiza | 2 | organizational memberships? | 2 | THE WITNESS: No. Organizations |
| 5 THE WITNESS: I don't know. 5 BY MR. BECKER: 6 Q. What's the difference between 6 BY MR. BECKER: 6 Q. What's the difference between 7 Q. Can organizational members be 7 what you just said and an organizational 8 members of technical committees? 8 member designating an individual to 9 A. Yes. As a matter 9 participate on technical committees on its 10 MR. FEE: There's no question 10 behalf? 11 pending. 11 MR. FEE: Objection. 12 BY MR. BECKER: 12 Mischaracterizes his testimony to the 13 Q. Tm sorry, what were you about 13 extent it purports to summarize it. 14 to say? 14 You can answer. 15 15 A. I believe all organizational members 17 organizational members are members of technical committees. 16 members are members of technical committees. 16 organization. So the organization 20 As not to my knowledge. Im 19 a member to represent it on a a member to be a 21 Q. Yes. Have any organizational | 3 | MR. FEE: Objection. Vague. | 3 | designate a member, an employee to |
| 6BY MR. BECKER:6Q. What's the difference between what you just said and an organizational member seignating an individual to7What's the difference between what you just said and an organizational member seignating an individual to9A. Yes. As a matter910MR. FEE: There's no question1011pending.1112BY MR. BECKER:1213Q. I'm sorry, what were you about1314to say?1415A. I believe all organizational1516members are members of technical committees.1617Q. Have any organizational1518executed copyright assignments for ASTM?1820sorry, can you repeat that question?2021Q. Yes. Have any organizational2122BY MR. BECKER:2023astfM?2324A. Through the membership2425tatked about carifer, if they're involved in23a collaboration area, they would make an34a collaboration area, they would make an34a collaboration area, they would make an assignment.107Q. So those are the same the47thorugan thembers when910organizational members when911through the renewal applications that we116membership?1117A. Correct.1218Mayeell1 | 4 | Beyond the scope of his designation. | 4 | participate on technical committees. |
| 7Q. Can organizational members be members of technical committees?7what you just said and an organizational member designating an individual to participate on technical committees on its10A. Yes. As a matter - pending.10behalf?11pending.11MR. FEE: Objection.12BY MR. BECKER: to say?12Mischaracterizes his testimony to the extent it purports to summarize it.14to say?14You can answer.15A. I believe all organizational members a members are members of technical committees.16THE WITNESS: An organizational member is an individual, it's not the organization. So the organization16members are members of technical committees.16organization. So the organization18executed copyright assignments for ASTM?18designates a member, an employee to be a member to represent it on a to a to a to a to a to a to a to a supresentative on a technical committee.21Q. Yes. Have any organization a paplications that we talked about earlier. talked about earlier.21BY MR. BECKER: to a terpresentative on a technical committee.23a collaboration area, they would make an a assignment, and if they registered a work same assignment language that would relate to organizations al members when tim, they would make an assignment.1representative, an organization? A. Maybe.3Q. So those are the same - the same assignment language that would relate to organizational members.3Q. Does ASTM have any knowledge as to whether organization and maintyidual to pa | 5 | THE WITNESS: I don't know. | 5 | BY MR. BECKER: |
| 8members of technical committees?8member designating an individual to9A. Yes. As a matter9participate on technical committees on its10MR. FEE: There's no question11MR. FEE: Objection.11pending.11MR. FEE: Objection.12BY MR. BECKER:12Mischaracterizes his testimony to the13Q. Tm sorry, what were you about14You can answer.14to say?14You can answer.15A. I believe all organizational members15THE WITNESS: An organizational16members as individual, it's not the17Q. Have any organizational members1618executed copyright assignments for ASTM?1820astructure on a technical committee.2021Q. Yes. Have any organizational2123designates an employee to be a member to present it on a24A. Through the membership2325applications that we talked about earlier, if they're involved in33a collaboration area, they would make an34assignment, and if they registered a work4to whether organizational members, when they5individual members you're saying would also7organizational members, when they6Q. So those are the same the3Correct.127A. Correct.12Har Mayee.16membership?11THE WITNESS: I think it varies.17Q. Can you elaborate on tha | 6 | BY MR. BECKER: | 6 | Q. What's the difference between |
| 8 members of technical committees? 8 member designating an individual to 9 A. Yes. As a matter 9 participate on technical committees on its 10 MR. FEE: There's no question 11 member designating an individual to 11 pending. 11 MR. FEE: Objection. 12 BY MR. BECKER: 12 Mischaracterizes his testimony to the 13 Q. Im sorry, what were you about 14 You can answer. 15 A. I believe all organizational 15 THE WITNESS: An organizational 16 members are members of technical committees. 16 member is an individual, it's not the 17 Q. Have any organizational members 17 organization. So the organization 18 executed copyright assignments for ASTM? 18 designates an employee to be a member to be a a 20 sorry, can you repeat that question? 20 Exchnical committee. 20 21 Q. Yes. Have any organizational 21 BY MR. BECKER: 20 When you say the organization 23 ASTM? 23 designates an employee to be a member to be a representative on a technical committee. | 7 | Q. Can organizational members be | 7 | what you just said and an organizational |
| 9A. Yes. As a matter MR. FEE: There's no question9participate on technical committees on its behalf?10mR. FEE: There's no question10behalf?11pending.11MR. FEE: Objection.12BY MR. BECKER:12Mischaracterizes his testimony to the extent it purports to summarize it.13Q. Im sorry, what were you about13extent it purports to summarize it.14to say?14You can answer.15A. I believe all organizational members16member is an individual, it's not the organization.16members are members of technical committee.16member is an individual, it's not the organization.18executed copyright assignments for ASTM?18designates a membery on eganization organization.20sorry, can you repeat that question?20technical committee.21Q. Yes. Have any organization21BY MR. BECKER:22nembers executed copyright assignments for a pulcations that we talked about earlier, page 16825you say the organization?23a collaboration area, they would make an a assignment, and if they registered a work 41representative of that organization?24through the renewal applications that we 51representative of shave any knowledge as 43a collaboration area, they would make an a assignment.2A. Maybe.3a collaboration area, they would alto anticipate in a technical committee, when they 66cos organizations and desi | 8 | | 8 | |
| 10MR. FEE: There's no question10behalf?11pending.11MR. FEE: Objection.12BY MR. BECKER:12Mixcharacterizes his testimony to the13Q. I'm sorry, what were you about13extent it purports to summarize it.14to say?14You can answer.15A. I believe all organizational16members are members of technical committees16members are members of technical committees16member is an individual, it's not the17Q. Have any organizational members17organization. So the organization18executed copyright assignments for20technical committee.21Q. Yes. Have any organizational21BY MR. BECKER:23ASTM?23designates an employee to be a member to be a24A. Through the membership24representative on a technical committee, when25applications that we talked about earlier, item, they would make an assignment. and individual members when estimation area, they would make an assignment and if they're involved in a assignment, and if they're involved in a assignment, and if they registered a work1representative on a technical committee, whethey designate an individual to participate in a technical committee, whethey those organizational members when prelate to organizational members, more iduidual members, individual members, individual members, individual members, | | A. Yes. As a matter | | |
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| 14participate in technical committees?14ASTM through an organizational15A. The same way as participating15membership designate an individual to16members, individual members.16participate on a technical committee.17Q. Can you elaborate on that?17That individual may be contributing to18MR. FEE: Objection. Vague.18the content of ASTM standards as an19THE WITNESS: I don't think I19individual even as an organizational20can. There's no difference.20member, not necessarily representing21BY MR. BECKER:21the organizational views.23designate an individual to participate on23BY MR. BECKER:24their behalf?24Q. For organizational memberships,25MR. FEE: Objection. Asked and25does the organization itself typically pay | 13 | Q. How do organizational members | 13 | |
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| 23designate an individual to participate on23BY MR. BECKER:24their behalf?24Q.For organizational memberships,25MR. FEE: Objection. Asked and25does the organization itself typically pay | 22 | Q. Do organizational members | 22 | |
| 24their behalf?24Q.For organizational memberships,25MR. FEE: Objection. Asked and25does the organization itself typically pay | 23 | - | 23 | |
| 25 MR. FEE: Objection. Asked and 25 does the organization itself typically pay | 24 | • • • | 24 | Q. For organizational memberships, |
| Page 167 Page 169 | 25 | | 25 | does the organization itself typically pay |
| | | Page 167 | | Page 169 |

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| | | I | |
