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 9 (JA7296-JA7675) MATERIAL UNDER SEAL IN SEPARATE SUPPLEMENT

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Page 3 of 395

TABLE OF CONTENTS

VOLUME 1 (JA1-JA493)

Public.Resource.Org, Inc., No. 13-cv-1215	JA1
Exhibit A to Complaint, DKT. 1-1	JA35
Transcript of 11/04/15 Status Hearing before Judge Tanya S. Chutkan, DKT. 116	JA45
Proposed Order Granting Plaintiffs' Motion for Leave to File Under Seal, DKT. 117-1	JA66
Exhibit 1 to Declaration of Jordana S. Rubel in Support of Plaintiffs' Motion for Summary Judgment, DKT. 117-2 (Material Under Seal)	JA68
Plaintiffs' Memorandum of Law in Support of Motion for Summary Judgment and Permanent Injunction, DKT. 118-1	JA182
Plaintiffs' Statement of Material Facts in Support of Motion for Summary Judgment, DKT. 118-2	JA256
Declaration of Dennis J. Berry and Exhibits in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-3	JA306
Declaration of Steven Cramer and Exhibits in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-4	JA336
Declaration of James Golinveaux in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-5	JA348
Declaration of Randy Jennings and Exhibit in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-6	JA352
Declaration of Thomas B. O'Brien, Jr. and Exhibits in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-7	JA362

VOLUME 2 (JA494-JA1297)

Declaration of Thomas B. O'Brien, Jr. and Exhibits in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-7 (continued)
Declaration of James T. Pauley and Exhibits in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-8
Declaration of Kevin Reinertson in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-9
Declaration of Stephanie Reiniche and Exhibits in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-10
Declaration of James Thomas in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-11
Exhibit 1 to Declaration of Jordana S. Rubel in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-12 (Jarosz Report) (Material Under Seal)
Exhibit 2 to Declaration of Jordana S. Rubel in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-12
Exhibit 3 to Declaration of Jordana S. Rubel in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-12 (Material Under Seal)
Exhibit 8 to Declaration of Jordana S. Rubel in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-12
Exhibit 10 to Declaration of Jordana S. Rubel in Support of Plaintiffs' Motion for Summary Judgment, DKT. 118-12
Defendant Public.Resource.Org's Statement of Material Facts in Support of Motion for Summary Judgment, DKT. 120-3 (Material Under Seal) (Public Version at DKT. 121-2)
Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-4 (Material Under Seal)

Exhibit 4 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-6 (Material Under Seal)
Exhibit 22 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-9 (Material Under Seal)
Exhibit 53 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-10 (Material Under Seal)
Exhibit 74 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-11 (Material Under Seal)
Exhibit 80 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-14 (Material Under Seal)
Exhibit 87 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-20 (Material Under Seal)
Exhibit 88 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-21 (Material Under Seal)
Exhibit 89 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-22 (Material Under Seal)
Exhibit 90 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-23 (Material Under Seal)
Exhibit 91 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-24 (Material Under Seal)

Exhibit 92 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-25 (Material Under Seal)
Exhibit 93 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-26 (Material Under Seal)
Exhibit 94 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-27 (Material Under Seal)
Exhibit 129 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-29 (Material Under Seal)
Exhibit 146 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-33 (Material Under Seal)
Exhibit 150 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 120-34 (Material Under Seal)
Declaration of Carl Malamud in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 121-5
Exhibits 1-10 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-1
VOLUME 3 (JA1298-JA1677)
Exhibits 1-10 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-1 (continued)
Exhibits 11-20 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-2

Page 7 of 395

VOLUME 4 (JA1678-JA2057)

Exhibits 11-20 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-2 (continued)
Exhibits 21-40 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-3
VOLUME 5 (JA2058-JA2437)
Exhibits 21-40 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-3 (continued)
Exhibits 41-60 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-4
Exhibits 61-80 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-5
Exhibits 61-80 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-5
Exhibits 81-100 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-6
VOLUME 6 (JA2438-JA2817)
Exhibits 81-100 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-6 (continued)
Exhibits 101-120 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-7
Exhibits 121-140 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-8
VOLUME 7 (JA2818-JA4847)
Exhibits 141-157 to Public.Resource.Org's Motion for Summary Judgment, DKT. 122-9

Exhibit 3 to Declaration of Kathleen Lu in Support of Public.Resource.Org's Motion to Strike, DKT. 124-5
Declaration of Steve Comstock in Support of Plaintiffs' Reply to Opposition to Motion for Summary Judgment, DKT. 155-5
Declaration of Christian Dubay in Support of Plaintiffs' Reply to Opposition to Motion for Summary Judgment, DKT. 155-6
Exhibit A to Declaration of Christian Dubay in Support of Plaintiffs' Reply to Opposition to Motion for Summary Judgment, DKT. 155-6, exhibit A (Material Under Seal)
Supplemental Declaration of Thomas B. O'Brien, Jr. in Support of Plaintiffs' Reply to Opposition to Motion for Summary Judgment, DKT. 155-7
Exhibit 10 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 163-6 (Material Under Seal)
Exhibit 11 to Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 163-7 (Material Under Seal)
Declaration of Matthew Becker in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 164-1
Public.Resource.Org's Supplemental Statement of Undisputed Material Facts in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 164-3
Supplemental Declaration of Carl Malamud in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 164-8
Exhibit 5 to Supplemental Declaration of Carl Malamud in Support of Public.Resource.Org's Motion for Summary Judgment, DKT. 164-13

Exhibit 6 to Supplemental Declaration of Carl Malamud in Support of Public.Resource.Org's Motion for Summary Judgment,
DKT. 164-14
Memorandum Opinion, DKT. 175
Exhibit 156 to Declaration of Jane W. Wise in Support of Plaintiffs' Second Motion for Summary Judgment, DKT. 198-40
VOLUME 8 (JA4848-JA7295)
Exhibit 156 to Declaration of Jane W. Wise in Support of Plaintiffs' Second Motion for Summary Judgment, DKT. 198-40 (continued)
Exhibit 167 to Declaration of Jane W. Wise in Support of Plaintiffs' Second Motion for Summary Judgment, DKT. 198-48
Exhibit 173 to Declaration of Jane W. Wise in Support of Plaintiffs' Second Motion for Summary Judgment, DKT. 198-48
Declaration of James S. Thomas and Exhibits in Support of Plaintiffs' Second Motion for Summary Judgment, DKT. 198-49
Supplemental Declaration of James T. Pauley in Support of Plaintiffs' Second Motion for Summary Judgment, DKT. 198-50
Plaintiffs' Memorandum in Support of Second Motion for Summary Judgment and for Permanent Injunction, DKT. 199-1 (Material Under Seal) (Public Version at DKT. 200)
Plaintiffs' Second Supplemental Statement of Material Facts in Support of Second Motion for Summary Judgment, DKT. 199-2 (Material Under Seal) (Public Version at DKT. 201)
Exhibit D to the Supplemental Declaration of James T. Pauley in Support of Second Motion for Summary Judgment, DKT. 199-15 (Material Under Seal)

Exhibit F to the Supplemental Declaration of James T, Pauley
in Support of Second Motion for Summary Judgment,
DKT. 199-17 (Material Under Seal)
Exhibit P to the Supplemental Declaration of James T. Pauley
in Support of Second Motion for Summary Judgment,
DKT. 199-27 (Material Under Seal)
Exhibit T to the Supplemental Declaration of James T. Pauley
in Support of Second Motion for Summary Judgment,
DKT. 199-31 (Material Under Seal)
Exhibit V to the Supplemental Declaration of James T. Pauley
in Support of Second Motion for Summary Judgment,
• • •
DKT. 199-33 (Material Under Seal)
Supplemental Declaration of Stephanie Reiniche in Support of
Second Motion for Summary Judgment, DKT. 198-53JA6944
Exhibit 1 to Supplemental Declaration of Stephanie Reiniche in
Support of Second Motion for Summary Judgment, DKT. 199-34,
exhibit 1 (Material Under Seal)
Public Resource's Second Motion for Summary Judgment, DKT. 202 JA7139
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Public Resource's Second Supplemental Statement of Material Facts
in Opposition To Plaintiffs' Motion for Summary Judgment and
Permanent Injunction, and in Support of Public Resource's Second
Motion for Summary Judgment, DKT. 203-2 (Material Under Seal) JA7142
Exhibit 77 to Public Resource's Second Motion for Summary
Judgment, DKT. 203-27 (Material Under Seal)JA7197
Declaration of Carl Malamud in Support of Public Resource's Second
Motion for Summary Judgment, DKT. 204-4
Declaration of Matthew Becker in Support of Public Resource's
Second Motion for Summary Judgment, DKT. 204-5JA7216
, ,

Exhibit 34 to Public Resource's Second Motion for Summary Judgment, DKT. 204-40
Exhibit 36 to Public Resource's Second Motion for Summary Judgment, DKT. 204-42
VOLUME 9 (JA7296-JA7675)
Exhibit 36 to Public Resource's Second Motion for Summary Judgment, DKT. 204-42 (continued)
Exhibit 37 to Public Resource's Second Motion for Summary Judgment, DKT. 204-43
Exhibit 38 to Public Resource's Second Motion for Summary Judgment, DKT. 204-44
Exhibit 40 to Public Resource's Second Motion for Summary Judgment, DKT. 204-46
Exhibit 41 to Public Resource's Second Motion for Summary Judgment, DKT. 204-47
VOLUME 10 (JA7676-JA8154)
Exhibit 41 to Public Resource's Second Motion for Summary Judgment, DKT. 204-47 (continued)
Exhibit 42 to Public Resource's Second Motion for Summary Judgment, DKT. 204-48 (Material Under Seal)
Exhibit 43 to Public Resource's Second Motion for Summary Judgment, DKT. 204-49
Exhibit 44 to Public Resource's Second Motion for Summary Judgment, DKT. 204-50
Exhibit 45 to Public Resource's Second Motion for Summary Judgment, DKT. 204-51

VOLUME 11 (JA8155-JA8817)

Exhibit 45 to Public Resource's Second Motion for Summary Judgment, DKT. 204-51 (continued)	JA8155
Exhibit 46 to Public Resource's Second Motion for Summary Judgment, DKT. 204-52 (Material Under Seal)	JA8165
Exhibit 55 to Public Resource's Second Motion for Summary Judgment, DKT. 204-61 (Material Under Seal)	JA8269
Exhibit 56 to Public Resource's Second Motion for Summary Judgment, DKT. 204-62 (Material Under Seal)	JA8297
Exhibit 60 to Public Resource's Second Motion for Summary Judgment, DKT. 204-66	JA8324
Exhibit 72 to Public Resource's Second Motion for Summary Judgment, DKT. 204-78 (Material Under Seal)	JA8327
Exhibit 73 to Public Resource's Second Motion for Summary Judgment, DKT. 204-79 (Material Under Seal)	JA8352
Exhibit 74 to Public Resource's Second Motion for Summary Judgment, DKT. 204-80 (Material Under Seal)	JA8378
Exhibit 75 to Public Resource's Second Motion for Summary Judgment, DKT. 204-81 (Material Under Seal)	JA8405
Exhibit 76 to Public Resource's Second Motion for Summary Judgment, DKT. 204-82 (Material Under Seal)	JA8435
Exhibit 77 to Public Resource's Second Motion for Summary Judgment, DKT. 204-83 (Material Under Seal)	JA8438
Exhibit 78 to Public Resource's Second Motion for Summary Judgment, DKT. 204-84 (Material Under Seal)	JA8440
Exhibit 79 to Public Resource's Second Motion for Summary Judgment, DKT. 204-85 (Material Under Seal)	JA8446

Exhibit 80 to Public Resource's Second Motion for Summary Judgment, DKT. 204-86 (Material Under Seal)	JA8448
Exhibit 84 to Public Resource's Second Motion for Summary Judgment, DKT. 204-90	JA8450
Exhibit 85 to Public Resource's Second Motion for Summary Judgment, DKT. 204-91	JA8456
Exhibit 86 to Public Resource's Second Motion for Summary Judgment, DKT. 204-92	JA8471
Exhibit 87 to Public Resource's Second Motion for Summary Judgment, DKT. 204-93	JA8489
Exhibit 88 to Public Resource's Second Motion for Summary Judgment, DKT. 204-94	JA8491
Exhibit 89 to Public Resource's Second Motion for Summary Judgment, DKT. 204-95	JA8534
Exhibit 90 to Public Resource's Second Motion for Summary Judgment, DKT. 204-96	JA8538
Exhibit 91 to Public Resource's Second Motion for Summary Judgment, DKT. 204-97	JA8654
Exhibit 96 to Public Resource's Second Motion for Summary Judgment, DKT. 204-102	JA8667
Exhibit 97 to Public Resource's Second Motion for Summary Judgment, DKT. 204-103 (Material Under Seal)	JA8729
Plaintiffs' Statement of Disputed Facts and Objections in Opposition to Public Resource's Second Supplemental Statement of Material	
Facts, DKT. 212-1 (Material Under Seal) (Public Version at DKT. 213-20)	JA8733

VOLUME 12 (JA8818-JA9197)

Plaintiffs' Statement of Disputed Facts and Objections in Opposition to Public Resource's Second Supplemental Statement of Material Facts, DKT. 212-1 (Material Under Seal) (Public Version at DKT. 213-20) (continued)
Plaintiffs' Third Supplemental Statement of Material Facts in Support of Second Motion for Summary Judgment, DKT. 213-1
Exhibit 176 to Declaration of Jane W. Wise in Support of Second Motion for Summary Judgment, DKT. 213-6
Supplemental Reply Declaration of Matthew Becker in Support of Public Resource's Second Motion for Summary Judgment, DKT. 215-3JA9005
Exhibit 98 to Supplemental Reply Declaration of Matthew Becker in Support of Public Resource's Second Motion for Summary Judgment, DKT. 215-4
VOLUME 13 (JA9198-JA9505)
Exhibit 98 to Supplemental Reply Declaration of Matthew Becker in Support of Public Resource's Second Motion for Summary Judgment,
DKT. 215-4 (continued)
DKT. 215-4 (continued)
DKT. 215-4 (continued)

Motion for Permanent Injunction; granting in part and denying in	
part Defendant's Cross-Motion for Summary Judgment, DKT. 240	.JA9499
T	
Notice of Appeal	140502
Notice of Appear	.JA9302

[implemented - know]

implemented	indicating 33:8	interested 8:23	jerry 5:8 9:6
182:16 183:6	individual 151:18	139:4 195:15	jerry.yen 5:13
importance 131:5	individuals 136:25	202:17	job 1:24
important 131:7	137:7,13,23 180:1	interface 15:13	john 5:21 8:20
148:13 149:2	180:8	17:1	judgment 166:24
166:9	industry 17:3	internal 87:7	167:6
include 86:23 87:7	26:12,19,24 27:11	internally 102:6	july 7:4 35:25
122:11 128:3	163:21	international 1:5	131:4,18 132:4
173:14	inferior 166:13	2:5 4:4 38:8,11	135:21 139:16
included 86:20	info 88:5	93:24 134:12	170:8
includes 24:22	information 25:17	162:25 163:8,13	jurisdiction 105:5
88:17 155:1	34:11,15 64:13	190:3,7	121:20 183:12
including 81:6	66:3,5 86:16 88:8	internet 25:17	185:1 188:24
89:19 158:19	88:17 102:8,11,15	33:5,7,9,12	jurisdiction's
179:24	114:23 116:11	interpret 65:20	184:10,15 185:15
incomplete 63:11	143:22 146:10,11	66:1	jurisdictions
110:14	146:12,14 193:21	interpreting 66:7	52:24 117:25
inconsequential	196:3	intervening 35:9	121:7,14 122:4,6
113:4,16,20,24	informed 91:10	138:22 139:20,22	122:11,14 127:25
114:8	initial 17:16 18:16	invited 196:8	128:6,8 175:5
inconsistent	48:2	involved 10:5	182:17,23 183:7
156:21	initialed 201:13	78:21 163:16	184:17 188:11,14
incorporate 30:23	ink 201:13	169:11 171:5	188:16,19 195:15
31:2,7,12 164:20	installation 125:10	involvement 10:8	justice 5:6
167:7 172:6	installations 65:20	21:22 23:12 26:7	k
incorporated 26:2	instance 36:20	78:10,15,19	k 134:21,21,24
106:7 145:6	65:4 71:18 94:13	issue 35:6 86:4	136:17
incorporates	100:3 128:3 190:2	91:21 92:20	katrina 146:8,19
166:22	instances 32:13,17	124:12 190:23	147:17
incorporation	94:3,5	issues 25:25 90:25	keep 52:11 81:8
30:17 31:5 49:9	instruct 148:9	91:10 124:6,7,10	88:5 101:12,19
49:14,18,23 50:7	intend 66:3	124:19,20 125:10	171:23
50:11,12,18,19	intensive 164:12	138:5,13 180:16	kevin 4:6 9:19
51:2,5	interacted 26:12	181:16	kevin.fee 4:11
incredibly 164:12	26:17	item 109:12 135:7	kind 108:1 128:17
independent 19:12 index 6:1	interactions 15:16	177:22,25 186:17	185:8 195:8 196:3
	27:17,21 interest 78:2 79:7	186:17	kinds 40:16,21
indicate 159:11 indicates 62:22,24	79:11,18,22 80:2	j	knew 152:18
170:12 183:4	80:14 81:4,19	j 4:6	177:17
1/0.12 103.4	105:8,14,16	january 23:6 36:2	know 11:9 12:6,10
	103.0,17,10	139:19	17:11 25:19 26:17
		1	

[know - licensee]

26:21 37:4 43:19	136:22,23 137:3,5	laid 47:4	leaving 154:25
49:12 50:5,15,25	130:22,23 137:3,3	lands 130:16	155:3
51:12 53:13,16,16	137:10,12,17	language 17:19	leda 3:14
53:18 54:1,7,13,23	141:4,5,8,9,12	41:19 46:5 61:21	left 110:14
54:24 55:18 56:1	141.4,5,8,9,12	103:25 110:1,7,9	legal 5:19 9:10
	142:2,3,13,17	110:17 113:8,11	50:22 51:11 77:15
56:7,12,14,22,24 56:25 57:1,5,6,8	146:16 147:2,13	110:17 113:8,11	88:24 103:9 107:1
	,	115:13:13:15:8,13	109:2,21 110:11
57:11,13,18,20	148:3,6 149:4	116:6,25 117:3	111:2,10,22
58:17 60:3,12,14	150:6,12,24	131:5 135:1	, ,
60:18,19 61:6	151:21,23,25		112:13,24 126:12 126:24 127:8
62:17 68:5 69:5,8	152:20,23,24	140:17,20,21 181:22 183:18	131:14 147:10
69:20,25 70:21	157:21 158:5,6		
71:12 72:2,20	159:22,25 160:3,8	186:14,16 187:1	189:7,14
73:8,13,15,16,20	160:8 162:3,6	latest 22:21	legend 62:18,22
73:22 74:2,4 75:1	164:2,9,15 171:8	law 3:6,15 4:7,17	legislated 115:14
75:10,15,21 76:12	172:14 173:23,24	5:9,16 10:24 14:2	legislation 105:3
76:23 77:17 82:13	187:2 188:23	14:10 16:16 17:10	legislature 41:11
82:17 86:11,14,16	189:8,22 190:6,7	26:2 28:16 36:6	letter 7:4 24:19,22
87:9 90:2,9,15,19	190:10 192:14,17	40:16 44:18 45:6	25:10 84:17
90:24 92:1,21	192:20,21 193:3,5	51:6 52:23 89:7	level 112:7 161:24
94:19 95:8,17,18	194:10 195:17	89:18,21,23	162:1,7,13 163:11
95:25 96:16,17,19	197:16 198:16	104:12 111:16	169:9
96:23 97:6,9,14,17	knowledge 25:12	117:24 121:17,22	lewis 4:5 9:19
97:22 98:1 100:18	25:15,16 38:21	122:1 131:13	libraries 117:24
100:19 101:12,16	39:18,25 52:4,6,16	165:20 175:6	135:24 136:1,10
103:10 107:2	54:2 63:22 69:11	177:17 178:12	136:11,11,12
108:7,20,21 109:6	90:23 113:14,18	185:16	175:6,6,17,20
109:10 111:5	121:7 126:20	law's 45:21	176:1,2 177:1,4,7
112:25 114:2,5,19	138:3 144:11,18	lawsuit 25:14 58:9	186:21
114:21 119:21	145:5 196:21	152:14 153:13	library 121:22
121:11,15 122:3	known 14:5,13	lawsuits 10:5,9	122:1 176:17
122:23,24,25	19:4 43:10	lawyers 148:16	177:17 178:6,9,12
123:3 126:7	l	153:15	178:16,19
127:10 128:6,13	lack 61:2,12	lay 10:19	license 109:19
128:17,20 129:15	123:23 137:8,13	lays 47:14	127:10
129:18,18,20,24	137:15 138:1,6	leading 32:21 38:5	licensed 17:3
130:4,6,9,10,14,15	143:12,18 180:12	39:10 47:16 50:14	110:6 115:9
130:18,19 131:17	lacked 190:18	139:15,18	118:23 119:3,10
131:21,24,25	lacks 55:15 73:11	learn 196:18	119:12
132:2,7 134:6,8	137:1 159:15	leased 118:13,19	licensee 117:1
135:7 136:8,16,21			

[life - meetings]

life 29:25	122:10,11,14,14	m	34:4 49:8 57:24
light 59:11	122:17,21 123:1	macdonell 5:21	81:18 83:9 145:20
likewise 11:22	127:25 128:6,8,9	8:20	160:18 201:10,22
limit 12:17	128:11 140:18	machine 202:8	material 45:19
line 65:5 135:18	141:9 170:6		62:2 155:24
136:17 187:5	174:25 175:4	maeda 7:12 85:25	materials 1:4 2:4
lines 170:2 187:7	182:17,21,22	86:2 93:6	4:4 8:16 15:18
193:7	183:7,12 184:10	magazine 193:19 mail 193:18	17:14,15 20:2
link 52:21 54:19	184:15,17 185:14	main 193:18 maintain 122:1	21:24 199:6,13
54:25 55:6,12	188:11,13,19	maintains 121:23	matrix 64:6,8
58:5 61:10 67:19	195:14		matter 8:15 13:8
71:3,4,15 72:3	located 8:18	makeup 47:3	33:14 36:18
73:3 91:18,22	long 20:4 46:12	making 167:6	194:13
92:1,7 100:11,13	99:19 100:19	179:25 180:7,11 180:15	matters 10:15
101:23 102:20	110:21 144:1	malamud 88:5	maximum 108:18
134:3 173:15	149:11 161:18	152:24 153:10	mcgeorge 178:11
linked 33:15 39:6	longer 82:19	mall 2:21 8:18	mean 11:13 12:1
133:3 135:14	look 35:11 65:18	manager 146:5	16:22 24:2 26:17
links 54:22 60:21	69:6,20 83:8	151:19	26:22 29:8 31:1,3
60:25 61:6 72:8	86:18 154:23	mandate 131:14	32:19 37:4,5
89:21 123:6 133:6	155:5,7,21 156:16	march 7:11 94:17	49:11 93:18 95:17
179:17	156:22 157:21	margin 62:23	102:7 108:7,25
list 74:17 75:17	168:6 169:24	mark 24:8 33:1	120:12 123:3,17
135:20 176:17	170:2 172:4,17,18	34:17 57:21 83:4	124:17,19 128:9
177:1,22,23 178:1	175:9,10 176:5	107:9 141:19	150:8 155:12,15
178:5	177:21 178:4,11	marked 24:10,13	171:8
listed 38:13 67:6	180:18 185:5,13	33:3 34:18,21	meaning 50:13,18
75:4 135:24	looked 186:13	37:24 57:22,25	means 49:24 67:15
175:17,20 176:14	looking 19:2 44:25	74:6 83:6 85:10	110:18 124:24
187:22	61:7 131:3 156:25	85:12 107:11	182:20
lists 38:17 186:21	171:24 187:3	132:9,11,13	meant 182:8
little 82:19 161:5	looks 46:8 85:23	141:21,23 150:19	mechanical
162:18 168:7	139:14,15 155:16	150:20,22	124:14 133:23
173:10 184:23	162:20 169:25	marnell 151:19,21	134:13,17
live 10:17	178:15	151:23	meet 29:24 127:5
llp 3:4,13 4:5,14	los 3:18	marshal 30:1	meeting 18:6
7:5	lunch 99:2 102:17	106:16,17 128:21	19:24 21:24 45:14
load 126:16	103:13	129:16	46:2
local 49:15 52:23		marvelli 1:17 2:19	meetings 14:20
117:23,24 121:7		6:3 7:5,6 8:4,14	20:1,3,19
121:13,19 122:4		9:11 10:1,2 24:13	

[meets - national]

meets 46:12	80:4,17,21,24 81:8	198:17,23 199:20	modelled 150:14
meets 40:12 member 47:3 94:6	81:14,20 90:8	198:17,23 199:20	modified 33:10
132:18 146:4	91:4,13 92:12	minimum 135:19	149:6
	98:7,22 100:15,24	166:3	moment 30:2 83:8
members 47:7		minor 113:4,15,20	85:13 145:21
48:20 92:24 95:3	101:6,21 103:8	·	153:18 164:3
118:16 merit 17:25 20:1	106:25 110:13,20	113:24 114:3,7	
	111:2,9 112:21	minute 49:1 161:13 200:5	monday 1:19 2:23 8:1
met 30:3,7,8,10,12	114:10,24 115:19		0.0
46:18 95:5 104:10	116:7 117:8,17	minutes 48:24	money 173:18
104:13 131:18	118:9,21 119:6,18	145:11 156:15	monitor 127:20
160:23 167:3	119:25 120:9,14	mischaracterizes	monitoring 127:16
method 134:25	121:2 123:16,23	61:4 72:5 92:13	month 149:14,15
135:3,6,10,14,16	124:25 125:15	94:11 104:2	monthly 193:19
173:19,20	126:1,12,24 127:7	112:22 120:10	months 149:16,18
methods 167:7	127:22 137:1,8,15	122:7 138:15	149:24
mia 1:17 2:19 6:3	138:6,15 139:11	152:4 158:13	morgan 4:5 9:19
7:4 8:4,14 9:10	141:13,16 143:12	161:11 188:22	morganlewis.com
10:1 201:10,22	143:18 144:14	misspoke 129:2	4:11
michael 7:11 86:5	145:8 146:2	misstates 54:6	morning 8:8 9:23
87:21	147:24 152:3,16	64:17 74:24	9:24 10:2
mike 85:25 93:6	153:23 154:13,19	mistake 101:1	move 81:25,25
miller 3:5 6:8,10	155:20 156:4,7,18	mix 47:10	86:1 173:10
9:13,13 16:1,5,10	157:4,15 158:3,12	mobility 137:6,23	mto.com 3:11,20
19:16 21:14 22:14	158:21 159:15	180:8 190:14	multiple 15:25
23:21 24:6,25	160:17,19 161:12	model 28:12,15	munger 3:4,13
26:14 28:19 30:19	162:11,17 163:2	29:2 31:4,20 37:8	9:14,17
31:9 32:21 33:4,7	163:14,19,24	37:19 40:15 41:6	n
33:13,18 34:1	164:11,17,25	41:8,12,18,22,25	n.w. 3:7
35:3 38:5 39:7,10	165:9,15,23 166:6	42:10,18 44:19	name 9:25 15:21
42:3,13,20 43:1,18	167:4,14 168:22	52:22 62:20,25	53:16,19 124:3
44:3 46:7 47:16	169:15 170:16	71:23 77:6 103:25	127:13 147:14
48:9 49:19 50:14	171:10,20 172:16	106:7 111:11,18	151:18 160:18
50:21 51:10 52:10	173:2,9 174:14,19	111:20 112:7	202:20
53:12 54:5 55:15	175:2 179:3,9,15	114:12 115:21	named 44:10 58:8
55:22 56:5,11	180:5 183:2,15,24	116:17,18 134:1	58:9
57:15 59:8 61:2	184:8,24 185:10	134:16 144:12,21	names 14:8
61:12 62:9 63:10	185:20 188:21	145:1 150:18	national 1:6 2:6
63:17 64:17 65:7	189:6,12,14 191:9	152:1,6 162:7	3:3 7:24 9:15,17
65:23 66:9 71:6	191:14 192:6,13	182:6 183:22,23	41:8,12,18,22,24
72:12,18 73:5,11	193:2 194:8,15	184:2 189:24	42:10,18 43:10,13
74:24 76:21 77:14	197:1,6,13,20,24	190:1 197:5,11	43:15,22,25 44:8,9
			10.10,22,20 11.0,9

Case 1:13-cv-01215-TSC Document 204-42 Filed 11/13/19 Page 73 of 89

[national - nfpa]

	10= -1		167101660
44:21 51:7 61:23	negotiation 107:24	87:17 89:3 90:3	165:19 166:2
62:3 79:4 106:6	108:7 149:7	90:11,16 91:7,19	167:1,10 168:19
107:20 160:19	negotiations 108:5	92:3,15 94:15	169:14 170:14
162:7,8,13,14	194:1,24	95:1,9,22 96:6,24	171:7,19 172:13
163:11 164:4,21	neither 202:16	97:10,18 98:2,10	172:25 173:7,21
165:18,21 168:1,3	nercessian 4:15	98:23 99:21 100:6	173:22 174:13,18
168:9,17 171:23	6:7,9,11 9:1,1,22	100:17 101:2,11	175:1 178:25
172:7,20 182:5	16:11,12 19:17	101:17,25 103:12	179:8,13 180:2
184:2 191:1,6	21:15,16 22:15	103:21 104:6	182:24 183:9,20
192:3,25 196:2,5	23:23 24:7,11	107:3,12 108:17	184:5,22 185:7,18
196:19	25:2,4 26:6,15,23	109:7,25 110:15	185:23 186:1,9
nature 15:16 96:7	27:2,16 28:20	110:23 111:6,13	188:25 189:10,17
152:11,12 156:11	30:20 31:11,17	112:1,9,17 113:1	191:12,19 192:9
ncb 7:17 142:2,5	32:1,6,16,22 33:5	114:14 115:2,20	192:16,22 193:4
142:10	33:11,15,23 34:3,8	116:15,22 117:13	194:12,18 195:18
near 178:11	34:19 35:5 36:9	117:19 118:4,5,17	195:25 196:9,15
nearman 7:12	38:7,25 39:5,8,17	119:2,8,22 120:2	196:20 197:3,9,17
85:25 86:5 87:22	39:22,25 40:3,5	120:19 121:6,12	197:22 198:15,21
93:6	42:5,14,23 43:3,24	122:9 123:19	199:2,5 200:10
nec 62:2 79:3	44:5,13 46:15	124:2 125:2,18	new 35:6 44:24
81:21 106:24	47:18 48:13,21	126:4,19 127:3,12	103:4
110:4,5 164:7	49:7,21 50:3,16	128:2 132:8,12	newsletter 194:23
166:23,24 167:5,7	51:1,13,23 52:3,15	133:19 137:4,11	nfpa 43:7,8,10
168:4 172:6,8,11	52:18 53:2,14	137:18 138:10,18	44:6,7 53:6,9 58:8
172:24 173:3,6,23	54:8 55:4,10,17,25	139:13 141:15,18	58:20 59:5,6,18,21
177:2 195:6	56:6,13,21 57:7,12	141:22 142:16,21	60:5,9,16,23 61:10
necessary 45:1,22	57:17,23 58:16,23	143:15,21 144:17	61:18 62:7,14
82:11	59:10,16,24 60:13	144:23 145:12,19	63:6 72:16,23
need 11:5,25 12:9	60:20 61:8,16	146:6 147:7 148:2	73:1 77:8,22
15:21 29:13 52:24	62:10,11,21 63:5,8	148:21 149:10,21	81:12 82:6,15
58:12,15 86:16	63:12,20 64:23	150:2,7,13,21	96:12 101:7
102:9 117:11,15	65:9,17 66:2,13	151:8 152:13,19	107:20 109:20
118:1,7 143:16	67:13,14 69:9	153:17 154:2,4,17	110:2,4 111:19
155:7 200:3,11	70:2,16,22 71:8,14	154:24 155:14,25	112:3,11,19 113:5
needed 40:25	71:24 72:9,15,21	156:5,13,24	113:14 114:20
143:10	73:7,14,21 75:5,12	157:10,23 158:7	115:13,23 116:25
needs 41:9 73:8	76:14,24 77:18	158:17 159:2,19	117:5,16 131:22
117:14,21 119:4	80:8,19 81:2,11,17	161:10 162:4,15	133:13,22 134:7
negotiate 111:7	81:22,24 82:10,22	162:22 163:5,18	134:24 135:3,10
negotiating 108:3	83:4,7 84:15 85:4	163:23 164:8,14	135:18 136:18,21
	85:11 86:15 87:16	164:22 165:7,13	136:23 137:5,12

[nfpa - objection]

140:16,19 141:1,5	noon 103:18	30:18,19 31:9,24	119:18,25 120:9
141:9 150:17	nope 34:7	32:3,9,21 34:6	121:2,10 122:7
151:10,25 167:16	notary 8:22	35:3 36:7 38:5,23	123:16,23 124:25
168:2,8,9,16,24	notation 33:16	39:2,7,10 42:3,13	125:15,25 126:1
169:3 170:3,12,18	62:23 159:10	42:20 43:1,18	126:11,13,22
170:21,24 171:4	notations 153:21	44:3,11 46:7	127:7,22 132:5
171:12,16 172:19	154:10,25 155:3	47:16,17 48:9,16	133:17 137:1,8,15
172:20,23 175:13	155:17 157:1,12	49:19,25 50:14,21	138:6 139:11
175:25 176:17,18	158:1,9	51:9,10,22 52:1	141:17 142:14,19
176:18 181:14	note 35:11 115:15	53:11,12 54:5	143:12,18 144:14
186:14 187:12,17	noted 25:3 64:3	55:2,8,14,15,21,22	144:15,19 145:7,8
187:25 189:4	81:23 201:13	56:4,5,10,11 57:3	146:2 147:24
191:4 192:1,10	notice 18:5 45:21	57:10,14 58:19,21	149:3,19,25 150:5
193:10,17,19,21	195:14	59:8,14,22 60:11	150:11 151:5
193:25 194:5,14	noticed 45:20	60:17 61:2,12	152:3,16 153:23
194:20,25 195:9	notices 19:25	62:8,15 63:10,17	154:12,13,19
195:19 196:3	notify 91:17	64:16,17 65:7,22	155:20 156:4,18
198:10	november 99:11	65:23 66:9 67:12	157:4,15 158:4,12
nfpa's 82:2,4	number 17:12	69:7,22 70:13,20	158:21 159:15
nfpa.org 58:6,17	31:19 34:15 74:14	71:6,10,21 72:5,12	161:10 162:4,15
58:25 59:3 100:14	82:3 83:18 93:11	72:18 73:5,11,19	162:22 163:5,18
nine 29:13,15,21	145:2 179:5	74:23,24 75:9	163:23 164:8,14
46:13,16 47:7	numbered 62:17	76:13,21 77:14	164:22 165:7,13
103:23 104:5,16	176:6	80:4,17 81:9,13,23	165:19 166:2
104:18 105:1,13	numbering 114:6	82:2,8 84:10	167:1,10 168:19
105:21 106:21	nw 4:8	86:10 88:24 90:1	169:14 170:14
166:18 167:2	0	90:8,14 91:3,13,15	171:7,19 172:13
nodding 56:19		91:24 92:12 94:9	172:25 173:7,21
non 115:14	oath 8:5 10:22	94:24 95:7,20	174:13,18 175:1
noncompetitive	object 16:8 31:16	96:2,22 97:8,16,25	178:25 179:8,13
142:8,10,13,22	33:18,25 34:1	98:7,22 99:18	180:2 182:24
143:17,24 144:5	48:10 52:10 57:15	100:4,15,24 101:6	183:9,20 184:5,22
nonexclusive	58:10 61:4 62:9	101:15,21 103:8	185:7,18 188:21
110:2	63:2,9 64:19	103:11 104:2	189:5,6,12,13
nonregulatory	65:13,13 84:11 141:13	106:25 109:2,21	191:9,14 192:6,13
113:25		110:11,13,19,20	192:19 193:2
nonresidential	objecting 16:6	111:1,9,22 112:4	194:8,15 195:11
198:9	objection 16:1,5	112:13,21,23	195:23 196:6,12
nontransferrable	19:16 21:14 22:14	114:10,24 115:19	196:17 197:2,6,13
110:3	23:21 24:6,25	116:7,19 117:8,17	198:15,21
	25:2 26:5,14,20	118:3,9,21 119:6	•
	27:1,13 28:19		