|--|--|--|---|
| 1 | the \$400 fee? | 1 | MR. FEE: Objection. This is |
| 2 | MR. FEE: Objection. Calls for | 2 | beyond the scope of his designation. |
| 3 | speculation. | 3 | THE WITNESS: No. |
| 4 | THE WITNESS: I don't know for | 4 | MR. BECKER: For the record, I |
| 5 | sure. Not necessarily. But probably | 5 | don't believe that this is beyond his |
| 6 | in most cases, probably. | 6 | designation as this concerns an |
| 7 | BY MR. BECKER: | 7 | organizational membership renewal. |
| 8 | Q. Do you know of any instance | 8 | MR. FEE: I don't think he was |
| 9 | when a person indicated that he or she | 9 | designated to authenticate checks from |
| 10 | disagreed with his or her organization's | 10 | 2013, but we'll agree to disagree. |
| 11 | position with respect to an action on a | 11 | BY MR. BECKER: |
| 12 | technical committee? | 12 | Q. Does this document indicate to |
| 13 | A. No. | 13 | you that the Department of Consumer Affairs |
| 14 | Q. Do you know of any instance | 14 | from the State of California had paid for an |
| 15 | when an individual indicated that he or she | 15 | organizational membership renewal with ASTM? |
| 16 | was specifically speaking on his or her own | 16 | MR. FEE: Objection. Calls for |
| 17 | behalf as apart from the organization that he | 17 | speculation. Beyond the scope of his |
| 18 | or she is part of? | 18 | designation. |
| 19 | A. No. | 19 | THE WITNESS: I guess you could |
| 20 | Q. Are any U.S. federal agencies | 20 | assume that. I don't know for sure. |
| 21 | organizational members of ASTM? | 21 | BY MR. BECKER: |
| 22 | A. I don't know. | 22 | Q. Do you have any reason for |
| 23 | Q. Who would know if any federal | 23 | thinking this that's not what this |
| 24 | agencies are organizational members of ASTM? | 24 | document shows? |
| 25 | MR. FEE: Objection. Calls for | 25 | MR. FEE: Same objections. |
| | Page 170 | | Page 172 |
| 1 | speculation. Also beyond the scope of | 1 | THE WITNESS: No, no reason not |
| 2 | his designation. | 2 | to believe. |
| 3 | THE WITNESS: We have an | 3 | |
| 4 | organizational member directory on the | 4 | (Exhibit 1293, 2011 Membership |
| 5 | Web site. | 5 | renewal invoices, Bates ASTM086030 - |
| 6 | BY MR. BECKER: | 6 | ASTM086031, was marked for |
| 7 | Q. And where on the Web site is | 7 | identification.) |
| 8 | that organizational member directory located? | 8 | |
| 9 | A. I think it's on the membership | 9 | BY MR. BECKER: |
| 10 | P 0.00 | 10 | |
| | page. | 10 | Q. I'm handing you what's been |
| 11 | | 11 | marked as Exhibit 1293. This is the document |
| 11 12 | (Exhibit 1292, Check, Bates | 11 12 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to |
| 11 12 13 | (Exhibit 1292, Check, Bates ASTM049368, was marked for | 11 12 13 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document |
| 11 12 13 14 | (Exhibit 1292, Check, Bates | 11 12 13 14 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? |
| 11 12 13 14 15 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) | 11 12 13 14 15 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal |
| 11 12 13 14 15 16 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: | 11 12 13 14 15 16 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is?A. It is a 2011 membership renewal invoice. |
| 11 12 13 14 15 16 17 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been | 11 12 13 14 15 16 17 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 |
| 11 12 13 14 15 16 17 18 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as 1292. This is the document | 11 12 13 14 15 16 17 18 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 membership renewal invoice on each side. |
| 11 12 13 14 15 16 17 18 19 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as 1292. This is the document produced by plaintiffs as Bates number | 11 12 13 14 15 16 17 18 19 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 membership renewal invoice on each side. Correct? |
| 11 12 13 14 15 16 17 18 19 20 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as 1292. This is the document produced by plaintiffs as Bates number ASTM049368. | 11 12 13 14 15 16 17 18 19 20 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 membership renewal invoice on each side. Correct? A. Yeah. For different persons, |
| 11 12 13 14 15 16 17 18 19 20 21 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as 1292. This is the document produced by plaintiffs as Bates number ASTM049368. Do you recognize this document? | 11 12 13 14 15 16 17 18 19 20 21 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 membership renewal invoice on each side. Correct? A. Yeah. For different persons, yeah. |
| 11 12 13 14 15 16 17 18 19 20 21 22 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as 1292. This is the document produced by plaintiffs as Bates number ASTM049368. Do you recognize this document? A. No. | 11 12 13 14 15 16 17 18 19 20 21 22 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 membership renewal invoice on each side. Correct? A. Yeah. For different persons, yeah. Q. And these persons are employees |
| 11 12 13 14 15 16 17 18 19 20 21 22 23 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as 1292. This is the document produced by plaintiffs as Bates number ASTM049368. Do you recognize this document? A. No. Q. Do you have any reason to | 11 12 13 14 15 16 17 18 19 20 21 22 23 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 membership renewal invoice on each side. Correct? A. Yeah. For different persons, yeah. Q. And these persons are employees of NIST. Is that correct? |
| 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | (Exhibit 1292, Check, Bates ASTM049368, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as 1292. This is the document produced by plaintiffs as Bates number ASTM049368. Do you recognize this document? A. No. Q. Do you have any reason to believe that this document produced by ASTM | 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | marked as Exhibit 1293. This is the document produced by plaintiffs as ASTM086030 to 086031. Can you tell me what this document is? A. It is a 2011 membership renewal invoice. Q. It is a different 2011 membership renewal invoice on each side. Correct? A. Yeah. For different persons, yeah. Q. And these persons are employees of NIST. Is that correct? MR. FEE: Objection. Calls for |
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| 1 | designation. | 1 | where on these renewal invoices, if anywhere, |
|---|--|---|---|
| 2 | THE WITNESS: It says here | 2 | language exists that would assign any |
| 3 | they're from NIST. | 3 | copyright that Charles E. Gibson or Benjamin |
| 4 | BY MR. BECKER: | 4 | K. Tsai, the individuals listed on these |
| 5 | Q. NIST is a federal agency. | 5 | membership renewal invoices, might have |
| 6 | Correct? | 6 | granted to ASTM? |
| 7 | MR. FEE: Same objections. | 7 | MR. FEE: Objection. Calls for |
| 8 | THE WITNESS: I believe. Sorry. | 8 | a legal conclusion. Compound. You |
| 9 | I believe so. | 9 | can answer if you know. |
| 10 | BY MR. BECKER: | 10 | THE WITNESS: No, there's |
| 11 | Q. And they both give their NIST | 11 | language in the middle of both pages |
| 12 | e-mail addresses. Is that correct? | 12 | beginning with "You agree" |
| 13 | MR. FEE: Objection. Calls for | 13 | BY MR. BECKER: |
| 14 | speculation. Beyond the scope of his | 14 | Q. Is that where it says, "You |
| 15 | designation. You can answer. | 15 | agree, by your participation in ASTM and |
| 16 | THE WITNESS: The e-mail | 16 | enjoyment of the benefits of your annual |
| 17 | addresses are on this piece of paper. | 17 | membership, to have transferred and assigned |
| 18 | BY MR. BECKER: | 18 | any and all interest you possess or may |
| 19 | Q. And the e-mail addresses say | 19 | possess, including copyright, in the |
| 20 | @nist.gov. Correct? | 20 | development or creation of ASTM standards or |
| 21 | A. Yes. | 21 | ASTM IP to ASTM. For additional information, |
| 22 | Q. And the addresses that they | 22 | please see the ASTM IP Policy, available at |
| 23 | provide are for NIST. Correct? | 23 | www.astm.org"? |
| 24 | MR. FEE: Objection. Calls for | 24 | A. Yes. |
| 25 | speculation. Beyond the scope of his Page 174 | 25 | Q. For these membership renewal Page 176 |
| 1 | | 1 | |
| 1 | designation. | 1 | invoices, are individuals required to check |
| | | 2 | |
| $\begin{vmatrix} 2 \\ 2 \end{vmatrix}$ | THE WITNESS: Yes, the NIST | $\begin{vmatrix} 2 \\ 2 \end{vmatrix}$ | any box showing that they have read and |
| 2 3 4 | address is on these pieces of paper. BY MR. BECKER: | 2 3 4 | any box showing that they have read and understand the provision that I just read out loud? |
| 3 | address is on these pieces of paper. | 3 | understand the provision that I just read out |
| 3 4 | address is on these pieces of paper. BY MR. BECKER: | 3 4 | understand the provision that I just read out loud? |
| 3 4 5 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card | 3 4 5 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. |
| 3 4 5 6 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both | 3 4 5 6 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. |
| 3 4 5 6 7 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? | 3 4 5 6 7 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here |
| 3 4 5 6 7 8 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the | 3 4 5 6 7 8 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. |
| 3 4 5 6 7 8 9 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. | 3 4 5 6 7 8 9 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: |
| 3 4 5 6 7 8 9 10 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that | 3 4 5 6 7 8 9 10 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal |
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| 3 4 5 6 7 8 9 10 11 12 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the names are the same. BY MR. BECKER: | 3 4 5 6 7 8 9 10 11 12 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal invoices, are the members required to sign anywhere on the renewal invoice? |
| 3 4 5 6 7 8 9 10 11 12 13 14 15 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the names are the same. BY MR. BECKER: Q. And that name appears to be | 3 4 5 6 7 8 9 10 11 12 13 14 15 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal invoices, are the members required to sign anywhere on the renewal invoice? MR. FEE: Same objections. THE WITNESS: I don't see anywhere else other than the signature |
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| 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the names are the same. BY MR. BECKER: Q. And that name appears to be Aruella Kuehl, K-U-E-H-L. Aruella is spelled A-R-U-E-L-L-A excuse me, that's Arvella, A-R-V-E-L-L-A. MR. FEE: Objection. Beyond the scope of his designation. | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal invoices, are the members required to sign anywhere on the renewal invoice? MR. FEE: Same objections. THE WITNESS: I don't see anywhere else other than the signature for where the credit card information is. BY MR. BECKER: |
| 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the names are the same. BY MR. BECKER: Q. And that name appears to be Aruella Kuehl, K-U-E-H-L. Aruella is spelled A-R-U-E-L-L-A excuse me, that's Arvella, A-R-V-E-L-L-A. MR. FEE: Objection. Beyond the scope of his designation. BY MR. BECKER: | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal invoices, are the members required to sign anywhere on the renewal invoice? MR. FEE: Same objections. THE WITNESS: I don't see anywhere else other than the signature for where the credit card information is. BY MR. BECKER: Q. And if an individual pays by |
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| 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the names are the same. BY MR. BECKER: Q. And that name appears to be Aruella Kuehl, K-U-E-H-L. Aruella is spelled A-R-U-E-L-L-A excuse me, that's Arvella, A-R-V-E-L-L-A. MR. FEE: Objection. Beyond the scope of his designation. BY MR. BECKER: Q. Is that correct? MR. FEE: Same objection. THE WITNESS: If that's yeah, | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal invoices, are the members required to sign anywhere on the renewal invoice? MR. FEE: Same objections. THE WITNESS: I don't see anywhere else other than the signature for where the credit card information is. BY MR. BECKER: Q. And if an individual pays by some other means that doesn't require a credit card, would it not be necessary to sign this membership renewal invoice at all |
| 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the names are the same. BY MR. BECKER: Q. And that name appears to be Aruella Kuehl, K-U-E-H-L. Aruella is spelled A-R-U-E-L-L-A excuse me, that's Arvella, A-R-V-E-L-L-A. MR. FEE: Objection. Beyond the scope of his designation. BY MR. BECKER: Q. Is that correct? MR. FEE: Same objection. THE WITNESS: If that's yeah, that's the way you want to spell it. | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal invoices, are the members required to sign anywhere on the renewal invoice? MR. FEE: Same objections. THE WITNESS: I don't see anywhere else other than the signature for where the credit card information is. BY MR. BECKER: Q. And if an individual pays by some other means that doesn't require a credit card, would it not be necessary to sign this membership renewal? |
| 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | address is on these pieces of paper. BY MR. BECKER: Q. And did the credit card information and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the names are the same. BY MR. BECKER: Q. And that name appears to be Aruella Kuehl, K-U-E-H-L. Aruella is spelled A-R-U-E-L-L-A excuse me, that's Arvella, A-R-V-E-L-L-A. MR. FEE: Objection. Beyond the scope of his designation. BY MR. BECKER: Q. Is that correct? MR. FEE: Same objection. THE WITNESS: If that's yeah, that's the way you want to spell it. BY MR. BECKER: | 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | understand the provision that I just read out loud? MR. FEE: Objection. Vague. Compound. THE WITNESS: I don't see here where there's a box to check off. BY MR. BECKER: Q. For the membership renewal invoices, are the members required to sign anywhere on the renewal invoice? MR. FEE: Same objections. THE WITNESS: I don't see anywhere else other than the signature for where the credit card information is. BY MR. BECKER: Q. And if an individual pays by some other means that doesn't require a credit card, would it not be necessary to sign this membership renewal? MR. FEE: Objection. Calls for |
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| 1 | | 1 | |
|--|---|--|---|
| 1 | THE WITNESS: I don't know. I | 1 | that we read. |
| 2 | guess you could sign a check. The | 2 | BY MR. BECKER: |
| 3 | only other way you could pay is | 3 | Q. And my question is, is there |
| 4 | through a check, so you could sign a | 4 | any means through the membership renewal |
| 5 | check. | 5 | invoice that ASTM ensures that it has the |
| 6 | BY MR. BECKER: | 6 | understanding and assent of the individual |
| 7 | Q. It also lists electronic | 7 | who is renewing his or her membership that |
| 8 | payments. Correct? | 8 | any copyright he or she has in the |
| 9 | A. Yes. | 9 | development or creation of ASTM standards is |
| 10 | Q. So if somebody were to provide | 10 | to be assigned to ASTM? |
| 11 | an electronic payment, then they would not | 11 | MR. FEE: Same objections. Plus |
| 12 | need to sign anywhere on this form. Is that | 12 | asked and answered. |
| 13 | correct? | 13 | THE WITNESS: Plus what? |
| 14 | MR. FEE: Objection. Calls for | 14 | MR. FEE: Asked and answered. |
| 15 | speculation. | 15 | THE WITNESS: Same answer. |
| 16 | THE WITNESS: I suppose. | 16 | BY MR. BECKER: |
| 17 | BY MR. BECKER: | 17 | Q. It's a yes or no answer. |
| 18 | Q. Is there any means through the | 18 | MR. FEE: No. Answer it however |
| 19 | membership renewal invoice that ASTM ensures | 19 20 | you want to answer it. |
| 20 | that it has the understanding and assent of | 20 | THE WITNESS: Within the 2011 |
| 21 | the individual renewing his or her membership | 21 | membership renewal invoice, there is this clause that we feel is informs |
| 22 | that any copyright he or she has in the | 22 | |
| 23 | development or creation of ASTM standards is | 23 | the members that they're assigning |
| 24 | to be assigned to ASTM? | 24 | their copyright to us within their |
| 25 | MR. FEE: Objection. Vague and Page 178 | 25 | participation at ASTM. Page 180 |
| 1 | | 1 | BY MR. BECKER: |
| $\begin{vmatrix} 1 \\ 2 \end{vmatrix}$ | confusing. Calls for speculation. Calls for a legal conclusion. | 2 | Q. How does ASTM know that a |
| 2 3 | THE WITNESS: Through the | 3 | member has read that clause? |
| 4 | original membership application, | 4 | A. We don't. |
| 4 5 | through the work item registration | 5 | Q. How does ASTM know that a |
| 6 | process, and through the collaboration | 6 | member agrees with that clause? |
| 7 | registration process. | 7 | MR. FEE: Objection to the |
| 8 | BY MR. BECKER: | 8 | extent it calls for a legal |
| 9 | | 9 | conclusion. Also calls for |
| 10 | Q. My question was with regards to the 2011 membership renewal invoice. I'll | 10 | speculation. You can answer. |
| | the 2011 membership renewal myolee. Th | 10 | |
| | _ | 11 | |
| 11 | read it again. | 11 12 | THE WITNESS: We don't know for |
| 11 12 | read it again. Is there any means through the | 12 | |
| 11 12 13 | read it again. Is there any means through the membership renewal invoice that ASTM ensures | 12 13 | THE WITNESS: We don't know for sure. |
| 11 12 13 14 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of | 12 13 14 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational |
| 11 12 13 14 15 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership | 12 13 14 15 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for |
| 11 12 13 14 15 16 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the | 12 13 14 15 16 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational |
| 11 12 13 14 15 16 17 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the development or creation of ASTM standards is | 12 13 14 15 16 17 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for identification.) |
| 11 12 13 14 15 16 17 18 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the development or creation of ASTM standards is to be assigned to ASTM? | 12 13 14 15 16 17 18 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for identification.) BY MR. BECKER: |
| 11 12 13 14 15 16 17 18 19 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the development or creation of ASTM standards is to be assigned to ASTM? MR. FEE: Objection to form. | 12 13 14 15 16 17 18 19 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been |
| 11 12 13 14 15 16 17 18 19 20 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the development or creation of ASTM standards is to be assigned to ASTM? MR. FEE: Objection to form. Vague and confusing. Compound. Calls | 12 13 14 15 16 17 18 19 20 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1294. It's a document |
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| 11 12 13 14 15 16 17 18 19 20 21 22 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the development or creation of ASTM standards is to be assigned to ASTM? MR. FEE: Objection to form. Vague and confusing. Compound. Calls for speculation and calls for a legal conclusion. | 12 13 14 15 16 17 18 19 20 21 22 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1294. It's a document titled: "Organizational Membership Directory." This is two separate printouts |