[obtain - paragraph]

obtain 73:17 101:4	80:12,21 82:18	95:11 104:11	n
obviously 33:20	83:21 85:2 88:3	107:9 111:11	p
occupancies 41:17	91:8 98:14 100:5	132:10 133:7	p.m. 2:22 8:2
42:1,17,24 182:1,5	100:7 103:14,15	140:12 141:20	package 30:14
182:15 198:9	109:18 134:23	150:19 181:3	46:3,14
occupant 126:16	140:8,11 145:14	ordinances 49:15	page 6:6 7:3 34:24
occur 131:11	145:17 148:17	182:16 183:6	34:24 35:1,12
occurrence 189:22	154:2 155:10	organization	37:13,24 38:13,17
occurs 139:9,12,19	160:7,14 162:18	76:25 79:6,11	40:6,25 61:10,20
139:22	164:3 167:18	136:6 198:19	61:21 62:16 64:1
october 84:7 99:11	175:4 176:5,11,11	organizations 26:3	64:3,3,5 74:6 82:4
offer 89:1 195:13	176:13 177:15	27:18,22 77:3,12	85:18 87:14 93:4
198:2,4,6	183:16 185:12	80:1,13 81:4,19	93:13 95:11
offers 56:25 57:2	186:3,6,20 191:23	196:23 198:13	107:21 109:10,16
office 5:7 9:7	191:25 193:13	oriented 28:3	114:25 115:3,16
15:17 24:18 42:6	197:19,22 198:25	161:7,15	116:24 133:3
45:20 53:1 57:1	ola 89:6	original 202:13	134:21 138:21
84:5 86:4,19 89:7	olson 3:4,13 9:14	originate 146:15	140:10 151:12,13
89:17,21,23	9:17	originated 146:18	153:20,21 154:1,6
128:20 129:15,24	omit 115:18	146:18	154:10,15 155:1,4
145:24 165:1,5,11	ones 108:11	origins 40:11	155:18 156:22
165:24 182:9	online 91:17,18	oshpd 183:13	157:12 158:9
195:17	92:6 96:12 117:22	184:13	159:5 167:25
official 88:14 89:8	119:1,17,24 120:3	outline 139:5	169:25 171:25
officials 16:19,20	120:8,25 121:4,5,5	output 22:12	172:4 175:10,22
134:13	133:1,13,16,24,25	outreach 198:2	176:15,25 177:7
oh 15:7,11 20:25	152:22 173:19,23	outside 23:21	178:4,8,14 181:2
94:16 120:14	174:1,11,15	50:22 142:8,13	181:21 182:1,18
129:2 140:11	open 18:4	152:17 153:6	186:12
okay 8:12 12:7	operator 8:12 49:1	197:1,7,14	pages 1:25 39:6
13:24 15:11 17:5	49:5 82:24 83:1	outstanding 74:13	58:25 62:17 63:4
17:13,18 18:4	103:15,19 145:15	overall 105:23	114:1,1 155:21
19:3 22:11,17	145:17 160:11,14	overlap 29:23	156:8 176:22
25:2 28:22 29:3,5	186:3,6 199:22	104:23	177:8,12
32:11 33:1 34:14	200:12	oversee 19:23	paid 45:10
38:16 40:4,24	opinion 24:22 25:5	ow 166:15	pam 85:25 86:1
41:2 43:20 44:18	25:7,9	owner 168:8	93:6
47:12 48:24,25	opportunity 18:7	172:19	pamela 7:12
49:1,5 52:17,19	option 47:1	owns 58:18 168:2	panic 106:16
54:9 56:18 58:14	order 33:2 34:17		paper 114:4,4
63:9 70:8 74:10	57:21 83:5 93:14		paragraph 74:11
			74:15 93:9,15

[paragraph - premium]

99:10 113:2	passed 85:12	person's 95:15	pointing 113:10
167:25 168:7	132:13	personally 120:6	points 37:7,19
170:1,2 172:5,18	pause 16:7 49:1	120:11,16 121:19	90:9 96:10
172:19 175:11	pay 93:13 94:7,23	persons 90:25	poor 166:13
181:25 186:18,19	95:5 181:2	91:11 147:12	populations
187:5	paying 189:4	pertain 36:17	179:23
paragraphs	payment 55:20	pertains 202:12	portion 65:11 66:7
168:16	56:3,9 190:8	petitions 47:25	110:4 158:19
parameters 105:3	pays 197:10	phase 20:19	170:17
part 25:8 28:16	pdf 33:11,15 99:13	phone 93:10,11	portions 61:22
31:4 32:13 33:22	99:23 100:21	180:24	62:1,6,13 65:5
33:24 34:11 36:17	101:4 102:2	piece 114:4	115:8 133:1
36:20,23 43:4	pederson 1:22	place 22:25 100:21	position 23:15
47:5,12,19 48:15	2:23 202:25	202:5	positions 20:25
70:10 85:9 89:13	penalty 201:11	placed 139:10	possible 55:11
93:17,18,20	pending 12:11	places 72:11 95:15	68:9,12,16,21,23
105:19 106:3,8	48:25 145:13	178:22 179:5	69:13,17 118:18
115:12 121:17	pennsylvania 4:8	plaintiff 3:3 4:3	118:25 119:1
131:12 134:15	people 17:20 92:5	44:10 58:9	127:13 132:19
143:3,10 154:7	94:22 95:4 173:11	plaintiffs 1:10	165:4,8,10
158:18 167:5	195:15	2:10 25:13 58:9	possibly 46:20
180:25 181:6	performance	planning 129:25	77:22 78:23
182:4,13 183:3	124:14	play 16:13 19:12	155:21
189:19 190:12	performed 20:9	19:15,18 21:11,18	posted 100:10
participate 18:14	performing	22:1 127:16 146:9	113:5,18 114:17
45:11 108:5 164:1	123:14	played 146:25	posting 113:6
197:5,11	period 45:20	plays 128:14	potentially 185:17
participation	139:20,22,23	please 8:25 9:25	185:19
163:21	periodical 193:18	11:9,19,23 35:13	pra 84:1 85:2
particular 25:18	periods 14:20	44:17 83:4,8 88:5	86:12,13,19 99:7
80:9 148:12 149:1	perjury 201:11	plumbing 133:23	152:25 153:5,7
149:9 150:4	permission 61:23	134:12,18	pras 153:4
167:16	62:2 73:17 189:3	point 11:8 25:9,23	pre 44:25 47:25
parties 139:4	person 32:7 68:1,5	29:13,15 46:13,16	139:6
parts 32:18 35:4	69:5,18 70:11,19	90:13,17,21	preliminaries
36:14 37:1,9	73:8 94:7 95:18	103:23 104:5,16	10:19
38:11,17 166:23	95:25 96:18,20	104:18 105:1,13	preliminary 99:1
167:7	132:22 136:6	105:21 106:21	premium 93:13
party 8:21 202:18	189:24,25 190:4,8	133:7 156:1	94:7,23 95:6,11
pass 132:9	190:18,22	166:18 167:2	181:2

[prep - publication]

prep 7:6	151:1 202:7	profit 57:9,19	providers 152:2
prepare 12:24	privileges 120:8	program 66:17	provides 56:8
13:10	121:1	prohibit 103:5	89:18 93:11
prepared 20:18	probably 124:17	promote 106:15	199:14
21:24	197:21	promotion 21:3,5	providing 103:6
prescribe 147:22	problem 184:25	21:8	provision 68:21
prescribed 29:25	problems 92:19	prompted 87:23	69:1,6,14,19,21
prescribes 125:14	procedures 14:3	property 110:6	103:25 109:19
125:24 126:10	18:22 45:5 47:23	115:9	159:9
present 5:15 67:22	proceedings 202:4	propose 76:6	provisions 68:5
presented 18:6	202:6,8,14	108:9,12 163:9	70:10 115:10
46:1	process 13:22,25	194:5	public 8:22 14:19
preserving 141:16	13:25 14:5,16,17	proposed 17:21	14:20 18:5,6,7,13
pretty 81:15 139:7	19:13,19,24 22:8	29:10 40:14 45:11	20:1,3,19 37:25
previous 10:8	22:12 47:15 63:21	45:17 104:22	38:22 45:13,14
23:10 44:23 67:25	75:7 78:24 102:10	105:2,18 106:1,11	46:2,9 48:18
68:4 69:3 70:15	116:9 142:3,6,12	106:15 158:25	51:18,19 52:8
70:18,24 121:13	142:17,23 143:3,9	159:7 194:14	54:14 55:18 56:1
122:8	143:11,17,24	protect 166:19	56:8 63:15 64:1
previously 12:5	144:6,9 161:21	protecting 167:8	75:20 78:24 84:6
36:1 71:25 93:5	162:3,10,19,20,25	protection 1:6 2:6	86:9 87:2,5,11
106:21 107:4	163:4,7,10,16,21	3:3 7:24 9:15,18	92:24 94:6 103:7
115:3 128:9	164:1,13 169:6	26:1 44:8,9 62:3	105:8,14,16,22
price 140:19,23	196:22 198:7	107:20 160:19	106:6 130:11
141:1,6,10	199:11,12	168:2	132:2 140:19
principal 145:21	processes 21:11,19	protects 166:24	141:7,11 163:25
print 34:23 58:2	22:1,6,24 23:3	provide 16:24	166:19 167:8
59:20 60:4,6	48:7	17:14 45:13 66:6	170:7
95:18 97:3,6	procurement 7:22	67:16 89:8,24	public.resource
136:24 137:20	151:16	114:22 143:22	25:13 86:9 87:2,5
170:5 174:5,21,24	produce 87:4	195:19 196:4	152:21 153:3
179:24 180:1	produced 86:8	199:7	public.resource.
181:1 189:21	87:11	provided 12:5	153:1
190:9	production 85:9	13:1 15:19 18:11	public.resource
printed 32:20 53:1	101:9	25:1 71:3,4,9 85:3	1:13 2:13
133:2	products 124:21	85:6 86:20 87:1	public.resource
printing 82:16	professional	92:7 101:23	8:17 9:3,5
89:8 114:13	118:23 119:3,13	102:20 106:8	publication 21:12
170:13	professionals	113:6,15 114:2	61:22 62:6 63:16
prior 84:2 104:13	119:11	135:20 176:17	65:2 89:9 131:11
131:11 142:7			131:18 139:6,9,23

[publications - receive]

purchased 120:7	questioning 16:7	88:14 93:10 99:10
121:4	questions 10:21	113:3 138:22
purchasing 54:15	12:21 56:17 64:20	151:11 154:6
	82:1 83:19 99:1	157:12 159:10
purely 192:11	138:19 160:4,21	168:1 173:1
purports 94:10	168:13 173:25	175:12 182:4
purpose 18:23	179:21 180:4	realize 12:4
196:16	182:11 185:21,22	realized 100:9
pursuant 85:6	186:10 197:18,21	really 149:6
111:15	197:25 199:1,21	184:19
put 26:3 33:20	quick 145:10,11	realtime 8:9
91:18 101:23	quite 108:16	reason 12:20
195:14	143:25	18:23 29:12 45:25
puts 45:19	quote 141:2	46:18 61:9 68:24
•	r	69:1 86:7 115:24
	_	118:6 133:20
		154:25 198:12,18
-		reasonable 105:22
		reasons 17:16
		18:17 45:24 46:10
		63:19,25 67:21,23
	· ' '	68:22 69:15
		recall 51:20 70:25
,		87:25 88:8,11
	· · · · · · · · · · · · · · · · · · ·	92:21,23,25 93:7
,	_	94:19 99:20 100:3
,		103:25 104:4
	·	107:6,24 108:16
		110:22 113:17
		133:8,14,18 135:5
	, ,	135:9 143:14,20
	· ·	143:25 145:3
*		146:21 148:11
		149:11,13,17,23
*	·	150:1 151:2
*	·	179:17 187:15,16
	· · · · · · · · · · · · · · · · · · ·	187:24 188:1
		191:1 194:13,17
		194:19,24 196:23
		receive 14:18 74:1
1/3.11 1//.3	64:5 66:19 85:18	96:18 101:8 120:7
	121:4 purchasing 54:15 96:17,19 purely 192:11 purports 94:10 purpose 18:23 196:16 pursuant 85:6 111:15 put 26:3 33:20 91:18 101:23 195:14	121:4 purchasing 54:15 96:17,19 purely 192:11 138:19 160:4,21 168:13 173:25 179:21 180:4 182:11 185:21,22 186:10 197:18,21 197:25 199:1,21 143:25 160:18 rachel.miller 3:11 raised 191:1 rai

[received - requests]

received 21:3 25:8	reference 28:2,4,7	regulate 166:13	185:11 191:22
25:10 84:4 91:16	28:11,18,25 29:7	regulated 184:15	replaced 100:13
92:18 93:10 94:6	30:5,16,23,24 31:3	regulations 14:12	report 94:17
94:21 121:1	31:8,12,15,20,23	14:14 22:17 89:9	reported 1:21
132:17,19 137:21	32:8,14,18 50:7,12	89:10,14,16,19,25	_
*		' ' ' '	reporter 2:24 8:8 8:24 11:1 199:23
179:25 180:7,11	50:19 51:3,6,7	90:5,7,13,21 154:7	
180:15,24 receives 73:23	52:23 65:11,11	158:25 175:16 185:6	200:2,8 202:2
	71:23 93:17		reporter's 11:16
111:20	115:10 122:12 161:14,19 162:8	regulatory 35:8 relate 23:3	reports 94:21 95:4
receiving 78:22	,		repository 175:6
84:3 95:4	referenced 28:12	related 8:21 21:11	represent 16:20
recess 49:4 83:1	31:19 49:20 50:1	21:19 22:2,6	34:14 82:5 160:19
103:18 145:16	50:10	175:16 190:23	representation
160:13 186:5	references 51:6	198:4,11,13	12:16 13:12
recognize 24:13	referencing 31:8	relationship 19:8	representative
34:22 58:1 83:9	31:13	relative 202:17	10:11 17:2 193:22
83:23 87:18 99:3	referred 17:13	relevant 66:7 69:6	representatives
106:23 107:14	18:16 28:4 41:15	69:19 88:22	193:10,17 194:20
132:14 141:24	46:17,21 93:25	relies 161:16	representing 9:2,5
153:22 154:11,18	110:5 115:1	165:17	9:7,10
156:14 158:18,19	188:11 189:24	rely 46:10 144:12	represents 16:18
158:24	referring 29:16	164:4 165:21	65:1 66:11,16
recognizes 154:16	39:13,14,15 40:2	166:12,13	reprinted 32:14
recommend 30:5	51:18 52:9 122:6	relying 167:5	32:18
recommendation	135:8 177:10	remember 19:1	reproduce 82:12
45:13,15	refers 181:6,12	21:2 48:5 161:8	82:14
record 8:13 9:25	reflect 64:13 67:3	167:19 174:2	reproduced 61:22
11:4 16:4 49:1,6	reflected 59:12	177:19 182:2,10	62:2
80:23 82:22,24	60:25 61:10 88:8	191:3	request 84:1,6,9
83:1 103:16,19	reflects 65:4	removed 100:10	85:6 86:9,13 87:2
145:15,18 160:10	109:19 166:24	renew 158:3	87:5,11 99:7
160:11,15 168:15	refrigerating 1:8	repeat 27:20 31:10	137:21 152:25
185:24 186:2,3,7	2:8	55:3,23 68:15	189:18 190:11,16
199:22 200:12,14	regarding 88:14	78:13 91:5 105:10	190:17,21
202:7,11	135:10 147:4,9,18	157:8 182:25	requested 128:24
records 84:6 86:9	153:2 186:11	rephrase 11:10	138:2 202:15
87:2,5,11	195:20 199:7	16:11 21:15 27:6	requesting 189:25
red 193:7	regards 153:4	28:21 48:14 56:7	190:4,8,18,22
refer 31:22 32:8	register 72:16,23	62:10 67:13 70:7	requests 153:5,7
61:20 64:2 66:21	registry 45:21	91:8 108:2 116:4	179:25 180:6,10
74:5 93:4 102:21		118:4 122:10	180:14

[require - says]

124:23 86:12,19 revision 22:25 roughs 200:2 required 16:17 respondent 10:10 revisions 110:5 roughs 200:2 48:3 94:7 165:20 86:8 87:1,4,11 20:4 24:12 34:4 188:10 190:25 row 66:24 175:25 176:19 88:4 175:15 34:20 39:24 40:6 row 66:24 rulemaking 14:5 177:3 190:8 responses 11:5 52:13 56:22 62:18 14:18 15:17 17:13 17:15 19:13 20:18 requirement 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 22:24 45:2 46:1,3 47:15 48:2 63:21 requirements 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemaking 14:15 19:13 20:18 127:6 170:4 responsive 85:3 139:25 140:12 rulemakings 14:22,24 15:19 requires 44:18 restotion 15:22 157:7 68:11,14,18 69:2 68:11,14,18 69:2 105:14 restriction 95:17 166:20 167:9,22 184:19 185:1,15 170:9 172:24 s s 4:13 researched	require 88:23	responded 85:2	reviews 14:21 20:2	roughly 20:7
required 16:17 respondent 10:10 revisions 110:5 round 186:13 28:13,14 40:16 48:3 94:7 165:20 86:8 87:1,4,11 20:4 24:12 34:4 188:10 190:25 175:25 176:19 88:4 175:15 34:20 39:24 40:6 row 66:24 177:3 190:8 responses 11:5 52:13 56:22 62:18 rulemaking 14:5 requirement responsibilities 63:13 69:10 70:7 17:15 19:13 20:18 17:15 19:13 20:18 125:7 176:21 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 47:15 48:2 63:21 requirements 38:12 169:20 107:4 120:15 14:22,24 15:19 14:22,24 15:19 127:6 170:4 responsive 85:3 139:25 140:12 rulemakings 14:22,24 15:19 requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 105:14 restate 80:10 166:20 167:9,22 184:19 185:1,15 research 13:4,7 restrictions 54:24 17:4 178:24 s resellers 136:18 restrictions </td <td>_</td> <td>_</td> <td></td> <td>0 .</td>	_	_		0 .
28:13,14 40:16 response 84:22 right 17:17 19:1 188:10 190:25 48:3 94:7 165:20 86:8 87:1,4,11 20:4 24:12 34:4 row 66:24 175:25 176:19 88:4 175:15 34:20 39:24 40:6 rulemaking 14:5 177:3 190:8 responses 11:5 52:13 56:22 62:18 rulemaking 14:5 177:3 190:8 responsibilities 63:13 69:10 70:7 17:15 19:13 20:18 17:15 19:13 20:18 125:7 176:21 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 22:24 45:2 46:1,3 183:18,22,23 responsible 14:15 98:18 99:3 103:12 47:15 48:2 63:21 16:15 65:19 125:3 170:12,18 134:24 135:17 14:22,24 15:19 127:6 170:4 responsive 85:3 139:25 140:12 rulemakings 14:22,24 15:19 14:22,24 15:19 rulemakings 14:22,24 15:19 127:6 170:4 responsive 85:3 139:25 140:12 rulemakings 125:14 responsive 85:3 139:25 140:12 rulemakings 125:14 restate	_	· ·		C
48:3 94:7 165:20 86:8 87:1,4,11 20:4 24:12 34:4 row 66:24 175:25 176:19 88:4 175:15 34:20 39:24 40:6 rulemaking 14:5 177:3 190:8 responses 11:5 52:13 56:22 62:18 14:18 15:17 17:13 requirement 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 183:18,22,23 responsible 14:15 98:18 99:3 103:12 47:15 48:2 63:21 requirements 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemaking 14:5 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemakings 17:15 19:13 20:18 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemakings 17:15 48:2 63:21 responsible 14:15 139:25 140:12 rulemakings 14:12 48:2 63:21 responsive 85:3 139:25 140:12 rulemakings 14:22,24 15:19 rulemakings 14:22,24 15:19 14:22,24 15:19 14:22,24 15:19 <t< td=""><td>_</td><td>_</td><td></td><td></td></t<>	_	_		
175:25 176:19 88:4 175:15 34:20 39:24 40:6 rulemaking 14:5 177:3 190:8 responses 11:5 52:13 56:22 62:18 14:18 15:17 17:13 requirement 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 22:24 45:2 46:1,3 183:18,22,23 responsible 14:15 98:18 99:3 103:12 47:15 48:2 63:21 requirements 38:12 169:20 107:4 120:15 rulemaking 14:5 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemakings 17:15 19:13 20:18 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemakings 17:15 48:2 63:21 responsible 14:18 15:17 48:2 63:21 rulemakings 17:15 48:2 63:21 rulemakings 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemakings 14:22,24 15:19 14:22,24 15:19 rulemakings 14:22,24 15:19 14:22,24 15:19	1 '	_	0	
177:3 190:8 responses 11:5 52:13 56:22 62:18 14:18 15:17 17:13 requirement 125:7 176:21 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 183:18,22,23 responsible 14:15 98:18 99:3 103:12 47:15 48:2 63:21 requirements 38:12 169:20 107:4 120:15 rulemakings 127:6 170:4 responsive 85:3 139:25 140:12 rules 47:14 48:6 requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 restate 80:10 166:20 167:9,22 184:19 185:1,15 research 13:4,7 restriction 95:17 170:9 172:24 s resellers 136:18 restrictions 54:24 174:8,16 176:20 s residences 42:2 return 111:20 182:23 183:7 184:3,10,21 8:19 132:18 residential 93:20 reveal 84:25 185:16 186:10 17:24 178:2,7,10		·		
requirement responsibilities 63:13 69:10 70:7 17:15 19:13 20:18 125:7 176:21 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 183:18,22,23 responsible 14:15 98:18 99:3 103:12 47:15 48:2 63:21 requirements 16:15 65:19 125:3 170:12,18 107:4 120:15 rulemakings 127:6 170:4 responsive 85:3 139:25 140:12 rulemakings 127:6 170:4 responsive 85:3 139:25 140:12 rules 47:14 48:6 requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 191:24 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 runs 58:18 resellers 136:18 95:15 177:4 178:24 sacramento 1:18 residences 42:2 145:20 153:18 184:3,10,21 8:19 132:18 residential 93:20 145:20 153:18 185:16 186:10 177:24 178:2,7,10				<u> </u>
125:7 176:21 19:21 21:7 75:19,24 81:25 22:24 45:2 46:1,3 183:18,22,23 responsible 14:15 98:18 99:3 103:12 47:15 48:2 63:21 requirements 38:12 169:20 107:4 120:15 rulemakings 16:15 65:19 125:3 170:12,18 134:24 135:17 rulemakings 127:6 170:4 responsive 85:3 139:25 140:12 rules 47:14 48:6 requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 191:24 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 s researched 75:21 55:5,11 72:10 177:4 178:24 sacramento 1:18 residences 42:2 145:20 153:18 182:23 183:7 8:19 132:18 residential 93:20 145:20 153:18 185:16 186:10 177:24 178:2,7,10		_		
183:18,22,23 responsible 14:15 98:18 99:3 103:12 47:15 48:2 63:21 requirements 38:12 169:20 107:4 120:15 rulemakings 16:15 65:19 125:3 170:12,18 134:24 135:17 14:22,24 15:19 requires 44:18 rest 110:14 135:13 rest 15:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 restate 80:10 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 runs 58:18 researched 75:21 restrictions 54:24 174:8,16 176:20 s 4:13 residences 42:2 145:20 153:18 181:7,10,12,23 sacramento 1:18 residential 93:20 145:20 153:18 184:3,10,21 8:19 132:18 residential 93:20 185:16 186:10 185:16 186:10	_ <u>*</u>	_		
requirements 38:12 169:20 107:4 120:15 rulemakings 16:15 65:19 125:3 170:12,18 134:24 135:17 14:22,24 15:19 127:6 170:4 responsive 85:3 139:25 140:12 rules 47:14 48:6 requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 restate 80:10 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 runs 58:18 researched 75:21 55:5,11 72:10 177:4 178:24 sacramento 1:18 residences 46:24 return 111:20 182:23 183:7 8:19 132:18 residences 42:2 145:20 153:18 184:3,10,21 8:19 132:18 residential 93:20 184:25 185:16 186:10 177:24 178:2,7,10			·	,
16:15 65:19 125:3 170:12,18 134:24 135:17 14:22,24 15:19 127:6 170:4 responsive 85:3 139:25 140:12 rules 47:14 48:6 requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 restate 80:10 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 runs 58:18 researched 75:21 55:5,11 72:10 177:4 178:24 sacramento 1:18 residences 46:24 return 111:20 182:23 183:7 8:19 132:18 residences 42:2 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25 185:16 186:10 177:24 178:2,7,10	1 ' '	_		
127:6 170:4 responsive 85:3 139:25 140:12 rules 47:14 48:6 requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 restate 80:10 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 s researched 75:21 55:5,11 72:10 177:4 178:24 s 4:13 reside 46:24 return 111:20 181:7,10,12,23 sacramento 1:18 residences 42:2 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25 185:16 186:10 177:24 178:2,7,10	_			<u> </u>
requires 44:18 rest 110:14 135:13 155:22 157:7 68:11,14,18 69:2 89:6 95:11 105:8 restate 80:10 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 77:16,23 restrictions 54:24 174:8,16 176:20 s 4:13 researched 75:21 95:15 181:7,10,12,23 sacramento 1:18 residences 46:24 return 111:20 182:23 183:7 8:19 132:18 residential 93:20 145:20 153:18 185:16 186:10 177:24 178:2,7,10		f f		· · · · · · · · · · · · · · · · · · ·
89:6 95:11 105:8 restate 80:10 166:20 167:9,22 184:19 185:1,15 105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 s 77:16,23 restrictions 54:24 174:8,16 176:20 s 4:13 researched 75:21 95:15 181:7,10,12,23 sacramento 1:18 reside 46:24 return 111:20 182:23 183:7 8:19 132:18 residential 93:20 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25 185:16 186:10 177:24 178:2,7,10		_		
105:14 191:24 168:18 169:17,22 runs 58:18 research 13:4,7 restriction 95:17 170:9 172:24 s 77:16,23 restrictions 54:24 174:8,16 176:20 s 4:13 researched 75:21 55:5,11 72:10 181:7,10,12,23 sacramento 1:18 reside 46:24 return 111:20 182:23 183:7 8:19 132:18 residences 42:2 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25 185:16 186:10 177:24 178:2,7,10				· · ·
research 13:4,7 restriction 95:17 170:9 172:24 s 77:16,23 restrictions 54:24 174:8,16 176:20 s 4:13 researched 75:21 95:15 181:7,10,12,23 sacramento 1:18 reside 46:24 return 111:20 182:23 183:7 8:19 132:18 residential 93:20 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25 185:16 186:10			· · · · · · · · · · · · · · · · · · ·	
77:16,23 restrictions 54:24 174:8,16 176:20 s 4:13 researched 75:21 55:5,11 72:10 177:4 178:24 sacramento 1:18 reside 46:24 return 111:20 182:23 183:7 8:19 132:18 residential 93:20 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 185:16 186:10 177:24 178:2,7,10		_		
researched 75:21 55:5,11 72:10 177:4 178:24 sacramento 1:18 reside 46:24 return 111:20 182:23 183:7 2:21 5:11 7:16 8:1 8:19 132:18 residences 42:2 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25	1			
resellers 136:18 95:15 181:7,10,12,23 sacramento 1:18 reside 46:24 return 111:20 182:23 183:7 8:19 132:18 residences 42:2 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25 185:16 186:10			· · · · · · · · · · · · · · · · · · ·	
reside 46:24 return 111:20 182:23 183:7 8:19 132:18 residences 42:2 145:20 153:18 184:3,10,21 177:24 178:2,7,10 residential 93:20 reveal 84:25 185:16 186:10		· · · · · · · · · · · · · · · · · · ·		
residences 42:2 145:20 153:18 184:3,10,21 8:19 132:18 177:24 178:2,7,10				
residential 03:20 reveal 84:25 185:16 186:10 17/:24 17/8:2,7,10				
			, ,	
03:21 23 05:12 16 108:13 102:12 105:8 1/8:13,1/,20,22				178:13,17,20,22
05:10.06:1.21.25 Payonus 73:23 100:10 Safety 14:2.17:11	1 ' '			· ·
07.4.7.12.15.20.23 74.1 rmr 1.23 29:20,23.00:10				
08.4.6.13.10 raviow 13.2.17.25 rale 16:13.17:5		•		,
resource 164:12 45:11 78:24 84:13 10:12 15 18 20:5 124:9,12,20 130:3	/ / /			· · ·
respect 18:1 24:10 84:10 85:5 14 20:20 21:4 10 10 166:9,14,19,25			, ,	
24.24.28.24.53.7 87.10.111.4.17 21.17.18.22.1		,		
53.9.70.9.71.18 119.24.121.4 26.11.19.25.53.9 sale 117.2,6.170.6		*	-	
73.16.23.77.11 152.11.154.14 86.1.108.2.127.16 san 4:20				
85·1 08·5 13 18 180·25 202·14 128·14 145·25 Saw 145:24	· ·			
112:11 124:22 24 reviewed 20:18 146:9 25 171:22 saying 41:3 52:12	1 ' '			_
125:4 120:12 21:23 26:10 22 roles 20:0 12	-		·	
130·17 134·16 27·11 45·4 108·8 23·10 145·21 says 11:17 40:7		· · · · · · · · · · · · · · · · · · ·	·	•
1/2·23 160·21 115·/ 110·13 room 131·23 41:21,24 52:23				· ·
171:1 105:0 20				
106:14 100:14 reviewing 82:6 reseabler 3:20				,
respond 45:23 108:4.118:20 rough 130:5.200:6 155:18.150:17	1			
110.23 145.25 200.0 10				
168:4,8,10,21				168:4,8,10,21

[says - sorry]

150 2 152 10	(2.1.61.60.66.10	101 0 100 1 100 1	105111001
170:3 172:19	62:4 64:6,9 66:19	131:3 133:1 168:1	sight 137:14 138:1
182:14	72:16,23 74:11,15	170:17 172:21	180:12 190:19
school 129:3,7,12	75:21 82:5 85:17	175:12,25 180:23	signature 107:22
178:12	88:6,14,20 93:9,14	182:4,14 183:3	151:13,17 172:1
schools 42:8 182:9	99:9,14 104:20	separate 18:10	202:24
scope 23:22 50:22	109:15 110:7,8	32:8 103:1	signed 145:23
152:17 172:5	113:7,13 115:8,16	separately 63:15	172:1,22 173:4
195:12,23 196:6	117:3 125:22	63:23 144:25	significant 123:12
197:1,7,14 199:3	131:5 133:4 135:1	series 10:20 85:21	123:20 124:3
scratch 165:6,12	135:21 136:9,12	serve 20:20 47:9	signing 151:18
screen 82:5 181:1	136:19,20 138:21	53:9	similar 143:2
screenshots 59:12	138:23 139:16	served 20:4 83:13	146:16 151:3
63:5 82:3,11,16	140:20,21 146:12	service 71:19	152:10,11,12
search 60:14	152:11 154:8,9	129:4,8,13 188:15	156:11 158:6
95:25 96:20 97:11	156:21 157:25	services 5:18 7:18	190:17,21
97:14	158:8,25 159:6	7:22 9:10 19:10	similarly 38:3
searchable 99:13	168:23 169:25	23:17,19 35:19	96:11
99:23 100:21	175:10,22 181:3,5	107:19 118:11,15	simply 81:17
101:4,8 102:1	182:6,18 186:16	119:16 120:23	simultaneously
sec 82:23	186:25 187:10	143:23 146:5	21:1
second 37:13	193:6	151:16	single 145:6
58:11 61:20,21	seeing 119:17	set 170:5,8 175:18	site 35:2 72:4,17
66:24 99:9 140:9	143:6	184:25 202:5	72:24
159:4 167:24	seek 76:9 84:9	sets 22:8 131:9	situations 91:20
172:4 177:25	seeking 67:16 68:5	seven 134:21,22	92:16
178:9 182:13	69:18 70:11 78:5	134:23,23 178:21	six 149:24 170:1
183:3	90:25 91:11 92:6	sheet 7:17 33:21	187:7,8 188:6
section 17:12	94:22 95:4 189:3	33:24	sixth 178:15,15
37:24 38:2 88:18	seen 58:2 84:2	sheets 33:20	skim 156:6,15
88:22 89:6 102:12	85:14,16 150:25	175:17	slate 98:16
109:13,15 113:2	151:6	short 96:17,19	society 1:4,7 2:4,7
113:11 115:7	selected 47:7 63:7	shorthand 2:24	4:3 8:15
116:10,17,23	63:8 176:1 187:8	202:1,9	sole 168:8 172:19
123:9 131:1	selective 136:11	show 24:8 85:8	solely 110:6
134:20,24 136:17	175:19 177:1	115:13 143:16	somebody 31:21
140:14 158:23,25	sell 160:2	showing 191:7	173:12 174:20
159:3,6 168:7	sense 12:12	192:4	179:5
sections 64:11	sent 24:17 86:13	shown 115:12	sorry 15:1,5 26:10
67:6 115:9	sentence 88:2 94:1	116:10	27:20 43:20 46:23
see 17:20,21 33:17	99:10,15,17	side 139:25 159:9	55:23 56:18,20
41:19 59:12 61:24	110:14 113:3	171:21	58:14 68:6,15

[sorry - state]

78:14 88:21 91:6	specifies 140:23	132:18 146:4,5	131:12 133:2
91:25 100:5	speculate 126:17	147:13 153:5	142:25 144:8,13
104:12 105:10,12	159:22 164:16	165:2,5	151:17 158:24
109:5 114:1	speculation 55:14	stages 14:16	159:7,17 161:3,4,7
115:17 120:12	57:4 58:21 62:8	stand 35:21 44:7	161:15,19,22
123:25 125:17	65:24 67:12 69:7	standalone 192:18	162:9 164:6
126:3 129:2	69:23 70:13,20	standard 7:13	165:25 166:1,4,8,8
140:11 157:8	71:21 72:19 75:9	22:13 26:3 27:8	183:14 189:20
160:7 166:16	76:13,22 82:8	27:17,21 30:5,16	190:13 193:21
172:18 176:8	84:12 86:10 90:14	31:7,8,13,13,20	196:23 198:1,5,8
181:19 182:25	91:3,14 95:20	32:8,14,18 41:7	199:11
183:1 184:23	96:2,22 97:8,16,25	44:6 65:11 107:17	stands 35:18
186:23 187:6,10	99:18 100:25	149:5	142:10
sort 149:5 195:4	101:15 116:19	standards 5:3 7:24	start 11:22 116:18
sought 76:19 78:1	118:3,22 119:7,19	9:8,11 13:17,19,22	161:5
sound 172:24	121:10 125:25	14:1,9 16:16	starting 98:16
184:21	126:11,22 127:8	17:10 19:3,9 23:8	starts 74:7 187:7
sounds 104:25	132:6 133:17	24:4 26:1,3,7,9,11	state 5:5,17 7:13
sources 40:12 43:6	137:2 142:14	26:13,19,24,25	9:25 10:12 13:21
78:25	144:15,19 146:3	27:9,10,11,12,19	14:19 15:23 17:22
south 3:16	149:19,25 162:5	27:23,25 28:2,4,7	18:25,25 19:15,18
speak 119:10,11	163:6 192:7,19	28:8,11,16,17,23	21:23 23:13,25
121:16 183:11	197:15	29:6,18 30:4,24	29:17,18 30:1
speaking 184:11	spoke 18:3 29:2	31:22 35:22 36:5	35:16 38:20 39:13
special 113:4,15	78:21 116:8 169:6	37:3,10 38:22	39:14,18,20 40:15
113:19	169:21 174:25	39:16,21,23 40:8	40:23 41:5 44:18
specific 18:21 27:8	175:4	40:10,11,13 41:4,6	44:18,22 45:10,14
47:3 64:11 80:9	spoken 12:14	41:11 45:3,6,18	45:15,16,23 46:11
100:2 102:12	153:12 160:25	47:2 51:7,17,18	48:1,7,19 51:14
116:10,17 142:12	193:21	52:20,23 54:19	52:4,6,11,12,17,18
149:6 170:3 185:1	spring 20:15	63:13,24 67:16	52:22 63:22 64:10
193:22	sprinkler 125:10	73:25 75:18 84:22	66:15 68:9,12,16
specifically 19:1	sprinklers 125:11	99:12,22 100:20	69:11,15 73:22
19:24 75:22	ss 66:11,16	101:3,19 102:14	74:3,14,20 75:1,6
179:19 184:11	stack 167:17	102:24 104:10,12	75:15,17 76:17
194:11 198:6	180:21	104:22,24 105:2,9	77:24 78:4,22
specifications	staff 7:16 13:23	105:15,18,24	79:17,21 89:5,9
106:6	19:23 20:2 45:3	106:2,6,11,15	103:23 104:9,15
specifics 27:15	47:2 85:23,24	107:5,19 111:16	106:16,17 109:8
32:15 99:20 148:6	87:8 92:22 100:9	117:9 121:17	111:17 115:15
	101:1,9 118:16	127:15 130:24	116:9,16 117:2,6

[state - takes]