| 11 12 13 14 15 16 17 18 19 20 21 22 23 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the development or creation of ASTM standards is to be assigned to ASTM? MR. FEE: Objection to form. Vague and confusing. Compound. Calls for speculation and calls for a legal conclusion. THE WITNESS: Within the 2011 | 12 13 14 15 16 17 18 19 20 21 22 23 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1294. It's a document titled: "Organizational Membership Directory." This is two separate printouts combined. It is the A to K listing and the L |
| 11 12 13 14 15 16 17 18 19 20 21 22 | read it again. Is there any means through the membership renewal invoice that ASTM ensures that it has the understanding and assent of the individual renewing his or her membership that any copyright he or she has in the development or creation of ASTM standards is to be assigned to ASTM? MR. FEE: Objection to form. Vague and confusing. Compound. Calls for speculation and calls for a legal conclusion. | 12 13 14 15 16 17 18 19 20 21 22 | THE WITNESS: We don't know for sure. (Exhibit 1294, Organizational Membership Directory, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1294. It's a document titled: "Organizational Membership Directory." This is two separate printouts |

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| 1 | THE WITNESS: They make | 1 | A. Yes. |
|--|---|--|---|
| 2 | contributions at the meetings. | 2 | Q. Did you ever receive this |
| 3 | BY MR. BECKER: | 3 | e-mail that's Exhibit 1295? |
| 4 | Q. And do those contributions end | 4 | A. I may have. |
| 5 | up in the final approved standards? | 5 | Q. Do you have any reason to think |
| 6 | MR. FEE: Objection. Vague. | 6 | that if you had that you did not receive |
| 7 | THE WITNESS: I don't I can't | 7 | this e-mail produced by ASTM that has your |
| 8 | say specifically. | 8 | name listed under the cc line? |
| 9 | BY MR. BECKER: | 9 | A. No. |
| 10 | Q. What kind of contributions do | 10 | Q. Do you have any reason to |
| 11 | they provide at these meetings? | 11 | believe that this document provided by ASTM |
| 12 | MR. FEE: Objection. Vague. | 12 | is not authentic? |
| 13 | THE WITNESS: Oral contributions. | 13 | MR. FEE: Objection. Calls for |
| 14 | BY MR. BECKER: | 14 | a legal conclusion. |
| 15 | Q. Do they provide any written | 15 | THE WITNESS: I have no idea. |
| 16 | contributions? | 16 | BY MR. BECKER: |
| 17 | MR. FEE: Objection. Vague. | 17 | Q. Is that a yes or a no? |
| 18 | THE WITNESS: They may through | 18 | A. I don't know. I don't see any |
| 19 | the balloting process. | 19 | reason why it wouldn't be. |
| 20 | BY MR. BECKER: | 20 | Q. If you turn to the second page, |
| 20 | Q. Do they vote on standard drafts | 20 | it says this is an e-mail from Sarah |
| $ ^{21}_{22}$ | or revisions? | $\frac{21}{22}$ | Petre, P-E-T-R-E, to Jeff Grove that says |
| 23 | MR. FEE: Objection. Form. | 22 | in which you are cc'd at dsmith@astm.org. Is |
| 23 | THE WITNESS: They may. They | 23 | that correct? |
| 24 | have the opportunity to. | 24 | A. Yes. |
| 25 | Page 186 | 25 | Page 188 |
| 1 | | 1 | |
| 1 | | 1 | Q. And it says, "Jeff: Attached |
| 2 | (Exhibit 1295, E-mail chain with | 2 | is a summary of all the potentially relevant |
| 3 | attachment, Bates ASTM025633 - | 3 | standards related to the UE's efforts that |
| 4 | ASTM025640, was marked for | 4 | focus on the environmental footprint of |
| 5 | identification.) | 5 | products and services. This list is more |
| 6 | | 6 | over inclusive. I also included a list of |
| 7 | BY MR. BECKER: | 7 | the EPA members that participate in E50 or |
| 8 | Q. I'm handing you what's been | 8 | E60." Is that correct? |
| 9 | marked as Exhibit 1295. | 9 | A. That's what it says. |
| 10 | | | - |
| 10 | Could you, please, take a | 10 | Q. Then if you turn to Bates |
| 11 | moment to try to put the pages for the | 11 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from |
| 11 12 | moment to try to put the pages for the previous exhibit back in the same order that | 11 12 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives |
| 11 12 13 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? | 11 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM |
| 11 12 13 14 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. | 11 12 13 14 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of |
| 11 12 13 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? | 11 12 13 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM |
| 11 12 13 14 15 16 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. | 11 12 13 14 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. |
| 11 12 13 14 15 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. | 11 12 13 14 15 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? |
| 11 12 13 14 15 16 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the | 11 12 13 14 15 16 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. |
| 11 12 13 14 15 16 17 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. | 11 12 13 14 15 16 17 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these |
| 11 12 13 14 15 16 17 18 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. BY MR. BECKER: | 11 12 13 14 15 16 17 18 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these individuals that are listed? |
| 11 12 13 14 15 16 17 18 19 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. BY MR. BECKER: Q. Do you recognize this document | 11 12 13 14 15 16 17 18 19 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these individuals that are listed? A. Yes. |
| 11 12 13 14 15 16 17 18 19 20 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. BY MR. BECKER: Q. Do you recognize this document that has been provided to you as | 11 12 13 14 15 16 17 18 19 20 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these individuals that are listed? A. Yes. Q. Which individuals do you know? |
| 11 12 13 14 15 16 17 18 19 20 21 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. BY MR. BECKER: Q. Do you recognize this document that has been provided to you as Exhibit 1295? It is Bates number ASTM025633 | 11 12 13 14 15 16 17 18 19 20 21 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these individuals that are listed? A. Yes. Q. Which individuals do you know? A. I know Deb Goldblum. I know |
| 11 12 13 14 15 16 17 18 19 20 21 22 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. BY MR. BECKER: Q. Do you recognize this document that has been provided to you as Exhibit 1295? It is Bates number ASTM025633 to 025640. | 11 12 13 14 15 16 17 18 19 20 21 22 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these individuals that are listed? A. Yes. Q. Which individuals do you know? A. I know Deb Goldblum. I know Sven-Erik Kaiser. And I know Patricia |
| 11 12 13 14 15 16 17 18 19 20 21 22 23 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. BY MR. BECKER: Q. Do you recognize this document that has been provided to you as Exhibit 1295? It is Bates number ASTM025633 to 025640. A. No. | 11 12 13 14 15 16 17 18 19 20 21 22 23 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these individuals that are listed? A. Yes. Q. Which individuals do you know? A. I know Deb Goldblum. I know Sven-Erik Kaiser. And I know Patricia Overmeyer. |
| 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | moment to try to put the pages for the previous exhibit back in the same order that they were provided to you, if possible? MR. BRIDGES: I'll do that. Hand them to me, I'll do that. THE WITNESS: I think that's the order. BY MR. BECKER: Q. Do you recognize this document that has been provided to you as Exhibit 1295? It is Bates number ASTM025633 to 025640. A. No. Q. Are you copied on this e-mail | 11 12 13 14 15 16 17 18 19 20 21 22 23 24 | Q. Then if you turn to Bates number ASTM025637, the second paragraph from the top says, "The following representatives from EPA participate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Q. Do you know any of these individuals that are listed? A. Yes. Q. Which individuals do you know? A. I know Deb Goldblum. I know Sven-Erik Kaiser. And I know Patricia Overmeyer. Q. Who is Deborah Goldblum? |

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| 1 2 3 4 5 6 7 8 9 10 | marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1300. Could you, please, | 1 2 3 4 5 | respective years, 2007 through 2014? MR. FEE: Objection to form. THE WITNESS: There probably was, yes. |
|---|---|-----------------------|---|
| 3 4 5 6 7 8 9 | Q. I'm handing you what's been marked as Exhibit 1300. Could you, please, | 3 4 | THE WITNESS: There probably |
| 4 5 6 7 8 9 | Q. I'm handing you what's been marked as Exhibit 1300. Could you, please, | 4 | |
| 5 6 7 8 9 | marked as Exhibit 1300. Could you, please, | | was, yes. |
| 6 7 8 9 | • • | | BY MR. BECKER: |
| 7 8 9 | identify this document? | 6 | Q. How do you know that? |
| 8 9 | identify this document? A. It says at the top "Laboratory | 7 | A. Well, because I know our |
| 9 | Inspection Program," but it would appear to | 8 | applications, we have applications that have |
| | be a membership application. | 9 | the language that we spoke about earlier that |
| 10 | Q. I'll note that this document is | 10 | was on, was it 1293, Exhibit 1293? We have |
| 11 | produced by ASTM as ASTM067024. Is there any | 11 | copies of membership applications that have |
| 12 | mention of copyright assignment or ASTM's IP | 12 | that language on there. |
| 12 | Policy on this document? | 12 | Q. Exhibit 1293 is a membership |
| 15 14 | • | 14 | renewal invoice. Correct? |
| | MR. FEE: Objection to form. THE WITNESS: I don't see that | 14 | A. Yes. |
| 15 16 | | 16 | Q. And a membership renewal |
| 16 17 | language on here, no. | 17 | invoice is different from a membership |
| 17 19 | (Eyhibit 1201 Momharshin | 18 | application. Correct? |
| 18 | (Exhibit 1301, Membership applications, Bates ASTM066871, | 10 | A. Yes. |
| 19 20 | | 20 | |
| 20 | ASTM069213, ASTM069058, ASTM080176, | 20 | |
| 21 | ASTM061450, ASTM063146, ASTM063147, | $\frac{21}{22}$ | different versions, do you mean that there is different versions of the membership |
| 22 | ASTM065682 & ASTM066345, was marked | 22 | applications for each year or that there is a |
| 23 | for identification.) | 23 | |
| 24 25 | | 24 | membership application and there also is a |
| 25 | BY MR. BECKER: Page 210 | 23 | membership renewal invoice Page 212 |
| 1 | _ | 1 | |
| 2 | Q. I'm handing you what's been marked as Exhibit 1301. This is a | $1 \\ 2$ | MR. FEE: Objection. Form. BY MR. BECKER: |
| | | | |
| 3 | compilation of documents that were provided | 3 | Q for each year? |
| 4 | by ASTM as single pages. It is one example | 4 | A. We have membership applications |
| 5 | from each year from which ASTM has provided a | 5 | for these years that have that language from Exhibit 1293 on them. |
| 6 | membership application starting with the 2007 | 6 | |
| 7 | membership application and ending with the | 7 | Q. How do you know that there are |
| 8 | 2014 membership application. And the Bates | 8 | membership applications for all of the years |
| 9 | numbers are ASTM066871, ASTM069213, | 9 | 2007 through 2014 that have the same language |
| 10 | ASTM069058, ASTM080176, ASTM061450, | 10 | that is from the 2011 membership renewal |
| 11 | ASTM063146, ASTM063147, ASTM065682 and | 11 | invoice Exhibit 1293? |
| 12 | ASTM066345. | 12 | MR. FEE: Objection to form. |
| 13 | Are these the ASTM membership | 13 | THE WITNESS: Because I believe |
| 14 | application forms for the years 2007 through | 14 | we put the language on the renewal |
| 15 | 2014? | 15 | forms and the application forms at the |
| 16 | MR. FEE: Objection to the | 16 | same time. |
| 17 | extent the witness has cherry picked | 17 | BY MR. BECKER: |
| 18 | pages of membership applications that | 18 | Q. Why would there be membership |
| 19 | were produced to you; to form as well, | 19 | applications that do not have the language |
| 20 | and compound. | 20 | that you're referring to? And to let |
| 21 | THE WITNESS: These are versions | 21 | me hold on. Let me clarify. |
| | of the application from these years. | 22 | By the language that you're |
| 22 | BUILD BEQUES | | |
| 22 23 | BY MR. BECKER: | 23 | referring to on Exhibit 1293, you're |
| 21 22 23 24 25 | BY MR. BECKER: Q. Were there multiple versions of the ASTM membership applications for these | 23 24 25 | referring to on Exhibit 1293, you're referring to the purported copyright assignment language that starts with "You |

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| 1 | agree. By your participation in ASTM" | 1 | Q. How many different forms of | | | |
|--|--|----------|--|--|--|--|
| 2 | Correct? | 2 | membership application existed in 2007? | | | |
| 3 | A. Yes. | 3 | A. I don't know. | | | |
| 4 | MR. FEE: Hold on. Objection to | 4 | Q. Do you know how many different | | | |
| 5 | form. | 5 | forms of membership application ASTM had for | | | |
| 6 | THE WITNESS: Sorry. | 6 | the year 2008? | | | |
| 7 | MR. FEE: It's compound. Calls | 7 | A. No. | | | |
| 8 | for a legal conclusion. | 8 | Q. Do you know how many forms of | | | |
| 9 | THE WITNESS: The language that | 9 | membership application ASTM had for the year | | | |
| 10 | I'm talking about is on Exhibit 1293 | 10 | 2009? | | | |
| 11 | that begins with "You agree, by your | 11 | A. No. | | | |
| 12 | participation" | 12 | Q. Do you know how many forms of | | | |
| 13 | BY MR. BECKER: | 13 | membership application ASTM had for 2010? | | | |
| 14 | Q. Why do you believe that ASTM | 14 | A. No. | | | |
| 15 | put the language that you're referring to on | 15 | Q. How about for 2011? | | | |
| 16 | the renewal forms and the application forms | 16 | A. No. | | | |
| 17 | at the same time? | 17 | Q. Or 2012? | | | |
| 18 | A. That's what I recall. | 18 | A. No. | | | |
| 19 | Q. Recall from what? | 19 | Q. Or 2013? | | | |
| 20 | MR. FEE: Objection. Vague. | 20 | A. No. | | | |
| $\frac{20}{21}$ | THE WITNESS: Just what I | 20 | Q. Or 2014? | | | |
| $ ^{21}_{22}$ | remember. | 21 | A. No. | | | |
| $\begin{vmatrix} 22\\23 \end{vmatrix}$ | BY MR. BECKER: | 22 | | | | |
| $\frac{23}{24}$ | | 23 24 | | | | |
| 24 | - | 24 25 | different membership application forms? | | | |
| 25 | used the language that you're referring to Page 214 | 23 | MR. FEE: Objection. To the Page 216 | | | |
| 1 | _ | 1 | - | | | |
| 1 | from Exhibit 1293? | 1 | extent that your answering that | | | |
| $\begin{vmatrix} 2 \\ 2 \end{vmatrix}$ | A. Not exactly sure. | 2 | question would disclose | | | |
| 3 | Q. Do you have any idea as to what | 3 | attorney-client communications, you | | | |
| 4 | year ASTM first started using that language | 4 | shouldn't disclose that. You can | | | |
| 5 | that appears on Exhibit 1293? | 5 | answer otherwise. | | | |
| 6 | A. I thought it was in about 2005. | 6 | THE WITNESS: No. My experience | | | |
| 7 | Q. Do you have any way to confirm | 7 | has been that if we go to a very | | | |
| 8 | when ASTM began using that language that was | 8 | focused individual conference, there | | | |
| 9 | featured on Exhibit 1293? | 9 | may be a it could be the staff | | | |
| 10 | MR. FEE: Objection. Vague. | 10 | manager prepares an application for | | | |
| 11 | THE WITNESS: Not right here, | 11 | that particular committee and did not | | | |
| 12 | now. | 12 | use the most current application. | | | |
| 13 | BY MR. BECKER: | 13 | BY MR. BECKER: | | | |
| 14 | Q. How would you go about | 14 | Q. Is there a difference between | | | |
| 15 | confirming that? | 15 | ASTM membership application forms and ASTM | | | |
| 16 | A. I would ask our general counsel. | 16 | committee membership application forms? | | | |
| 17 | Q. Is there any other way that you | 17 | MR. FEE: Objection. Vague. | | | |
| 18 | would confirm that? | 18 | THE WITNESS: We have a type of | | | |
| 19 | A. Not right now. | 19 | membership that's called a | | | |
| 20 | Q. Is there anyone who would know | 20 | participating membership where you | | | |
| 21 | other than ASTM's general counsel when the | 21 | join technical committees. And then | | | |
| | copyright assignment language that you're | 22 | we also have informational members | | | |
| 22 | copyright assignment language that you're | | | | | |
| 22 23 | | 23 | that just joined ASTM but they do not | | | |
| | referring to from 1293 was first used by ASTM | 23 24 | | | | |
| 23 | | | that just joined ASTM but they do not join a particular technical committee. But I'm not aware of a difference | | | |
| 23 24 | referring to from 1293 was first used by ASTM on membership forms? | 24 | join a particular technical committee. | | | |

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| 1 | BY MR. BECKER: | 1 | MR. FEE: Objection to form. I | | | | |
|------------------|---|----|--|--|--|--|--|
| 2 | Q. On the next page, ASTM063147, | 2 | also object to the extent it calls for | | | | |
| 3 | it has different language concerning the ASTM | 3 | attorney-client communications. You | | | | |
| 4 | Intellectual Property Policy than the 2012 | 4 | shouldn't disclose any communications | | | | |
| 5 | membership application that we were just | 5 | between you and counsel, but you can | | | | |
| 6 | discussing. Is that correct? | 6 | answer otherwise. | | | | |
| 7 | MR. FEE: Hold on one second. | 7 | THE WITNESS: I believe the | | | | |
| 8 | You can answer. | 8 | language that is at the top of | | | | |
| 9 | THE WITNESS: Yes, that language | 9 | ASTM063146 was language that we used | | | | |
| 10 | is different. | 10 | prior to the language that we used | | | | |
| 11 | BY MR. BECKER: | 11 | that's contained on ASTM063147. | | | | |
| 12 | Q. The language that's on | 12 | BY MR. BECKER: | | | | |
| 13 | ASTM063147 is similar to the language that's | 13 | Q. But if you then turn the page | | | | |
| 14 | on Exhibit 1293, the 2011 membership renewal | 14 | to ASTM065682, that's a 2013 membership | | | | |
| 15 | invoice. Is that correct? | 15 | application, and it has the same language | | | | |
| 16 | MR. FEE: Objection. Vague. | 16 | concerning the ASTM Intellectual Property | | | | |
| 17 | THE WITNESS: Yep, that looks | 17 | Policy as on ASTM063146. Correct? | | | | |
| 18 | correct. Slightly different. | 18 | A. That's what it looks like. | | | | |
| 19 | BY MR. BECKER: | 19 | Q. If you turn the page to the | | | | |
| 20 | Q. Why is this language different | 20 | following page, the 2014 membership | | | | |
| 21 | for the 2012 committee membership application | 21 | application also has that same language. | | | | |
| 22 | than for the 2012 membership application? | 22 | Correct? | | | | |
| 23 | MR. FEE: Objection. To the | 23 | A. Yes. | | | | |
| 24 | extent that would require you to | 24 | Q. So ASTM has continued to use | | | | |
| 25 | disclose attorney-client | 25 | this language into 2014? | | | | |
| | Page 222 | | Page 224 | | | | |
| 1 | communications, you shouldn't do so. | 1 | MR. FEE: Objection. Vague. | | | | |
| 2 | If you can answer otherwise, go ahead. | 2 | THE WITNESS: That's what it | | | | |
| 3 | THE WITNESS: My perspective is | 3 | would appear to me. | | | | |
| 4 | that they're the same thing. They're | 4 | BY MR. BECKER: | | | | |
| 5 | both intended for an individual to | 5 | Q. Who knows how many different | | | | |
| 6 | join a particular committee. | 6 | versions exist for the membership | | | | |
| 7 | BY MR. BECKER: | 7 | applications during each year from 2007 to | | | | |
| 8 | Q. Why is the copyright you say | 8 | 2014? | | | | |
| 9 | they're the same thing, the copyright | 9 | A. I don't know if anybody knows. | | | | |
| 10 | assignment language? | 10 | Q. Why is that? | | | | |
| 11 | MR. FEE: Same objection and | 11 | MR. FEE: Objection. Calls for | | | | |
| 12 | instruction. | 12 | speculation. | | | | |