117:11,14,20 statewide 129:24 subdomain 35:18 157:6 166:15,17 118:1,6,13,19 stating 61:21 subject 13:8 36:18 171:11 172:17 127:23 128:14,16 86:13 41:18 182:5,15,21 183:3 185:11 197:16 129:6,11,15,21,22 steps 116:4 123:1 194:13 suren 93:10 130:15,19 134:1 137:19,22 store 37:5 sublicense 110:3 swers 8:24 140:18 141:6 street 3:7 4:18 submitted 45:2 switch 145:5 144:11 148:13 5:10 strike 16:23 31:1 15:25,25 switch 145:5 146:8 169:9,16 34:16 38:1 41:23 43:14 48:1 51:3 83:15 84:3 86:21 86:23,25 152:17 subscribed 20:22 194:2 substance 148:20 15:10 table 64:8 65:1,18 65:21 66:3,5,10 table 64:8 65:1,18 65:21 66:3,5,10 tables 64:6,13 115:10 take 11:3 12:1 14:23 15:2 14:23 15:2 14:23 15:2 14:23 15:2 14:13 14:23 15:2
127:23 128:14,16 86:13 41:18 182:5,15,21 183:3 185:11 128:20,23 129:1,3 stats 161:14 183:5,5,10,12 197:16 129:6,11,15,21,22 steps 116:4 123:1 194:13 suren 93:10 134:18 138:3,9,12 store 37:5 submittal 48:2 swears 8:24 140:18 141:6 5:10 submitted 45:2 switch 145:5 144:11 148:13 5:10 submitted 45:2 switch 145:5 144:11 148:13 5:10 submounted 45:2 switch 145:5 149:2 159:23 strike 16:23 31:1 34:16 38:1 41:23 83:15 84:3 86:21 sworn 9:21 202:7 160:1 166:4,9,14 34:16 38:1 41:23 83:15 84:3 86:21 t 170:6 175:21 34:16 38:1 41:23 83:15 84:3 86:21 t 176:3 182:16,22 43:14 48:1 51:3 86:23,25 152:17 subscribed 202:20 table 64:8 65:1,18 184:11,15 185:5,13 68:2,7,11,25 69:11 69:12 70:17 73:15 148:10 148:10 take 11:13 12:1 187:24 188:1 77:2 78:8,9 84:16 suggest 172:22 29:11,13 46:13 22:9 28:24 29:1 20:2:2 93:1,3 94:4,16,20 95:2 96:16,18 suite 2:21 84:22 85:13 </td
128:20,23 129:1,3 stats 161:14 183:5,5,10,12 197:16 129:6,11,15,21,22 steps 116:4 123:1 194:13 suren 93:10 130:15,19 134:1 137:19,22 sublicense 110:3 swears 8:24 134:18 138:3,9,12 store 37:5 submittal 48:2 swears 8:24 140:18 141:6 5:10 swbmittal 48:2 swears 8:24 144:11 148:13 5:10 swbmitted 45:2 switch 145:5 149:2 159:23 strike 16:23 31:1 23:22 24:20 50:23 sworn 9:21 202:7 160:1 166:4,9,14 34:16 38:1 41:23 83:15 84:3 86:21 tworn 9:21 202:7 170:6 175:21 34:16 38:1 41:23 83:15 84:3 86:21 t 176:3 182:16,22 51:15 52:5 53:8 64:4 66:4 67:8 86:23,25 152:17 subscribed 202:20 187:11,15,16,22 68:2,7,11,25 69:11 194:2 194:2 194:2 187:11,15,16,22 74:18,19 76:16 148:10 148:10 148:10 187:24 188:1 77:2 78:8,9 84:16 suggest 172:22 29:11,13 46:13 22:9 28:24 29:1 29:11,13 46:13 48:23 82:20 83:8 84:22 85:13
129:6,11,15,21,22 steps 116:4 123:1 194:13 suren 93:10 130:15,19 134:1 137:19,22 sublicense 110:3 swears 8:24 140:18 141:6 street 3:7 4:18 submittal 48:2 swears 8:24 144:11 148:13 5:10 street 3:7 4:18 submitted 45:2 switch 145:5 149:2 159:23 strength 124:15 subpoena 7:9 sworn 9:21 202:7 160:1 166:4,9,14 34:16 38:1 41:23 43:14 48:1 51:3 86:23,25 152:17 systems 16:21 170:6 175:21 43:14 48:1 51:3 86:23,25 152:17 subscribed 202:20 20:220 184:1,15 185:5,13 68:2,7,11,25 69:11 69:12 70:17 73:15 194:2 substance 148:22 187:11,15,16,22 74:18,19 76:16 148:10 142:23 15:2 18:1 187:24 188:1 77:2 78:8,9 84:16 suggest 172:22 suggest 156:14 202:2 95:2 96:16,18 98:12,14 108:11 suite 2:21 29:11,13 46:13 48:23 82:20 83:8 84:22 85:13 102:17 104:14<
130:15,19 134:1 137:19,22 store 37:5 sublicense 110:3 180:24 134:18 138:3,9,12 store 37:5 submittal 48:2 swears 8:24 140:18 141:6 street 3:7 4:18 submitted 45:2 switch 145:5 144:11 148:13 5:10 48:3 152:25,25 switching 186:2 149:2 159:23 strength 124:15 subpoena 7:9 sworn 9:21 202:7 160:1 166:4,9,14 34:16 38:1 41:23 83:15 84:3 86:21 systems 16:21 170:6 175:21 43:14 48:1 51:3 86:23,25 152:17 subscribed 202:20 183:4,6,11,16 64:4 66:4 67:8 68:2,7,11,25 69:11 69:12 70:17 73:15 substance 148:22 148:10 187:11,15,16,22 74:18,19 76:16 148:10 successfully 144:6 suggest 172:22 suggest 172:22 29:28:24 29:1 202:2 93:1,3 94:4,16,20 95:2 96:16,18 suite 2:21 48:3 152:25,25 80 148:10 suggests 156:14 suite 2:21 29:11,13 46:13 48:23 82:20 83:8 84:22 85:13 102:17 104:14
134:18 138:3,9,12 store 37:5 submittal 48:2 swears 8:24 140:18 141:6 5:10 48:3 152:25,25 switch 145:5 144:11 148:13 5:10 48:3 152:25,25 switching 186:2 149:2 159:23 strength 124:15 subpoena 7:9 sworn 9:21 202:7 160:1 166:4,9,14 34:16 38:1 41:23 83:15 84:3 86:21 systems 16:21 170:6 175:21 43:14 48:1 51:3 86:23,25 152:17 51:15 52:5 53:8 subscribed 202:20 183:4,6,11,16 64:4 66:4 67:8 68:2,7,11,25 69:11 substance 148:22 65:21 66:3,5,10 186:15,24 187:2,9 74:18,19 76:16 77:2 78:8,9 84:16 successfully 144:6 5uggest 172:22 195:3 201:18 86:22,24 92:17 93:1,3 94:4,16,20 95:2 96:16,18 98:12,14 108:11 5ummarize 169:8 48:3 152:25,25 8witch 145:5 145:5 184:10 148:10 148:10 148:21 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1 148:23 15:2 18:1
140:18 141:6 street 3:7 4:18 submitted 45:2 switch 145:5 switching 186:2 switching 186:2 switching 186:2 sworn 9:21 202:7 9:21 202:7 switching 186:2 sworn 9:21 202:7 switching 186:2 sworn 9:21 202:7 sworn 9:21 202:7 sworn 9:21 202:7 systems 16:21 16:21 16:21 16:21 18:21 16:21 1
144:11 148:13 5:10 48:3 152:25,25 switching 186:2 149:2 159:23 strength 124:15 subpoena 7:9 sworn 9:21 202:7 160:1 166:4,9,14 strike 16:23 31:1 34:16 38:1 41:23 83:15 84:3 86:21 systems 16:21 170:6 175:21 43:14 48:1 51:3 86:23,25 152:17 subscribed 202:20 table 64:8 65:1,18 183:4,6,11,16 64:4 66:4 67:8 68:2,7,11,25 69:11 69:12 70:17 73:15 substance 148:22 194:2 187:11,15,16,22 74:18,19 76:16 77:2 78:8,9 84:16 successfully 144:6 suggest 172:22 59:11,13 46:13 195:3 201:18 86:22,24 92:17 93:1,3 94:4,16,20 suggests 156:14 22:9 28:24 29:1 202:2 95:2 96:16,18 98:12,14 108:11 summarize 169:8 84:22 85:13
149:2 159:23 strength 124:15 subpoena 7:9 sworn 9:21 202:7 160:1 166:4,9,14 34:16 38:1 41:23 83:15 84:3 86:21 170:6 175:21 34:16 38:1 41:23 83:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 183:15 84:3 86:21 186:23,25 152:17 186:23,25 152:17 186:23,25 152:17 186:23,25 152:17 189:21 66:3,5,10 189:21 66:3,5,10 189:21 66:3,5,10 189:21 66:3,5,10 189:21 66:3,5,10 189:12 70:17 73:15 189:12 70:17 73:15 189:12 70:17 73:15 189:12 70:17 73:15 189:12 70:17 73:15 189:12 14:6
160:1 166:4,9,14 strike 16:23 31:1 23:22 24:20 50:23 systems 16:21 167:8 169:9,16 34:16 38:1 41:23 83:15 84:3 86:21 t 170:6 175:21 43:14 48:1 51:3 86:23,25 152:17 table 64:8 65:1,18 176:3 182:16,22 51:15 52:5 53:8 subscribed 202:20 65:21 66:3,5,10 184:1,15 185:5,13 68:2,7,11,25 69:11 194:2 substantive 187:11,15,16,22 74:18,19 76:16 148:10 successfully 144:6 195:3 201:18 86:22,24 92:17 suggest 172:22 29:11,13 46:13 202:2 93:1,3 94:4,16,20 suggests 156:14 48:23 82:20 83:8 84:22 85:13 95:2 96:16,18 suite 2:21 124:4 98:12,14 108:11 summarize 169:8
167:8 169:9,16 34:16 38:1 41:23 83:15 84:3 86:21 t 170:6 175:21 43:14 48:1 51:3 86:23,25 152:17 table 64:8 65:1,18 176:3 182:16,22 51:15 52:5 53:8 subscribed 202:20 table 64:8 65:1,18 183:4,6,11,16 64:4 66:4 67:8 substance 148:22 table 64:8 65:1,18 186:15,24 187:2,9 68:2,7,11,25 69:11 194:2 tables 64:6,13 187:11,15,16,22 74:18,19 76:16 148:10 take 11:13 12:1 187:24 188:1 77:2 78:8,9 84:16 successfully 144:6 22:9 28:24 29:1 202:2 93:1,3 94:4,16,20 suggest 172:22 29:11,13 46:13 84:23 82:20 83:8 84:22 85:13 124:4 98:12,14 108:11 summarize 169:8
170:6 175:21 176:3 182:16,22 183:4,6,11,16 184:1,15 185:5,13 186:15,24 187:2,9 187:11,15,16,22 187:24 188:1 195:3 201:18 202:2 state's 123:13,21 124:4 43:14 48:1 51:3 51:15 52:5 53:8 64:4 66:4 67:8 68:2,7,11,25 69:11 69:12 70:17 73:15 74:18,19 76:16 77:2 78:8,9 84:16 86:22,24 92:17 93:1,3 94:4,16,20 95:2 96:16,18 98:12,14 108:11 86:23,25 152:17 subscribed 202:20 substance 148:22 194:2 substantive 148:10 successfully 144:6 suggest 172:22 suggests 156:14 suite 2:21 summarize 169:8 86:23,25 152:17 subscribed 202:20 substance 148:22 194:2 substantive 148:10 successfully 144:6 suggest 172:22 suggests 156:14 suite 2:21 summarize 169:8
176:3 182:16,22 51:15 52:5 53:8 subscribed 202:20 64:8 63:1,18 183:4,6,11,16 64:4 66:4 67:8 68:2,7,11,25 69:11 194:2 194:2 194:2 187:11,15,16,22 74:18,19 76:16 148:10 142:3 15:2 18:1 187:24 188:1 77:2 78:8,9 84:16 successfully 144:6 22:9 28:24 29:1 195:3 201:18 86:22,24 92:17 suggest 172:22 29:11,13 46:13 202:2 93:1,3 94:4,16,20 suggests 156:14 48:23 82:20 83:8 84:22 85:13 84:22 85:13 102:17 104:14
176:3 182:16,22 183:4,6,11,16 184:1,15 185:5,13 186:15,24 187:2,9 187:11,15,16,22 187:24 188:1 195:3 201:18 202:2 state's 123:13,21 124:4 51:15 52:5 53:8 64:4 66:4 67:8 68:2,7,11,25 69:11 69:12 70:17 73:15 74:18,19 76:16 77:2 78:8,9 84:16 86:22,24 92:17 93:1,3 94:4,16,20 95:2 96:16,18 98:12,14 108:11 51:15 52:5 53:8 64:4 66:4 67:8 68:2,7,11,25 69:11 69:12 70:17 73:15 74:18,19 76:16 77:2 78:8,9 84:16 86:22,24 92:17 93:1,3 94:4,16,20 95:2 96:16,18 98:12,14 108:11 51:15 52:5 53:8 64:4 66:4 67:8 194:2 substantive 148:10 successfully 144:6 suggest 172:22 suggests 156:14 suite 2:21 summarize 169:8 65:21 66:3,5,10 take 11:13 12:1 14:23 15:2 18:1 22:9 28:24 29:1 29:11,13 46:13 48:23 82:20 83:8 84:22 85:13 102:17 104:14
183:4,6,11,16 184:1,15 185:5,13 186:15,24 187:2,9 187:11,15,16,22 187:24 188:1 195:3 201:18 202:2 state's 123:13,21 124:4 184:1,15 185:5,13 68:2,7,11,25 69:11 69:12 70:17 73:15 74:18,19 76:16 77:2 78:8,9 84:16 86:22,24 92:17 93:1,3 94:4,16,20 95:2 96:16,18 98:12,14 108:11 substance 148:22 194:2 194:2 substantive 148:10 successfully 144:6 suggest 172:22 suggests 156:14 suite 2:21 summarize 169:8 substance 148:22 194:2 194:2 substantive 148:10 successfully 144:6 suggest 172:22 suggests 156:14 suite 2:21 summarize 169:8
184:1,15 185:5,13 68:2,7,11,25 69:11 194:2 186:15,24 187:2,9 69:12 70:17 73:15 substantive 187:11,15,16,22 74:18,19 76:16 148:10 187:24 188:1 77:2 78:8,9 84:16 successfully 144:6 195:3 201:18 86:22,24 92:17 suggest 172:22 202:2 93:1,3 94:4,16,20 suggests 156:14 state's 123:13,21 95:2 96:16,18 suite 2:21 124:4 98:12,14 108:11 summarize 169:8
186:15,24 187:2,9 69:12 70:17 73:15 substantive 148:10 14:23 15:2 18:1 187:24 188:1 77:2 78:8,9 84:16 successfully 144:6 22:9 28:24 29:1 195:3 201:18 93:1,3 94:4,16,20 suggest 172:22 29:11,13 46:13 124:4 95:2 96:16,18 suite 2:21 23:13,21 124:4 98:12,14 108:11 summarize 169:8
187:11,15,16,22 74:18,19 76:16 148:10 187:24 188:1 77:2 78:8,9 84:16 successfully 144:6 195:3 201:18 86:22,24 92:17 suggest 172:22 202:2 93:1,3 94:4,16,20 suggest 156:14 state's 123:13,21 95:2 96:16,18 suite 2:21 124:4 98:12,14 108:11 summarize 169:8
187:24 188:1 77:2 78:8,9 84:16 successfully 144:6 195:3 201:18 86:22,24 92:17 suggest 172:22 202:2 93:1,3 94:4,16,20 suggests 156:14 state's 123:13,21 95:2 96:16,18 suite 2:21 124:4 98:12,14 108:11 summarize 169:8
195:3 201:18 202:2 state's 123:13,21 124:4 86:22,24 92:17 93:1,3 94:4,16,20 95:2 96:16,18 98:12,14 108:11 suggest 172:22 suggests 156:14 suite 2:21 summarize 169:8 29:11,13 46:13 48:23 82:20 83:8 84:22 85:13 102:17 104:14
202:2 state's 123:13,21 124:4 93:1,3 94:4,16,20 95:2 96:16,18 98:12,14 108:11 suggests 156:14 suite 2:21 summarize 169:8 48:23 82:20 83:8 84:22 85:13 102:17 104:14
state's 123:13,21 95:2 96:16,18 suite 2:21 124:4 98:12,14 108:11 summarize 169:8 84:22 85:13 102:17 104:14
124:4 98:12,14 108:11 summarize 169:8 102:17 104:14
stated 102.10 115.12.14.120.2 sumplement 25.0 102.17.107.17
stated 102:19 115:12,14 120:3 supplement 35:9 116:5 123:1
121:13 191:16
statement 17:16 131:16 132:1 192:18 126:16 130:4 145:11 154:23
18:16 40:18 45:24 133:10 141:4 supplements 156:6,15 176:5
45:25 46:10 63:18
63:25 67:21,23
68:22 69:2,15 196:2 supplied 19:25 taken 2:20 10:3
120:4,18 122:13 strikeout 17:19 supplies 15:17 22:25 26:18 48:4
122:16 123:11,15
133:21 135:13 191:21 support 13:23 137:19,22 138:4
140:22 191:11 strikeouts 191:7 suppose 27:14 138:12 179:22
statements 18:20 191:20 192:4,25 supposed 157:6 138:12 1/9:22 202:4
18:24 structural 66:16 166:19
states 1:1 2:1 124:14 sure 16:22 17:2 takes 14:22 22:12
74.12.20.2.110.2 study 15:1.2.0 22:4.25:14.49:11 40:3.128:21
115.9 116.25 sub 66.25 67.1 65.15 92.24 09.9 129:11,10,25
134:24 140:16 subdivision 112:15 120:5
179:2 120:16 Subdivision 112:13 120:3 171:1 179:2

[talk - triennial]

1			
talk 11:17,18	testified 8:6 36:1	114:16 123:25	155:1,3 182:6
18:24 104:19	47:19 51:16 70:23	124:18 161:13	titles 14:14 89:24
161:4 162:2,2,18	71:25	165:1,4,10 166:7	90:6,12,17,20
167:15 171:21	testify 7:9 83:15	166:17,23 198:18	today 10:20,22
talked 41:9 161:2	testifying 202:7	third 40:6,21	12:15,18,22 61:7
166:7 180:19,20	testimony 10:14	109:16 178:5	151:1 160:23,25
181:25	10:17,22 12:15,17	thirteen 36:16	161:2 168:12
talking 15:6 80:18	13:11 51:20 54:6	thought 128:24	169:6 173:25
80:25 81:16	61:5 64:18 70:25	187:20	177:16 180:19,20
128:25 162:13	72:6 92:13 93:1,3	thousand 82:16	today's 12:24
167:19 173:10	104:3 112:22	155:21 156:8	83:15
182:2	121:13 122:8	three 20:6 35:7	tolles 3:4,13 9:14
talks 139:4	129:5 138:16	40:10,18 41:4,14	9:17
team 95:4	150:14 152:4	47:9 109:12	tonight 200:8
technical 17:25	161:6,11 188:22	181:21 182:1	top 48:5 62:17
45:9,11 47:10	201:14 202:11	187:8 188:4	64:4,5 65:4
163:16	testing 1:4 2:4 4:3	time 11:25 12:9	108:20 111:5
technician 86:4	8:16	18:7 21:2,3 86:3	114:21 121:16,25
tell 11:23 27:15	tests 97:19	99:19 100:19	151:11 172:4,17
114:19 139:8	text 38:21 52:7	108:16 110:21	175:11 184:18
148:12 154:15	55:19 56:2,8 60:8	123:10,13 124:18	track 116:6
156:10 162:3	60:15 61:17 62:4	132:22 133:13,16	training 195:1,2,4
163:3 173:14	71:16,18 72:4,7,11	144:24 152:10	195:5,14,16 196:4
176:14,25 177:8	92:5 97:22 101:13	156:6 172:22	196:8,14 198:19
188:16	101:19 102:1	173:4 202:5	199:9
tells 62:19 114:5	103:6 115:15	timeframe 152:7	trainings 195:8,20
ten 13:23 15:13	174:5 192:10	timeline 138:23	196:1,11 198:4,6
16:16 18:9 156:15	thank 15:11 16:10	139:2,15	198:11,13 199:7
188:8	35:15 109:4	timetable 170:5	transcribed 202:9
tend 161:18	198:24 199:17	timing 48:1,2	transcript 201:12
term 47:9 49:8,11	thanks 22:17	139:5,5	202:10,13,15
49:13,18,23 50:6,9	161:2	title 14:6,7,7,10,10	treated 90:5
175:12 187:3	thing 25:6 109:24	14:12 19:19 35:4	tried 61:17 93:11
terminology 76:5	156:25 157:11	35:6,23 36:15	97:3,11,19 174:4
terms 17:16,18,24	169:8	37:15,18 41:19,21	180:25
18:2,4,10 45:25	things 122:13	41:22,25 42:11,18	triennial 36:14
73:9 129:19	171:22	43:5 47:6,12,20	37:2,14 47:1 80:9
145:22 146:1	think 17:17 27:24	48:15 89:11,13,15	81:5 99:14 111:8
147:1,4,9,18	30:2 41:14 70:5	89:20,22 90:4	111:18,21 139:2
148:10,13 149:1	80:6 81:14 94:12	93:18 115:12	142:24
150:4,9 151:3	104:7 106:19,22	134:15 154:7	

[triennially - viewing]

triennially 35:7	unauthorized	use 14:3 50:4 63:2	44:1 46:6 53:1
true 51:24 119:9	33:19	102:5 110:3	60:21 71:19 77:13
201:15 202:10	underline 17:20	111:11,14,16,20	78:11,16,25 79:7
try 11:10,17,18	underneath	117:11,14,21	79:12,19,23 80:2
169:8	151:15 178:18	118:1,7,12,14,16	80:10,14 81:5,5
trying 27:7,24	undersigned 202:1	119:1 134:14	100:9 101:8 102:2
70:6,9	understand 10:21	166:5 199:6	111:21 121:4
tsc 1:7 2:7	11:1,5,8,20 12:1	useful 88:6,9	122:1 172:5
turn 167:17,24	15:11 22:4,5 27:6	user 37:25 38:3	versions 33:8
178:3,8 181:20,21	27:7,24 28:1	82:5 114:2,5	122:5
twenty 188:9	30:21 31:23 32:12	uses 161:3	versus 8:16
two 25:20 40:16	41:3 43:21 50:11	utilize 14:1 23:15	vertically 62:23
40:20 46:25 47:8	50:17 53:21 64:24	23:19 112:6	159:10
66:18 67:1,4	65:10 71:12 76:4	utilized 188:15	vet 45:1
88:10 103:3	85:9 93:18 110:9	utilizing 23:13	vetting 162:8
111:12,14 113:2	115:24 152:14	v	viana 5:16 9:9
131:3 149:16,18	156:9	vague 19:16 53:12	video 8:12 49:1,5
158:9 160:22	understanding	55:22 56:5,11	82:24 83:1 103:15
176:22 186:17	40:23 49:22 50:9	65:7 80:5,17 81:9	103:19 145:15,17
187:8	50:18 51:2,5	81:13,15 91:4	160:11,14 186:3,6
type 16:24	65:16 70:5 79:10	98:7,22 106:2	199:22 200:12
types 16:16 40:10	79:14 89:17	111:1 118:9 121:2	videographer 5:21
122:6 124:23	110:17,24 111:19	123:16 139:11	8:20
193:16	112:2,6,10,18	141:14,17 149:3	videotaped 1:17
u	163:3,15,20,25	150:5,11 151:5	2:19
u.s. 24:23	172:8 189:1,11	161:24 162:1	view 93:12,14 94:8
uh 15:12,15 18:18	understood 11:14	163:5 166:16	95:6,11 96:9,12,15
31:6 37:16 40:19	11:14 76:8	184:23	98:11,20 123:5
46:23 47:22 48:23	unfair 81:15	vaguely 142:4	165:24 173:12,16
56:15 67:2 88:19	105:19	variety 18:24	173:18 174:10
88:21 89:12 91:9	uniform 134:17,17	193:20	177:18 178:22
93:16 102:18	unit 148:20 149:8	various 14:18	179:6 181:3
115:17 123:8	united 1:1 2:1	107:6 127:23	viewable 39:3
131:2 132:16	universe 86:24,25	161:19 162:25	123:4
139:17 140:15	unnecessarily	169:9	viewed 21:25
151:14 167:18	106:2	verbal 11:6 56:17	96:25 174:1
180:22 199:18	unreasonable	verify 121:20	viewer 59:6,18,21
ultimately 14:20	105:18	155:23	60:5,7,9,16,23
46:5 169:20	url 35:12,13 58:5	veritext 8:21	61:10,18 63:6
unable 179:11	100:14	version 37:6,18	viewing 59:6 98:3
		43:13,15,16,25	
		1 , , , ,	1

[violate - witness]

violate 29:25	ways 124:24	west 4:14 7:5 9:2,5	107:2 108:15
volume 1:20 2:20	173:11,14	wet 162:2	109:4,23 110:21
6:4 159:5	we've 89:11 91:16	whereof 202:19	111:4,11,24 112:5
volumes 145:6	137:21 138:2	wholesale 136:18	112:15,25 114:11
voss 151:19,21,23	144:21 161:2	wide 125:13	114:25 116:8,20
voted 163:11	web 34:23,24 35:1	width 125:8,23	117:9,18 118:10
vs 1:12 2:12	37:24 38:13,17	126:9	118:23 119:20
W	40:25 58:25 61:10	wish 152:18	120:1,11,16 121:3
wait 11:19 139:23	63:25 95:10	witness 5:4 6:2	121:11 123:17,25
want 8:9 39:12	132:22 133:3	8:24 9:7,21 16:2,9	125:1,16 126:2,14
52:14 86:18 88:1	website 35:15 37:3	26:21 27:14 31:10	127:1,9,23 132:7
88:12 96:13,15	37:6,11,18 38:3	31:25 32:4,11,13	133:18 137:3,10
113:2 115:6	39:3 41:21,24	34:7 35:4 36:8	137:17 138:8,17
116:23,24 123:9	52:21 54:15,17,17	38:6,24 39:3,11	139:12 142:15,20
130:25 132:25	54:19,20,22,25	42:4,21 43:2,20,22	143:14,20 144:16
134:19,20 140:6	55:6,7,12,13 60:21	44:4,12 46:8	144:20 145:9,14
140:13 151:12	60:25 67:20 70:15	48:11,17 49:20	146:4 147:6,25
154:5 156:9	70:24 71:2,3,4,15	50:1,15,24 51:12	148:17,19 149:4
159:22 160:10,20	71:19,22 72:3,8,8	52:2,20 53:13	149:20 150:1,6,12
162:2 164:15	73:1,1,3,10 82:4,7	54:7 55:3,9,23	151:6 152:5,18
167:15 168:15	82:16 89:22 90:10	56:12,18,20 57:5	153:16 154:21
171:21 173:10	90:10,13,18,22	57:11,16 58:14,20	155:10,12,23
185:24 199:23	92:7 93:12 95:14	58:22 59:9,15,23	156:9,19 157:8,19
200:2	95:19 96:1,10,21	60:12,18 61:6,14	158:5,14,23
wanted 40:1	97:1,4,7,12,15,20	62:16 63:18 65:8	159:17 162:6,16
179:10	97:24 98:4,6,14,19	65:15,25 66:10	162:23 163:7
wanting 80:24	99:13,24 100:8,10	69:8,24 70:14,21	164:9,15,23 165:8
93:13 181:2	100:23 101:14,20	71:11,22 72:7,14	165:14,20 166:3
wants 102:13	101:23,24 102:21	72:20 73:13,20	167:2,11 168:20
washington 3:9	103:7 113:6,7,19	75:1,10 76:23	170:15 171:8
4:9	114:18,20,20,21	77:16 80:6 81:10	172:14 173:1,8
way 12:18 31:2	114:22 117:22,23	82:9,19 84:13	179:1,14 180:3
52:8 56:14,23,24	123:4 134:1,2,7	85:2 86:11 89:1	182:25 183:10,21
57:13 59:25 61:14	135:14 139:4	90:2,9,15 91:5,16	184:6,23 185:8,19
69:18 79:14 86:14	173:15 181:1,22	91:25 92:14 94:12	188:23 189:8,16
95:23 96:4 100:18	websites 38:4	94:25 95:8,21	191:10,15 192:8
108:6 122:24	123:7	96:3,23 97:9,17	192:14,20 193:3
139:6 148:25	weeks 24:17 83:13	98:1,8 99:19	194:10,17 195:13
158:15 171:4,11	weighed 46:12	100:5,16 101:1,7	196:8,13,18 197:8
171:16 174:20	went 40:24 106:20	101:16,22 103:10	197:16 198:16,22
192:23 193:5		103:14 104:4	202:19

[witnesses - ziegler]

witnesses 202:6	157:19,24 158:14	
witnesses 202:0 word 94:6	165:22 172:14	
	186:1 195:13	
wording 148:7	year 35:25 47:9	
work 127:9 142:23	60:22 149:6	
170:1 172:5	years 20:6 35:7	
worked 78:20 118:10 120:21	46:25 47:8 88:10	
	103:3,3 111:12,15	
146:22	144:2,21,22,22 145:2 196:13	
working 119:3		
133:7	yen 5:8 9:6,6	
workshops 45:1	32:10,12 39:12,20	
worries 15:7	39:24 40:1,4	
187:11	43:19,21 52:11,17	
write 87:23 165:5	52:19 55:14 56:16	
165:11	56:19 58:11,21	
writing 197:5,11	62:8,15 81:13	
written 106:17	82:18,21 84:11,24	
148:25 181:4,5	87:15 90:14	
www.dgs.ca.gov	101:15 103:11	
35:14	104:2 108:13	
X	109:2,21 110:11	
x's 66:25 67:3	110:19 111:1,22	
y	112:4,13,23	
yeah 30:9 50:24	116:19 118:3	
51:12 58:14,14,22	121:10 122:7	
58:22 65:8,15	125:25 133:17 147:5 148:15,18	
69:8,24,24 77:16	,	
77:23 82:19,21	149:3,19,25 150:5 150:11 151:5	
84:13 89:1 90:15		
98:8 100:19	153:14 155:7,11	
108:15 110:21	160:10 185:24	
111:4,24 112:15	200:1,4,11,15	
112:25 114:13	Z	
123:17 126:2	zero 108:21,22,25	
127:9 132:7 138:8	109:9	
140:13 142:15	ziegler 3:5,11 6:8	
	6:10 9:13,13 16:1	
· ·	16:5,10 19:16	
	21:14 22:14 23:21	
137.21 130.19	24:6,25 26:14	
145:2,12 148:4,8 148:19 149:4,20 154:21 156:19	16:5,10 19:16 21:14 22:14 23:21	

Federal Rules of Civil Procedure Rule 30

- (e) Review By the Witness; Changes.
- (1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
- (A) to review the transcript or recording; and
- (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.
- (2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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Case 1:13-cv-01215-TSC Document 204-42 Filed 11/13/19 Page 89 of 89

VERITEXT LEGAL SOLUTIONS COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 1 of 122

EXHIBIT 37

N THE UNITED STATES DISTRICT COUNT FOR THE DISTRICT OF COLUMBAY		D 4		D 2
FOR THE DISTRICT OF COLUMBIA AMERICAN SOCIETY FOR TESTING) Case No. AND MATERIALS disha ASTM 1:13-0-01215 INTERNATIONAL; TSC-DAR STATIONAL; TSC-DAR STATIONAL FIRE PROTECTION SASSOCIATION, INC; and	1	•	1	-
MARERICAN SOCIETY FOR TESTING Case No. A AND MATERIALS dib/a RATM 1:13-ev-0/1215 INTERNATIONAL;) TSC-DAR		FOR THE DISTRICT OF COLUMBIA		_
A NO MATERIALS diba ASTM 11-13-cv-01215 1NTENATIONAL; 1TSC-DAR 5 5 JANE W. WISE, ESQ. 3 JANE W. WISE, ESQ. MORGAN, LEWIS & BOCKIUS, LLP 7 1111 Pennsylvania Avenue, N.W. 8 Washington, D.C. 20004 REFRIGERATING, AND AIR 9 Plaintiffs-Counterdelendants 1 11 Pennsylvania Avenue, N.W. 11 Jane. Wise@morganilewis.com 12 13 On behalf of National Fire Protection 14 Association, Inc.: 12 13 On behalf of National Fire Protection 14 Association, Inc.: 15 RACHEL G. MILLER-ZIEGLER, ESQ. 16 MUNGER, TOLLES & OLSON, LLP 17 1155 F Street, N.W. 18 Washington, D.C. 20004 17 10-16 a.m. 19 200-220-1115 7 rachel.miller-ziegler@mto.com 21 20 22 22 23 23 24 22 23 23	3	AMERICAN SOCIETY FOR TESTING A Case No.		· · · · · · · · · · · · · · · · · · ·
N. REINTERNATIONAL;) TSC-DAR 5	4			
NATIONAL FIRE PROTECTION 6 ASSOCIATION, INC; and) 7 AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR) 8 Washington, D.C. 20004				·
6 ASSOCIATION, INC.; and) 7 AMERICAN SOCIETY OF HEATING,) 8 CRETRIGERATING, AND AIR) 8 CONDITIONING ERIORERS,) 9 Plaintiffs-Counterclefendants) 10 vs.) 10 vs.) 11 PUBLIC RESOURCE ORG, INC., Defendant-Counterclaimant) 12 13 Videotaped Deposition of Mary H. Saunders 18 Washington, D.C. 20004 202-739-5596 202-739-739-739-739-739-739-739-739-739-739	5) NATIONAL FIRE PROTECTION)		,
7 AMERICAN SOCIETY OF HEATING,) REFRIGERATING, AND AIR) 8 CONDITIONING ENGINEERS,) 9 Plaintiffs-Counterdefendants) 10 vs.) 11 PUBLIC RESOURCE ORG, INC.) Defendant-Counterclaimant) 12 13 On behalf of National Fire Protection 14 Association, Inc.: 15 RAC'HEL G, MILLER-ZIEGLER, ESQ. 16 August 15, 2019 17 10:16 a.m. 18 19 Reported by. 20 10 Bonnie L Russo 21 Job No. 3461686 22 Pages 1 - 334 Peage 2 1 Pages 1 - 334 Peage 2 1 APPEARANCES (CONTINUED): 2 On behalf of Public Resource. Org, Inc.: 3 MATTHEW B. BECKER, ESQ. 4 ANDREW P. BRIDGES, ESQ. 5 FENWICK & WEST, LLP 555 California Street, 12th Floor 6 San Francisco, California 94104 7 415-875-2300 8 Mashington, D.C. 20 Bonnie L Russo 21 Job No. 3461686 22 Pages 1 - 334 Peage 2 1 APPEARANCES (CONTINUED): 2 On behalf of Public Resource. Org, Inc.: 3 MATTHEW B. BECKER, ESQ. 4 ANDREW P. BRIDGES, ESQ. 5 FENWICK & WEST, LLP 555 California Street, 12th Floor 6 San Francisco, California 94104 7 415-875-2300 8 mbecker@fenwick.com 10 10 Dehalf of the Witness: 12 GERALD W. GRIFFIN, ESQ. 13 CARTER, LEDYARD & MILBURN, LLP 14 2 Wall Street 15 New York, New York 10005 16 212-238-8672 17 griffin@clm.com 20 Sally P. Everett, Vice President and General 20 Counsel, National Fire Protection Association	6			
SEFRICERATING, AND AIR SCONDITIONING ENGINEERS, SCONDITIONING ENGIN)		•
8 CONDITIONING ENGINEERS.) 9 Plaintiffs-Counterdefendants) 10 vs.) 11 PUBLIC RESOURCE ORG, INC.) Defendant-Countercialmant) 12	7		8	Washington, D.C. 20004
Plaintiffs-Counterdefendants 10	8		9	202-739-5596
10 vs.)	10	kevin.fee@morganlewis.com
11 PUBLIC.RESOURCE ORG, INC) Defendant-Counterclaimant) 12	9	Plaintiffs-Counterdefendants)	11	jane.wise@morganlewis.com
13 On behalf of National Fire Protection 14 Association, Inc.: 15 RACHEL G. MILLER-ZIEGLER, ESQ. 16 MUNGER, TOLLES & OLSON, LLP 17 1155 F Street, N.W. 18 Washington, D.C. 20004 19 202-220-1115 19 Reported by: 20 Bonnie L. Russo 21 Job No. 3481686 22 Pages 1 - 334 Page 2 1 APPEARANCES (CONTINUED): 2 On behalf of Public.Resource.Org, Inc.: 3 MATTHEW B. BECKER, ESQ. 4 ANDREW P. BRIDGES, ESQ. 5 FENWICK & WEST, LLP 5 SSC California Street, 12th Floor 6 San Francisco, California 94104 7 415-875-2300 8 mbecker@fenwick.com 10 11 Veritext Legal Solutions 12 1250 Eye Street, N.W. 13 Washington, D.C. 14 15 Pursuant to Notice, when were present on behalf of the respective parties: 16 of the respective parties: 17 girffin@clm.com 18 19 Also Present: 20 Sally P, Everett, Vice President and General 21 Counsel, National Fire Protection 14 Association, Inc.: 15 RACHEL G. MILLER-ZIEGLER, ESQ. 16 MUNGER, TOLLES & OLSON, LLP 17 1155 F Street, N.W. 18 Washington, D.C. 20004 202-220-1115 19 Capted by: 202-220-1115 19 Capted by: 21 202-220-1115 19 Page 2 11 APPEARANCES (CONTINUED): 22 On behalf of Public.Resource.Org, Inc.: 3 MATTHEW B. BECKER, ESQ. 4 ANDREW P. BRIDGES, ESQ. 5 FENWICK & WEST, LLP 5 SCalifornia Street, 12th Floor 6 San Francisco, California 94104 7 415-875-2330 8 mbecker@fenwick.com 10 11 On behalf of the Witness: 12 GERALD W. GRIFFIN, ESQ. 13 CARTER, LEDYARD & MILBURN, LLP 14 2 Wall Street 15 New York, New York 10005 16 212-238-8672 17 girffin@clm.com 18 19 Also Present: 20 Sally P. Everett, Vice President and General 21 Counsel, National Fire Protection Association	10	/ vs.)	12	
Association, Inc.: 14) [']	13	On behalf of National Fire Protection
15	11			
13	12	belendant-Counterclaimant)		
14 Washington, D.C. 17 1155 F Street, N.W. 18 Washington, D.C. 20004 17 10:16 a.m. 19 202-220-1115 19 Reported by: 20 Bonnie L. Russo 21 Job No. 3461886 22 Pages 1 - 334 22 22 24 24 25 25 26 26 26 26 26 26				
16 August 15, 2019 17 10:16 a.m. 18 Washington, D.C. 20004 19 202-220-1115 18 rachel.miller-ziegler@mto.com 20 Bonnie L. Russo 21 Job No. 3461686 22 Pages 1 - 334 Page 2 1 APPEARANCES (CONTINUED): 2 On behalf of Public.Resource.Org, Inc.: 3 MATTHEW B. BECKER, ESQ. 4 ANDREW P. BRIDGES, ESQ. 5 FENWICK & WEST, LLP 555 California Street, 12th Floor 6 San Francisco, California 94104 7 415-875-2300 8 mbecker@fenwick.com 21 On behalf of the Witness: 12 1250 Eye Street, N.W. 13 Washington, D.C. 14 15 Pursuant to Notice, when were present on behalf of the respective parties: 17 18 19 20 Sally P. Everett, Vice President and General Counsel, National Fire Protection Association				
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Videotaped Deposition of Mary Saunders held at: Veritext Legal Solutions 12 1250 Eye Street, N.W. 13 Washington, D.C. 14 15 Pursuant to Notice, when were present on behalf of the respective parties: 17 18 19 19 19 18 19 19 19 18 19 19 19 18 19 19 19 18 19 19 19 18 18 19 19 19 18 18 19 19 19 18 18 19 19 19 18 18 19 19 19 18 18 19 19 19 18 18 19 19 19 18 18 19 19 19 18 19 19 19 18 19 19 19 19 19 18 19 19 19 19 18 19 19 19 19 19 19 19 10 10 10 10 11 10 10 11 10 11 10 11 10 11 10 11 10 11 10 11 10 11 10 11 11	7		6	
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20 20 Sally P. Everett, Vice President and General 21 Counsel, National Fire Protection Association			18	
21 Counsel, National Fire Protection Association			19	Also Present:
22 Daniel Russo, Videographer	21		21	
ZZ Daniel Russo, Videographer	22		22	Daniel Russo, Videographer

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 3 of 122

	Dogo F		Dogo 7
1 CONTENTS	Page 5	1 EXHIBITS (CONTINUED):	Page 7
		2 Exhibit 18 E-Mail Chain dated 3-18-12	237
3 BY MR. BECKER 12, 323	-	ANSI 3121-3122	
4		3 Exhibit 19 ANSI Response to Request	237
BY MR. FEE 311, 331		for Comments on	
5 6	4	4 Incorporation by Reference	
7 EXHIBITS	'	5 ANSI 3123-3128	
Exhibit 1 Subpoena to Testify 15		6 Exhibit 20 E-Mail Chain dated 4-10-12	240
8 at a Deposition in		7 ANSI 3602-3604	
a Civil Trial		8 Exhibit 21 E-Mail Chain dated 6-27-12	245
9 Exhibit 2 Letter dated 7-29-19 16		9 ANSI 3792-793	0.47
10 Exhibit 3 ANSI Organization Chart 117 11 ANSI 1536	10	0 Exhibit 22 E-Mail Chain dated 7-16-12	247
11 ANSI 1536 Exhibit 4 E-Mail Chain dated 8-28-15 118	'	1 ANSI 3844 2 Exhibit 23 E-Mail Chain dated 7-16-12	250
12 PRO_00264718-723	13		230
13 Exhibit 5 Draft Report 150		4 Exhibit 24 House Outreach Matrix	250
14 4-21-11	1:		200
15 ANSI 2690-2692		Exhibit 25 E-Mail Chain dated 1-8-14	256
16 Exhibit 6 Draft Agenda 156	16		
17 4-21-11 18 ANSI 2296	17	7 Exhibit 26 E-Mail Chain dated 2-27-13	259
19 Exhibit 7 Agenda 157	18	8 ANSI 8802-805	
20 4-21-11	19	9 Exhibit 27 E-Mail Chain dated 2-27-12	268
ANSI 2538	20		
21 Exhibit 8 Agreement on Technical 160		1 Exhibit 28 E-Mail Chain dated 5-29-12	271
22 Barriers to Trade	22	2 ANSI 9121-124	
4 EVIJIDITO (CONTINUED):	Page 6	4 EVIUDITO (CONTINUED)	Page 8
1 EXHIBITS (CONTINUED):		1 EXHIBITS (CONTINUED):	
2 Exhibit 9 IBR Handbook 164		2 Exhibit 29 LinkedIn Profile	Page 8
2 Exhibit 9 IBR Handbook 164 July 2018		2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders	278
2 Exhibit 9 IBR Handbook 164 July 2018 3 Exhibit 10 Draft Minutes 179		2 Exhibit 29 LinkedIn Profile3 of Mary Saunders4 Exhibit 31 Draft Meeting Report	
2 Exhibit 9 IBR Handbook 164 July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12		 2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 	278
2 Exhibit 9 IBR Handbook 164 July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644		 Exhibit 29 LinkedIn Profile of Mary Saunders Exhibit 31 Draft Meeting Report 10-27-11 ASTMO16254-265 	278 288
2 Exhibit 9 IBR Handbook 164 July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12		 2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit32 Draft Meeting Report 	278
2 Exhibit 9 IBR Handbook 164 July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190		 2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 	278 288
2 Exhibit 9 IBR Handbook 164 July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190 7 PRO_00167221-7222)4	 2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 	278 288 289
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and)4	 Exhibit 29 LinkedIn Profile of Mary Saunders Exhibit 31 Draft Meeting Report 10-27-11 ASTMO16254-265 Exhibit 32 Draft Meeting Report 5-21-12 ANSI 1179-187 Exhibit 33 Draft Proposed Agenda 	278 288
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 20 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 11 Incorporation by Reference	04 8	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267	278 288 289 289
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 20 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 20 11 Incorporation by Reference 12 Recent Developments	05 10	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated	278 288 289
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 20 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 20 11 Incorporation by Reference 12 Recent Developments ANSI 0308-0327	04 8 05 10	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated 2 by Reference into Law	278 288 289 289
2 Exhibit 9 IBR Handbook	04 8 05 10 12	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated 2 by Reference into Law 3 ANSI 0268-0276	278 288 289 289 290
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 11 Incorporation by Reference 12 Recent Developments ANSI 0308-0327 13 Exhibit 14 Draft Minutes 229 14 5-16-13	04 8 05 10 12	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated 2 by Reference into Law 3 ANSI 0268-0276 4 Exhibit 35 Draft Minutes	278 288 289 289 290
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 11 Incorporation by Reference 12 Recent Developments ANSI 0308-0327 13 Exhibit 14 Draft Minutes 229 14 5-16-13 15 ANSI 0328-0336	05 10 11 12 13	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated 2 by Reference into Law 3 ANSI 0268-0276 4 Exhibit 35 Draft Minutes 5-24-12	278 288 289 289 290
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 20 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 20 11 Incorporation by Reference 12 Recent Developments ANSI 0308-0327 13 Exhibit 14 Draft Minutes 229 14 5-16-13 15 ANSI 0328-0336 Exhibit 15 E-Mail dated 3-1-12 230	04 8 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated 2 by Reference into Law 3 ANSI 0268-0276 4 Exhibit 35 Draft Minutes 5-24-12 5 ANSI 0277-284	278 288 289 289 290
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 20 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 20 11 Incorporation by Reference 12 Recent Developments ANSI 0308-0327 13 Exhibit 14 Draft Minutes 229 14 5-16-13 15 ANSI 0328-0336 Exhibit 15 E-Mail dated 3-1-12 230 16 ANSI 2860	05 10 11 12 13 14	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated 2 by Reference into Law 3 ANSI 0268-0276 4 Exhibit 35 Draft Minutes 5-24-12 5 ANSI 0277-284 6 Exhibit 36 Draft Proposed Agenda	278 288 289 289 290
2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 190 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 11 Incorporation by Reference 12 Recent Developments ANSI 0308-0327 13 Exhibit 14 Draft Minutes 229 14 5-16-13 15 ANSI 0328-0336 Exhibit 15 E-Mail dated 3-1-12 230 16 ANSI 2860 17 Exhibit 16 E-Mail dated 3-15-12 232	05 10 11 12 13 14 14 16 17	2 Exhibit 29 LinkedIn Profile 3 of Mary Saunders 4 Exhibit 31 Draft Meeting Report 5 10-27-11 6 ASTMO16254-265 7 Exhibit 32 Draft Meeting Report 5-21-12 8 ANSI 1179-187 9 Exhibit 33 Draft Proposed Agenda 0 ANSI 0263-267 1 Exhibit 34 Standards Incorporated 2 by Reference into Law 3 ANSI 0268-0276 4 Exhibit 35 Draft Minutes 5-24-12 5 ANSI 0277-284 6 Exhibit 36 Draft Proposed Agenda 7 ANSI 0680-684	278 288 289 289 290 91
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2 Exhibit 9 IBR Handbook July 2018 3 Exhibit 10 Draft Minutes 179 4 3-22-12 5 ANSI 0638-0644 6 Exhibit 11 E-Mail dated 4-27-12 7 PRO_00167221-7222 8 Exhibit 12 Draft Proposed Agenda 9 ANSI 0303-307 10 Exhibit 13 Copyright Infringement and 11 Incorporation by Reference 12 Recent Developments ANSI 0308-0327 13 Exhibit 14 Draft Minutes 229 14 5-16-13 15 ANSI 0328-0336 Exhibit 15 E-Mail dated 3-1-12 230 16 ANSI 2860 17 Exhibit 16 E-Mail dated 3-15-12 232 18 ANSI 3083 19 Exhibit 17 ANSI Response to Request for	04 8 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9 9	of Mary Saunders Exhibit 31 Draft Meeting Report 10-27-11 ASTMO16254-265 Exhibit 32 Draft Meeting Report 5-21-12 ANSI 1179-187 Exhibit 33 Draft Proposed Agenda ANSI 0263-267 Exhibit 34 Standards Incorporated by Reference into Law ANSI 0268-0276 Exhibit 35 Draft Minutes 5-24-12 ANSI 0277-284 Exhibit 36 Draft Proposed Agenda ANSI 0680-684 Exhibit 37 Draft Minutes 9 3-21-13	278 288 289 289 290 91
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		Page 9		Page 11
	BITS (CONTINUED):		1	Public.Resource.Org, Incorporated,
2 Exhib	it 39 Draft Agenda ANSI 0715-719	295	2	defendant-counterclaimant, filed in the United
3 Exhib	it 40 Draft Minutes	296		States District Court for the District of
4	11-6-13			Columbia, Case No. 1:13-cv-01215-TSC-DAR.
5	ANSI 0729-736		5	This deposition is being held at
	it 41 Discussion on Changes	296		Veritext Legal Solutions located at 1250 Eye
7 8	to the Office of Managemen and Budget Circular A-119	L	8	Street, Northwest, Washington, D.C. My name is Daniel Russo from the
	ANSI 0033-51			firm Veritext Legal Solutions and I am your
	it 42 Draft Agenda	297		videographer today. The court reporter is
10	7-24-14			Bonnie Russo from the firm Veritext Legal
11 12 Exhib	ANSI 0771-775 it 43 Federal Engagement in	298		Solutions.
13	Standards Activities	290	13	Counsel and all present in the room
14	ANSI 0776-782		14	and everyone attending remotely will now state
15 Exhib	it 44 Draft Minutes	299	15	their appearances and affiliations for the
40	7-24-14		16	record, please.
16 17 Exhib	ANSI 0783-790 it 45 Draft Minutes	300	17	MR. BECKER: Good morning. My name
18	11-19-14	300		is Matthew Becker of the law firm Fenwick &
19	ANSI 0791-797			West representing Public.Resource.Org and with
	it 46 Letter dated 6-28-19	301		me is my colleague Andrew Bridges.
21 22	Attachment		21	MR. GRIFFIN: Gerald Griffin,
22	SAU 001-162	D 40	22	Carter, Ledyard & Milburn, representing the
1	PROCEEDINGS	Page 10	1	Page 12 witness.
2	· · · · · · · · · · · · · · · · · · ·			
			2	MR. FEE: Kevin Fee from Morgan
3	THE VIDEOGRAPHER: Goo	d morning. We	3	MR. FEE: Kevin Fee from Morgan Lewis on behalf of ASTM.
	THE VIDEOGRAPHER: Goo	_		•
	oing on the record at 10:16 a.n	_	3 4	Lewis on behalf of ASTM.
4 are go	oing on the record at 10:16 a.n	n. on August	3 4	Lewis on behalf of ASTM. MS. WISE: Jane Wise from Morgan
4 are go 5 15, 20 6 7 sensit	oing on the record at 10:16 a.n 019. Please note that the micropho iive and may pick up whisperin	n. on August ones are og, private	3 4 5 6 7	Lewis on behalf of ASTM. MS. WISE: Jane Wise from Morgan Lewis on behalf of ASTM. MS. MILLER-ZIEGLER: Rachel Miller-Ziegler, Munger, Tolles & Olsen on
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Page 13

1 A. I have not.

- 2 Q. Let's see. So in that case, we will
- 3 set out some preliminaries. In a deposition,
- 4 I'm going to be asking you questions and you
- 5 will provide answers.
- 6 Do you understand that you are 7 giving testimony under oath today?
- 8 A. I do.
- 9 Q. Just as you would in a court of law?
- 10 A. Yes. I do.
- 11 Q. You understand that the court
- 12 reporter is taking down everything that you
- 13 say.
- 14 A. Yes, I do.
- 15 Q. In that case, we need only audible
- 16 responses and not just gestures or sort of
- 17 something of the like.
- 18 A. I understand.
- 19 Q. Thank you. If at any point you
- 20 don't understand a question, will you please
- 21 let me know and I will try to rephrase?
- 22 A. I will.

1

Page 14

- Q. And in that case, I'm going to try
- 2 to give you the clearest questions I can so
- 3 long as you promise to let me know if you don't
- 4 understand the question. All right?
- 5 A. Yes.
- 6 Q. All right. If you ever need a break
- 7 for any reason, please let me know and as long
- 8 as a question isn't pending, I'll provide one.
- 9 A. Yes, thank you, I understand.
- 10 Q. If you come to realize that any of
- 11 your answers that you previously provided is
- 12 not completely correct, just let me know and we
- 13 will address it. Okay?
- 14 A. Yes.
- 15 Q. After the transcript and deposition
- 16 is prepared, you will have a chance to review
- 17 it and make changes to it. However, I can
- 18 comment on any changes that you make. Do you
- 19 understand?
- 20 A. Understood.
- 21 Q. Is there any reason preventing you
- 22 from giving your best testimony today?

- 1 A. No.
 - 2 MR. BECKER: Please mark this
 - 3 Exhibit 1.
 - 4 (Deposition Exhibit 1 was marked for
 - 5 identification.)
 - 6 BY MR. BECKER:
 - 7 Q. Ms. Saunders, I am handing you what

Page 15

Page 16

- 8 has been marked as Exhibit 1.
 - 9 Do you recognize this document?
- 10 A. Yes, I do.
- 11 Q. What is this document?
- 12 A. It's a subpoena to testify at a
- 13 deposition in a civil action.
- 14 Q. Is this a subpoena that you
- 15 received?
- 16 A. I did receive it.
- 17 Q. And are you familiar with this
- 18 lawsuit, ASTM, et al., versus
- 19 Public.Resource.Org?
- 20 A. Yes. I'm generally aware of the
- 21 lawsuit, yes.
- 22 MR. BECKER: Can you please mark

1 this as Exhibit 2.

- 2 (Deposition Exhibit 2 was marked for
- 3 identification.)
- 4 BY MR. BECKER:
- 5 Q. Ms. Saunders, I am handing you what
- 6 has been marked as Exhibit No. 2.
- 7 Have you seen this document before?
- 8 A. I have seen this document.
- 9 Q. What is this document?
- 10 A. It's a letter from Russell Craig,
- 11 who's the associate chief of the general
- 12 litigation division at the U.S. Department of
- 13 Commerce, RE: Subpoenas to Mary H. Saunders
- 14 for a deposition and document production.
- 15 Q. When you say it's a letter to --
- 16 A. I'm sorry.
- 17 Q. You mean it's a letter to --
- 18 A. It's a letter to Russell Craig from
- 19 you as I remember.
- 20 Q. Do you understand what the purpose
- 21 of this letter is?
- 22 A. I do.

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 6 of 122

Page 17

- 1 Q. What is the purpose of this letter?
- 2 A. My understanding is that you had a
- 3 conversation with Mr. Craig and Henry Wixon who
- 4 is the general counsel for the National
- 5 Institute of Standards and Technology regarding
- 6 topics that were not open for discussion with
- 7 me since I'm testifying in my personal capacity
- 8 from the time when I was a government official.
- 9 These are internal -- any internal government
- 10 deliberations are protected under process
- 11 privilege.
- 12 Q. Did you have any conversation with
- 13 Mr. Craig about this matter?
- 14 A. About the letter?
- 15 Q. About this litigation.
- 16 A. I'm not following. About the letter
- 17 or about the --
- 18 Q. Have you had any conversation with
- 19 Mr. Craig about the Public Resource litigation?
- 20 A. I had a conversation with Mr. Craig
- 21 and Henry Wixon about my deposition, not about
- 22 the litigation per se.

Page 18

- 1 Q. When did that conversation take 2 place?
- 3 A. That was yesterday. That was
- 4 yesterday at 2:00.
- 5 Q. And what did you talk about?
- 6 A. We talked about the contents of this
- 7 letter that you sent to Mr. Craig. We just
- 8 wanted to make sure that I had the same
- 9 understanding that he and Henry, Mr. Wixon with
- 10 regarding -- with respect to what is not open
- 11 for discussion.
- 12 I also asked if they were planning
- 13 to be available and I understand Mr. Craig and
- 14 Mr. Wixon will be available by phone if needed.
- 15 Q. Did you talk about anything else?
- 16 A. No.
- 17 Q. Is there any other time, other than
- 18 yesterday at 2:00, that you talked to Mr. Craig
- 19 about this litigation?
- 20 A. No, there is no other time.
- 21 Q. And is there any other time that you
- 22 talked with Mr. Wixon about this litigation?

- 1 A. No. I did not talk -- I spoke with
- 2 both Henry and Russell Craig yesterday at 2:00.

Page 19

- 3 Q. Do you have any written
- 4 communications with Mr. Craig or Mr. Wixon
- 5 about this litigation?
- 6 A. Not about the litigation. I sent an
- 7 e-mail to Russell Craig, I believe a couple of
- 8 weeks ago asking if he had actually engaged
- 9 with you regarding what would be permissible
- 10 and not permissible. That's all that I have.
- 11 Q. Did you receive a response?
- 12 A. Yes. He said that he had, and
- 13 that's -- the result is this letter as I
- 14 understand it.
- 15 MR. BECKER: Would it be possible to
- 16 see a copy of that e-mail?
- 17 MR. GRIFFIN: If you are requesting
- 18 it, we will go back and look for it.
- 19 MR. BECKER: Sure, on a break, that
- 20 would be great. Thank you.
- 21 MR. GRIFFIN: I'm not sure I'll be
- 22 able to get it to you today, but after the

- 1 deposition, yes.
- 2 Can we agree that this is the letter
- 3 that memorializes your agreement with Russell
- 4 Craig with respect to the questions that you
- 5 can and cannot ask Ms. Saunders today?
- 6 MR. BECKER: Yes.
- 7 MR. GRIFFIN: Okay. Thank you.
- 8 MR. BRIDGES: By this, Counsel,
- 9 you're referring to --
- 10 MR. GRIFFIN: Exhibit 2, correct.
- 11 BY MR. BECKER:
- 12 Q. Ms. Saunders, are there any other
- 13 names other than Mary Saunders that you have
- 14 gone by?
- 15 A. My maiden name is Mary Catherine
- 16 Howard.
- 17 Q. Ms. Saunders, where do you work
- 18 today?
- 19 A. I'm currently the vice president for
- 20 government relations and public policy at the
- 21 American National Standards Institute.
- 22 Q. And that's -- the American National

Page 21

- 1 Standards Institute is more commonly referred
- 2 to as ANSI?
- 3 Α. That's correct.
- 4 How long have you held that position
- 5 for?
- A. I have held that position since the 6
- 7 1st of March, 2017.
- Q. What was your employment immediately
- 9 before being VP of government relations and
- 10 public policy at ANSI?
- 11 A. I was the associate director for
- 12 management resources at the National Institute
- 13 of Standards and Technology also known as NIST.
- 14 I retired from federal service on the 3rd of
- 15 February, 2017.
- 16 Q. What is NIST?
- A. NIST is the National Measurement 17
- 18 Institute for the United States. It is a
- 19 bureau of the U.S. Department of Commerce and
- 20 it has additional response -- mission related
- 21 responsibilities I can go into if you would
- 22 like me to, which were delegated under the --

- 1 in 1988, under a revision to NIST
- 2 responsibilities. So NIST has broader
- 3 technology and standards-related
- 4 responsibilities as well as being the National
- 5 Measurement Institute for the United States.
- Q. How long did you hold the role of 6
- 7 associate director for management resources for
- 8 NIST?
- A. From the end of November 2012 until
- 10 the time that I retired, which as I mentioned,
- 11 was the 3rd of February, 2017.
- 12 Q. Did you hold any other employment
- 13 positions between -- sorry, let me rephrase
- 14 this.
- 15 Were you employed in any other
- 16 positions at any organization or entity between
- 17 November 2012 and today, other than the two
- 18 that you just referred to?
- A. The two -- I'm sorry. I'm not 19
- 20 following. I was a federal employee so I was
- 21 employed at NIST from --
- 22 Q. Since November 2012 --

- 1 A. Yes.
 - 2 Q. -- have you held -- have you been
 - 3 employed in any position other than the VP of

Page 23

- 4 government relations and public policy at ANSI
- 5 and the associate director for management
- 6 resources at NIST?
- 7 A. I understand. No, I have not.
- 8 Q. What was your employment immediately
- before being associate director at NIST? 9
- 10 A. You want me to go backwards. Okay.
- 11 So from March, the end of March 2011
- 12 through November 2012, I was the director of
- 13 the standards coordination office at NIST.
- Q. Prior to that position, what was
- 15 your employment?
- 16 A. No, it's easier for me to do it
- 17 doing forward.
- 18 So going backwards, I was -- prior
- 19 to that, I was the deputy assistant secretary
- 20 for manufacturing and services at the
- 21 International Trade Administration which is
- 22 also a bureau of the Department of Commerce. I
- Page 22
- 1 occupied that position from the 18th of
- 2 December, 2008, through the end of March 2011.
- 3 What position did you hold before Q.
- 4 that?
- 5 A. From October 2001 through the 18th
- 6 of -- well, 17th of December, 2008, I was the
- 7 chief of the standards services division at --
- 8 which is a component of technology services at
- 9 the National Institute of Standards and
- 10 Technology.
- Q. And what was your employment
- 12 immediately prior to that?
- A. So I transferred from the 13
- 14 international trade administration to NIST in
- 15 July of 1993 and I was an international
- 16 economist in -- what was called in 1993, the
- 17 office of standards services.
- 18 The office of standards services was
- 19 renamed the standards services division as part
- 20 of a realignment within NIST, so '93 to 2001, I
- 21 was in the -- what became the standards
- 22 services division but I was -- became the chief

Page 25

- 1 in October of 2001.
- 2 Q. Prior to July of 1993, what was your 3 employment immediately prior to that?
- 4 A. So I began my commerce department
- 5 career in January of 1996 at the International
- 6 Trade Administration. I held positions as an
- 7 international trade specialist in two offices
- 8 of the International Trade Administration, the
- 9 office of capital goods and the second position
- 10 was in the office of European community
- 11 affairs.
- 12 Q. When I refer to "standards," do you
- 13 know what I'm referring to?
- 14 A. Yes.
- 15 MR. GRIFFIN: Objection.
- 16 BY MR. BECKER:
- 17 Q. How would you define a standard?
- 18 A. So depending on context, there may
- 19 be a variety of definitions but the -- there
- 20 are standards of conduct, there are a variety
- 21 of standards, but if you are asking me about
- 22 technical standards, those are standards for
 - Page 26
 - 1 products, processes or services. There is a
- 2 definition. The International Organization for
- 3 Standardization has a definition, the World
- 4 Trade Organization's technical barriers to
- 5 trade agreement has a definition. Those are
- 6 the definitions I believe you are referring to.
- 7 Q. Between those two definitions, is
- 8 there any difference?
- 9 MR. GRIFFIN: Objection.
- 10 THE WITNESS: I don't know. I don't
- 11 believe there is, but I haven't looked in
- 12 detail at those documents recently. I believe
- 13 the WTO TBT agreement takes its definition from
- 14 ISO.
- 15 BY MR. BECKER:
- 16 Q. What does standards coordination
- 17 mean?
- 18 A. In the context of the standards
- 19 coordination office?
- 20 Q. Yes.
- 21 A. So in the context of the standards
- 22 coordination office, it means coordinating

- Page 27
- 1 internally within NIST with respect to
- 2 standards-related activities, documentary
- 3 standards-related activities and it means
- 4 working externally within -- with other federal
- 5 agencies and with White House offices and the
- 6 private sector in the context of the NIST
- 7 activities related to documentary standards,
- 8 particularly policy activities related to
- 9 documentary standards.
- 10 Q. When you refer to policy activities
- 11 related to document -- related to standards,
- 12 what is it that you are referring to?
- 13 A. I am referring to responsibilities
- 14 that NIST has under the National Technology
- 15 Transfer and Advancement Act of 1995,
- 16 specifically as expressed in NIST's mission as
- 17 it's described by Congress.
- 18 Q. What is the National Technology
- 19 Transfer and Advancement Act of 1995?
- 20 A. So I can't speak to the entire
- 21 National Technology Transfer Act of 1995, it
- 22 was a -- it's a revision. I can speak

Page 28

- 1 specifically to Section 12 of the National
- 2 Technology Transfer -- NTTAA of 1995 which
- 3 specifically directs federal agencies to use
- 4 technical standards developed by voluntary
- 5 consensus bodies in support of mission
- o consensus bodies in support of mission
- 6 activities where relevant and appropriate in
- 7 lieu of developing government-unique standards.
- 8 Q. Do you understand that today when I
- 9 use the word "standards," I will be referring
- 10 to technical standards unless I say otherwise?
- 11 A. Yes, I do.
- 12 MR. GRIFFIN: Objection.
 - THE WITNESS: Sorry. I will pause.
- 14 MR. GRIFFIN: That's okay.
- 15 BY MR. BECKER:
- 16 Q. When did you first begin working in
- 17 a position that required you to be familiar
- 18 with standards?
- 19 A. In my first position at the
- 20 International Trade Administration around the
- 21 time period 1989, I was in the office of
- 22 capital goods at the time, a component of the

13

8

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 9 of 122

Page 29

- 1 International Trade Administration and the
- 2 European community at that time led by the
- 3 European commission was embarking upon its
- 4 internal market program, which involved the
- 5 passage of a large amount of European
- 6 legislation related to product -- related to
- 7 how the European community would deal with
- 8 product safety and health requirements,
- 9 otherwise supported by standards.
- 10 These are technical regulations, but
- 11 in the European community at the time, now the
- 12 European Union, there are technical standards
- 13 that support legislation and that's how I first
- 14 became involved in standards in the trade
- 15 context.
- 16 Q. Had you been involved in standards
- 17 in any other context prior to that?
- 18 A. No.
- 19 Q. Does the United States develop its
- 20 own standards?
- 21 A. It's a little bit difficult to
- 22 answer that question. So standards are -- by

Page 30

- 1 the United States, do you mean the United
- 2 States Government or the United States -- I'm
- 3 not quite following.
- 4 Q. The United States Government, Does
- 5 the United States Government develop standards?
- 6 A. The United States Government at
- 7 large does not develop its own standards.
- 8 Individual federal agencies may develop
- 9 government-unique standards in support of
- 10 mission activities. I mentioned the National
- 11 Technology Transfer and Advancement Act, so
- 12 individual agencies may engage in standards
- 13 activities.
- 14 Q. In what situations do individual
- 15 U.S. Government agencies develop their own
- 16 standards?
- 17 MR. GRIFFIN: Objection.
- 18 THE WITNESS: So let me give you a
- 19 little bit more background. The
- 20 standardization system in the United States is
- 21 private sector led with government agency's
- 22 participation. In areas where government, a

Page 31

- 1 specific government agency or a part of an
- 2 agency has a need to support a regulation or --
- 3 a regulation or an other mission-related
- 4 activity and there is no technical standard
- 5 available in the private sector, the agency may
- 6 write its own documents. They are called
- 7 government-unique standards.
 - BY MR. BECKER:
- 9 Q. Typically, why is it that there
- 10 wouldn't be a standard available in the private
- 11 sector as required by the agency?
- 12 MR. GRIFFIN: Objection.
- 13 THE WITNESS: I don't know the
- 14 answer to that.
- 15 BY MR. BECKER:
- 16 Q. Do you offhand know of any standards
- 17 that a U.S. Government agency has developed?
- 18 A. I am aware generally of EPA test
- 19 methods which in some cases are -- have been
- 20 developed by the Environmental Protection
- 21 Agency.
- 22 Q. Do you know the names of any of

- 1 those?
- 2 A. I do not.
- 3 Q. Do you know why the EPA would have
- 4 developed those standards rather than using a
- 5 standard that was privately developed?
- 6 MR. GRIFFIN: Objection to form.
- 7 MR. FEE: Objection.
- 8 THE WITNESS: I can't answer that
- 9 question. You would have to ask someone at the
- 10 EPA about that.
- 11 BY MR. BECKER:
- 12 Q. Have you ever had affiliations with
- 13 standard development organizations?
- 14 A. If by "affiliations," you mean have
- 15 I served on the boards of standards -- specific
- 16 standards development organizations, yes.
- 17 Q. Have you been a member of standards
- 18 development organizations?
- 19 A. I have, yes. During my federal
- 20 career, I was a member of ASTM International.
- 21 For a period of time, I was also a member of
- 22 the Institute for Electrical and Electronics
- [8/15/2019] 2019 0815 SAUNDERS, MARY (VIDEO)

Page 35 Page 33 1 Engineers. 1 consensus standards developed under a process 2 And that last organization is often 2 including the characteristics that I referred to as the IEEE, correct? 3 highlighted. 4 It is, correct. 4 There are consortia standards. 5 Q. Any other standards development 5 There are open standards. There are many organizations? 6 different types of standards that are used 7 MR. GRIFFIN: Objection. 7 widely globally and in the United States. 8 THE WITNESS: Can you clarify, have 8 BY MR. BECKER: 9 I been a member --9 Q. What is an open standard? 10 BY MR. BECKER: 10 A. And so my understanding here is 11 Q. A member of --11 limited, but an open standard might -- as I 12 -- of any other standards 12 have heard it described, it's very common in 13 development organizations? 13 the IT sector. It's a standard where 14 Q. Yes. 14 individual technical experts come together and 15 Α. No, I have not. 15 discuss a particular technical area and may --16 Do you understand what I am 16 the document is open to input manipulation --17 referring to when I use the term "standards 17 manipulation is a bad word, but open to input 18 development organization?" 18 and change from a variety of different sources. 19 MR. GRIFFIN: Objection. 19 It's, as I said, common in the IT sector. 20 THE WITNESS: Yes, I do. 20 Q. When you referred to a voluntary 21 BY MR. BECKER: 21 consensus standard, you said that it's a 22 Q. What is a standards development 22 standard produced by a process that includes Page 34 Page 36 1 characteristics of openness, transparency, 1 organization? 2 2 balance and consensus and due process; is that A standards development organization 3 is an organization that engages in the 3 correct? 4 administration of process that leads to the 4 Α. That is correct. 5 Q. 5 development of standards. We typically focus What do you mean by "balance?" 6 on voluntary consensus standards. A. A balance of interest across 6 7 Q. What is a voluntary consensus 7 materially interested in affected parties, so 8 standard? 8 there are interest categories which may vary A. A voluntary consensus standard is 9 depending on what type of standard is under 10 defined in OMB Circular A-119, and I will be 10 consideration, but generally speaking, interest 11 paraphrasing, a voluntary consensus standard is 11 categories might include producer, user, 12 produced through a process that includes 12 general interest, might include consumer, might 13 include labor interest. It's an intent to 13 characteristics of openness, transparency, 14 balance and consensus, due process as well. 14 achieve balance or a representation amongst --15 Q. Is there an alternative to a 15 across a range of interests in a particular 16 topic. 16 voluntary consensus standard? 17 MR. GRIFFIN: Objection. 17 Q. What stakeholders participate in the 18 THE WITNESS: There are many 18 development of voluntary consensus standards? 19 different types of standards. There are 19 MR. FEE: Objection to form. 20 standards developed by treaty organizations 20 THE WITNESS: It's -- I can't

21 such as the International Telecommunications

22 Union. There are, as I mentioned, voluntary

21 speak -- that's a very general question. I

22 can't speak to that. I said materially

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 11 of 122

Page 37

- 1 interested in affected parties which may differ
- 2 depending on the technical topic.
- 3 BY MR. BECKER:
- 4 Q. Do members of government participate
- 5 in the development of voluntary consensus
- 6 standards in the United States?
- 7 MR. FEE: Objection to form.
- 8 THE WITNESS: They -- technical
- 9 staff and individual federal agencies may
- 10 participate in the development of standards.
- 11 They would be classified in the general
- 12 interest category.
- 13 BY MR. BECKER:
- 14 Q. Who else would be in the general
- 15 interest category?
- 16 A. I can't speak to that. It's not
- 17 solely government, but again, it depends on the
- 18 standard at -- under development as to who
- 19 would have a general interest. It would be any
- 20 individual organization that is not either a
- 21 producer, a user or in another category, but I
- 22 can't speak specifically to your -- in answer
 - Page 38

- 1 to your question.
- 2 Q. What are the -- other than the
- 3 general interest category, what are the other
- 4 categories of participants?
- 5 A. Again, that depends on the balance
- 6 and how that is achieved depends on the
- 7 individual standard at -- at issue. I am
- 8 speaking to high level categories as laid out
- 9 in the ANSI essential requirements for the
- 10 development of American national standards,
- 11 producer, user, general interests. Other
- 12 possible categories depending on the standard 12
- 13 include consumer interest, labor interests. It
- 14 depends.
- 15 Q. Is there industry interests?
- 16 A. Of course, producer, user, those can
- 17 both -- those categories can include industry
- 18 representatives.
- 19 Q. Any other interests?
- 20 MR. FEE: Objection to form.
- 21 THE WITNESS: It depends on the
- 22 standard under -- under development.

- 1 BY MR. BECKER:
- 2 Q. Do government and representatives

- 3 participate in standard development?
- 4 MR. GRIFFIN: Objection.
- 5 THE WITNESS: So the National
- 6 Technology Transfer and Advancement Act, as I
- 7 mentioned, Section 12, specifically directs
- 8 federal agencies to use technical standards
- 9 developed by voluntary consensus standards
- 40 hadiaa. Tha law alaa diraata tha arraniaa ta
- 10 bodies. The law also directs the agencies to
- 11 participate in standards development activities
- 12 when those activities are relevant to their
- 13 mission interests.
- 14 BY MR. BECKER:
- 15 Q. And how -- how do members of
- 16 government participate in standards development
- 17 activities when those activities are relevant
- 18 to their mission interests?
- 19 MR. GRIFFIN: Objection.
- 20 MR. FEE: Objection to form.
- 21 THE WITNESS: The type of
- 22 participation, as I understand, will vary from
 - Page 40

 1 agency to agency. Individual agencies have
- 2 particular guidelines for how their technical
- 3 staff participate in standards development
- 4 activities, so I -- I can't speak to the
- 5 general question. It varies from agency to
- 6 agency.
- 7 BY MR. BECKER:
- 8 Q. When you refer to "technical staff,"
- 9 are you referring to government employees?
- 10 A. Yes, I am referring to government
- 11 employees.
 - Q. Is ANSI an SDO?
- 13 A. No. ANSI is not a standards
- 14 development organization.
- 15 Q. What is ANSI?
- 16 A. ANSI is the -- ANSI's mission is to
- 17 represent the private sector-led
- 18 standardization system in the United States and
- 19 represent its interests.
- 20 ANSI is also -- as part of that
- 21 mission, ANSI is the national standards body
- 22 representing -- national standards body to the

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 12 of 122

Page 41

1 International Organization for Standardization

- 2 and through the U.S. national committee to the
- 3 International Electrotechnical Commission which
- 4 are two international -- two organizations that
- 5 develop international standards.
- 6 Q. So by that, do you mean ANSI
- 7 represents standards development organizations?
- 8 MR. GRIFFIN: Objection.
- 9 THE WITNESS: No, I do not mean that
- 10 ANSI represents -- you mean generally speaking?
- 11 Standards -- ANSI has several member
- 12 categories where ANSI is a federation, there is
- 13 a government member category, so government
- 14 agencies are members of ANSI. Organizational
- 15 membership category which includes standards
- 16 development organizations and other
- 17 organizations. There is a company member
- 18 category, there is a consumer category.
- 19 BY MR. BECKER:
- 20 Q. Any other categories?
- 21 MR. GRIFFIN: Objection.
- 22 THE WITNESS: Those are all the ones

Page 42

- 1 I remember.
- 2 BY MR. BECKER:
- 3 Q. You said that organizational
- 4 category includes standards development
- 5 organizations and other organizations.
- 6 What other organizations?
- 7 A. Trade associations that may not
- 8 develop standards.
- 9 Q. Any other organizations?
- 10 A. Not that I can enumerate currently.
- 11 Q. Are you a member of ANSI?
- 12 A. I'm on the staff of ANSI. I'm not a
- 13 member of ANSI.
- 14 Q. Were you previously a member of
- 15 ANSI?
- 16 A. Personally, no. The National
- 17 Institute of Standards and Technology was -- is
- 18 a government member of ANSI and I was a staff
- 19 member of the National Institute of Standards
- 20 and Technology.
- 21 Q. So you were never personally a
- 22 member of ANSI but you were -- you participated

1 in ANSI through NIST?