| 13 | THE WITNESS: No, I believe the | 13 | THE WITNESS: My experience as | | | | |
| 14 | form is the same thing. It serves the | 14 | being a staff manager is I don't think | | | | |
| 15 | same purpose. It's an application so | 15 | people think about the version of an | | | | |
| 16 | an individual can join the technical | 16 | application that's being used. I | | | | |
| 17 | committee. | 17 | think it's viewed as a tool that | | | | |
| 18 | BY MR. BECKER: | 18 | enables an individual to join a | | | | |
| 19 | Q. And my question was about the | 19 | technical committee. | | | | |
| 20 | actual language that ASTM believes concerns | 20 | BY MR. BECKER: | | | | |
| 21 | copyright assignment. Why is there a | 21 | Q. Who creates the membership | | | | |
| 22 | difference in the language concerning ASTM's | 22 | applications such as the 2014 membership | | | | |
| 23 | IP Policy on ASTM063146 as opposed to the | 23 | application ASTM066345? | | | | |
| 23 | language concerning ASTM's IP Policy on | 23 | A. I'm not sure who creates it. | | | | |
| _ ~ T | | | | | | | |
| 25 | ASTM063147? | 25 | Maybe our customer relations Maybe it's our | | | | |
| 25 | ASTM063147? Page 223 | 25 | Maybe our customer relations. Maybe it's our Page 225 | | | | |

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| 1 | I just want to say that Mr. Smith has | 1 | of Records," section III. |
|--|--|--|--|
| 2 | been available to be deposed since | 2 | |
| 3 | 10:00 a.m. this morning. It's now | 3 | (Exhibit 1312, 11/21/08 E-mail |
| 4 | 7:00. We have about 55 minutes left. | 4 | with attachment, Bates ASTM088320 - |
| 5 | We're not staying past 8:00. So if | 5 | ASTM088325, was marked for |
| 6 | you're going to take any other breaks, | 6 | identification.) |
| 7 | it better be short. That was a | 7 | |
| 8 | 20-minute break and I think a complete | 8 | BY MR. BECKER: |
| 9 | waste of time. Go ahead. | 9 | Q. I'm handing you what's been |
| 10 | BY MR. BECKER: | 10 | marked as Exhibit 1312. This is the document |
| 11 | Q. Mr. Smith, I've handed you | 11 | produced by ASTM as ASTM088320 to ASTM088325. |
| 12 | what's marked as Exhibit 1311. This is a | 12 | It is an e-mail with an attachment that says, |
| 13 | document produced by ASTM as 003501 to 3522. | 13 | "ASTM International Author/Copyright Owner |
| 14 | Could you, please, identify it? | 14 | Agreement." Is this attachment a correct |
| 15 | A. It says, "RECORD RETENTION | 15 | copy of the ASTM International |
| 16 | POLICY." | 16 | Author/Copyright Ownership Agreement? |
| 17 | Q. Is this ASTM's record retention | 17 | MR. FEE: Objection. Vague as |
| 18 | policy? | 18 | to time. Beyond the scope of the |
| 19 | A. Yes, I believe it is. | 19 | designation as well. |
| 20 | Q. Have you did you review | 20 | THE WITNESS: I'm not sure. |
| 21 | ASTM's record retention policy in preparation | 21 | BY MR. BECKER: |
| 22 | for the deposition today? | 22 | Q. Who would know whether this |
| 23 | A. I reviewed it very briefly. | 23 | attachment is a correct copy of the ASTM |
| 24 | Q. Do you know what category under | 24 | International Author/Copyright Ownership |
| 25 | the record retention policy that membership | 25 | Agreement? |
| | Page 258 | | Page 260 |
| | | | |
| 1 | application forms would qualify as? | 1 | MR. FEE: Objection. Beyond the |
| $\begin{vmatrix} 1\\2 \end{vmatrix}$ | application forms would qualify as? MR. FEE: Objection. It's | 1 2 | |
| 1 | MR. FEE: Objection. It's | | MR. FEE: Objection. Beyond the scope. THE WITNESS: I would have to |
| 2 | MR. FEE: Objection. It's beyond the scope of his designation. | 2 | scope. THE WITNESS: I would have to |
| 2 3 | MR. FEE: Objection. It's | 2 3 | scope. |
| 2 3 4 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring | 2 3 4 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. |
| 2 3 4 5 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: | 2 3 4 5 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department |
| 2 3 4 5 6 7 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 | 2 3 4 5 6 7 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or |
| 2 3 4 5 6 7 8 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That | 2 3 4 5 6 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct |
| 2 3 4 5 6 7 8 9 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" | 2 3 4 5 6 7 8 9 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since |
| 2 3 4 5 6 7 8 9 10 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also | 2 3 4 5 6 7 8 9 10 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since it's a journal paper, relevant to a |
| 2 3 4 5 6 7 8 9 10 11 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also has B is section B, "Types of Records That | 2 3 4 5 6 7 8 9 10 11 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since |
| 2 3 4 5 6 7 8 9 10 11 12 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also has B is section B, "Types of Records That have Legal or Regulatory Periods of | 2 3 4 5 6 7 8 9 10 11 12 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since it's a journal paper, relevant to a journal paper. |
| 2 3 4 5 6 7 8 9 10 11 12 13 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also has B is section B, "Types of Records That have Legal or Regulatory Periods of Retention," "Accounting and Corporate Tax | 2 3 4 5 6 7 8 9 10 11 12 13 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since it's a journal paper, relevant to a journal paper. (Exhibit 1313, Web site |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also has B is section B, "Types of Records That have Legal or Regulatory Periods of Retention," "Accounting and Corporate Tax Records," "Corporate Records," "Employment | 2 3 4 5 6 7 8 9 10 11 12 13 14 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since it's a journal paper, relevant to a journal paper. (Exhibit 1313, Web site screenshots, Bates ASTM001792 - |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also has B is section B, "Types of Records That have Legal or Regulatory Periods of Retention," "Accounting and Corporate Tax Records," "Corporate Records," "Employment and Employee Records," "Bank Records," and | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since it's a journal paper, relevant to a journal paper. (Exhibit 1313, Web site screenshots, Bates ASTM001792 - ASTM001800, was marked for |
| 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 | MR. FEE: Objection. It's beyond the scope of his designation. THE WITNESS: Are you referring to any particular pages? BY MR. BECKER: Q. Yes. If you look at ASTM 3502 and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also has B is section B, "Types of Records That have Legal or Regulatory Periods of Retention," "Accounting and Corporate Tax Records," "Corporate Records," "Employment and Employee Records," "Bank Records," and "Legal Records." | 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 | scope. THE WITNESS: I would have to read it first to possibly give you an answer. Our publications department might be able to tell you whether or not this is the correct Author/Copyright Owner Agreement since it's a journal paper, relevant to a journal paper. (Exhibit 1313, Web site screenshots, Bates ASTM001792 - |
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| | | 1 | |
|----------|---|----------|---|
| 1 | that I've provided here as Exhibit 1315? | 1 | Q. What do staff members do to |
| 2 | MR. FEE: Same objections, plus | 2 | assist the members of technical committees? |
| 3 | lack of formation or foundation. | 3 | MR. FEE: Objection. Vague. |
| 4 | Sorry. | 4 | THE WITNESS: General |
| 5 | THE WITNESS: I'm not aware of | 5 | assistance. Provide them with advice |
| 6 | whether there was or there was not. | 6 | on regulations, on our form and style |
| 7 | | 7 | manual. We have interlaboratory study |
| 8 | (Exhibit 1316, Regulations | 8 | program that assists our members. A |
| 9 | Governing ASTM Technical Committees, | 9 | variety of things. I don't know if |
| 10 | was marked for identification.) | 10 | there's anything specific that you |
| 11 | | 11 | want me to focus on. |
| 12 | BY MR. BECKER: | 12 | BY MR. BECKER: |
| 13 | Q. I'm handing you what's been | 13 | Q. Does how does ASTM staff |
| 14 | marked as Exhibit 1316. Could you, please, | 14 | members assist individual assist technical |
| 15 | tell me what this document is? | 15 | committee members in the drafting or revision |
| 16 | A. The front page says the | 16 | of standards? |
| 17 | "REGULATIONS GOVERNING ASTM TECHNICAL | 17 | MR. FEE: Objection. Vague. |
| 18 | COMMITTEES." | 18 | THE WITNESS: We have we |
| 19 | Q. What are the Regulations | 19 | provide them with editorial |
| 20 | Governing ASTM Technical Committees? | 20 | assistance, so we'll provide editorial |
| 21 | A. It's essentially this entire | 21 | help within the documents. Our |
| 22 | document if it's all included here. | 22 | interlaboratory study program is |
| 23 | Q. Does it appear to be all | 23 | responsible for organizing round-robin |
| 24 | included there? | 24 | studies for collecting the data and |
| 25 | A. I'd have to go through it, but | 25 | doing the number crunching in order to |
| | Page 266 | | Page 268 |
| 1 | it could. Looks like it. | 1 | produce precision statements. Our ILS |
| 2 | Q. What is the purpose of the | 2 | team will produce the research reports |
| 3 | Regulations Governing ASTM Technical | 3 | which are referenced in the standard. |
| 4 | Committees? | 4 | We will help we have a graphics |
| 5 | MR. FEE: Objection. Beyond the | 5 | department that will create graphics |
| 6 | scope. Vague. | 6 | for the standards, for committee |
| 7 | THE WITNESS: Technical | 7 | members. We have an up-front editor |
| 8 | committees follow the regulations and | 8 | that provides a great deal of |
| 9 | develop member standards. | 9 | assistance if we have a draft that |