- 2 A. That's correct.
- 3 MR. GRIFFIN: Objection. Wait one

Page 43

- 4 second.
- 5 BY MR. BECKER:
- 6 Q. How did you participate in ANSI 7 through NIST?
- 8 A. In a variety of ways. I was a
- 9 member of the ANSI national policy committee.
- 10 I served as chair of the national policy
- 11 committee for a term. I participated in
- 12 international policy committee, I participated
- 13 in representing NIST in ANSI activities that
- 14 are relevant to the NIST mission.
- 15 Q. Did NIST pay any membership or
- 16 participation fee for you when you were
- 17 participating in ANSI?
- 18 MR. GRIFFIN: Objection.
- 19 THE WITNESS: Not for me personally.
- 20 BY MR. BECKER:
- 21 Q. Did NIST pay any membership or
- 22 participation fee so that you were able to

- 1 participate in ANSI as a member -- as a person
 - 2 employed by NIST?
 - 3 A. Yes.
 - 4 Q. Do you know what fees those were?
 - 5 A. I mentioned that ANSI has different
 - 6 membership categories. NIST paid the fees
 - 7 relevant to the government membership category.
 - 8 I don't have the details of those dues.
 - 9 Q. Did you participate in any standards
 - 10 development organizations in your capacity at
 - 11 NIST?
 - 12 A. I participated as a member of an
 - 13 ASTM committee from 1993 probably for a couple
 - 14 of years specifically. I believe the number is
 - 15 E50. It's the ASTM committee that served as
 - 16 the -- that administered the technical advisory
 - 17 group to ISO, Technical 207 which is
 - 18 environmental management systems, so I was a
 - 19 member of that committee for a period of time.
 - 20 Q. Do you know approximately how long
 - 21 you were a member of that committee for?
 - A. Approximately two years would be my

Page 45 1 guess. It's been -- '93, 2003, it's been more

- 2 than 25 years.
- 3 Q. Did NIST pay your membership dues
- 4 when you were participating in that committee?
- 5 MR. GRIFFIN: Objection.
- 6 THE WITNESS: I paid my \$75
- 7 membership dues to ASTM when I was
- 8 participating in that committee personally.
- 9 BY MR. BECKER:
- 10 Q. Did you get those dues reimbursed?
- 11 A. No, I did not.
- 12 Q. Were you participating in that ASTM
- 13 committee in your personal capacity or in -- or
- 14 in a government employee capacity?
- 15 MR. FEE: Objection to form.
- 16 THE WITNESS: So as I mentioned
- 17 earlier, the National Technology Transfer and
- 18 Advancement Act directs federal agency
- 19 employees to participate in standards
- 20 development activities that are relevant to
- 21 their missions and that direction is also
- 22 codified in OMB Circular A119, so yes, I was
 - Page 46

1

- 1 participating pursuant to law and policy as a
- 2 NIST employee.
- 3 BY MR. BECKER:
- 4 Q. Did ASTM have a government
- 5 membership category at that time?
- 6 A. I'm not following that question.
- 7 Q. Was there -- did you pay a different
- 8 fee to ASTM as a member of government as
- 9 opposed to one you might pay if you were a
- 10 member of the private sector at the time?
- 11 A. No. My understanding is that the
- 12 \$75 membership fee applies to anyone who would
- 13 like to be a member of ASTM.
- 14 Q. Did you participate in the IEEE in
- 15 your capacity as a government employee?
- 16 A. I was a member of the IEEE standards
- 17 association board for one term in my capacity
- 18 as a NIST employee.
- 19 Q. When was that?
- 20 A. I would have to look at my risumi to
- 21 remember. I believe it was the early 2007,
- 22 2008, but I would have to look at my risumi to

- e 1 remind myself of the actual timing.
 - 2 Q. Have you participated in any
 - 3 standards development organizations in your

Page 47

- 4 personal capacity?
- 5 A. No, I have not.
- 6 Q. When did you first become involved
- 7 with ANSI?
- 8 A. Again, it's been a long time. Let
- 9 me think. I mentioned I moved from the
- 10 International Trade Administration to NIST to
- 11 July of 1993 to the office of standards
- 12 services, it would have been sometime following
- 13 July of 1993.
- 14 Q. How were you involved with ANSI
- 15 initially?
- 16 MR. GRIFFIN: Objection.
- 17 THE WITNESS: I -- as I mentioned,
- 18 in 1993, that's more than 25 years ago. I
- 19 would have to go -- I can't give you a specific
- 20 answer. It would probably have been -- I can't
- 21 give you a specific answer.
- 22 BY MR. BECKER:
 - Q. When you said that you were -- first
 - 2 became involved with ANSI in July 1993, are you
 - 3 referring to work that involved ANSI or in your
 - 4 government capacity?
 - 5 MR. GRIFFIN: Objection.
 - 6 THE WITNESS: So as I mentioned
 - 7 earlier, I moved to NIST to the office of
 - 8 standard services in July of 1993. NIST, at
 - 9 that time and still, is a member on behalf of
- 10 the Department of Commerce in ANSI.
- 11 So I would have been aware as a
- 12 staff person in the office of standards
- 13 services about NIST's participation in ANSI. I
- 14 believe at that time, participation in policy
- 15 committees was limited to board members so I
- 16 would not, at that time, have been directly
- 17 engaged in policy activities.
- 18 BY MR. BECKER:
- 19 Q. When did you first become directly
- 20 engaged in activities at ANSI?
- 21 A. Again, I would have to go look at my
- 22 risumi to remind myself of the particular

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 14 of 122

Page 49 1 dates, but as I mentioned, it's likely -- let's

- 2 see. Chief of global standards program --
- 3 2001, which is when I became chief of the
- 4 standards services division would be a
- 5 reasonable time frame to begin engagement in
- 6 policy activities at ANSI.
- 7 Q. What kind of policy activities were
- 8 you involved in with ANSI in -- when you were
- 9 chief of standards services division?
- 10 So I -- as I mentioned. I had a term
- 11 as the chair of the international policy
- 12 committee of ANSI. I also served as the chair
- 13 of the national -- not at the same time.
- 14 consecutively, as the chair of the national
- 15 policy committee of ANSI. I was on an
- 16 accreditation board dealing with environmental 16 The national policy committee has a committee
- 17 management systems for a period of time.
- 18 Q. Subsequent to that, what other --
- 19 can you tell me the -- the positions that you
- 20 have held in ANSI in chronological order?
- 21 MR. GRIFFIN: Objection.
- 22 THE WITNESS: I would be happy to

Page 50

- 1 provide you with a copy of my risumi. I don't
- 2 have that data in my head that I could tell 3 you.
- 4 BY MR. BECKER:
- 5 Q. Do you recall some of the other
- positions that you've held at ANSI? 6
- 7 MR. GRIFFIN: Objection.
- THE WITNESS: Not off the top of my 8 9 head, no.
- 10 BY MR. BECKER:
- 11 Q. No other positions than those?
- 12 MR. GRIFFIN: Objection.
- 13 THE WITNESS: I would be happy to
- 14 provide you with my risumi which lists all the
- 15 positions.
- 16 BY MR. BECKER:
- 17 Q. Do you have a copy of your risumi
- 18 available today?
- No, but I can send you one. 19 Α.
- 20 Q. What work did you do as chair of
- 21 international -- of the international policy
- 22 committee at ANSI?

- 1 A. So the international policy
 - 2 committee of ANSI is a committee which provides
 - 3 information to ANSI members or members of the
 - 4 community on international activities ranging
 - 5 from the activities in the International
 - 6 Organization for Standardization and the
 - 7 International Electrotechnical Commission to --
 - 8 reports on standards developments in other
 - 9 parts of the world, such as the European Union,
 - 10 China and so forth, its international policy.
 - Q. What work did you do as a member of
 - 12 the national policy committee at ANSI?
 - 13 So the responsibilities of the
 - 14 national policy committee are to look at
 - 15 national issues related to standardization.

 - 17 on education which focuses on education related
 - 18 to standards activities, so that was a topic of
 - 19 discussion and the national policy committee
 - 20 also was the policy committee to which the ANSI
 - 21 executive standards council and the board of
 - 22 standards review reported.

Page 52

- Those two committees are responsible
- 2 for overseeing the ANSI essential -- the
- 3 implementation of the ANSI essential
- 4 requirement and the development of American
- 5 national standards.
- Q. What do you mean by "education
- 7 related to standards activities?"
- So, there is a great interest in the
- 9 community at large, the private sector and the
- 10 government community in ensuring future
- 11 availability of standards professionals and
- 12 there are -- there are a growing number of
- 13 universities that include standards -- a
- 14 component in their education, engineering,
- 15 legal education, other education programs,
- 16 education programs focused on those types of
- 17 activities.
- 18 Q. So the committee on -- correct me if
- 19 I am mistaken, the committee on education
- 20 assisted in the education of future standards
- 21 professionals?
- 22 MR. GRIFFIN: Objection.

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 15 of 122

Page 53
THE WITNESS: You can look at the

- 2 information on the committee on education, I
- 3 believe it's available on the ANSI website but
- 4 the committee on education was a committee of
- 5 interested ANSI members who would either
- 6 provide materials that might be used in
- 7 universities or -- or discuss the value of
- 8 including knowledge about standards in various
- 9 university -- relevant university programs.
- 10 BY MR. BECKER:
- 11 Q. Other than as a member of the ASTM
- 12 Committee E50, have you had any other roles at
- 13 ASTM?

1

- 14 A. As I mentioned earlier, I was on the
- 15 board of ASTM for one term from 2010 to 2012.
- 16 Q. What did you do as a member of the
- 17 board of ASTM?
- 18 A. So I -- as a member of the board, I
- 19 heard reports from the president of ASTM and
- 20 from -- reports from the head of technical
- 21 operations at ASTM. We received reports and
- 22 had discussions.

Page 54

- 1 Q. Did you participate in
- 2 decisionmaking activities for ASTM when you
- 3 were a member of the board?
- 4 MR. GRIFFIN: Objection.
- 5 THE WITNESS: From my experience in
- 6 one term on the ASTM board, I don't remember
- 7 taking any specific decisions. As a government
- 8 employee, I recused -- would recuse myself from
- 9 any budgetary issues, items, fiduciary items.
- 10 BY MR. BECKER:
- 11 Q. Did you recuse yourself from any
- 12 other items other than budgetary and fiduciary
- 13 at ASTM?
- 14 A. No. As I -- no.
- 15 Q. How did you become a member of the
- 16 board at ASTM?
- 17 A. So NIST, as I have experienced, I
- 18 can only speak to NIST, NIST has had a -- had,
- 19 previously had a member of the ASTM board for
- 20 many -- for several terms. I was actually
- 21 asked to stand for a member election as a
- 22 potential member of the ASTM board when I was

1 in the International Trade Administration

2 because of my trade expertise, and I agreed to

Page 55

- 3 be a candidate for the board and I was elected
- 4 by the membership of the board.
- 5 Q. Who asked --
- 6 A. By the membership of ASTM.
- 7 Q. Who asked you to stand?
- 8 A. I -- it's -- I believe Jim Thomas
- 9 who was then the president of ASTM asked me if
- 10 I was willing to be a candidate.
- 11 Q. Were there other government
- 12 employees who were a member of the board of
- 13 ASTM at the time that you served as a member of
- 14 the board?
- 15 A. I would have to go back and look at
- 16 the membership at the time. That's almost ten
- 17 years ago. It's possible. I just can't
- 18 remember off the top of my head.
- 19 Q. Do you recall approximately how many
- 20 people comprised the board of ASTM at the time
- 21 that you served?

1 from memory.

22 A. I believe it was 12 or 15. Again,

- 2 Q. Have you served in -- have you
- 3 participated as a member at ASTM in any other
- 4 capacity other than with E50 and as a member of
- 5 the board in 2010 to 2012?
- 6 A. So for a couple of years toward the
- 7 end of my tenure at NIST, I was a member of E60
- 8 which is the sustainability committee.
- 9 Q. What did you do as a member of E60?
- 10 A. I commented on draft -- I voted on
- 11 draft documents.
- 12 Q. When you say, "draft documents,"
- 13 what kind of documents?
- 14 A. Standards.
- 15 Q. Was that voting on the revision of
- 16 draft standards?
- 17 A. So the sustainability committee was
- 18 created at the time that I became a member so
- 19 the initial effort was to develop new
- 20 standards.
- 21 Q. Okay. So you voted on drafts of new
- 22 standards --

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 16 of 122

Page 57

1 A. That's correct.

- 2 Q. -- as a member of E60?
- 3 A. I did.
- 4 Q. And at approximately what time was
- 5 that?
- 6 A. Probably 2015 to -- or 2014 to 2017
- 7 when I retired. Again, the time frame is
- 8 coming from memory.
- 9 Q. When you were a member of the E60,
- 10 did E60 end up developing any standards that
- 11 were finalized and released to the public?
- 12 A. I don't remember specifically.
- 13 Q. What considerations went into your
- 14 decisions when you were voting on draft
- 15 standards?
- 16 A. So sustainability is an area that
- 17 was of -- is of interest to the national -- to
- 18 NIST, and I looked at the draft documents to -
- 19 with a view to whether they were -- how they
- 20 were written and whether they were easy to
- 21 understand.
- 22 Q. What is the purpose of voting on

Page 58

- 1 draft standards as a member of E60?
- 2 MR. GRIFFIN: Objection.
- 3 MR. FEE: Objection to form.
- 4 THE WITNESS: The purpose of voting?
- 5 As I mentioned earlier, committees looked to
- 6 achieve a balance of interests and those
- 7 interests are -- it is the expectation that
- 8 those interests will vote on standards.
- 9 BY MR. BECKER:
- 10 Q. Do the members of E60 have to
- 11 approve a standard by majority vote in order
- 12 for the draft to be published --
- 13 MR. FEE: Objection to form.
- 14 MR. GRIFFIN: Objection.
- 15 BY MR. BECKER:
- 16 Q. -- as final?
- 17 A. You would have to check with ASTM
- 18 about that, what their requirements are for
- 19 moving a draft through the various stages of
- 20 the process.
- 21 Q. How were drafts of standards
- 22 developed when you were a member of E60?

- 1 MR. FEE: Objection to form.
 - 2 THE WITNESS: I was essentially a
 - 3 corresponding member of E60. I did not attend
 - 4 a committee meeting so I can't speak to how
 - 5 those drafts were developed.
 - 6 BY MR. BECKER:
 - Q. What does "corresponding member"
 - 8 mean?
 - A. It means I did not attend a meeting.
 - 10 I received electronic versions of documents and
 - 11 I voted on them.
 - 12 Q. Did you ever contribute any text to
 - 13 a standard when you were participating with
 - 14 ASTM?
 - 15 A. No, I did not.
 - 16 MR. FEE: Objection to form.
 - 17 BY MR. BECKER:
 - 18 Q. What aspects of the draft standards
 - 19 did you evaluate?
 - 20 MR. GRIFFIN: Objection.
 - 21 THE WITNESS: As I -- I'm not -- the
 - 22 question is not clear. Can you rephrase that.

Page 60

- 1 BY MR. BECKER:
- 2 Q. Sure. Were there certain criteria
- 3 you used when reviewing draft standards, draft
- 4 ASTM standards?
- 5 A. My background is heavily in
- 6 trade-related issues, also I have a background
- 7 in political science and economics, so I looked
- 8 at the text of the draft standards, as I
- 9 mentioned earlier, for readability,
- 10 understandability, those types of issues, those
- 11 types of aspects.
- 12 Q. Did you ever submit any comments
- 13 referring to -- did you ever submit any
- 14 comments when you were a member of E60
- 15 suggesting changes in any of the drafts that
- 16 you reviewed?
- 17 A. I did not.
- 18 Q. Was your participation as a member
- 19 of E60 limited to just voting?
- 20 A. Yes.
- 21 Q. Did you ever vote against a draft as
- 22 a member of E60?

Page 61

- 1 A. I don't recall.
- 2 Did you ever vote for a draft as a
- 3 member of E60?
- 4 A. Yes, I did.
- 5 Q. Other than as a member of E60 and a
- 6 member of E50 and a board member in 2010 to
- 7 2012, have you participated in ASTM in any
- 8 other capacity?
- A. I was an invited speaker at an ASTM
- 10 event hosting standards -- national standards
- 11 bodies from I believe Latin America, so I was
- 12 an invited speaker on behalf of NIST at that
- 13 ASTM event.
- 14 Q. Other than that and the involvement
- 15 we just previously discussed, is there any
- 16 other way in which you participated in ASTM?
- 17 A. No.
- 18 Q. How have you participated in IEEE?
- 19 MR. GRIFFIN: Objection.
- 20 THE WITNESS: As I mentioned, I was
- 21 on the IEEE Standards Association board of
- 22 governors for one term, I believe it was 2007,
- 1 2008. That is the extent of my engagement with 2 IEEE.
- 3 BY MR. BECKER:
- 4 Q. What do you do in that position at
- 5 the IEEE?
- A. So the board of governors of the
- 7 standards association oversees
- 8 standards-related activities of the IEEE, so we
- 9 received reports from the patent committee, we
- 10 received reports from the various committees
- 11 that are available at IEEE to advise on
- 12 standards activities.
- Q. When you say, "you oversee 13
- 14 standards-related activities," what does that
- 15 involve?
- 16 A. I should have said --
- 17 MR. GRIFFIN: Objection.
- 18 THE WITNESS: A better way to
- 19 support standards-related activities at the
- 20 IEEE. I mentioned the patent committee. At
- 21 the time that I was on the board of governors,
- 22 there was guite a bit of interest within the

- 1 standards association at -- in expanding the
 - 2 international visibility of IEEE, so I engaged

Page 63

- 3 with other members of the board in activities
- 4 related to international engagement and
- 5 visibility.
- 6 BY MR. BECKER:
- 7 Q. Is there any other way that you
- 8 participated as a member of the board of
- 9 governors at IEEE?
- A. Not that I remember, no. I think 10
- 11 that characterizes my engagement. Again, I was
- 12 -- understand primarily on the board of
- 13 governors because of my trade expertise.
- Q. How do you become a member of the
- 15 board of governors at IEEE?
- 16 A. Again, there is an election of the
- 17 members. The slate of proposed board of
- 18 governors, new board of governors members is
- 19 sent out to the membership for a vote. A staff
- 20 person at the IEEE Standards Association asked
- 21 me if I would stand for election to the board
- 22 of governors.
- Page 62
- 1 Q. Do you know who that staff person
- 2 was?
- 3 Α. Judy Gorman who was at that time the
- 4 executive director of the standards
- 5 association.
- When you refer to "the standards
- association," what are you referring to?
- It's a subcomponent of IEEE. 8
- 9 Q. Do you know why Judy Gorman asked
- 10 you to serve as a member of the board of
- 11 governors of IEEE?
- 12 MR. GRIFFIN: Objection.
- 13 THE WITNESS: I didn't ask her why
- 14 she asked me. I assumed it's because of my
- 15 trade expertise.
- 16 BY MR. BECKER:
- 17 Q. What board positions have you held
- 18 at ANSI?
- A. Board positions? 19
- 20 Q. Yeah.
- 21 MR. GRIFFIN: Objection.
- 22 THE WITNESS: I was a director at

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 18 of 122

Page 65

- 1 large on the board of ANSI. As I mentioned
- 2 earlier, as chair of the international policy
- 3 committee and also later as chair of the
- 4 national policy committee, those chairs are --
- 5 ex-officio are members of the board, so I was
- 6 both a director at large and I have also been
- 7 on the board as the IPC and the NPC chairs.
- 8 BY MR. BECKER:
- 9 Q. Have you had any other involvement
- 10 with -- as a member of the board of ANSI?
- MR. GRIFFIN: Objection. 11
- 12 THE WITNESS: Have I had any other
- 13 positions? Is that your question?
- 14 BY MR. BECKER:
- 15 Q. Yes.
- 16 A. So I neglected to mention earlier
- 17 because I did not remember until now, that I
- 18 was -- I served as a vice chair of ANSI as well
- 19 and as a vice chair. I was also a member of the
- 20 board.
- 21 Q. What is the role of a vice chair of
- 22 ANSI?

- A. So there are -- there are four vice
- 2 chairs at ANSI. And the four vice chairs.
- 3 along with the chairman of the board, the past
- 4 chair advice the president and CEO of ANSI on
- 5 issues that he raises with that small group.
- 6 Q. When you refer to "that small
- 7 group," what are --
- A. The four vice chairs, the chairman 8
- of the board and the past chair.
- 10 Q. When were you vice chair of ANSI?
- A. Let me think. It's in my risumi so 11
- 12 let's see. It would have -- certainly through
- 13 2016. So back up.
- 14 Probably, I would have to back it up
- 15 from there, but certainly through -- through
- 16 the end of 2016.
- 17 Q. Do you know approximately how many
- 18 years you served in that position?
- A. I think it's two two-year terms. 19
- 20 Q. Two separate two-year terms?
- 21 Yes A.
- 22 Q. Were those consecutive?

- 1 A. Yes.
 - 2 Q. How did you become the vice chair of

Page 67

Page 68

- 3 ANSI?
- A. I put my hat in the ring to be
- 5 nominated to be a vice chair of ANSI and I was
- 6 selected by the nominating committee of ANSI --
- 7 or recommended by the nominating committee of
- 8 ANSI.
- Q. Were you already a director at large
- 10 at the time that you became vice chair of ANSI?
- A. I would have to go back and look if
- 12 I was a member of the board as -- on the basis
- 13 of chairing a policy committee or if I was a
- 14 director at large. I don't have those dates at
- 15 my fingertips.
- 16 Q. What were your responsibilities as a
- 17 director at large of ANSI?
- A. So the ANSI board is very large. 18
- 19 There's 53 members of the ANSI board and I was
- 20 one of those 53 individuals. The board meets
- 21 twice a year and it receives briefings from the
- 22 staff of ANSI and the president and CEO on

Page 66

1 ANSI's activities.

- 2 Q. Did you attend each of those
- 3 meetings?
- A. I did. 4
- 5 Did you have any other
- 6 responsibilities as director at large of ANSI?
- 7 A. I'm not following your -- I was a
- 8 member of the board and --
- Other than attending those meetings?
- A. And chairing the policy committees 10
- 11 when I -- at the time I was a chair? No.
- 12 Q. Was chairing the policy committees a
- 13 required component of being a director of the
- 14 board?
- A. No. As I mentioned earlier, there
- 16 are different types of board members. Chairs
- 17 of policy committees are automatically members
- 18 of the board ex-officio, and then other members
- 19 of the board are directors at large who are
- 20 elected based -- directly to the board.
- Q. As a member of the ANSI board, did
- 22 you vote on policy decisions by ANSI?

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 19 of 122

Page 69

1 MR. GRIFFIN: Objection.

2 THE WITNESS: So as I mentioned,

- 3 members of the board would receive briefings on
- 4 ANSI's activities. ANSI's strategic objectives
- 5 were presented to the board every year, ANSI's
- 6 activities in ISO and ISE were briefed to the
- 7 board on a regular basis.
- 8 There probably were instances where
- 9 the board was asked to vote. I don't remember
- 10 the specifics of those votes. I would have
- 11 recused myself from any fiduciary votes that
- 12 the board -- the board approves the budget
- 13 every year. I did not vote on that.
- 14 BY MR. BECKER:
- 15 Q. Did you ever participate in any
- 16 votes of the board of ANSI?
- 17 A. I'm sure I did.
- 18 Q. Do you recall any of those votes
- 19 that you participated in?
- 20 MR. GRIFFIN: Objection.
- 21 THE WITNESS: Not off the top of my
- 22 head.

Page 70

- 1 BY MR. BECKER:
- 2 Q. How did you become the VP of
- 3 government relations and public policy at ANSI?
- 4 A. I applied for the position and I was
- 5 selected.
- 6 Q. Were there other candidates for that
- 7 position?
- 8 A. I don't know.
- 9 Q. When did you apply for that
- 10 position?
- 11 A. In the fall of 2016. I had made my
- 12 retirement plans and I was looking at
- 13 post-government employment. It was one of
- 14 several positions I applied for.
- 15 Q. What were the other positions that
- 16 you applied for?
- 17 A. I applied for positions at other
- 18 501(c)(3) organizations, that -- well, I
- 19 applied for a position at the Association for
- 20 the Advancement of Medical Instrumentation as
- 21 well.
- 22 Q. Were there any other positions that

- 1 you applied for at that time?
- A. No.
- 3 Q. What is the Association for the
- 4 Advancement of Medical Instrumentation?
- 5 A. It's a nonprofit organization that
- 6 engages in activities, including standards
- 7 development activities related to the health
- 8 technology sector.
- 9 Q. When did you learn that you had
- 10 gotten the position as VP of government
- 11 relations and public policy at ANSI?
- 12 A. As I said, I had already made my
- 13 retirement plans. This was post-government
- 14 employment. I filed all the required
- 15 disclosure forms with the Department of
- 16 Commerce. I learned in December of 2016 that I
- 17 had been -- the job was offered to me in
- 18 December of 2016.
- 19 Q. Do you know when you accepted the
- 20 job?
- 21 A. I can't -- presumably about that
- 22 time. I can't remember specifically. As I

Page 72

- 1 said, I filed all the necessary disclosure
- 2 forms with the Department of Commerce prior to
- 3 engaging in a job search.
- 4 Q. What are the -- those disclosure
- 5 forms?
- 6 A. What organizations I was seeking a
- 7 position with and a disclaimer that I would --
- 8 information that I would recuse myself from any
- 9 decisions related to those organizations.
- 10 Q. Did you recuse yourself from any
- 11 decisions related to ANSI during that time?
- 12 A. I was the associate director for
- 13 management resources so I had -- at the time at
- 14 NIST, so I had no direct responsibilities with
- 15 respect to ANSI decisions in standards
- 16 activities.
- 17 Q. What was your job as associate
- 18 director for management resources?
- 19 A. So the associate director for
- 20 management resources is directly responsible
- 21 for all of the operational activities at NIST,
- 22 which are facilities and property management,

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 20 of 122

Page 73

- 1 acquisitions and grants management, health and
- 2 safety, human resources. The chief financial
- 3 officer reported to me as did the chief
- 4 information officer, so all of the operational
- 5 activities at NIST.
- 6 Q. So does that mean that you oversaw
- 7 the human resources department and other
- 8 departments?
- 9 A. That's correct. I reported to --
- 10 the chief officers reported to me.
- 11 MR. GRIFFIN: Objection.
- 12 BY MR. BECKER:
- 13 Q. What are your responsibilities as
- 14 the VP of government relations and public
- 15 policy at ANSI?
- 16 A. I'm responsible for ANSI's
- 17 relationships with federal -- with government
- 18 agencies not just federal agencies. Federal --
- 19 government agencies as well as keeping track of
- 20 any Congressional activities that might be
- 21 relevant to standards -- the standardization
- 22 community for ANSI.

Page 74

- 1 Q. When you refer to "the
- 2 standardization community," what are you
- 3 referring to?
- 4 A. I am referring to standards as well
- 5 as -- and assessment of conformity to
- 6 standards. That's why we use the term
- 7 standardization.
- 8 Q. When you refer to "assessment of
- 9 conformity to standards," what are you
- 10 referring to?
- 11 A. Testing, product certification,
- 12 inspection, verification and validation. Those
- 13 are confirming assessment activities.
- 14 Q. Does ANSI itself engage in any
- 15 assessment of conformity to standards?
- 16 A. No. ANSI, through its division, the
- 17 American National Accreditation Board accredits
- 18 conformity assessment activities. It does not
- 19 engage in the activities that I listed.
- 20 Q. When you say it "accredits those
- 21 activities," what are you referring to?
 - 2 A. There are a suite of international

Page 75

- 1 standards establishing a hierarchy for what we
- 2 call conformity assessment activities
- 3 accreditation. It is a -- there are standards
- 4 at the accreditation level, ISO standards,
- 5 which speak to determining the competence of
- 6 conformity assessment organizations, so ANSI is
- 7 an accreditor.
- 8 Q. What is a conformity assessment
- 9 organization?
- 10 A. It could be a test lab, a product
- 11 certifier, an inspection body, a validation and
- 12 verification body, personnel certification.
- 13 There are a range of types of activities,
- 14 conformity assessment activities, all of which
- 15 have international standards associated with
- 16 them.
- 17 Q. Are there any instances you are
- 18 aware of in which a conformity assessment
- 19 organization requires ANSI accreditation in
- 20 order to operate?
- 21 A. Are you asking -- can you repeat the
- 22 question or clarify the question.

- 1 Q. Are there any instance you are aware
- 2 of in which a conformity assessment
- 3 organization requires ANSI accreditation in
- 4 order to operate?
- 5 A. The question is still not clear. So
- 6 ANSI accreditation -- you're asking me if ANSI
- 7 accreditation is mandatory in specific cases?
- 8 Q. Yes.
- 9 A. Not specifically ANSI accreditation.
- 10 Q. What do you mean by that?
- 11 A. Accreditation -- well, the U.S.
- 12 system for conformity assessment, like the U.S.
- 13 standards system, has a multiplicity of --
- 14 there is not a national accreditation body in
- 15 the United States. There are multiple
- 16 accreditation bodies of which the ANSI national
- 17 accreditation board is one.
- 18 Accreditation generally may be --as
- 19 demonstration of a competence through
- 20 accreditation generally may be required by
- 21 purchasers, by specifiers, by particular
- 22 interests, and ANSI may be one of those

Page 77 Page 79 1 accreditors. It's not the only one. 1 activities with those of the private sector. 2 Q. Is accreditation ever required by 2 The most recent revision of OMB 3 Circular A119 has an extensive section on government law or regulation? 4 MR. FEE: Objection to form. 4 conformity assessment activities in it which 5 THE WITNESS: Do you want to 5 reflect both developments in the -- at the 6 rephrase, please. 6 World Trade Organization's technical barriers 7 BY MR. BECKER: 7 to trade agreement as well as other government 8 Q. Yeah. Is accreditation ever 8 policies, and those documents encourage federal 9 required by government law? 9 agencies to rely on private sector conformity 10 MR. FEE: Objection to form. 10 assessment activities wherever feasible. THE WITNESS: I can't -- I don't 11 11 BY MR. BECKER: 12 know the answer whether any law requires 12 Q. Going back to my question: Are 13 accreditation. There are regulations where 13 there specific examples of regulations, other 14 accreditation is determined to be a means of 14 than the Food Safety Modernization Act, that 15 demonstrating competence. 15 you know of that require accreditation? 16 I would have to go back and read --16 MR. GRIFFIN: Objection. 17 the Food Safety Modernization Act might be one 17 MR. FEE: Objection to form. 18 example, but I'm more familiar with the 18 THE WITNESS: So the Federal 19 regulation activities than I am with the laws. 19 Communications Commission directs accredit --20 20 that telecommunication certification bodies be BY MR. BECKER: 21 Q. Are there any specific regulations 21 accredited. FCC's recognition of testing 22 that you know of, sitting here today, that 22 laboratories that do electromagnetic Page 78 Page 80 1 compatibility testing, requires accreditation. 1 require accreditation in this capacity? 2 2 EPA's Energy Star Program, but EPA administers MR. GRIFFIN: Objection. 3 MR. FEE: Objection to form. 3 that program. 4 THE WITNESS: I mentioned the Food 4 BY MR. BECKER: 5 5 Safety Modernization Act when the FDA Q. Does ANSI provide the accreditation 6 established its program for oversight of food 6 in either the FCC examples that you just 7 safety. There is a provision for accreditation provided or the Food Safety Modernization Act? A. Yes, both. ANSI has been evaluated 8 of competent organizations. The FDA 8 9 administers that overall program. I mean -- go 9 and is recognized by both the FCC and EPA as a 10 ahead. 10 qualified accreditation body as are others. 11 BY MR. BECKER: 11 Do you know approximately how many 12 Q. Are there any other specific 12 other qualified accreditation bodies there are? 13 regulations that you can think of, sitting here 13 Not off the top of my head. today, that require accreditation? 14 Do you have an estimate? 15 MR. GRIFFIN: Objection. 15 A. Let's see. In the Food Safety 16 Management Act, I believe one other 16 MR. FEE: Objection. 17 accreditation body is -- has demonstrated 17 THE WITNESS: I'll speak generally. 18 A component of the National Technology Transfer 18 technically competent, but I -- again, you 19 and Advancement Act, we covered the standards 19 would have to look on the -- at the FDA 20 website. 20 related -- directions under Section 12. 21 Section 12 also directs federal agencies to Q. Do you recall what -- what 21 22 accreditation body that is? 22 coordinate their conformity assessment

Page 81 Page 83 A. I believe it's the American 1 opinion on that. 1 BY MR. BECKER: 2 Association for Laboratory Accreditation. Does ANSI charge a fee for providing 3 Do you know what -- approximately 3 4 what portion of ANSI's revenues are derived 4 accreditations? 5 from accreditation? 5 A. All accreditation bodies charge fees 6 for accreditation. I believe that information is 7 Do you know what ANSI's fee is? 7 available in the annual report. I don't have Q. 8 I do not. 8 that number at my fingertips. Α. 9 9 Q. Do you have an estimate? And can I take that as a yes, that 10 ANSI does charge a fee to provide 10 Α. I would have to go look at the 11 accreditation? 11 annual report. Is that annual report provided to 12 Α. Yes, accreditation is a 12 Q. 13 fee-for-service activity. 13 the public? Q. Is ANSI listed in the Food Safety 14 Α. Yes. 14 15 Modernization Act as a body that can provide 15 Q. Under the Food Safety Modernization 16 accreditation? 16 Act and its related regulations, is there any 17 17 other means for a conformity assessment Α. Not under the Act, no. 18 organization to operate other than by 18 Q. Is ANSI listed under a regulation as 19 a body that can provide accreditation under the 19 accreditation by ANSI or the other accreditors 20 requirements of the Food Safety Modernization 20 that you had referenced? 21 And? 21 MR. GRIFFIN: Objection. 22 Α. As I mentioned, the Food and Drug 22 MR. FEE: Objection to form. Page 82 Page 84 1 Administration has evaluated ANSI with respect THE WITNESS: I can't answer that. 2 to its competence to provide services related 2 You would have to go look at the FDA website 3 to the Food Safety Modernization Act and its --3 BY MR. BECKER: 4 ANSI -- the American National Accreditation Q. What's the role of a conformity 5 assessment organization in the scope of the 5 Body, ANAB, the division of ANSI is listed I 6 Food Safety Modernization Act? 6 believe by the FDA. 7 A. I can't answer that. 7 Q. Listed in a regulation? 8 8 A. No, listed on its website. MR. FEE: Objection to form. 9 THE WITNESS: I don't have the 9 Q. Okay. Do any standards development 10 organizations provide conformity assessment --10 details on the Food Safety Modernization Act. 11 provide accreditation for conformity assessment That wasn't within my area of expertise. 11 12 BY MR. BECKER: 12 organizations? 13 MR. FEE: Objection to form. 13 Q. Do you know what the term THE WITNESS: Are you asking me if "incorporation by reference" means? 14 MR. FEE: Objection to form. 15 any standards development organizations are 15 THE WITNESS: In what context? 16 also accreditors? 16 17 BY MR. BECKER: 17 BY MR. BECKER: 18 18 Q. Yes. Q. In the context of law. MR. FEE: Same objection. A. No. Not to my knowledge. 19 19 20 MR. GRIFFIN: Objection. 20 Q. Why is that, do you know? THE WITNESS: I am familiar with the 21 MR. FEE: Objection to form. 21 22 22 National Archives and Records Administration THE WITNESS: I -- I don't have an

Page 85 Page 87 1 Incorporation by Reference Handbook for 1 THE WITNESS: Not having been a 2 incorporation into regulations, and I am 2 regulation writer, I can't speak directly to 3 familiar with the OMB Circular A119 discussion 3 that. 4 of incorporation by reference. 4 BY MR. BECKER: 5 BY MR. BECKER: 5 Q. What is "incorporation by 6 reference?" 6 Q. What's the National Archives and 7 7 Records Administration's Incorporation by A. Incorporation by reference is 8 Reference Handbook? 8 incorporating a document by reference to that Α. The National Archives and Records 9 document in a -- in a notice of proposed 10 Administration houses the Office of Federal 10 rulemaking or a rule itself. 11 Q. What is the effect of incorporation 11 Register. The Incorporation by Reference 12 Handbook is NARA's instructions to agencies as 12 by reference? 13 13 to the appropriate way to incorporate material MR. GRIFFIN: Objection. 14 by reference into regulations which will become 14 MR. FEE: Objection to form. 15 part of the Code of Federal Regulations. THE WITNESS: I can only speak to 15 16 the effect of incorporation by reference as 16 Q. When you say, "it's NARA's 17 defined in the NARA IBR handbook for materials 17 instructions to agencies," what do you mean by 18 that? 18 that are published in the Federal Register and A. As I mentioned, the National 19 in the Code of Federal Regulations. It's 19 20 Archives and Records Administration houses the 20 incorporated in by reference into the Code of 21 Office of Federal Register and in that context, 21 Federal Regulations. I can't speak beyond 22 it provides instructions to regulation writers 22 that. Page 86 Page 88 1 and agencies as to how to prepare materials for 1 BY MR. BECKER: 2 publication in the Office of Federal Register, 2 Why is incorporation by reference 3 and at the end of the rulemaking, in the Code 3 used? 4 of Federal Regulations. 4 MR. FEE: Objection to form. 5 MR. GRIFFIN: Objection. Q. When you say, "it provides 6 instructions," are these instructions that the 6 THE WITNESS: Again, I refer to the 7 regulation writers and agencies are required to 7 NARA handbook and the instructions. There are 8 follow or is this just guidance? 8 a variety of reasons and for reasons of 9 efficiency, for reasons of reducing the volume 9 MR. FEE: Objection to form. THE WITNESS: The IBR -- the NARA 10 10 of the materials that are actually published, 11 IBR handbook is available on the website. You 11 and very importantly for copyright reasons, 12 can review it directly. It is instructions for 12 documents that are copyrighted have protection 13 how to prepare material to be published in the 13 under the law. 14 Federal Register and in the Code of Federal 14 BY MR. BECKER: 15 Regulations. 15 Q. Can you speak more to that? 16 MR. FEE: Objection to form. BY MR. BECKER: 16 17 Q. And my question was: Are those 17 MR. GRIFFIN: Objection. THE WITNESS: What -- I'm not clear 18 instructions -- excuse me. 18 Are the writers of regulations and 19 about what additional --19 20 agencies required to follow the instructions in 20 BY MR. BECKER: 21 that handbook? 21 Q. When you say, "very importantly for 22 22 copyright reasons," what do you mean by that? MR. FEE: Objection to form.