| 10 | BY MR. BECKER: | 10 | needs to be put into proper ASTM form |
| 11 | Q. Do you use the Regulations | 11 | and style. We provide them with |
| 12 | Governing ASTM Technical Committees in the | | assistance on language for caveats |
| 13 | course of your work with ASTM? | 13 | that are placed in the ASTM standards. |
| 14 | A. Yes. | 14 | BY MR. BECKER: |
| 15 | Q. How do you use them? | 15 | Q. Anything else? |
| 16 | A. As staff people, we advise our | 16 | A. We provide an awful lot of |
| 17 | technical committees on the regulations so | 17 | assistance, but nothing else that comes to |
| 18 | that they the regulations can be followed | 18 | mind at this particular time. |
| 19 | in the development of their standards. | 19 | Q. When you say editorial |
| 20 | Q. Do staff members do other | 20 | assistance, what do you mean by that? |
| 20 | things to assist the members of the technical | 20 | A. Grammatical things. We'll |
| 21 | committees? | 21 22 | inform members if they have mandatory |
| 22 | | 22 23 | |
| 23 24 | MR. FEE: Objection. Vague. THE WITNESS: Yes. | 23 24 | language in a non-mandatory section, that |
| 24 | BY MR. BECKER: | 24 25 | that's outside the form and style policy. Or vice versa, if they have non-mandatory |
| 25 | DI WIK. DECKEK. Page 267 | 23 | Vice versa, if they have non-inalidatory Page 269 |
| | | | |

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| 1 | language in a mandatory section, we'll | 1 | BY MR. BECKER: |
|-----------------|---|-------|--|
| 2 | provide assistance in tweaking that language | 2 | Q. Is that the same grammatical |
| 3 | so that it's within the form and style | 3 | changes that you were referring to before? |
| 4 | guidelines. | 4 | MR. FEE: Objection. |
| 5 | Q. Anything else in terms of | 5 | Mischaracterizes his testimony. |
| 6 | editorial assistance other than grammatical | 6 | Vague. |
| 7 | assistance? | 7 | BY MR. BECKER: |
| 8 | A. We could take a document and | 8 | Q. I'm sorry, what did you say? |
| 9 | place it and organize it so that it has the | 9 | A. The editors could work with the |
| 10 | relevant sections as defined in the form and | 10 | technical contacts to incorporate editorial |
| 11 | style manual. | 11 | changes, grammatical or reorganization of |
| 12 | Q. Do you mean to reorganize a | 12 | content. |
| 13 | draft standard, is that what you're saying? | 13 | Q. Who are the technical contacts? |
| 14 | A. Yes. | 14 | A. Who are they? |
| 15 | Q. What are excuse me. | 15 | Q. Yeah. |
| 16 | Anything else in terms of | 16 | A. They are individuals that take |
| 17 | editorial assistance? | 17 | the lead in developing a new standard or in |
| 18 | A. Our editors will also take a | 18 | developing a revision to an existing |
| 19 | document that's been approved through our | 19 | standard. |
| 20 | balloting process, if it's a new standard, | 20 | Q. Are those volunteers or are |
| 21 | they'll put it into publication format and | 21 | those employees of ASTM? |
| 22 | work with the technical contacts to make sure | 22 | MR. FEE: Objection. Vague. |
| 23 | that everything looks good prior to | 23 | Calls for a legal conclusion. |
| 24 | publication. | 24 | THE WITNESS: They're |
| 25 | Q. When you say they put it into | 25 | volunteers. |
| | Page 270 | | Page 272 |
| 1 | publication format, does that involve any | 1 | BY MR. BECKER: |
| 2 | changes to the content of the draft standard? | 2 | Q. What did you mean when you said |
| 3 | MR. FEE: Objection. Vague. | 3 | precision statements? |
| 4 | THE WITNESS: It involves taking | 4 | A. Precision statements are |
| 5 | what was balloted in the Word format | 5 | included in test methods. |
| 6 | and placing it into our XML format | 6 | Q. What are precision statements? |
| 7 | that we use for producing PDFs. | 7 | A. Precision statements include |
| 8 | BY MR. BECKER: | 8 | statements on repeatability and reproducibility. |
| 9 | Q. Is that a no? | 9 | Q. What do you mean by that? |
| 10 | MR. FEE: Objection. You can | 10 | A. For a test method, a statement |
| 11 | answer the question however you like. | 11 | of repeatability would be a laboratory taking |
| 12 | You don't have to answer it yes or no. | 12 | the ASTM test method and running the test in |
| 13 | THE WITNESS: Did you ask me is | 13 | the laboratory several times. And they take |
| 14 | that a no? | 14 | the results of that test and they see how |
| 15 | BY MR. BECKER: | 15 | close each iteration is. And if the results |
| 16 | Q. Yeah. | 16 | are very close, then that would indicate good |
| 17 | A. What was can you repeat the | 17 | precision. If it's if the results are not |
| 18 | original question? | 18 | close, then that would indicate poor |
| 19 | Q. The question was, when you say | 19 | precision. So that's what repeatability is. |
| 20 | you put it into publication format, does that | 20 | Then reproducibility is at least six labs |
| 20 | involve any changes to the content of the | 20 | doing the same thing as what I just described |
| $\frac{21}{22}$ | draft standards? | 22 | as that one lab. And then the |
| 23 | MR. FEE: Objection. Vague. | 23 | reproducibility is a statement that analyzes |
| 1 | THE WITNESS: It could, | 23 | the results from all six or more labs. |
| 124 | | 1 4 T | and results from an six of more labs. |
| 24 | | | |
| 24 25 | editorial changes, yes. Page 271 | 25 | Q. Do the same precision Page 273 |

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| 1 | statements appear in different standards? | 1 | significantly when it's transformed |
|--|--|--|---|
| 2 | A. In test methods. | 2 | into the published version. |
| 3 | Q. For test methods they do? | 3 | BY MR. BECKER: |
| 4 | A. Yes. | 4 | Q. When you say it's not changed |
| 5 | Q. What is the work that the | 5 | significantly, what do you mean? |
| 6 | graphics department does? | 6 | A. There could be editorial |
| 7 | MR. FEE: Objection. Vague. | 7 | changes. So that's a service that our |
| 8 | THE WITNESS: Graphics, I don't | 8 | editors perform. When they're putting it |
| 9 | know exactly everything that they do, | 9 | into the published version, they will work |
| 10 | but they will take figures that are | 10 | with the technical contact to incorporate any |
| 11 | perhaps old from years ago and we will | 11 | editorial changes that may have been agreed |
| 12 | use them in our technology, update | 12 | upon by the committee. |
| 13 | them to make them more user friendly. | 13 | Q. You mentioned caveats in ASTM |
| 14 | BY MR. BECKER: | 14 | standards. What are those? |
| 15 | Q. Are these figures that were | 15 | A. There are caveats that are in |
| 16 | created by committee members or how are these | 16 | our form and style manual. |
| 17 | figures created that the graphics department | 17 | Q. Are those what exactly are |
| 18 | would update? | 18 | the caveats in the form and style manual? |
| 19 | MR. FEE: Objection to form. | 19 | MR. FEE: Objection. Vague. |
| 20 | THE WITNESS: I would assume by | 20 | THE WITNESS: I wouldn't be able |
| 21 | the committee members. | 21 | to name all of them for you, but there |
| 22 | BY MR. BECKER: | 22 | are caveats related to the use of |
| 23 | Q. Do members do committee | 23 | units, so the standard will the |
| 24 | members vote on the changes that or | 24 | there will be a caveat that will |
| 25 | additions that you just described? | 25 | identify the use of units within a |
| | Page 274 | | Page 276 |
| 1 | MR. FEE: Objection. | 1 | particular standard. We have certain |
| 2 | Mischaracterizes his testimony. Vague | 2 | safety caveats and hazardous caveats. |
| 3 | and ambiguous. | 3 | I think we have a caveat that deals |
| 4 | THE WITNESS: Yes. | 4 | with mercury being used in the |
| 5 | BY MR. BECKER: | 5 | standard. I'm sure there are some |
| 6 | Q. Do committee members vote on | 6 | others. |
| 7 | the final versions of ASTM standards? | 7 | |
| 8 | A. I'm not sure what you mean by | 8 | (Exhibit 1317, Participating |
| 9 | "final versions." | 9 | Membership Applications, Bates |
| 10 | Q. Do committee members vote on | 10 | ASTM064686 - ASTM064692, was marked |
| 11 | ASTM standards, on the final appearance of | 11 | for identification.) |
| 12 | ASTM standards? | 12 | |
| 13 | MR. FEE: Objection. Vague. | 13 | BY MR. BECKER: |
| 14 | THE WITNESS: The final | 13 | Q. I'm handing you what's been |
| 15 | | 14 | marked as Exhibit 1317. This document has |
| | appearance, the published tormal / | 1.10 | marines as Emilor 1517. This document has |
| | appearance, the published format? BY MR. BECKER: | 16 | been produced by ASTM as ASTM064686 to 64692 |
| 16 | BY MR. BECKER: | 16 17 | been produced by ASTM as ASTM064686 to 64692. What is this document? |
| 16 17 | BY MR. BECKER: Q. Yes. | 17 | What is this document? |
| 16 17 18 | BY MR. BECKER: Q. Yes. A. No. | 17 18 | What is this document? A. This looks like a copy of an |
| 16 17 18 19 | BY MR. BECKER: Q. Yes. A. No. Q. Do ASTM committee members vote | 17 18 19 | What is this document?A. This looks like a copy of an old application that was downloaded and saved |
| 16 17 18 19 20 | BY MR. BECKER:Q. Yes.A. No.Q. Do ASTM committee members vote on the content that appears in the final form | 17 18 19 20 | What is this document? A. This looks like a copy of an old application that was downloaded and saved from our Web site and that was filled out by |
| 16 17 18 19 20 21 | BY MR. BECKER: Q. Yes. A. No. Q. Do ASTM committee members vote on the content that appears in the final form of ASTM standards? | 17 18 19 20 21 | What is this document?A. This looks like a copy of an old application that was downloaded and saved |
| 16 17 18 19 20 21 22 | BY MR. BECKER: Q. Yes. A. No. Q. Do ASTM committee members vote on the content that appears in the final form of ASTM standards? MR. FEE: Objection. Vague. | 17 18 19 20 21 22 | What is this document? A. This looks like a copy of an old application that was downloaded and saved from our Web site and that was filled out by hand. Best guess. |