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 24 of 122 Page 89 Page 91 1 So NARA -- the NARA handbook lists 1 handbook? 2 several considerations that agencies should 2 A. The staff of the Office of Federal 3 take under advisement, as does the OMB 3 Register is my understanding. 4 circular, with respect to incorporating 4 Q. Do you know how the NARA handbook is 5 materials by reference, and one of those is 5 drafted? 6 copyright obligations, obligations to protect, 6 A. I do not. 7 to -- obligations to protect copyright. 7 MR. GRIFFIN: Objection. Q. What do you mean by "obligations to 8 8 BY MR. BECKER: protect copyright?" 9 9 Q. Do you know who has input on the 10 A. Well, copyrighted documents are 10 contents of the NARA handbook? 11 protected by the Copyright Act. 11 MR. GRIFFIN: Objection. Q. So how does incorporation by 12 12 THE WITNESS: I do not. 13 reference relate to an obligation to protect 13 BY MR. BECKER: 14 copyright? 14 Q. Do you have any estimate as to when 15 A. Incorporation by reference is in 15 the NARA handbook was first issued? 16 lieu of producing -- reproducing an entire 16 MR. GRIFFIN: Objection. 17 copyrighted document in a federal document. THE WITNESS: I do not. l 17 18 mean --18 BY MR. BECKER: 19 Q. And again, how does incorporation by 19 Q. How long have you been referring to 20 reference relate to an obligation to protect 20 the NARA handbook? 21 copyright? 21 MR. GRIFFIN: Objection. THE WITNESS: As a source document? 22 MR. FEE: Objection. 22 Page 90 Page 92 1 THE WITNESS: I just -- I thought I 1 The NARA handbook was -- is updated 2 just answered that. 2 periodically. The NARA handbook was updated in 3 BY MR. BECKER: 3 -- following the publication -- I think Q. Are you saying that by not 4 immediately prior to the publication of the 5 publishing a document in full in a law or 5 current version of the OMB circular. OMB 6 regulation, the entity that is publishing that 6 deferred to NARA to update its regulations 7 law or regulation thereby avoids copyright 7 prior to completing the update of the OMB 8 infringement? 8 circular and I -- the current version of the 9 MR. FEE: Objection. 9 NARA handbook is dated 2018. 10 MR. GRIFFIN: Objection. 10 BY MR. BECKER: THE WITNESS: Well, I'm not a 11 11 Q. Did you refer to the NARA handbook 12 copyright lawyer so I can't speak to the 12 as an authoritative source of information when 13 details of that. I refer you to the OMB 13 you were a government employee? 14 circular which has a very extensive discussion 14 MR. GRIFFIN: Objection. 15 of considerations for agencies and 15 THE WITNESS: As I said, I never was 16 incorporating material by reference as well as 16 in a position to be a regulation writer. 17 the NARA handbook. 17 Relevant documents are pointed to on 18 BY MR. BECKER: 18 standards.gov and so it's the National 19 Q. Do you know when the NARA handbook 19 Technology Transfer and Advancement Act, the 20 was first published? 20 OMB circular and the NARA handbook. There may A. I do not. 21 be other documents as well, but I have never 21

Q. Do you know who drafts the NARA

22

22 been a regulation writer.

Page 95 Page 93 1 Q. But my question was: Is there a 1 BY MR. BECKER: 2 2 Q. Did you ever refer to the NARA more authoritative document other than that? 3 MR. FEE: Objection to form. 3 handbook when you were a government employee? 4 MR. GRIFFIN: Objection. 4 A. Personally, no, because I never 5 THE WITNESS: I don't know. 5 wrote a regulation. 6 BY MR. BECKER: 6 Q. Did you ever read the NARA handbook 7 Q. Do you consider the IBR handbook to 7 while you were a government employee? 8 be an authoritative document? 8 A. I have read the NARA handbook, yes. 9 MR. FEE: Objection to form. While you were a government 9 10 THE WITNESS: I consider the IBR 10 employee? 11 handbook to be relevant to agencies that are 11 A. Yes. 12 incorporating material by reference. 12 Q. Why was it that you read the NARA 13 BY MR. BECKER: 13 handbook while a government employee? 14 Q. What kind of documents are A. As I mentioned, there are -- the 15 incorporated by reference into law? 15 relevant documents are the National Technology 16 MR. FEE: Objection to form. 16 Transfer and Advancement Act, the OMB circular 17 MR. GRIFFIN: Objection. 17 and the NARA handbook. There are related THE WITNESS: I'm familiar with 18 18 executive orders as well as 1512866 and other 19 regulations, not the law. 19 memos. I read all those documents. I was 20 BY MR. BECKER: 20 familiar with those documents at a high level 21 Q. What's the distinction between law 21 because NIST is directed by Congress to promote 22 and regulations? 22 reliance on private voluntary consensus Page 94 Page 96 1 1 standards by federal agencies and those are MR. GRIFFIN: Objection. 2 THE WITNESS: At the federal -- I am 2 operative documents. 3 Q. When you say, "operative documents," 3 familiar with the federal level, federal agency 4 what do you mean? 4 activities only, which typically, agencies 5 Those are relevant documents. 5 issue regulations pursuant to laws that Α. 6 Okay. How is the NARA handbook 6 Congress has passed. 7 relevant to the promotion of reliance on 7 BY MR. BECKER: 8 private voluntary consensus standards by 8 Q. So by laws, are you referring to 9 federal agencies? 9 statutes? 10 It speaks to good practices in 10 MR. FEE: Objection. 11 incorporated material by reference in the Code 11 THE WITNESS: I'm referring to 12 of Federal Regulations and the material may 12 legislation that passes Congress and is signed 13 include standards. 13 by the President. 14 14 Q. Is there a more authoritative source BY MR. BECKER: 15 of information on the practices for 15 Q. Okay. When I - today, when I refer 16 incorporation by reference of material into 16 to "law." 17 regulations? 17 I will be including regulations in the term 18 MR. FEE: Objection to form. 18 law. MR. GRIFFIN: Objection. 19 If I want to refer to statutes or 19 THE WITNESS: I have listed the 20 20 legislations specifically or regulations 21 documents I am aware of. 21 specifically, I will use those terms. 22 BY MR. BECKER: 22 Does that make sense to you?

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 26 of 122 Page 97 Page 99

- 1 A. I understand what you said. I will
- 2 continue to refer to them as regulations though 3 because I see a difference.
- What kind of documents are 4
- 5 incorporated by reference into regulations?
- 6 MR. FEE: Objection to form.
- 7 THE WITNESS: So I can't speak to
- 8 that general question. I haven't looked at
- 9 every regulation in terms of what documents
- 10 might be incorporated. 11 BY MR. BECKER:
- 12 Can you give me examples of
- 13 documents that are incorporated by reference
- 14 into regulation?
- 15 A. Yes. There are -- some standards
- 16 are incorporated by reference into regulation.
- 17 Are you aware of other documents,
- 18 other than standards, that are incorporated by
- 19 reference into regulation in the United States?
- 20 Not specifically.
- 21 Q. Are you aware of specific -- excuse
- 22 me.

1 regulations which are subject to the

- 2 Administrative Procedures Act, which means that
- 3 they go out for public comment. The agency
- 4 responds to those comments and then moves
- 5 through the process to a final rule. So
- 6 agencies are responsible for proposing
- 7 regulations and proposing material incorporated
- 8 in those regulations. Those actions are
- 9 subject to the Administrative Procedures Act.
- 10 BY MR. BECKER:
- 11 Q. So when you say that "an agency is
- 12 responsible for proposing material incorporated
- 13 into regulations," who makes the final decision
- 14 as to what material will be incorporated into
- 15 those regulations?
- 16 MR. GRIFFIN: Objection.
- 17 MR. FEE: Objection to form.
- 18 THE WITNESS: I can't speak to
- 19 internal agency processes as to who the
- 20 decisionmakers are. Likely, various from
- 21 agency to agency. It will be an internal
- 22 review process for a notice of proposed

Page 98

- 1 Are you generally aware of other
- 2 documents that are incorporated by reference
- 3 into regulation in the United States other than
- 4 standards?
- 5 A. I am aware that there is the
- 6 possibility that other documents may be
- 7 incorporated by reference. I don't have any
- 8 direct experience.
- Q. Do you know what types of other
- 10 documents might be incorporated by reference 10
- 11 into regulation in the United States?
- A. I do not. 12
- 13 MR. GRIFFIN: Objection.
- 14 BY MR. BECKER:
- 15 Q. Who makes the decision to
- 16 incorporate a document by reference into a
- regulation in the United States? 17
- MR. GRIFFIN: Objection. 18
- MR. FEE: Objection. 19
- THE WITNESS: Who makes the 20
- 21 decision? So agencies -- regulatory agencies
- 22 have regulatory staff that write draft

- Page 100 1 rulemaking, and for certain rules over a
- 2 certain economic threshold, the Office of
- 3 Management and Budget will also reviews those
- 4 proposed rules.
- 5 BY MR. BECKER:
- Q. Do members of the public have input 6
- 7 as to what documents will be incorporated by
- 8 reference into regulations in the United
- 9 States?
 - MR. GRIFFIN: Objection.
- 11 MR. FEE: Objection to form.
- 12 THE WITNESS: I mentioned that
- 13 regulations are subject to the Administrative
- 14 Procedures Act which means they are subject to
- 15 notice and comment by the public.
 - BY MR. BECKER:
- 17 Q. And what does notice and comment by
- 18 the public involve?
- 19 MR. GRIFFIN: Objection.
- 20 THE WITNESS: An agency develops and
- 21 publishes in the Office of Federal Register, a
- 22 notice of proposed rulemaking, allows a certain

16

USCA Case #22-7063 Document #1982413 Filed: 01/20/2023 Page 63 of 395 Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 27 of 122 Page 103 Page 101 1 Q. Are you aware of any instance in 1 period of time for comment on that proposed 2 rule, and then under the Administrative 2 which there has been a change in a proposed 3 incorporation by reference of a standard in a 3 Procedures Act must take the comments into 4 regulation as a result of input by the standard 4 account and respond to those comments and move 5 development organization that publishes that 5 through the process. That's what I mean. 6 standard that would be incorporated by 6 BY MR. BECKER: 7 7 reference? Q. Earlier, you had discussed the A. I don't have the details of a 8 8 reasons for incorporation by reference and -particular -- any particular rulemaking 9 as opposed to stating the contents of the 10 process, so I can't speak to that. 10 document that would be incorporated verbatim Q. Sitting here today, are you aware of 11 into the law or regulation, and you had 11 12 any such instances? 12 mentioned that those reasons included MR. GRIFFIN: Objection. 13 efficiency and also copyright concerns; is that 13 14 correct? 14 THE WITNESS: No. 15 A. Yes. 15 BY MR. BECKER: 16 Q. Are you aware of any instances in 16 MR. GRIFFIN: Objection. 17 which a standards development organization has 17 BY MR. BECKER: 18 asked that its standard not be incorporated by Q. Are there other reasons other than 18 19 reference into a regulation? 19 efficiency and copyright concerns? 20 20 MR. GRIFFIN: Objection. A. Not personally, no. 21 THE WITNESS: The OMB circular has 21 Q. Are you aware of any change in a 22 an extensive section on considerations that 22 proposed incorporation by reference of a Page 102 Page 104 1 agencies need to take into account when 1 standard in a regulation as a result of any 2 proceeding under the Administrative Procedure 2 incorporating standards by reference into 3 regulations. I don't have at my fingertips 3 Act? 4 that full list, but I would refer you to that. 4 MR. GRIFFIN: Objection. THE WITNESS: I am not personally 5 5 BY MR. BECKER: 6 Q. Are you referring to A119? 6 aware of that. 7 BY MR. BECKER: A. I'm referring to OMB Circular A119, 7 8 correct. Q. Are you generally aware of any 8 instance where a standards development 9 Q. What is the OMB Circular A119? 10 OMB Circular A119 is instructions to 10 organization has asked that its standard not be 11 federal agencies on use of voluntary consensus 11 incorporated by reference into a regulation? A. No. 12 standards and participation and standards 12 13 activities. 13 MR. GRIFFIN: Objection. Q. Are you aware of any change in a 14 BY MR. BECKER: 15 Q. Are you generally aware of any

14

15 proposed incorporation by reference of a

16 standard in a regulation as a result of public

17 comment?

18 MR. GRIFFIN: Objection.

19 THE WITNESS: I wouldn't have that

20 information, since I have never worked at an

21 agency that issues regulations.

22 BY MR. BECKER:

20

So you are not aware of any instance 21 where a standards development organization has

22 asked that its standard be incorporated by

16 instances where a standards development

17 organization has asked that its standard be

18 incorporated by reference in a regulation?

19

A. No.

Page 105 Page 107 1 reference into a regulation? 1 In my memory, those issues were not 2 MR. GRIFFIN: Objection. 2 discussed at the board level. THE WITNESS: So my responsibilities 3 3 Q. Was incorporation by reference ever 4 at NIST and the responsibilities of the 4 discussed at the board level at either of the 5 standards coordination office were at a very 5 standards development organizations that you 6 high policy level. We did not engage in were a board member of? 7 specific -- specific engagements between 7 A. Not that I represent. 8 standards development organizations and 8 Q. Was incorporation by reference ever 9 agencies. discussed at the board level at ANSI? 10 BY MR. BECKER: 10 There are several board meetings 11 Q. What about in your role at ANSI or 11 which reports on incorporation by reference 12 at any of the standards development 12 were provided. I believe Public.Resource.Org 13 organizations that you have participated with? 13 has those documents as a result of a FOIA MR. GRIFFIN: Objection. 14 14 request made to NIST. 15 MR. FEE: Objection. 15 Q. Does -- does ANSI advocate for the 16 THE WITNESS: M I aware of any 16 incorporation by reference of standards into 17 instance in which a standards development regulation? 17 18 organization asked to have a standard? No. 18 MR. GRIFFIN: Objection. 19 BY MR. BECKER: 19 MR. FEE: Objection to form. 20 Q. Have you ever discussed with anyone 20 THE WITNESS: ANSI advocates for 21 the possibility of a standards development 21 federal agencies reliance on voluntary 22 organization asking that its standard not be 22 consensus standards in carrying out their Page 106 Page 108 1 mission responsibilities. incorporated by reference into a regulation? 2 MR. GRIFFIN: Objection. 2 BY MR. BECKER: 3 THE WITNESS: Not to my knowledge. 3 Q. When you say, "reliance," what do 4 you mean by that? 4 BY MR. BECKER: A. So depending on the agency, organic 5 5 Q. Did you ever come to hear directly 6 legislation and their authorities, there are 6 or indirectly that a standards development 7 various ways that agencies can rely on 7 organization asked that its standard not be 8 voluntary standards to carry out their 8 incorporated by reference into a regulation? 9 missions. 9 MR. GRIFFIN: Objection. THE WITNESS: Not to my knowledge. Q. Does that -- including incorporation 10 10 11 by reference --11 BY MR. BECKER: 12 Α. Yes. 12 Q. Is there any benefit to a standards 13 development organization in having its standard 13 Q. -- in the regulations? incorporated by reference into a regulation? That includes incorporation by 14 14 MR. FEE: Objection to form. 15 reference into regulations. 15 What are the other ways that an THE WITNESS: So since I have never 16 16 17 agency could rely on voluntary standards to 17 been employed by a standards development 18 carry out its mission? 18 organization, I can't speak to the benefit that 19 MR. FEE: Objection to form. 19 might accrue. 20 THE WITNESS: In the guidance area, 20 BY MR. BECKER:

21

Q. Even despite being a board member of

21 agencies can point to standards that are

22 relevant to an agency mission space and

Page 109 Page 111 1 identify those for interested members of the 1 with agency -- with those particular agencies. 2 regulated community. 2 MR. GRIFFIN: Just pause for one 3 BY MR. BECKER: 3 second. Q. When you say, "point to standards 4 4 Before you answer, just pause for 5 that are relevant to an agency mission and 5 one second. 6 identify those for interested members of the 6 THE WITNESS: Sorry. 7 regulated community," what's the difference 7 BY MR. BECKER: 8 between that and incorporation by reference? 8 Q. Are you aware of any instances where A. Incorporation by reference is a very 9 an agency both refers to standards and uses 10 specific term. It's for documents that are 10 incorporation by reference? 11 incorporated by reference into the Code of 11 A. Not off the top of my head. I'm 12 Federal Regulations, so that is different than 12 sure there are instances where that occurs. 13 identifying standards as part of guidance. MR. GRIFFIN: We just hit the 13 14 Q. Why wouldn't an agency just identify 14 two-hour mark, so whenever you --15 a standard as part of guidance? MR. BECKER: Sure. We can take a 16 MR. GRIFFIN: Objection. 16 break in just a few minutes unless someone is 17 THE WITNESS: It depends on the 17 dying to take a break right now. 18 agency. What their -- their organic act and 18 MR. GRIFFIN: No, no. 19 the -- Congress, the direction Congress has 19 BY MR. BECKER: 20 given to them as to how to carry out their 20 Q. You said that ANSI advocates for 21 regulatory responsibilities so it's unique, it 21 federal agencies to rely on consensus standards 22 depends on the agency. 22 in carrying out their mission responses, and Page 112 Page 110 1 BY MR. BECKER: 1 that there are various ways that agencies can 2 2 rely on voluntary standards to carry out their Q. I'm not certain I understand. 3 You would have to look to the 3 missions. 4 particular agency, scope of responsibilities 4 One way of relying on those 5 and how they are directed by Congress to carry 5 standards is by incorporation by reference and 6 the other is by simply referring to those 6 out those responsibilities. It differs from standards, correct? 7 agency to agency. 7 MR. FEE: Objection. Q. So why would an agency -- why would 8 8 9 MR. GRIFFIN: Objection. 9 an agency just refer to a standard rather than THE WITNESS: "An" other way, not 10 using incorporation by reference? 10 11 "the" other way. 11 A. It may not --12 BY MR. BECKER: 12 MR. GRIFFIN: Objection. 13 MR. FEE: Objection to form. 13 Q. And what are -- other than 14 incorporation by reference and referring to 14 THE WITNESS: It may not be 15 these standards, are there other ways that an 15 permitted under their authorizing legislation. 16 agency could rely on voluntary standards to 16 BY MR. BECKER: 17 carry out its mission? 17 Q. Why wouldn't referring to a standard 18 A. So that is outside of my area of 18 be permitted under authorizing legislation? 19 A. Well, I can't speak to that. 19 expertise.

MR. GRIFFIN: Objection.

MR. FEE: Objection to form.

THE WITNESS: You'd have to check

20

21

22

Q. Are you aware of any other ways,

21 other than referring to standards or

22 incorporating standards by reference into

20

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 30 of 122

Page 113

1 regulation?

- 2 A. So I'm not going to guess as to
- 3 possible ways agencies may rely. It differs
- 4 from agency to agency.
- 5 Q. Does ANSI ever advocate for an
- 6 agency referring to a standard rather than
- 7 incorporating a standard by reference into
- 8 regulation?
- 9 A. That's the agency's decision.
- 10 Q. Is that a no?
- 11 A. That's a no.
- 12 Q. Does ANSI ever advocate for an
- 13 agency incorporating a standard by reference
- 14 into regulation rather than simply referring to
- 15 the standard?
- 16 A. No. I said that's the agency's
- 17 decision.
- 18 Q. Does ANSI ever discuss the benefits
- 19 or detriments of incorporation by reference
- 20 versus other reference to a standard in
- 21 regulation?
- 22 MR. GRIFFIN: Objection.

Page 114

- 1 THE WITNESS: ANSI as an institute?
- 2 I referred to the OMB Circular A119 and other
- 3 relevant documents I referred to earlier that
- 4 provides the overall context for this situation
- 5 so ANSI operates within that context.
- 6 BY MR. BECKER:
- 7 Q. And my question is: Does ANSI, as
- 8 an organization, ever discuss the benefits or
- 9 detriments of incorporation by reference versus
- 10 other reference to a standard in regulation?
- 11 MR. GRIFFIN: Objection.
- 12 THE WITNESS: With agencies?
- 13 BY MR. BECKER:
- 14 Q. Or generally.
- 15 A. No, not at that level of
- 16 specificity.
- 17 Q. Do they do so at a different level
- 18 of specificity?
- 19 A. No, you are asking for my personal
- 20 recollection.
- 21 MR. GRIFFIN: Objection.
- 22 THE WITNESS: The institute does not

- 1 get into those types of differentiations.
- 2 BY MR. BECKER:
 - Q. Did NIST ever advocate for reference
- 4 to a standard as opposed to incorporation by
- 5 reference of a standard into regulation?
- 6 A. No, again, that's the agency's 7 decision.
- 8 Q. Did NIST ever provide guidance as to
- 9 when an agency should reference a standard
- 10 versus incorporate the standard by reference
- 11 into regulation?
- 12 A. No. That's the responsibility of
- 13 the individual regulatory agency.
- 14 MR. BECKER: We can take a break.
- 15 THE VIDEOGRAPHER: We are going off
- 16 the record. This is the end of Media Unit No.
- 17 1. The time is 12:23.
- 18 (A short recess was taken.)
- 19 THE VIDEOGRAPHER: We are going back
- 20 on the record. This is the start of Media Unit
- 21 No. 2. The time is 1:11.
- 22 BY MR. BECKER:

Page 116

- 1 Q. Ms. Saunders, are there any answers
- 2 to questions earlier today that you realized
- 3 are incorrect or that you would like to change?
- 4 A. I think we've covered the point that
- 5 I neglected to mention the first time you asked
- 6 me about my positions in which -- at ANSI,
- 7 which I neglected to mention, I was a vice
- 8 chair but we covered that in a later exchange.
- 9 Beyond that, I don't think I have
- 10 any connections.
- 11 Q. Okay. And, Ms. Saunders, if you
- 12 wouldn't mind, if you could just try to speak a
- 13 little bit slower --
- 14 A. I am trying.
- 15 Q. So our court reporter can get
- 16 everything and your attorney can make
- 17 objections. I know it's -- it's hard to do --
- 18 speak at the cadence required for a deposition.
- 19 A. I will do my best.
- MR. BECKER: Can you please mark
- 21 that. I believe that is Exhibit 3.
- 22 (Deposition Exhibit 3 was marked for

Page 117 Page 119 1 identification.) 1 has been marked as Exhibit No. 4. 2 BY MR. BECKER: 2 This is a document produced as 3 PRO 00264718 to PRO 00264723. 3 Q. I have handed you what has been Have you ever seen this document 4 marked as Exhibit No. 3. 4 5 before? 5 This is the document produced by A. I must have, since it was a document 6 ANSI at Bates No. ANSI 1536. 7 provided as part of discovery in response to 7 Do you recognize this document? 8 the FOIA request. It is a printout, as it says 8 A. Yes. I do. 9 at the top, of the NIST standard committee 9 Q. What is this document? 10 A. This is the current ANSI 10 participation database. Q. Starting on the third to last page 11 11 organizational chart. 12 of Exhibit No. 4 which is Bates-stamped 12 Q. So this document was produced in 13 PRO 00264721, does this have a listing of the 13 2015. Is there -- has there been any change to 14 SDOs that you have had a membership with? 14 the ANSI organizational chart between 2015 and 15 MR. GRIFFIN: Objection. 15 today that you are aware of? 16 MR. GRIFFIN: Objection. 16 MR. FEE: Objection to form. 17 THE WITNESS: It lists the standards THE WITNESS: This looks -- this 17 18 activities in which I participated that are 18 looks accurate as of 2019. 19 recorded in the standard committee 19 BY MR. BECKER: 20 participation database. It appears to include 20 Q. Great. What positions on this ANSI 21 everything. 21 organization chart have you held? 22 BY MR. BECKER: 22 MR. GRIFFIN: Objection. Page 118 Page 120 1 THE WITNESS: I have served, as we 1 Q. Here, it lists ANSI as an SDO; is 2 noted earlier, on the ANSI board of directors. 2 that correct? 3 I have served on the national policy committee It lists ANSI as an SDO. It doesn't 4 and as the chair of the national policy 4 list ANSI -- it lists ANSI as an SDO because 5 committee. I have actually served on the 5 the database does not make provisions for other 6 appeals board. This is one level below the 6 types of organizations. ANSI is not an SDO. 7 national policy committee. Q. Are there other types of 8 I have served as a member and also a 8 organizations other than SDOs and ANSI that 9 chair of the international policy committee, 9 would be listed in this database? 10 and as a government member, I was a member of 10 MR. FEE: Objection. 11 the government member from up here. 11 THE WITNESS: No. ANSI is the only 12 BY MR. BECKER: 12 one, but ANSI is unique in that the database 13 was developed to track standards committee 13 Q. That's the government member listing 14 under forums? 14 participation which is mostly in SDOs. ANSI is 15 A. Correct. And I served on several 15 a policy level organization and it is included 16 in the database. 16 occasions on the nominating committee which is 17 17 not a standing committee that's reconstituted BY MR. BECKER: Q. Looking over the -- this list, are 18 every year. Hold on a second. That's it. 18 (Deposition Exhibit 4 was marked for 19 19 there any committees that you have been part of 20 identification.) 20 for an SDO or ANSI that are not listed here? 21 21 BY MR. BECKER: A. The standards committee 22 participation database does not list my 22 Q. Ms. Saunders, I have handed you what

Page 121

- 1 participation in ASTM E50 because I believe
- 2 that would have been 1993. That predated the
- 3 existence of the database.
- 4 Q. Anything else?
- 5 A. No.
- 6 Q. When you were participating with --
- 7 on the committee for ASTM E50, what was your 8 role?
- 9 MR. GRIFFIN: Objection.
- 10 THE WITNESS: I was a member of the
- 11 standards committee.
- 12 BY MR. BECKER:
- 13 Q. What does a member of the standards
- 14 committee do?
- 15 A. A member of the standards committee
- 16 participate in the development of documents --
- 17 standards under the -- that come under the
- 18 purview of that committee.
- 19 In this specific case, because E50
- 20 operated and operates as a U.S. technical
- 21 advisory group to the International
- 22 Organization for Standardization technical

Page 122

- 1 committee 207, it operated as -- in developing
- 2 U.S. positions on standards that were being
- 3 developed in ISO.
- 4 Q. Did E50 develop any ASTM standards?
- 5 MR. FEE: Objection to form.
- 6 THE WITNESS: I was specifically
- 7 participating in that committee in its role as
- 8 the U.S. technical advisory group to ISO, so
- 9 the documents I commented on and in which I
- 10 participated in discussions were to be ISO
- 11 standards.
- 12 BY MR. BECKER:
- 13 Q. When you say, "to be ISO standards,"
- 14 what's the distinction between that and an ASTM
- 15 standard?
- 16 A. Those are two different --
- 17 MR. GRIFFIN: Objection.
- 18 THE WITNESS: Those are two
- 19 different standards organizations. The
- 20 International Organization for Standardization
- 21 is headquartered in Geneva, participation is on
- 22 a national standards body basis, and ANSI is

Page 123

- 1 the national standards body representing the
- 2 U.S. to ISO. ANSI accredits U.S. technical
- 3 advisory groups. In this case, the technical
- 4 advisory group to TC 207 was administered by
- 5 ASTM.

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BY MR. BECKER:

- 7 Q. Going back to Exhibit No. 3, and now
- 8 that you have the benefit of having Exhibit No.
- 9 4 in front of you, are there any additional
- 10 positions on the ANSI organization chart that
- 11 you have participated in that you didn't
- 12 previously tell me about?
- 13 A. I neglected to mention the executive
- 14 committee and I think a reason I did not
- 15 mention that is by dent of my -- it's a
- 16 chairman chair position first for the IPC and
- 17 the national policy committee, you are -- those
- 18 chairs are also automatically members of the
- 19 ANSI executive committee as are ANSI vice
- 20 chairs are automatically members of the ANSI
- 21 executive committee.
- 22 Q. Approximately how many individuals

Page 124

1 are on the ANSI executive committee?

- 2 A. Approximately 18.
- 3 Q. What is the role of the ANSI
- 4 executive committee?
- 5 A. The ANSI executive committee is --
- 6 serves as a subset of the ANSI board. The
- 7 executive committee meets three times a year
- 8 and is typically the committee where ANSI
- 9 policy positions that will be further
- 10 deliberated by the board are first -- first
- 11 discussed.

12 The executive committee is also

- 13 responsible for approving nominations of chair14 positions I believe.
- 15 Q. What are the ANSI forums that's
- 16 listed here on the upper left side of Exhibit
- 17 No. 3?
- 18 A. As I mentioned earlier, ANSI has
- 19 different membership categories. These --
- 20 there is a forum for each of the membership 21 categories.
- 22 Q. When you say, "there is a forum for

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Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 33 of 122

Page 125

- 1 each of the membership categories," what
- 2 exactly is the forum?
- 3 A. So as a government member of -- I
- 4 say representative of a government member,
- 5 ANSI, I was automatically a member of the
- 6 forum. It is -- each of the fora are -- forums
- 7 are places where a membership category can meet
- 8 or -- to discuss shared interests and can share
- 9 information.
- 10 Q. So this is where government -- the
- 11 government member forum would be one where
- 12 government members of ANSI would meet and share
- 13 information?
- 14 A. Yes.
- 15 MR. GRIFFIN: Objection.
- 16 BY MR. BECKER:
- 17 Q. Did you ever participate in the ANSI
- 18 government member forum?
- 19 MR. GRIFFIN: Objection.
- 20 THE WITNESS: As an employee of a
- 21 government member, I was automatically a member
- 22 of the government member forum.

Page 126

- 1 BY MR. BECKER:
- 2 Q. Did you use that forum to engage in
- 3 communications with other government members?
- 4 A. Well, official communications? I
- 5 mean, can you clarify? I mean, the forum
- 6 periodically -- the forum periodically had
- 7 meetings.
- 8 Q. Did you participate in those
- 9 meetings?
- 10 A. I probably participated in a few of
- 11 those meetings.
- 12 Q. Do you know how regularly they had
- 13 meetings?
- 14 A. The forum -- the government member
- 15 forum did not meet regularly.
- 16 Q. Would that be once a year or there
- 17 is just no -- when you say, "it doesn't meet
- 18 regularly," do you mean that there is no set
- 19 number of meetings per year?
- 20 MR. GRIFFIN: Objection.
- 21 THE WITNESS: What I meant is that
- 22 in my memory, the government member forum would

- 1 meet periodically.
- 2 BY MR. BECKER:
- 3 Q. Do you recall approximately how

Page 127

Page 128

- 4 frequently?
- 5 A. One to two times a year.
 - Q. What is the role of the appeals
- 7 board on the national policy committee?
- A. So the -- I mentioned earlier, that
- 9 two of the committees which currently come
- 10 under the responsibility of the national policy
- 11 committee are the ANSI executive -- the ANSI
- 12 board of standards review and the ANSI
- 13 executive standards council. These two
- 14 entities are responsible for managing the
- 15 process by which American national standards
- 16 are developed and approved.
- 17 As part of the ANSI essential
- 18 requirements for process, there is a dispute
- 19 settlement provision so -- and there can be an
- 20 appeal at several levels of an action that is
- 21 taken by an accredited standards developing
- 22 organization or -- and there can be appeal
- - 2 national standard as well. The appeals board

1 about a particular standard, an American

- 3 is the final level of appeal at ANSI with
- 4 respect to actions related to American national
- 5 standards.
- 6 Q. What kind of disputes would come
- 7 under that dispute settlement provision?
- 8 MR. GRIFFIN: Objection.
- 9 THE WITNESS: Organizations can
- 10 raise questions about conformance to the ANSI
- 11 essential requirement, emulates to the process
- 12 of developing American national standards. It
- 13 specifically does not touch on the technical
- 14 content of the standard.
- 15 BY MR. BECKER:
- 16 Q. What are the ANSI essential
- 17 requirements?
- 18 A. So you can find a copy of the ANSI
- 19 essential requirements documents on the ANSI
- 20 website. As I mentioned earlier, the ANSI
- 21 essential requirements relate to openness,
- 22 transparency, balance, due process and

Page 70 of 395 Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 34 of 122 Page 129 Page 131 1 process that the standards developing 1 consensus. Q. Are you aware of any instances when 2 organization administers to the ANSI essential 3 requirements. 3 anyone has complained about the difficulty in Only accredited SDOs can submit 4 accessing a standard that is incorporated by 5 draft -- can submit draft standards for 5 reference into federal regulation? 6 consideration as American national standards. May I just add to my previous 7 So they -- so they don't -- ANSI does not 7 answer. 8 accredit the standard. It accredits the Q. Of course. 9 standards developing organization. A. Lack of dominance is an essential 10 requirement that I forgot. 10 BY MR. BECKER: 11 Q. Thank you. Q. What is lack of dominance? What is the benefit of having an So balance and lack of dominance are 12 13 organization accredited by ANSI so that it can 13 related, a balance of interest and the lack of 14 submit draft standards for consideration as an 14 dominance of any particular interest category 15 American national standard? 15 in the consensus process. 16 MR. GRIFFIN: Objection. Q. So does that mean that if, say, 17 THE WITNESS: So ANSI considers the 17 industry had a majority of members or something 18 benefit to be that the essential requirements 18 like that in the development of a standard, 19 are the bedrock of the voluntary consensus 19 then it might not be given ANSI accreditation? 20 standards process. Very similar requirements MR. GRIFFIN: Objection. 21 are reflected in the World Trade Organization's THE WITNESS: What it means is that 22 standards developing organizations who process, 22 technical barriers to trade agreement in its Page 130 Page 132 1 description of the process for international 1 conform to the essential requirements must make 2 best efforts to ensure balance, but also within 2 standards development. 3 Typically, and a standards 4 developing organization will submit a They may do that a variety of ways, 5 particular project for processes in American 5 so if one interest category has a larger number 6 national standard because its stakeholders find 6 of participants then another interest category, 7 they can address -- they can address lack of that valuable. That may be -- its stakeholders 8 find that valuable. 8 dominance through weighted devoting. There are 9 BY MR. BECKER: 10 Q. Are there other benefits to being BY MR. BECKER: 11 able to submit a standard as an American Q. Are you aware of any instance where 12 national standard? 13 MR. GRIFFIN: Objection. Are you aware of any instance where THE WITNESS: Yes, but I can't 14 ANSI declined to provide accreditation for a 14 15 recall them -- I can't reflect them for you 16 right off the top of my head. We have an MR. GRIFFIN: Objection. 17 entire set of pages on the American national THE WITNESS: So the actual

- 18 terminology would be that ANSI accredits

- 21 for accreditation by ANSI, and the
- 22 accreditation relates to the conformance of the

3 that balance, lack of dominance.

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9 a variety of different ways.

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11

12 ANSI refused to -- or excuse me.

13

15 particular standard?

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17

19 standards developing organizations, as

20 standards developing organizations may apply

18 standards process and a presentation that our

19 senior standards coordinator gives

20 periodically, but I'm not recalling all the

21 benefits at this time.

22 BY MR. BECKER: Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 35 of 122

Q. Are American national standards more

- 2 likely to be used by industry versus if a
- 3 standard is not designated an American national
- 4 standard?

1

- 5 MR. GRIFFIN: Objection.
- 6 THE WITNESS: The American national
- 7 -- the body of American national standards is a
- 8 very small subset of the overall body of
- 9 standards that are used generally in the United
- 10 States or globally. There are about 12,000 and
- 11 they tend to be -- they tend to be -- have
- 12 tended to be health and safety standards in
- 13 long established industry sectors.
- 14 BY MR. BECKER:
- 15 Q. Going back to my question: Are
- 16 American national standards more likely to be
- 17 used by industry versus if a standard is not
- 18 designated an American national standard?
- 19 MR. GRIFFIN: Objection.
- 20 THE WITNESS: Not to my knowledge.
- 21 BY MR. BECKER:
- 22 Q. Are American national standards more

- re 1 must conform to a standard.
 - 2 So purchasers of products, either
 - 3 individual products or retailers, for example,
 - 4 who have requirements for qualified suppliers,

Page 135

Page 136

- 5 it's possible insurance companies could give a
- 6 preference to particular standards.
- 7 Q. Did -- does NIST track the
- 8 incorporation by reference of standards into
- 9 regulations?
- 10 A. So NIST until 2016 maintained the
- 11 standards incorporated by reference database,
- 12 and in that sense, yes, provided information on
- 13 incorporations into the Code of Federal
- 14 Regulations.
- 15 Q. What happened in 2016?
- 16 MR. GRIFFIN: Objection.
- 17 THE WITNESS: The database had been
- 18 maintained by a contractor to the standard
- 19 services division. I believe that contractor
- 20 retired. In addition, ANSI had begun the
- 21 development and maintenance of the ANSI
- 22 incorporation by reference portal.

Page 134

- 1 likely to be used by agencies for incorporation
- 2 by reference than standards that are not
- 3 designated American national standards?
- 4 MR. FEE: Objection to form.
- 5 THE WITNESS: So ANSI does not track
- 6 the implementation of particular American
- 7 national standards. ANSI is responsible for
- 8 the process by which those standards are
- 9 developed.
- 10 BY MR. BECKER:
- 11 Q. What do you mean by
- 12 "implementation?"
- 13 A. Use. The use of the standard.
- 14 Q. Is incorporation by reference a form
- 15 of implementation?
- 16 A. Yes.
- 17 Q. What are some other forms of
- 18 implementation?
- 19 A. A purchaser of a product that may be
- 20 -- as covered by an American national standard
- 21 may specify to suppliers that in order to be
- 22 considered a part of their supply chain, they

1 BY MR. BECKER:

- 2 Q. So what is the ANSI incorporation by
- 3 reference portal?
- 4 A. So the ANSI IBR portal is a
- 5 read-only portal providing read-only access to
- 6 standards that are incorporated by reference
- 7 into the Code of Federal Regulations.
- 8 Q. So earlier, when I said, are
- 9 American national standards more likely to be
- 10 used by agencies for incorporation by reference
- 11 than standards that are not designated American
- 12 national standards, you said ANSI does not
- 13 track the temporary -- excuse me. The text is
- 14 not complete here.
- 15 But I believe you said that ANSI
- 16 doesn't track the incorporation by reference of
- 17 standards; is that true?
- 18 MR. GRIFFIN: Objection.
 - THE WITNESS: So ANSI, as an
- 20 institute, does not track the incorporation by
- 21 reference in the Code of Federal Regulations.
- 22 ANSI -- NIST provided the database, the

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Page 139 Page 137 1 standards incorporated by reference database to 1 BY MR. BECKER: 2 ANSI as a basis for the creation of the -- of 2 Q. Why is it then that you referenced 3 the ANSI portal and ANSI maintains that portal. 3 the creation of the ANSI IBR database when I 4 When federal agencies incorporate a 4 asked what happened in 2016 to cause the --5 standard by reference, either as part of a 5 NIST to cease maintaining the SIBR database? 6 notice of proposed rulemaking or later on as an A. 2016 was also the year that they 7 actual final rule, they reach out to ANSI and 7 revised OMB Circular A119 was published in 8 ask to have that standard reflected in the 8 January of 2016 with an extensive discussion of 9 portal. 9 reasonable availability when agencies 10 BY MR. BECKER: 10 incorporate by reference. 11 11 Q. How did the creation of the ANSI IBR My understanding is that ANSI 12 portal affect the maintenance of the SIBR 12 developed and offered the IBR portal as a means 13 database? 13 of reasonable availability, and as I mentioned 14 MR. FEE: Objection. 14 earlier, it was my understanding that NIST THE WITNESS: So the standards 15 standards coordination office provided the SIBR 15 16 incorporated by reference database is different 16 database to ANSI as a basis for that portal, 17 than the ANSI IBR portal. The standards 17 but I wasn't part of the decision as to timing. 18 incorporated by reference database listed the 18 Q. When did ANSI create the IBR portal? 19 -- would list the reference, the specific 19 A. I wasn't part of that decision as to 20 reference in the Code of Federal Regulations. 20 timing so I can't speak to that. 21 21 The agency that was incorporating the reference Q. Do you know why ANSI created the IBR 22 and the place in the Code of Federal 22 portal? Page 138 Page 140 1 Regulations where the reference could be found, 1 MR. GRIFFIN: Objection. 2 and a -- and the number or title, in most cases 2 THE WITNESS: To assist the federal 3 there is a number of the standard and the 3 agency community with addressing the reasonable 4 sponsoring standards developing organization. 4 availability principle. 5 5 The SIBR database did not include BY MR. BECKER: 6 any standards content. It simply identified Q. Was there a concern that without the 7 the referenced document by title or by number. 7 ANSI IBR portal, standards incorporated by 8 The ANSI IBR portal provides read-only access 8 reference into regulations otherwise would not 9 to the documents that are incorporated by 9 be reasonably available? 10 reference for those SDOs that do not maintain 10 MR. GRIFFIN: Objection. 11 their own link, their own portal for reasonable 11 THE WITNESS: ANSI provided the 12 availability. 12 portal as an assistance, an aid to small 13 BY MR. BECKER: 13 standards developing organizes that might not 14 Q. Was the creation of the ANSI IBR 14 have the resources to provide their own 15 portal a factor in NIST's decision to stop 15 read-only access provisions. 16 maintaining the SIBR database? 16 ANSI also as the national standards 17 MR. GRIFFIN: Objection. 17 body to ISO and IEC is the only organization in THE WITNESS: I don't know the 18 18 the U.S. that could arrange with ISO and IEC

20 while I was the associate director for

22 decision.

19 answer to that because that decision was taken

21 management resources, so I have no part in that

20

21

19 for access to those documents.

BY MR. BECKER:

Q. My question was: Was there a

22 concern that without the ANSI IBR portal,

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 37 of 122 Page 141 Page 143 1 standards incorporated by reference into 1 comment. 2 regulations otherwise would not be reasonably 2 BY MR. BECKER: 3 available? 3 Q. Have you ever heard Carl Malamud say 4 MR. GRIFFIN: Objection. 4 that standards incorporated by reference into 5 MR. FEE: Objection. 5 regulations are not reasonably available? 6 THE WITNESS: No, I don't believe 6 Α. Yes. 7 7 that was the -- there was a general concern. I Have you heard anybody else say that 8 believe -- ANSI provided the portal as an 8 standards incorporated by reference into regulations are not reasonably available? 9 assistance to small SDOs to minimize the burden MR. GRIFFIN: Objection. 10 with respect to reasonable availability. I 10 11 would not say that there was a concern that 11 THE WITNESS: So there were 12 without it, there wouldn't be reasonable 12 significant discussions as part of the 13 availability. 13 administrative conference for the -- of the 14 BY MR. BECKER: 14 U.S., and as part of the administrative 15 conference of the U.S., who the administrative 15 Q. Have you ever heard someone say that 16 without a read-only access, standards 16 of conference developed their recommendation of 17 incorporated by reference into regulations are 17 incorporation by reference, and as part of 18 not reasonably available? 18 those discussions, in which I believe Carl A. No. Both the OMB circular -- the 19 Malamud participated as well as did many other 19 20 OMB circular specifically lists a variety of 20 individuals, administrative law practitioners 21 and many others, I'm sure those comments came 21 different ways, which I will not be able to 22 repeat since I don't have the circular in front 22 up. Page 142 Page 144 1 of me, for it to assure reasonable availability 1 BY MR. BECKER: 2 including read-only access but not limited to 2 Q. Did you participate in that? 3 read-only access. 3 A. Yes. Q. So you are saying you have never 4 Q. Who else participated in that -- in 5 heard the -- anyone opine that without 5 that discussion? 6 read-only access, standards incorporated by 6 MR. GRIFFIN: Objection. THE WITNESS: You would have to --7 reference into regulations are not reasonably 7 8 available? 8 I'm sure the ACUS -- the administrative 9 MR. GRIFFIN: Objection. 9 conference of the U.S. has the records of the THE WITNESS: I can't answer that. 10 10 participation. There were several public 11 That is very general. I mean, I may have heard 11 meetings and I think at least a six-month 12 an individual say that. It's not something 12 process of discussion in the development of the 13 that I can attest to. 13 ACUS, A-C-U-S recommendation. 14 BY MR. BECKER: 14 BY MR. BECKER: 15 Q. Have you ever heard -- have you ever 15 Q. Have you ever heard someone say that 16 a particular standard is not reasonably 16 heard anyone opine that standards incorporated 17 by reference into regulations generally are not 17 available -- excuse me. 18 reasonably available? 18 Have you ever heard someone opine 19 MR. GRIFFIN: Objection. 19 that a particular standard incorporated by 20 20 reference into regulations is not reasonably MR. FEE: Objection.

22 comment. Again, I can't attest to that

21

THE WITNESS: I may have heard that

22

21 available?

MR. GRIFFIN: Objection.

Page 147 Page 145 1 THE WITNESS: I can't speak to that. 1 that agencies make available to their -- the 2 It's very -- nonspecific question, have I ever 2 regulated constituency and the public reading 3 heard. 3 rooms, depository libraries, a variety of 4 different means to access regulations and 4 BY MR. BECKER: Q. Are you aware of any instance where 5 related documentation. 5 6 an individual has said that they were unable to BY MR. BECKER: 7 7 access a standard that was incorporated by Q. I don't think you have answered my 8 reference into regulation? 8 question, so I'm going to go back and say it 9 again. A. It is likely that there are 10 Do you have a general memory of an 10 constituencies that have made that comment. Q. So my question was: Whether you 11 individual stating that he or she was unable to 11 12 have ever heard that -- have you ever learned 12 access a standard that was incorporated by 13 of an individual complaining of not being able 13 reference into a regulation? 14 to access a standard incorporated by reference 14 MR. GRIFFIN: Objection. Asked and 15 into regulation? 15 answered. 16 MR. FEE: Objection to form. 16 MR. FEE: Objection. 17 THE WITNESS: In my position at 17 THE WITNESS: As I said, I don't 18 NIST, we never -- I never -- I am not aware 18 have a memory of an individual expressing that 19 that we received comments -- a comment directly 19 concern. I am aware that there were extensive 20 discussions under the auspices of the 20 from an individual about that. 21 21 administrative conference of the U.S. and in BY MR. BECKER: 22 22 the process of revising the OMB circular where What about other than in your Page 146 Page 148 1 position at NIST? 1 those comments may have been made. 2 MR. FEE: Same objection. 2 BY MR. BECKER: 3 THE WITNESS: I didn't -- I haven't 3 Q. Are you aware of any instance where 4 received any of that -- any comment of that 4 a government employee has said that he or she 5 type from -- in my position at ANSI. 5 was unable to access a standard that had been 6 BY MR. BECKER: 6 incorporated by reference into a regulation? 7 7 Q. Have you ever heard of an individual MR. FEE: Objection to form. 8 saying that, that individual was unable to 8 MR. GRIFFIN: Objection. 9 access a standard that was incorporated by 9 THE WITNESS: I -- you have to give 10 reference into regulation? 10 me an example. I can't answer that general --11 MR. FEE: Objection to form. 11 a general statement like that. It's --THE WITNESS: It's possible. I 12 12 BY MR. BECKER: 13 don't have a specific memory. 13 Q. Is there any instance you know of 14 BY MR. BECKER: 14 where a government employee has said that he or Q. Do you have a general memory of an 15 15 she was unable to access a standard that had 16 individual stating that he or she was unable to 16 been incorporated by reference into a 17 access a standard that was incorporated by 17 regulation? 18 reference into regulation? 18 MR. FEE: Objection. 19 MR. FEE: Objection to form. 19 MR. GRIFFIN: Objection. 20 MR. GRIFFIN: Objection. 20 THE WITNESS: Not to my knowledge. THE WITNESS: So what I can speak to 21 21 BY MR. BECKER: 22 is the fact that there are a variety of means 22 Did you ever learn of a report of a

USCA Case #22-7063 Document #1982413 Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 39 of 122 Page 149 Page 151 1 person or entity saying that they were unable 1 Q. What is GMF? 2 2 to access a standard incorporated by reference Α.

MR. GRIFFIN: Objection. 4

5 THE WITNESS: I thought I answered

6 that. A report -- can you repeat the question.

7 BY MR. BECKER:

3 into regulation?

8 Q. Yes. Did you ever learn of a report

9 of a person or entity saying that they were

10 unable to access a standard incorporated by

11 reference into regulation?

12 MR. GRIFFIN: Objection.

13 THE WITNESS: So I was chief of the

14 standard services division for seven years and

15 the head of the standards coordination office

16 for -- in my position as chief of the standard

17 services division for seven years and director

18 of the standards coordination office for a

19 little over a year and a half, it is possible

20 that I came into contact with a comment like

21 that but I have no specific memory about that.

22 (Deposition Exhibit 5 was marked for

- 1 identification.)
- 2 BY MR. BECKER:
- 3 Q. I've handed you what's been marked 4 as Exhibit 5.
- 5 This is the document produced by
- 6 ANSI as ANSI 2690 to ANSI 2692.
- 7 Do you recognize this document?
- A. I remember the joint meeting, yes. 8
- 9 Q. What is this document?
- 10 A. It's the draft report of a joint
- 11 interagency committee on standards policy, ANSI
- 12 government member forum meeting with standards 12
- 13 developers.
- 14 Q. What is ICSP?
- 15 A. The ICSP is the Interagency
- 16 Committee on Standards Policy. The committee
- 17 is established under OMB Circular A119 and it
- 18 is comprised of the standards executives of the
- 19 federal agencies that are tasked with
- 20 implementing the circular.
- 21 Q. Is that a government committee?
- 22 That is.

- GMF is the ANSI Government Member 3 Forum.
- 4 Q. So is this a meeting of a government

5 committee and an ANSI committee?

- 6 Α. That's correct.
- 7 This took place on April 21, 2011? Q.
- 8 That's what the document says, yes. Α.
- 9 Were you present at that meeting?
- 10 Α. Yes.
- 11 Q. It says that you conducted the
- 12 opening of the meeting; is that correct?
- 13 A. Yes, in my position as chair of the 14 interagency committee on standards policy.
- Q. Do you remember what the purpose of 16 this meeting was?
- 17 MR. GRIFFIN: Objection.
- 18 THE WITNESS: The purpose of the
- 19 meeting is outlined in Paragraph 3: "ANSI
- 20 staff agreed to arrange a meeting that would
- 21 allow the SDO community to showcase their
- 22 efforts to meet the needs of federal agencies

Page 150

1 with respect to access to standards and

- 2 participation in the development of standards."
- 3 BY MR. BECKER:
- Q. What were the needs of the federal
- 5 agencies for access to standards?
- A. So federal agencies -- it is useful
- 7 for federal agencies, regulatory agencies in
- 8 particular to have access to standards as -- in
- 9 support of them conducting their mission
- 10 activities which include but are not limited to
- 11 development -- writing regulations.
 - Q. What is the role of federal agencies
- 13 in the development of standards?
- 14 MR. FEE: Objection to form.
- 15 THE WITNESS: So as I mentioned
- 16 earlier, the law, the National Technology
- 17 Transfer and Advancement Act as supported by
- 18 the OMB circular directs federal agencies where
- 19 consistent with the mission and public need to
- 20 also -- not only use voluntary consensus
- 21 standards but to participate in their
- 22 development.

Page 155 Page 153 1 BY MR. BECKER: 1 unidentified federal agency and I don't know. 2 Q. How is it that federal employees BY MR. BECKER: participate in the development of standards? 3 Three paragraphs below that, it Q. 4 MR. FEE: Objection to form. 4 says: "The open discussion concluded noting 5 THE WITNESS: From my experience as 5 that each of the six SDOs have different 6 a NIST employee, we -- technical staff at NIST 6 business models but nonetheless each one makes 7 participated as members of committees. They 7 provisions to accommodate the needs of the 8 might, if determined by the committee, actually 8 federal agencies to achieve greater 9 chair a committee. Those are methods of 9 participation in the development process and 10 participation. Obviously, serving on boards of 10 access to the standards themselves." 11 standards developing organizations as well 11 What kind of provisions do SDOs 12 where relevant. 12 engage in to accommodate the needs of federal 13 BY MR. BECKER: 13 agencies to access standards? 14 Q. At this meeting, did federal 14 MR. FEE: Objection to form. 15 MR. GRIFFIN: Objection. 15 employees opine that they would like to have THE WITNESS: So while I know 16 free access to standards? 16 17 MR. FEE: Objection to form. 17 generally that they do, I am not privy to the 18 business operations of individual SDOs so I 18 MR. GRIFFIN: Objection. THE WITNESS: I have no memory of 19 can't answer that. 19 20 20 that. BY MR. BECKER: 21 21 BY MR. BECKER: Q. Does this draft report accurately 22 Could you turn to the third page of 22 characterize the discussion at the meeting to Page 154 Page 156 1 the best of your knowledge? 1 Exhibit No. 5. 2 Could you read the paragraph at the 2 MR. FEE: Objection to form. 3 top of that page. 3 THE WITNESS: So given that the A. "At least one federal agency noted 4 meeting took place more than eight years ago, I 5 that they billed standards into their business 5 -- it seems accurate to me. 6 models and opined that it would be more BY MR. BECKER: 7 Q. Were these reports regarding the --7 beneficial to pay the same membership dues as 8 all other participants, if it meant that access 8 this meeting and other meetings like it 9 to the standards was free. Free access to 9 regularly prepared and maintained in the course 10 of ANSI business? 10 standards as part of their membership would 11 11 also support their participation in the MR. FEE: Objection to form. 12 development process as opposed to paying for 12 THE WITNESS: Meeting reports of all 13 individual standards and receiving a special 13 -- of policy commitments are developed and 14 membership discount." 14 maintained and certainly for forum meetings as 15 well, yes. 15 Q. How is it that free access to 16 standards as part of a membership would support 16 (Deposition Exhibit 6 was marked for 17 government participation in the development 17 identification.) 18 process? 18 BY MR. BECKER: 19 MR. GRIFFIN: Objection. 19 Q. I am handing you what has been 20 marked as Exhibit No. 6. 20 MR. FEE: Objection to form. THE WITNESS: I can't -- I can't 21 This is a document produced by ANSI 21 22 speak to that comment since it came from an 22 as ANSI 2296.

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 41 of 122

Page 157

1 Do you recognize this document?

- 2 A. It is the draft agenda of the same
- 3 meeting we just discussed.
- 4 Q. Were draft agendas such as this
- 5 regularly prepared and maintained in the course
- 6 of ANSI business?
- 7 A. Yes, draft agendas for meetings are
- 8 generally maintained -- prepared and
- 9 maintained.
- 10 (Deposition Exhibit 7 was marked for
- 11 identification.)
- 12 BY MR. BECKER:
- 13 Q. Including this one?
- 14 MR. GRIFFIN: Objection.
- 15 BY MR. BECKER:
- 16 Q. Exhibit No. 6?
- 17 MR. GRIFFIN: Objection.
- 18 THE WITNESS: So this was a joint
- 19 meeting of the interagency committee on
- 20 standards policy and the joint and the
- 21 government member forum. A portion of the
- 22 meeting involving the government member forum
 - Page 158
- 1 was an open meeting. The follow-on session
- 2 after lunch, the interagency committee on
- 3 standards policy was a closed session just for
- 4 government members of the interagency
- 5 committee.
- 6 BY MR. BECKER:
- 7 Q. My question to you was whether
- 8 Exhibit No. 6 had been prepared and maintained
- 9 in the course of business?
- 10 MR. GRIFFIN: Objection.
- 11 MR. FEE: Objection.
- 12 THE WITNESS: So I'm not following
- 13 your reference. The two are exactly the same
- 14 except the second one includes the closed
- 15 session of the interagency committee on
- 16 standards policy.
- 17 BY MR. BECKER:
- 18 Q. Do you have any reason to believe
- 19 that either Exhibit 6 or Exhibit 7 are not --
- 20 excuse me.
- Do you have any reason to believe
- 22 that Exhibit 6 is a document that was not

- Page 159
- 1 maintained -- prepared and maintained in the
- 2 regular course of business?
- 3 MR. GRIFFIN: Objection.
- THE WITNESS: This agenda would have
- 5 been developed and maintained as part of the
- 6 regular course of business for ANSI and for the 7 ICSP.
- 8 BY MR. BECKER:
- 9 Q. I have handed you Exhibit No. 7
- 10 which is ANSI 2538.
- 11 Do you recognize this document?
- 12 A. As I said earlier, it's the same
- 13 agenda for the joint meeting but includes the
- 14 reference to the closed ICSP session that
- 15 followed the joint meeting.
- 16 MR. BECKER: Let's take a short
- 17 break.

22

- 18 THE VIDEOGRAPHER: We are going off
- 19 the record. This is the end of Media Unit No.
- 20 2. The time is 2:07.
- 21 (A short recess was taken.)
 - THE VIDEOGRAPHER: We are going back

- 1 on the record. This is the start of Media Unit
- 2 No. 3. The time is 2:36.
- 3 BY MR. BECKER:
- 4 Q. Ms. Saunders, during the break, have
- 5 you come to the realization that any of your
- 6 prior answers was incorrect that you would like
- 7 to -- or are there any answers that you would
- 8 like to amend?
- 9 A. I would simply like to note that
- 10 Exhibit 6 is the draft agenda for the joint
- 11 meeting and Exhibit 7 is the final agenda which
- 12 includes what was in the draft plus the
- 13 addition of the closed session. That's the
- 14 only difference I seen between the two
- 15 documents.
- 16 (Deposition Exhibit 8 was marked for
- 17 identification.)
- 18 BY MR. BECKER:
- 19 Q. Ms. Saunders, I have handed you what
- 20 has been marked as Exhibit 8 which starts with
- 21 the Page No. 1 and says: "Technical barriers
- 22 to trade," at the very top and then ends on

Page 161

1 Page 26. 1 two together. Do you know what this document is?

- 3 A. It's the World Trade Organization's
- 4 technical barriers to trade agreement.
- Q. Is this the document that you had
- 6 referenced earlier when you talked about the
- 7 definition for standards?
- 8 A. Yes.

2

- And if you turn -- if you turn to 9 Q.
- 10 Page 23, is that the definition for standards
- 11 at Bullet Point No. 3 towards the bottom that
- 12 you had referenced earlier:
- 13 A. "A technical specification approved
- 14 by a recognized standardizing body for repeated
- 15 or continuous application with which compliance
- 16 is not mandatory." That is accurate. That's
- 17 not the -- yes.
- Q. What were you going to say? 18
- A. I was referring to the ISO 19
- 20 definition of standardization which I believe
- 21 is the same.
- 22 Q. Okay. So it says: "A standard is a

2

Q. And then it references at Point No.

Page 163

Page 164

- 3 2, technical regulation --
- Α. Yes.
- 5 Q. -- and defines that as: "A
- 6 technical specification including the
- 7 applicable administrative provisions with which
- 8 compliance is mandatory;" is that correct?
- 9 Α. Yes.
- 10 Q. What is -- in your understanding,
- 11 what is the difference between a technical
- 12 specification and a technical regulation?
- 13 A. One is mandatory and the other is 14 not.
- 15 Q. Is a standard that has been
- 16 incorporated by reference into a regulation a
- 17 technical regulation?
- 18 MR. GRIFFIN: Objection.
- 19 MR. FEE: Objection.
- 20 THE WITNESS: Not itself. It's a
- 21 component of a technical regulation.
 - BY MR. BECKER:

Page 162

22

- 1 technical specification approved by a
- 2 recognized standardizing body for repeated or
- 3 continuous application with which compliance is
- 4 not mandatory," correct?
- A. Yes. 5
- 6 Q. And above, at Bullet Point No. 1, it
- 7 references the definition of technical
- 8 specification; is that correct?
- 9 A. Yes.
- 10 Q. It says: "A specification contained
- 11 in a document which lays down characteristics
- 12 of a product such as levels of quality,
- 13 performance, safety or dimensions. It may
- 14 include or deal exclusively with terminology
- 15 symbols, testing and test methods, packaging,
- 16 marking or labeling requirements as they apply
- 17 to a product;" is that correct?
- 18 A. Yes. So you take the two together.
- 19 This is a technical specification and then down
- 20 in standard, it's a technical specification,
- 21 referring to this paragraph, which is approved
- 22 by a recognized standardizing body. Take the

- Q. What are the other components of a 1 2 technical regulation?
- 3 So depending on the agency, a
- 4 technical regulation would include all of the
- 5 requirements with which the agency deems
- 6 necessary for the regulated community to
- 7 comply. It might, as part of that, might
- 8 include reporting requirements, a variety of
- 9 other actions. So I can't speak any more
- 10 specifically than that. It depends on the law
- 11 that is being implemented.
- 12 (Deposition Exhibit 9 was marked for 13 identification.)
- BY MR. BECKER: 14
- 15 Q. I have handed you what has been
- 16 marked as Exhibit 9.
- 17 This is a document titled: "IBR
- 18 Handbook, July 2018, Office of the Federal
- Register." 19
- 20 Do you recognize this document?
- 21 l do Α.
- 22 Q. What is this document?

Page 165

- 1 This document is the IBR handbook
- 2 that is produced by the Office of the Federal 3 Register.
- 4 Is this the IBR handbook that we 5 were discussing earlier in the deposition 6 today?
- 7 Α. Yes, it is.
- 8 Q. Could you please turn to Page 7 of 9 Exhibit 9.
- 10 And at the bottom of that page, it 11 says: "What is the required availability for
- 12 IBR material? A, incorporated materials must
- 13 be reasonably available."
- 14 Do you see that?
- I do. 15
- 16 And do you see the paragraph
- 17 immediately under that that's labeled .1?
- 18 Α. Yes. I do.
- 19 It says: "Material that is Q.
- 20 incorporated by reference must be 'reasonably 20 available for reading. Many agencies these
- 21 available' during the life cycle of the
- 22 relevant regulation and its regulatory

Page 166

- 1 programs. This can pose a challenge for agency
- 2 especially when material is copyrighted. We
- 3 interpret 'reasonably available' in a flexible
- 4 case-by-case manner that takes specific
- 5 considerations into consideration. However,
- 6 the agency must provide the basis for a finding
- 7 of reasonably available."
- 8 Then it says: "2, when necessary,
- 9 the responsible agency should collaborate with
- 10 the standards development organizations and
- 11 other publishers of incorporated material to
- 12 ensure that the public has reasonable access to
- 13 the incorporated documents."
- 14 Do you see that?
- 15 A. I do.
- 16 Q. Are you aware of any efforts within
- 17 the U.S. Government to collaborate with SDOs to
- 18 ensure that the public has reasonable access to
- 19 incorporated documents?
- 20 A. So an individual agency when it
- 21 engages in a rulemaking may reach out to the
- 22 owner of the copyrighted standards that the

1 agency intends to incorporate in whole or in

- 2 part, to make -- to discuss with the owning SDO
- 3 ways to make the material reasonably available.
- 4 To publish a notice of proposed
- 5 rulemaking in the Office of the Federal
- 6 Register, it is good practice to have a copy of
- 7 the standard that is incorporated by reference
- 8 available at a minimum in an agency reading 9 room.
- 10 So yes, I am aware of times when 11 agencies have reached out to SDOs to discuss
- 12 access to incorporated documents.
- 13 Q. What is an agency reading room?
- 14 So each agency has a --
- 15 historically, it was a physical reading room, a
- 16 room that people -- that interested parties
- 17 could come to in an agency where -- for a
- 18 regulatory agency, hard copy notices of
- 19 proposed rules and other documents would be
- 21 days have what are called electronic reading
- 22 rooms.

Page 168

- 1 Q. Is that a reading room that is
- 2 available online?
- 3 A. It can be, yes.
- 4 Do those agencies' electronic
- 5 reading rooms provide copies of standards that
- are incorporated by reference into regulations?
- 7 MR. FEE: Objection to form.
- 8 THE WITNESS: So I don't know the
- 9 specifics of individual reading rooms. I do
- 10 know that some agencies will point to the
- 11 owning organization, the owning centers
- 12 development organization, if that organization
- 13 has a -- their own portal or reading room. In
- 14 some cases, agencies have pointed interested
- 15 parties to the ANSI IBR portal, because ANSI
- 16 posts documents on request from federal
- 17 agencies that are engaged in proposed
- 18 rulemaking. It varies from agency to agency.
- 19 BY MR. BECKER:
- 20 Q. Are you aware of specific instances
- 21 where agencies have collaborated with SDOs to
- 22 ensure that the public has reasonable access to

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 44 of 122

Page 171 Page 169 1 an incorporated standard? 1 in place. 2 MR. GRIFFIN: Objection. 2 BY MR. BECKER: 3 3 THE WITNESS: I think that's a good Q. Are you aware of potential uses of 4 material that's been incorporated by reference 4 practice for agencies, so yes. 5 into regulations beyond uses that include BY MR. BECKER: 5 6 reading or accessing that material? 6 Can you name any of those particular 7 MR. FEE: Objection to form. 7 instances that you are aware of? 8 MR. GRIFFIN: Objection. MR. GRIFFIN: Objection. 8 9 THE WITNESS: I'm sorry. Could you 9 THE WITNESS: Department of 10 Transportation across a range of its programs 10 repeat that. I didn't quite follow. 11 makes -- works with relevant SDOs to assure 11 BY MR. BECKER: 12 reasonable access and there are likely others. 12 Yes. Are you aware -- so other than 13 reading or accessing, are you aware of other 13 BY MR. BECKER: 14 potential uses of IBR standards? 14 Q. How do you define "reasonable 15 MR. FEE: Objection to form. 15 access?" 16 MR. GRIFFIN: Objection. 16 MR. GRIFFIN: Objection. 17 THE WITNESS: I'm sorry, I'm still 17 MR. FEE: Objection to form. 18 not following. 18 THE WITNESS: So as I mentioned 19 BY MR. BECKER: 19 right down here on the bottom of Page 8B, NARA 20 Q. So it says in the second sentence 20 outlines a few ways of -- that agencies may 21 that I had read a moment ago: "If the 21 make incorporated material reasonably 22 available. There is also a discussion of 22 regulated parties are not able to use the Page 170 Page 172 1 material which may be different than simply 1 reasonable availability in -- as part of the 2 ACUS proceeding, administrative conference of 2 reading or accessing it," what other uses of

- 3 the U.S. as well as in the OMB circular.
- 4 BY MR. BECKER:
- 5 Q. It says at the bottom of Point B on
- 6 Page 8 that you're referencing: "Remember,
- 7 read-only access on its own may not meet the
- 8 reasonable availability requirement at the
- 9 final rule stage of rulemaking. If the
- 10 regulated parties are not able to use the
- 11 material (which may be different than simply
- 12 reading or accessing it) throughout the life of
- 13 the rulemaking, this could lead to enforcement
- 14 issues."
- 15 What do you understand that to mean?
- MR. GRIFFIN: Objection. 16
- 17 MR. FEE: Objection to form.
- THE WITNESS: I understand that to 18
- 19 be an advice to agencies regarding the fact
- 20 that read-only access might need to be
- 21 supplemented by other means of access in -- at
- 22 the final rule stage, when the rule is finally

- 3 incorporated material is there other than
- 4 reading or accessing?
- MR. GRIFFIN: Objection. 5
- 6 MR. FEE: Objection.
- 7 THE WITNESS: Well, many industry --
- 8 many industries that are regulated have
- 9 subscriptions to standards as a normal course
- 10 of business that they use in terms of
- 11 conducting their every day business, so a use
- 12 of a material would include actually
- 13 implementing and ensuring that if your product
- 14 needs to comply with a particular -- conform to
- 15 a particular standard, your engineers have
- 16 access to those documents so that they can
- 17 ensure that's the case.
- 18 BY MR. BECKER:
 - Q. Would a use of the material also
- 20 include duplicating a portion of the
- 21 incorporated document and providing that to a
- 22 colleague?

19

Page 173 Page 175 1 MR. GRIFFIN: Objection. 1 reference other than simply reading or 2 MR. FEE: Objection to form. 2 accessing it as described in the IBR handbook. THE WITNESS: So my understanding --3 3 And I am asking if the transcription 4 as I mentioned earlier, standards are 4 of a portion of the incorporated document and 5 copyrighted documents and individuals in 5 providing that transcription to a colleague 6 would constitute use? 6 companies or elsewhere can buy an individual 7 copy of a copyrighted document. A company or 7 MR. GRIFFIN: Objection. 8 organization can pay for a -- what is called a 8 MR. FEE: Objection. 9 THE WITNESS: That's beyond my 9 site license so that any number of individuals 10 at that company or organization can use the 10 capabilities to answer. I mean, you can call 11 document, but if you buy an individual copy, my 11 anything you want to use, I suppose. I think 12 understanding of copyright protection is that 12 the intention of the National Archives and 13 you are not to make copies of that document. 13 Records Administration was with respect to what 14 BY MR. BECKER: 14 we typically understand to be use of a standard 15 15 which is to purchase a copy and actually apply Q. Have you had any training in 16 copyright law? 16 it to the relevant product process or system. 17 MR. GRIFFIN: Objection. 17 BY MR. BECKER: 18 Q. Have you consulted with any 18 THE WITNESS: No, I have not had any 19 training in copyright law. 19 copyright experts to form your views on 20 copyright as applied to incorporated by 20 BY MR. BECKER: 21 reference standards? 21 Q. My question was: Would the use of 22 incorporated material also include duplicating 22 MR. GRIFFIN: Objection. Page 174 Page 176 1 a portion of the incorporated document and THE WITNESS: I have not. 1 2 2 providing it to a colleague? Yes or no. BY MR. BECKER: 3 MR. GRIFFIN: Objection. 3 Q. Do you know what the Fair Use MR. FEE: Same objection. 4 4 Doctrine is? THE WITNESS: I wouldn't call that 5 5 A. I have a general idea. I do not 6 an authorized use of the material. know the specifics of the Fair Use Doctrine. 7 BY MR. BECKER: 7 Q. What do you know about the Fair Use 8 8 Doctrine? Q. I didn't ask about authorized use. 9 9 I said, would a use of a material MR. FEE: Objection to form. THE WITNESS: That a very minimal 10 also include duplicating a portion of the 10 11 incorporated document and providing that to a 11 portion of a copyrighted document may be 12 colleague? 12 subject to fair use, may be allowed to be 13 MR. FEE: Same objection. 13 reproduced for fair use purposes. I don't know 14 MR. GRIFFIN: Objection. 14 the extenuating circumstances. THE WITNESS: You'd have to have BY MR. BECKER: 15 What is the basis of that view? 16 access to the entire document to begin with so 16 Q. 17 that you could copy the incorporated portion so 17 A. My view? 18 I mean, I don't know -- I'm not clear what you 18 Q. Yes. 19 are getting at, I mean. 19 As I said general -- I have heard 20 BY MR. BECKER: 20 generally about the Fair Use Doctrine. I know 21 nothing about the specifics of the Fair Use 21 Q. My -- so I am trying to identify 22 other uses of material incorporated by 22 Doctrine.

Page 179 Page 177 1 Q. Do you have a view as to the effect 1 Q. Are you aware of any standard 2 on a regulation if an incorporated standard is 2 development organization consulting with the 3 copyright office regarding any copyright issues 3 not reasonably available? MR. GRIFFIN: Objection. 4 concerning incorporation by reference? 4 5 MR. FEE: Objection. I'm not personally aware of any 5 Α. 6 interactions. 6 THE WITNESS: No. 7 BY MR. BECKER: 7 Q. Have you received any information 8 8 about any party or individual consulting with Q. Do you have a view as to the enforcement of a regulation if an incorporated the U.S. Copyright Office regarding copyright 9 10 standard is not reasonably available? 10 issues concerning incorporation by reference? MR. GRIFFIN: Objection. 11 11 Not that I remember. MR. FEE: Objection. 12 12 (Deposition Exhibit 10 was marked 13 THE WITNESS: I do not. 13 for identification.) 14 BY MR. BECKER: 14 BY MR. BECKER: 15 15 Q. I would like to turn to Page 9 of Q. I have handed you Exhibit 10 which 16 this Exhibit No. 9. 16 is produced as ANSI 0638 to 0644. 17 17 Do you recognize this document? At the top, it says: "C, balancing 18 procedural requirement and substantive 18 A. Draft minutes of an executive 19 statutory authority. 1, when you propose to 19 committee meeting of the ANSI board of 20 incorporate material by reference, under the 20 directors from 2012. 21 NTTAA, you must balance the following: A, 21 Q. Were you present at that meeting? 22 statutory obligations regarding reasonable 22 Α. It's likely that I was. I don't Page 180 Page 178 1 availability of the standards under FOIA, B, 1 have a specific memory. 2 U.S. copyright law, C, U.S. international trade Q. Could you please turn to Page 4 of 3 obligations, and D, the ability to 3 that document. 4 substantively regulate under its own 4 A. Okay. 5 authorizing statutes." 5 Q. Agenda Item 2.3: "Federal 6 What is -- do you know what NTTAA 6 engagement and standards activities." 7 7 refers to here? It says that: "Ms. Saunders A. It's the National Technology 8 discussed the work of the National Science and 8 9 Transfer and Advancement Act. 9 Technology Council subcommittee on standards Q. Are you aware of any consultation by 10 who met several times in 2011;" is that 10 11 any U.S. government agency with the copyright 11 correct? 12 office of the Library of Congress on copyright 12 A. Yes. 13 issues related to incorporation by reference? 13 Q. So does this refresh your 14 recollection that you were --14 MR. FEE: Objection. 15 THE WITNESS: Not personally, no. 15 A. Yes. Q. -- present? Okay. 16 BY MR. BECKER: 16 Q. Are you aware of the U.S. Copyright On the following page, Page No. 5, 17 17 18 Office's position on the copyrightability of 18 there is Agenda Item 2.6, current activities of 19 edicts of government? 19 the copyright task group. 20 In the second paragraph -- well, 20 MR. GRIFFIN: Objection. THE WITNESS: No, I am not. 21 actually let me back up. 21

BY MR. BECKER:

22

In the first paragraph it says Ms.