| 16 17 18 19 20 21 22 23 | BY MR. BECKER: Q. Yes. A. No. Q. Do ASTM committee members vote on the content that appears in the final form of ASTM standards? MR. FEE: Objection. Vague. THE WITNESS: The content that | 17 18 19 20 21 22 23 | What is this document? A. This looks like a copy of an old application that was downloaded and saved from our Web site and that was filled out by hand. Best guess. |
| 16 17 18 19 20 21 22 23 24 | BY MR. BECKER: Q. Yes. A. No. Q. Do ASTM committee members vote on the content that appears in the final form of ASTM standards? MR. FEE: Objection. Vague. THE WITNESS: The content that is balloted and approved through our | 17 18 19 20 21 22 23 24 | What is this document? A. This looks like a copy of an old application that was downloaded and saved from our Web site and that was filled out by hand. Best guess. (Exhibit 1318, E-mail chain with attachment, Bates ASTM087493 - |
| 16 17 18 19 20 21 22 23 | BY MR. BECKER: Q. Yes. A. No. Q. Do ASTM committee members vote on the content that appears in the final form of ASTM standards? MR. FEE: Objection. Vague. THE WITNESS: The content that | 17 18 19 20 21 22 23 | What is this document? A. This looks like a copy of an old application that was downloaded and saved from our Web site and that was filled out by hand. Best guess. |

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| 6Membership Application."6What is this document?7Q. Does this document appear to8MR. FEE: Objection. Lack of8have a line crossed through the language9foundation.9concerning the ASTM IP Policy?9foundation.10MR. FEE: Objection. The10THE WITNESS: Maybe an article11document speaks for itself.11we have on our Web site that helps12THE WITNESS: I can't say that12provide guidance for our members.13that's a line or whether that's an13BY MR. BECKER:14indicator towards the individual's14Q. Do you know what a US TAG ISO15account number.15list is?1616A. A US17(Exhibit 1320, How To Standards17Q. US TAG ISO list.18Writing 101 New Standards, was marked18A. United States Technical19for identification.)19Advisory Group ISO list, I don't know if that2020refers to the list of members that are21BY MR. BECKER:21serving on the technical advisory group.22Q. I'm handing you what's been2223marked as Exhibit 1320. What is this23(Exhibit 1322, 8/13/08 E-mail,24document?24Bates ASTM073852, was marked for | | | |] |
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| 3 BY MR. BECKER: 3 Standardization News back in 2000. 4 Q. I'm handing you what's been 3 Standardization News back in 2000. 7 attempting to renew his application. 7 Rembership application with ASTM by phone 9 A. I'd have to read it. 7 MR. FEE: You're going to have to read it. 10 Q and e-mail? 11 A. Reviewing document.] Looks 11 believe, a way that an individual an individual could request the development of a new standard. 12 like, based on what I'm reading here, they 12 could request the development of a new standard. 14 but it doesn't say that it actually happened. 15 Q. So there were other ways that ita in individual could request the development of a new standard. 16 membership by bhone or e-mail? 17 of a new standard as of March 2000? 18 don't think its very common, but they could. 18 BY MR. BECKER: 20 (Exhibit 1319, 2011 ASTM 20 chairman. 21 International Committee Membership 21 could make a request 23 Marked as Exhibit 1319, document produced by a marked as Exhibit 1321. This document was 3 A. It says, "2011 | | identification.) | | |
| 4 Q. Tm handing you what's been 4 Q. Does this document accurately 5 marked as Exhibit 1318. Does 5 reflect the way that standards were developed 6 appeart to show an individual who was attempting to renew his application. 7 MR. FEE: You're going to have 8 membership application with ASTM by phone - 9 A. I'd have to read it. 7 MR. FEE: You're going to have 10 Q and e-mail? 10 THE WITNESS: This was, I 11 11 A. Reviewing document, Looks 12 believe, a way that an individual 12 like, based on what I'm reading here, they 13 standard. 13 were trying to renew the membership by phone, the were other ways that 13 an individual could request the development of a new 14 but it doesn't say that it actually happend. 15 Q. So there were other ways that 15 n. Arey could. It's not -1 14 BY MR. BECKER: 22 2 Application, Bates ASTM0(1183, was 23 Developed atticle, was marked for 24 24 identification.) 23 25 26 | 2 | | | |
| 5 marked as Exhibit 1318. Does this exhibit 5 reflect the way that standards were developed 6 appear to show an individual who was 6 at ASTM in approximately March of 2000? 7 MR. FEE: You're going to have 6 at ASTM in approximately March of 2000? 9 A. If have to read it. 9 that question. 10 Q and e-mail? 10 THE WITNESS: This was, I 11 A. [Reviewing document, Looks 11 believe, a way that an individual 12 like, based on what I'm reading here, they 12 could request the development of a new 13 were trying to renew the membership by phone, 14 BY MR. BECKER: 5 0. So there were other ways that 14 but it doesn't say that it actually happened. 15 Q. So there were other ways that 15 Q. Can ASTM members renew their 16 an individual could request the development 16 nort think it's very common, but they could. 14 BY MR. BECKER: 21 23 marked for identification.) 23 Developed article, was marked for 24 25 Page 27 | 3 | | 3 | |
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| 1 | IP Policy or assignments? | 1 | I declare under penalty of perjury | | |
|----------------|---|----|--------------------------------------|-------|-----------|
| 2 | MR. BECKER: Object as to form. | 2 | under the laws that the foregoing is | | |
| 3 | THE WITNESS: There is | 3 | true and correct. | | |
| 4 | additional language. This document | 4 | | | |
| 5 | identifies membership renewal Web | 5 | Executed on | , 20, | |
| 6 | screenshots for different types of | 6 | at,, | | • |
| 7 | members. So I identified page 2, and | 7 | | | |
| 8 | then there's also additional language | 8 | | | |
| 9 | on page ASTM001796 as well as | 9 | | | |
| 10 | ASTM001798. And I believe that's it. | 10 | | | |
| 11 | MR. FEE: I have no other | 11 | | | |
| 12 | questions. | 12 | DANIEL SMITH | | |
| 13 | Do you have any other questions | 13 | | | |
| 14 | or is he done? | 14 | | | |
| 15 | MR. BECKER: No, no redirect. | 15 | | | |
| 16 | MR. FEE: Great. Thank you. | 16 | | | |
| 17 | THE WITNESS: Thanks. | 17 | | | |
| 18 | VIDEOGRAPHER: The time is now | 18 | | | |
| 19 | 7:57. This concludes the videotape | 19 | | | |
| $\frac{1}{20}$ | deposition of Dan Smith. | 20 | | | |
| 20 | deposition of Dan Siniti. | | | | |
| $21 \\ 22$ | (Witness excused.) | 21 | | | |
| 22 | (whiless excused.) | 22 | | | |
| | (Demosition concluded at 7:57 | 23 | | | |
| 24 | (Deposition concluded at 7:57 | 24 | | | |
| 25 | p.m.) Page 290 | 25 | | | Page 292 |
| | r age 290 | | | | 1 age 292 |
| 1 | CERTIFICATE | | | | |
| 23 | | | | | |
| | I do hereby certify that I am a Notary | | | | |
| 4 | Public in good standing, that the aforesaid | | | | |
| 5 | testimony was taken before me, pursuant to notice, at the time and place indicated; that | | | | |
| | said deponent was by me duly sworn to tell | | | | |
| 6 | the truth, the whole truth, and nothing but the truth; that the testimony of said | | | | |
| 7 | deponent was correctly recorded in machine | | | | |
| | shorthand by me and thereafter transcribed | | | | |
| 8 | under my supervision with computer-aided transcription; that the deposition is a true | | | | |
| 9 | and correct record of the testimony given by | | | | |
| 10 | the witness; and that I am neither of counsel nor kin to any party in said action, nor | | | | |
| 10 | interested in the outcome thereof. | | | | |
| 11 | | | | | |
| 12 | WITNESS my hand and official seal this 7th day of August, 2015. | | | | |
| 13 | ful day of August, 2015. | | | | |
| 14 | | | | | |
| 15 | Notary Public | | | | |
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EXHIBIT 14

JA01631

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| A DNITE | This certificate, issued under the seal of the Copyright Office in accordance with the provisions of section 410(a) of title 17, United States Code, attests that copyright reg- istration has been made for the work identified below: The information in this certificate has been made a part of the Copyright Office records. | |
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| PUBE | CATION DIVISION / COLL REGISTER OF COPYRIGHTS United States of America | SEP 1 4 1983 Month Day Year |
| | DO NOT WRITE ABOVE THIS LINE. IF YOU NEED MORE SPACE, USE A SEPARATE | CONTINUATION SHEET. |
| * | TITLE OF THIS WORK ▼ 1983 Annual Book of ASTM Standards Metals - Mechanical Testing; Elevated and Low Temp | |
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| | NAME OF AUTHOR V | DATES OF BIRTH AND DEATH_ |
| | American Society for Testing and Materials | Year Born V Year Died V |
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| the "author" of a "work made for hire" is generally the employer, not the em- | NAME OF AUTHOR V | DATES OF BIRTH AND DEATH Year Born ▼ Year Died ▼ |
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| See instructions before completing | American Society for Testing and Materials 1916 Race Street Philadelphia, PA 19103 | |
| this space. | TRANSFER If the claimant(s) named here in space 4 are different from the author(s) named in space 2, give a brief statement of how the claimant(s) obtained ownership of the copyright. | REMITTANCE NUMBER AND DATE |
| | , | 323001 321 1400 |
| | MORE ON BACK ► • Complete all applicable spaces (numbers 5-11) on the reverse side of this page. | EXHIBIT ASTMO00001 $\frac{1291}{2-24-15}$ |
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