22

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 47 of 122

Page 181

1 Griffin.

- Who is Ms. Griffin?
- 3 A. Patty Griffin is the general counsel 4 for ANSI.
- 5 Q. Do you know if she was a general
- 6 counsel at -- on this date, on March 22, 2012?
- 7 A. She has been the general counsel 8 since 2004.
- 9 Q. Okay. It says: "Ms. Griffin
- 10 discussed recent activities of the ANSI
- 11 copyright task group including its development 11
- 12 of an ANSI position paper on copyright
- 13 implications of government incorporation of
- 14 voluntary consensus standards."
- What is the ANSI copyright task 16 group?
- 17 A. So ANSI -- intellectual property
- 18 rights policy committee has two task groups,
- 19 two standing task groups, and one is the
- 20 copyright task group and the other is the
- 21 trademark, I think, task group. It's a task
- 22 group of the intellectual property rights
 - Page 182

- 1 policy committee.
- Q. Are you a member or have you ever
- 3 been a member of the ANSI copyright task group?
- 4 A. I have not.
- 5 MR. GRIFFIN: Objection.
- 6 BY MR. BECKER:
- 7 Q. Have you ever assisted the ANSI
- 8 copyright task group?
- 9 MR. GRIFFIN: Objection.
- 10 THE WITNESS: I have not.
- 11 BY MR. BECKER:
- 12 Q. Do you know what the ANSI position
- 13 paper on copyright implications of government
- 14 incorporation of voluntary consensus standards
- 15 is?
- 16 A. I do not have a memory of that. It
- 17 may be posted on the ANSI website but I don't
- 18 personally remember that.
- 19 Q. It refers to a February 27, 2012
- 20 Federal Register Notice regarding a petition to
- 21 amend the National Archives and Records
- 22 Administration's regulations governing

1 materials incorporated by reference into the

Page 183

- 2 Code of Federal Regulations.
- 3 Do you know what that petition is
- 4 that it's referring to?
- 5 A. I don't remember, that was eight,
- 6 not eight, seven years ago.
- 7 Q. It says: "Ms. Griffin noted that a
- 8 position paper would be sent to the ANSI IPRPC
- 9 for further input prior to ANSI governance
- 10 review."
- 1 What is the ANSI IPRPC?
- 12 A. It's the ANSI Intellectual Property
- 13 Rights Policy Committee.
- 14 Q. Have you ever been a member of the
- 15 IPRPC?
- 16 A. I have not.
- 17 MR. GRIFFIN: Objection.
- 18 BY MR. BECKER:
- 19 Q. Do you know what is referred to by
- 20 ANSI governance review?
- 21 A. ANSI governance means executive
- 22 committee and board review.

Page 184

- 2 board as of March 22, 2012?
- 3 A. I believe so.
- 4 Q. The next paragraph says: "Mr.
- 5 Cooper discussed a box of documents including

Q. Remind me, were you on the ANSI

- 6 73 standards that had been sent to ANSI by Mr.
- 7 Carl Malamud, founder of Public.Resource.Org,
- 8 who has been challenging SDOs rights to charge
- 9 for standards especially those incorporated by
- 10 reference."
- 11 Do you see that?
- 12 A. I do.
- 13 Q. Had you known of Carl Malamud prior
- 14 to the date of this meeting on March 22, 2012?
- 15 A. Yes.
- 16 Q. How did you know of Carl Malamud?
- 17 A. I had exchanges with Mr. Malamud
- 18 regarding -- early, much earlier than this,
- 19 regarding our -- the NIST standards
- 20 incorporated by reference database. He had
- 21 some questions about the information in the
- 22 database and some recommendations as I remember

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 48 of 122

Page 185 1 for making the information more -- for

- 2 improving how the information was presented, so
- 3 I was aware of Mr. Malamud.
- Q. Do you know when those exchanges
- 5 occurred?
- A. That would have been when I was the
- 7 chief of the standards services division so
- 8 that would be -- would be no later than the end
- 9 of 2008.
- 10 Q. This also refers to a related topic,
- 11 as it refers to it, the Pipeline Safety,
- 12 Regulatory Certainty and Job Creation Act of
- 13 2011, which is shortened to Pipeline Bill HR 14 2845.
- 15 Do you know what the pipeline bill
- 16 is?
- A. I remember the piece of legislation, 17
- 18 yes.
- 19 Going back just a moment, you had Q.
- 20 said that Carl Malamud had sent recommendations 20 government and all my documents remained with
- 21 to you.
- 22 Do you recall what those

Page 186

- 1 recommendations were?
- A. I don't. That would have been ten
- 3 years ago. I do remember having exchanges with
- 4 him about the standard incorporated by
- 5 reference database, but that's the extent of my
- 6 memory.
- 7 Q. Do you know if anyone acted on Mr.
- 8 Malamud's recommendations to you?
- 9 MR. GRIFFIN: Objection.
- THE WITNESS: I believe that -- of 10
- 11 course, as a federal government employee, we
- 12 would have taken advice and implemented that
- 13 advice where we could, so yes, I don't remember
- 14 the specifics.
- 15 BY MR. BECKER:
- 16 Q. It says -- so are you saying that
- 17 some of the recommendations that Carl Malamud
- 18 provided were implemented?
- 19 MR. GRIFFIN: Objection.
- 20 MR. FEE: Objection to form.
- 21 THE WITNESS: I don't remember. I
- 22 remember having an exchange with him explaining 22 misunderstanding by some of how the

- 1 the underlying approach to creating the
- 2 standards incorporated by reference database.

Page 187

Page 188

- 3 I don't remember the specifics.
- 4 I think he may have pointed out some
- 5 incorrect references in the database and we
- 6 corrected those
- 7 BY MR. BECKER:
- 8 Q. Do you have any recollection as to
- 9 how much correspondence, in terms of number of
- 10 e-mails, you had with Mr. Malamud?
- A. Not specifically. 11
- 12 Q. Do you have an estimate?
- 13 My estimate would be three to four
- 14 exchanges.
- Did you produce any of those 15 Q.
- 16 documents in your discovery responses?
- 17 A. I don't have those documents.
- 18 Q. And why is that?
- 19 Because I retired from the federal
- 21 the Department of Commerce. I have nothing.
- 22 Q. And all of your communications were

1 with your government e-mail address?

- That's correct.
- 3 Q. Okay. Further down on Page 5, it
- 4 says: "It was noted that ASTM is working with
- 5 ASME and NFPA on a public relations outreach
- 6 campaign and plans to meet with the heads of
- 7 regulatory agencies to talk about the
- 8 contributions of SDOs."
- 9 Do you see that?
- 10 A. Yes, I do.
- 11 Q. Do you know what is being referred
- 12 to there?
- 13 A. Well, not more than what it says in
- 14 the text.
- Q. Do you have any recollection from
- 16 the -- what discussion occurred at the meeting
- 17 regarding the public outreach campaign?
- 18 A. I do not.
- 19 It then says at the next paragraph:
- 20 "Mr. Pauley noted that it was important to
- 21 address the free standards issue and the

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 49 of 122

Page 189

- 1 standardization system works."
- 2 Do you know what the free standards 3 issue is?
- 4 A. My understanding is that Mr. Pauley
- 5 is referring to the comment above that -- let's
- 6 see. I want to get the exact wording. The
- 7 standards incorporated by reference should be
- 8 available for free.
- 9 Q. Who is Mr. Pauley?
- 10 A. Jim Pauley at the time, 2012, was
- 11 the chairman of the board of ANSI.
- 12 Q. Did -- was Mr. Pauley also
- 13 affiliated with NFPA at that time?
- 14 A. He -- Mr. Pauley's employer was the
- 15 electronics company. I am missing the name
- 16 now. Anyway, he was employed by a private
- 17 company in the electronics --
- 18 electro-electronics field. He may have been -- 18
- 19 he was probably a member of the National Fire 19
- 20 Protection Association. He is an engineer.
- 21 Q. It goes on to say, this is referring
- 22 to Mr. Pauley: "He suggested that ANSI may
 - Page 190
 - 1 need to engage a public relations firm to help
- 2 ANSI's communications team craft the
- 3 appropriate messaging to explain how the
- 4 standard system works and the public benefits5 it brings."
- Do you know if ANSI engaged a public relations firm for that purpose?
- 8 A. ANSI did not.
- 9 Q. Why is that?
- 10 MR. FEE: Objection.
- 11 THE WITNESS: I don't know. I just
- 12 -- I know that ANSI -- the institute did not
- 13 engage a public relations firm.
- 14 (Deposition Exhibit 11 was marked
- 15 for identification.)
- 16 THE WITNESS: My timing was wrong.
- 17 BY MR. BECKER:
- 18 Q. That was going to be my next
- 19 question.
- 20 A. I apologize. I did not remember the
- 21 timing.
- 22 Q. My reason for asking about the

- Page 191

 1 documents was because I had not seen any such
- 2 documents like that.
- 3 I have handed you what has been
- 4 marked as Exhibit No. 11.
- 5 This is the document produced as
- 6 PRO 00167221 to 167222.
- 7 Do you recognize this document?
- B A. I do now that you give it to me, and
- 9 that was when I was -- it was not in 2008, but
- 10 the second stint at NIST.
- 11 Q. This was the correspondence between
- 12 you and Carl Malamud that you were just
- 13 referring to; is that correct?
- 14 A. Yes.
- 15 Q. And so Mr. Malamud asked you
- 16 questions about the SIBR database; is that
- 17 correct?
- 18 A. Yes, that's correct.
 - Q. And he says that -- he is asking
- 20 about when the last time is that -- that NIST
- 21 had done an audit of the SIBR database; is that
- 22 correct?

- 1 A. Yes, that's correct.
- 2 Q. And he is concerned that there are
- 3 errors?
- 4 A. Correct.
- 5 Q. And he also says that he is -- he
- 6 references a few instances or several instances
- 7 where he believes there are errors; is that
- 8 correct?
- 9 A. Yes, correct.
- 10 Q. And then he says he is finding a lot
- 11 of references to fed spec and fed STD
- 12 documents.
- 13 A. Yes.
- 14 Q. Do you know what those -- what that
- 15 refers to?
- 16 A. GSA documents, General Services
- 17 Administration documents.
- 18 Q. Are those produced by the U.S.
- 19 Government?
- 20 A. Yes.
- 21 Q. And then he raises a concern about
- 22 how current the database is.

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 50 of 122

Page 193

1 A. Correct. I see that.

- 2 Q. And you respond that: "With respect
- 3 to the currency of the information compared to
- 4 the latest version of the C.F.R., the database
- 5 is not intended to be a real-time index of what
- 6 is in the C.F.R. It does not represent any
- 7 specific C.F.R. citation as it may be on a
- 8 particular day other than the day that a
- 9 specific record was verified as identified in
- 10 the database;" is that correct?
- 11 A. That's correct.
- 12 Q. What did you mean by "verified?"
- 13 A. As I mentioned earlier, we had an
- 14 individual on contract who was charged with
- 15 searching the Code of Federal Regulations on a
- 16 daily basis to identify citations that should
- 17 be included in the standards incorporated by
- 18 reference database, so he would verify on that
- 19 day but might not go back to reverify.
- 20 Q. When you say, "might not go back to
- 21 reverify," what does that distinction mean?
- 22 MR. FEE: Objection.

Page 194

1

- 1 THE WITNESS: Well, what I -- what I
- 2 meant was, he would identify a record as needs
- 3 to be included in the standards incorporated by
- 4 reference database and on the day that he
- 5 identified it, it would be included. If there
- 6 were updates to that reference later, they
- 7 might not be picked up.
- 8 BY MR. BECKER:
- 9 Q. Your e-mail goes on to say: "The
- 10 range of review data to be incorporated into
- 11 the database runs from 2001 through 2011;" is
- 12 that correct?
- 13 A. Where are you? Oh, I see, the next
- 14 page. Yes. Yes, I said it in my e-mail.
- 15 Q. And so what does that mean?
- 16 MR. GRIFFIN: Objection.
- 17 THE WITNESS: That the individual
- 18 was reviewing the Code of Federal Regulations
- 19 from, as it existed in 2001 through 2011.
- 20 BY MR. BECKER:
- 21 Q. He then in the next paragraph
- 22 writes: "You noted that several entries in the

Page 195

- 1 SIBR database contained the letters NDG or no
- 2 date given in the edition column. NIST uses
- 3 the acronym in the database when a text found
- 4 in a specific paragraph of the C.F.R.
- 5 references a voluntary consensus standard, VCS,
- 6 without citing a specific edition of the
- 7 standard."
- 8 A. Yes.
- 9 Q. Are there instances in U.S.
- 10 regulations where the text references a --
- 11 excuse me, where the text incorporates a
- 12 standard by reference but doesn't say what
- 13 edition of that standard is being incorporated
- 14 by reference?
- 15 MR. GRIFFIN: Objection.
- 16 THE WITNESS: Well, there must be at
- 17 least as reflected in the versions of the Code
- 18 of Federal Regulations that were being
- 19 reviewed. It is considered best practice for
- 20 agencies to cite the year of the edition that
- 21 they are referencing.
- 22 BY MR. BECKER:

Q. You then write: "Some confusion may

- 2 occur when misuse of the acronym NDG for a
- 3 specific standard in one SIBR record, while it
- 4 cites the specific edition of the standard in
- 5 another related record from the same agency,
- 6 such as in the case identified in your
- 7 Public.Resources.Org comments to the OFR;" is
- 8 that correct?
- 9 A. Yes.
- 10 Q. Had you read Mr. Malamud's comments
- 11 to the OFR that you are referencing?
- 12 A. I had at the time obviously.
- 13 Q. You then say: "This is not an
- 14 error. It is and has been NIST's practice to
- 15 cite regulatory language exactly as it appears
- 16 in the text of each specific C.F.R. citation
- 17 and to not make assumptions about what a
- 18 regulatory agency intended in its regulation;"
- 19 is that correct?
- 20 A. That's correct.
- 21 Q. Why didn't NIST make assumptions
- 22 about what a regulatory agency intended in its

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 51 of 122

Page 197

1 regulation?

- 2 A. That would be irresponsible and out 3 of our scope of responsibility.
- 4 Q. Why would that be irresponsible?
- 5 A. NIST is not -- NIST is not a
- 6 regulatory agency. We don't have any -- NIST
- 7 did not have any authority over regulatory
- 8 agency activities. It's the responsibility of
- 9 the regulatory agency to make accurate 10 citations.
- 11 Q. Wasn't NIST able to figure out what 12 edition of the standard was -- the agency had 13 intended to incorporate?
- 14 MR. FEE: Objection to form.
- THE WITNESS: No. Only the agency
- 16 would know that.
- 17 BY MR. BECKER:
- 18 Q. Why is it a best practice to refer
- 19 to a particular edition of a standard when
- 20 incorporated by reference?
- 21 A. Because agencies are incorporating
- 22 specific -- a standard as it stood in a

Page 198

- 1 specific point in time. As the standard is
- 2 updated, the content of the standard may change
- 3 and an agency would have to make a separate
- 4 decision about incorporating an updated
- 5 reference.
- 6 Q. Did NIST ever contact an agency to
- 7 try to find out what edition of a standard was
- 8 intended to be incorporated by reference into a
- 9 regulation?
- 10 A. No. Periodically, we distributed
- 11 portions of the standards incorporated by
- 12 reference database to each agency so you can
- 13 sort by agency as well as by -- you can sort by
- 14 any column. We would distribute on a periodic
- 15 basis DOT's sections to the Department of
- 16 Transportation, Departments of Interior's
- 17 section to them and just note to them, you
- 18 might -- you might want to look at the data.
- 19 It's their responsibility, not NIST's
- 20 responsibility.
- 21 Q. You then give an example, you say:
- 22 "For example," in the next paragraph: "For

- 1 example, when NIST compiled the initial
- 2 inventory of standards incorporated by
- 3 reference, the Mine Safety and Health
- 4 Administration, MSHA, referenced the National

Page 199

- 5 Fire Protection Association, NFPA, National
- 6 Electric Code, NFPA 70 in 30 C.F.R. 57.12048,
- 7 without citing a specific edition. NDG appears
- 8 in the edition column for that record."
- 9 "However, NIST also found other MSHA
- 10 references to NSPA 70 that identified a
- 11 specific edition. For example, in Paragraph 3,
- 12 C.F.R. 75.513-1, MSHA references the 1968
- 13 edition of NFPA 70. In this record, 1968
- 14 appears in the edition column. NIST cannot
- 15 speculate that the nondated incorporation
- 16 refers to or is intended to refer to the 1968
- 17 edition of NFPA 70 referenced in the date of
- 18 incorporation."
- 19 "That intent or interpretation is up
- 20 to the regulatory agency promulgating the
- 21 regulation. The format and manner in which
- 22 SIBRs are identified in the C.F.R. is an

- 1 individual agency decision;" is that correct?
- 2 A. That's correct.
- 3 Q. So can you explain to me so I better
- 4 understand why is it that -- that NIST couldn't
- 5 just assume that the earlier reference to NFPA
- 6 70 in the MSHA referred to the 1968 edition,
- 7 seeing as elsewhere in the MSHA, it referred to
- 8 the 1968 edition?
- 9 A. We wouldn't have the information
- 10 necessary to make that determination and we are
- 11 not going to guess.
- 12 Q. In the next paragraph, you describe
- 13 NIST providing agency standards executives
- 14 Excel spreadsheets containing the referenced
- 15 records for their review.
- 16 Was that what you were earlier
- 17 describing in which NIST tried to point out
- 18 errors to certain agencies?
- 19 A. When I --
- 20 MR. GRIFFIN: Objection.
- 21 THE WITNESS: -- mentioned earlier
- 22 that we would provide hard-copied portions of

	Case 1:13-cv-01215-TSC Document 2	204-	43 Filed 11/13/19 Page 52 of 122
	Page 201		Page 203
1	the database, the Department of Transportation	1	particular recommendation that Mr. Malamud
	portion, the Department of Interior and so on,	2	made?
	to each agency to review through their	3	A. Yes.
	standards management system, yes, that's what I	4	Q. Do you know if the SIBR database
	was referring to.	5	was, in fact, identified updated to reflect
6	BY MR. BECKER:	6	
7	Q. At the bottom of the page, you say:	7	action in response to Mr. Malamud's e-mail?
8	"In addition to cross-references for	8	A. I can commit that the that the
	incorporation in the C.F.R., such as those	9	
	above, there are many federal specifications,		Federal Regulations, I asked him to take a
	military specifications and other federal GSA		to take a specific look and update the database
	standard documents cited in the C.F.R. by		if he identified additional references.
	various agencies. Many of these have been	13	
	withdrawn, replaced or updated by the issuing		a short break.
	agency but not by the using agency. The	15	
	references will be retained in the database	16	
	until the using agency reviews and revises its		the record. This is the end of Media Unit No.
	regulation in the C.F.R."	18	3. The time is 3:29.
19	What's the distinction between an	19	
20	issuing agency versus a using agency?	20	,
21	A. So a military specification is a		on the record. This is the start of Media Unit
22	Department of Defense document. The Department	22	No. 4. The time is 2:41
			NO. 4. THE WITE IS 3.41.
			No. 4. The time is 3:41.
	Page 202	1	Page 204
1	Page 202 of Defense might withdraw a military	1	Page 204 (Deposition Exhibit 12 was marked
1 2	Page 202 of Defense might withdraw a military specification. If another agency such as the	1	Page 204 (Deposition Exhibit 12 was marked for identification.)
1 2 3	Page 202 of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency	1 2	Page 204 (Deposition Exhibit 12 was marked for identification.) BY MR. BECKER:
1 2 3 4	Page 202 of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had	1 2 3 4	Page 204 (Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been
1 2 3 4 5	Page 202 of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they	1 2 3 4	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12.
1 2 3 4 5	Page 202 of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had	1 2 3 4 5	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document?
1 2 3 4 5 6 7	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same	1 2 3 4 5 6	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as
1 2 3 4 5 6 7	Page 202 of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development	1 2 3 4 5 6 7	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307.
1 2 3 4 5 6 7 8	Page 202 of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but	1 2 3 4 5 6 7 8 9	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an
1 2 3 4 5 6 7 8 9	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by	1 2 3 4 5 6 7 8 9	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting.
1 2 3 4 5 6 7 8 9	Page 202 of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but	1 2 3 4 5 6 7 8 9 10	Page 204 (Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board
1 2 3 4 5 6 7 8 9 10	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct.	1 2 3 4 5 6 7 8 9 10	Page 204 (Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting?
1 2 3 4 5 6 7 8 9 10 11 12 13	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct. Q. You then say: "Finally, you note	1 2 3 4 5 6 7 8 9 10 11	Page 204 (Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting? A. I was.
1 2 3 4 5 6 7 8 9 10 11 12 13 14	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct.	1 2 3 4 5 6 7 8 9 10 11 12 13	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting? A. I was. Q. As you it says on the third page
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct. Q. You then say: "Finally, you note that you identified five BSI standards referenced in the C.F.R. while the SIBR	1 2 3 4 5 6 7 8 9 10 11 12 13	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting? A. I was. Q. As you it says on the third page that you are listed as presenting the federal
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct. Q. You then say: "Finally, you note that you identified five BSI standards referenced in the C.F.R. while the SIBR database only identified two. This is likely	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting? A. I was. Q. As you it says on the third page that you are listed as presenting the federal engagement and standards activities
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct. Q. You then say: "Finally, you note that you identified five BSI standards referenced in the C.F.R. while the SIBR database only identified two. This is likely due to the fact that NIST's periodic review has	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting? A. I was. Q. As you it says on the third page that you are listed as presenting the federal
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct. Q. You then say: "Finally, you note that you identified five BSI standards referenced in the C.F.R. while the SIBR database only identified two. This is likely	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting? A. I was. Q. As you it says on the third page that you are listed as presenting the federal engagement and standards activities information/discussion; is that correct? A. Correct.
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	of Defense might withdraw a military specification. If another agency such as the Coast Guard or another component of an agency outside of the Department of Defense had referenced that military specifications, they are the using agency. Q. Is that the same kind of the same thing as where a standards development organization might withdraw their standard but it might still be listed as incorporated by reference into a particular regulation? A. That's correct. Q. You then say: "Finally, you note that you identified five BSI standards referenced in the C.F.R. while the SIBR database only identified two. This is likely due to the fact that NIST's periodic review has not yet captured the additional three	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	(Deposition Exhibit 12 was marked for identification.) BY MR. BECKER: Q. I am handing you what has been marked as Exhibit No. 12. Do you recognize this document? This is the document produced as ANSI 0303 to ANSI 0307. A. Yes. I recognize this to be an agenda of the ANSI board of directors meeting. Q. Were you in attendance at this board of directors meeting? A. I was. Q. As you it says on the third page that you are listed as presenting the federal engagement and standards activities information/discussion; is that correct? A. Correct.

22 referring to about taking action on a

21

Was this the instance that you were

21 National Science and Technology Council

22 subcommittee on standards and OMB A119

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 53 of 122

Page 205

- 1 revision.
- 2 A. Yes.
- 3 Q. And above that, it says that there
- 4 is going to be updates, that standards
- 5 incorporated by reference into law are going to
- 6 be discussed and there will be updates on
- 7 incorporation by reference, Public.Resource.Org
- 8 and IBR portal; is that correct?
- 9 A. I see that, yes.
- 10 (Deposition Exhibit 13 was marked
- 11 for identification.)
- 12 BY MR. BECKER:
- 13 Q. I have handed you what has been
- 14 marked as Exhibit No. 13.
- 15 This is a document produced as ANSI
- 16 0308 to ANSI 0327.
- Do you recognize this document? 17
- A. Yes. 18
- Q. What is this document? 19
- 20 A. It's the presentation that is
- 21 referenced in the board agenda on copyright
- 22 infringement and incorporation by reference,

Page 206

- 2 Q. Were you present for this
- 3 presentation?
- 4 A. I'm sure I was.

1 recent developments.

- 5 Q. It says on Slide 2, so that would be
- 6 the second page: "Copyright infringement up
- 7 generally. The posting of unauthorized
- 8 copyrighting standards on the internet has
- 9 skyrocketed over the last year;" is that
- 10 correct?
- 11 Α. That's what it says, yes.
- 12 Were you aware of concerns at that
- 13 time about the posting on the internet about
- 14 unauthorized copies of standards?
- 15 Α. Yes
- 16 Q. What is Attributor Guardian?
- 17 I -- other than it appears to be a
- 18 service that searches the web for violations,
- 20 the issues that were being faced -- many of the 20 view reasonable access as requiring free online
- 21 issues being faced by copyright owners were
- 22 with respect to foreign postings, in China,

- Page 207 1 Brazil, I think was a significant problem area,
- 2 and India.
- 3 Q. The next page says: "The unique
- 4 problem, standards incorporated by reference,
- 5 IBR, into law. Many countries are struggling
- 6 with what to do about standards that have been
- 7 incorporated by reference into law. Arguments
- 8 have been made that such standards should be
- 9 freely available. Counter-arguments have been
- 10 made that such standards are copyright
- 11 protected and that copyright should not yield
- 12 to free access;" is that correct?
- 13 A. That's what it says on the slide.
- 14 Do you know who was making the
- 15 arguments that standards should be freely
- 16 available?
- 17 Α. Referring to Bullet 2?
- 18 Q. Yes.
- 19 Not specifically. There are general Α.
- 20 arguments on both -- on both sides of the
- 21 issue.
- 22 Q. The following three pages refer to

- 1 countries either requiring free access to
- 2 standards that have been incorporated into law
- 3 or countries that -- as is phrased here, uphold
- 4 copyright in IBR standards; is that correct?
- 5 A. Yes, that's correct.
- 6 Q. It lists eight countries that have
- 7 acquired free access to standards that are
- 8 incorporated into law and it lists four
- 9 countries that have not; is that correct?
- 10 A. Yes, that's correct.
- Q. It then goes on to list the --
- 12 U.S.A. requires reasonable access for IBR
- 13 standards, correct?
- 14 A. Yes.
- Q. It says: "Some U.S.-based SDOs make
- 16 IBR standards available on a read-only basis
- 17 online and without fees, e.g., ASTM reading
- 18 room, API government cited and safety
- 19 for posting of copyrighted documents. Most of 19 documents, NFPA free access. Other SDOs do not

 - 21 access. "
 - 22 What is the ASTM reading room?

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 54 of 122

Page 209

1 A. My understanding is that's ASTM's

- 2 electronic portal where they provide read-only
- 3 access to ASTM standards that have been
- 4 incorporated by reference into regulation.
- Q. What is the API government cited and 5 6 safety documents?
- 7 A. I don't have specific knowledge, but
- 8 I assume it's a similar service, but I don't
- 9 know.
- 10 Q. Is API a standards development
- 11 organization?
- It's the American Petroleum 12 Α.
- 13 Institute.
- 14 Q. What is NFPA free access?
- National Fire Protection Association 15
- 16 free access. Again, that would be an NFPA
- 17 service.
- 18 Q. It says -- do you know what SDOs do
- 19 not view reasonable access as requiring free
- 20 online access?
- 21 MR. FEE: Objection to form.
- 22 MR. GRIFFIN: Objection.

Page 210

- THE WITNESS: I don't have specific 1
- 2 knowledge about that. There are 240 accredited
- 3 standards developing organizations in the
- 4 United States and many more that are not
- 5 accredited by ANSI. It's a large number of
- 6 organizations.
- 7 BY MR. BECKER:
- 8 Q. Do you know of any specific
- 9 standards setting organizations -- excuse me,
- 10 standards development organizations that do not
- 11 provide free online access to standards that
- 12 have been incorporated by reference?
- 13 A. Well, I suppose I -- you could make
- 14 that determination by the process of
- 15 elimination. The three standards developing
- 16 organizations who are listed here with the
- 17 reading rooms and the SDOs who have made their 17 available online for free;" is that correct?
- 18 standards available via the IBR portal. I
- 19 don't have that number, but I can speak to the
- 20 positive. I don't have information about the
- 21 negative.
- 22 Q. The next page says: "U.S. dialogue

- 1 on IBR, NARA petition."
- What -- what does NARA stand for?
- 3 Α. The National Archives and Records
- 4 Administration.
- Q. It says: "On February 27, 2012, a 5
- 6 Federal Register Notice called for comment on a
- 7 petition filed by a group of academics to amend
- 8 the National Archives and Records
- 9 Administration, NARA's regulations governing
- 10 the approval of agency requests to incorporate
- 11 materials by reference into the Code of Federal
- 12 Regulations."
- 13 Are you familiar with that Federal
- 14 Register Notice?
- 15 A. Well, I was at the time. I don't
- 16 have any memory of it currently.
- 17 Q. Then it says: "ANSI developed a
- 18 consensus response on behalf of the
- standardization community;" is that correct?
- 20 A. Yes.
- 21 Q. Did you participate in the consensus
- 22 response that ANSI developed?

Page 212

- 1 A. I don't remember.
- 2 Q. Do you remember what that consensus
- 3 response stated?
- 4 No. but it should be available in
- 5 NARA's record.
- Q. On Slide 10, it refers to the 6
- 7 pipeline safety bill.
- 8 Α. Yes.
- 9 Do you recognize that to be the same
- 10 pipeline bill that we discussed earlier today?
- 11 Α. I do.
- 12 Q. It says: "The U.S. Department of
- 13 Transportation Pipeline Hazardous Materials
- 14 Safety Administration, PHMSA, contacted SDOs to
- 15 request that their standards incorporated by
- 16 reference in PHMSA legislation be made
- 18 A. Yes.
- 19 Q. Do you recall that event occurring?
- 20 A. I recall hearing about it.
- 21 Do you know what the justification
- 22 was for asking SDOs to make their standards

USCA Case #22-7063 Document #1982413 Filed: 01/20/2023 Page 91 of 395 Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 55 of 122 Page 213 Page 215 1 incorporated by reference in PHMSA legislation 1 meeting that they held. It's on C-SPAN or 2 available for -- online for free? 2 YouTube. It's available. 3 MR. GRIFFIN: Objection. 3 Q. So is it your view that the 4 MR. FEE: Objection to form. 4 Department of Transportation did not actually 5 THE WITNESS: So my -- well, if you 5 want SDOs to make their standards incorporated 6 read the Section 4 of the bill, prohibited the 6 by reference in PHMSA legislation available 7 reference -- prohibited DOT from referencing 7 online for free? 8 any standard unless the documents were made 8 MR. GRIFFIN: Objection. 9 9 available free of charge on an internet MR. FEE: Objection to form. 10 website, so my understanding is that DOT then 10 THE WITNESS: I don't have an 11 reached out to SDOs to determine whether that 11 opinion on that. The Department of 12 was feasible. With a view to making the 12 Transportation was working with the 13 argument to the Congressional committee that it 13 Congressional committee to ensure that they 14 was -- that this was not necessarily feasible 14 could comply with the committee's intent, while 15 in all cases. 15 at the same time, enable them to still continue BY MR. BECKER: 16 carrying out their regulatory responsibilities. Q. When you say, "with a view to making 17 BY MR. BECKER: 18 the argument to the Congressional committee 18 Q. Moving on to Slide 12, that slide

16

17

19 that it was not necessarily feasible in all

20 cases," what is your basis for that knowledge?

A. There was a technical correction 21

22 made to the -- not to bill itself but to the

Page 214

20

21

- 1 record related to the legislation, which
- 2 altered this requirement and made it -- made it
- 3 more flexible so DOT, Department of
- 4 Transportation, Congressional legislative
- 5 affairs folks worked with the committee on the
- 6 technical correction to the bill.
- 7 Q. How is it that you -- strike that.
- 8 Have you -- had you spoken with
- 9 anybody from DOT about their views on the
- 10 pipeline bill?
- 11 A. Not since the time period 2012, 2013
- 12 when that was in play.
- 13 Q. At that time in 2012 or 2013, had
- 14 you spoken with anybody from the Department of
- 15 Transportation about their view on the pipeline
- 16 bill?
- 17 A. I actually participated in an open
- 18 community meeting that the Department of
- 19 Transportation, Pipeline and Hazardous Material
- 20 Safety Administration convened to discuss the
- 21 incorporation by reference in the particular
- 22 context of the bill, so I participated in a

Page 216

1 Air Conditioning Contractor's National

19 discusses Public.Resource.Org; is that correct?

Q. Slide 13 then refers to a lawsuit

22 between Public Resource and the Sheet Metal and

2 Association. Inc.: is that correct?

Yes, it does.

3 A. Yes.

Α.

- Q. And that is a SDO, correct?
- 5 Α. I believe so, yes, it's national
- 6 standards, yes.
- 7 Q. It's referred to as SMACNA?
- 8 Α. Yes.
- 9 SMACNA sent Public Resource a cease
- 10 and desist letter using Attributor Guardian in
- 11 response to posting SMACNA standards; is that
- 12 correct?
- 13 Α. That's what the slide says, right.
- 14 Were you -- at this time, were you
- 15 keeping updated on developments in the SMACNA
- 16 lawsuit?
- Α. 17 No.
- 18 Did you subsequently keep updated on
- 19 developments in the SMACNA lawsuit?
- 20 A. No.
- 21 Slide 14 discusses the ANSI IBR Q.
- 22 portal.

Page 217 Page 219 1 A. Uh-huh. 1 Q. How does the ANSI IBR portal factor 2 It says: "ANSI intends to provide a 2 into that? 3 portal for read-only access to a subset of 3 MR. GRIFFIN: Objection. 4 standards incorporated by U.S. federal agencies MR. FEE: Objection to form. 4 5 in rulemaking. Goal is to make it easier for 5 THE WITNESS: Well, as you mentioned 6 interested parties to find IBR standards and to 6 earlier and the bullet above, it provides it 7 access them via the internet at no cost." 7 easier, simpler access to a range of standards 8 How would this make it easier for 8 that are incorporated by reference into 9 interested parties to find IBR standards and 9 regulations. 10 access them via the internet with no cost? 10 BY MR. BECKER: MR. GRIFFIN: Objection. 11 11 Q. And why would simpler access have 12 MR. FEE: Objection. 12 any relation to the U.S. Government's reference 13 THE WITNESS: So the IBR portal is a 13 to private sector standards and regulations in 14 portal which provides read-only access to a 14 lieu of having the government develop its own 15 number of -- to standards that are maintained 15 standards? 16 16 by a number of standards developing MR. GRIFFIN: Objection. 17 organizations including ISO and IEC in one 17 MR. FEE: Objection. THE WITNESS: Well, I mentioned that 18 place, so having all that information in one 18 19 place would make it easier for interested 19 the Bullet 3 refers to the direction from 20 parties to find the standards. 20 Congress to federal agencies. That statement 21 BY MR. BECKER: 21 simply supports what the direction that the law 22 At this time, the ANSI IBR portal 22 provides. ANSI's IBR portal is -- was intended Page 218 Page 220 1 was not yet in existence; is that correct? 1 to be and currently is a tool for assisting A. Correct. 2 federal agencies and providing reasonable 3 Q. It says: "One important motivation 3 access, reasonable availability. 4 for providing this access is to encourage the 4 BY MR. BECKER: 5 5 U.S. Government's reference to private sector Q. It says on the next page: "Phase 1 6 standards and regulations in lieu of having the 6 will include only IBR standards that have been 7 government develop its own standards;" is that 7 developed by ANSI-accredited SDOs as well as by 8 correct? 8 IEC and ISO;" is that correct? 9 A. That's what it says. MR. FEE: Object to form. THE WITNESS: That's correct. Q. Is that -- when the ANSI IBR portal 10 10 11 BY MR. BECKER: 11 was first made publicly available, did it 12 Q. Can you explain that motivation? 12 include only standards developed by MR. GRIFFIN: Objection. 13 ANSI-accredited SDOs as well as by IEC and ISO? 13 14 MR. FEE: Objection. 14 A. That's -- I believe that -- that's 15 THE WITNESS: The National 15 what it says on the slide. I can't 16 Technology Transfer and Advancement Act directs 16 independently confirm that but I see no reason 17 federal agencies to rely on private voluntary 17 to say that's not the case. 18 consensus standards in lieu of developing their 18 Q. It says: "A number of SDOs have 19 own standards. That's simply a repetition of 19 already given permission for ANSI to either 20 the text of what -- the direction under the 20 include their standards or a link to their 21 site;" is that correct? 21 law. 22 22 BY MR. BECKER: That's what it says.

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Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 57 of 122

Page 221
Q. Through your involvement with ANSI

2 at this time, were you aware of ANSI believing

- 3 that it needed to get permission in order to
- 4 include a SDO standard on its read-only site?
- 5 MR. GRIFFIN: Objection.
- 6 THE WITNESS: That copyright belongs
- 7 to the copyright owner which in all of these
- 8 cases is the standards development
- 9 organization, so yes, ANSI could not post
- 10 copyrighted information even for read-only
- 11 purposes without permission from the copyright
- 12 owner.
- 13 BY MR. BECKER:
- 14 Q. Through your experience with ANSI at
- 15 this time, were you aware of ANSI believing it
- 16 needed to get permission from an SDO in order
- 17 to link to the SDO's own read-only site?
- 18 MR. GRIFFIN: Objection.
- 19 MR. FEE: Objection.
- 20 THE WITNESS: I know what is listed
- 21 on the slide. I don't think general practice
- 22 is -- I think it is good practice to reach out
 - Page 222
 - 1 to owning organizations with respect to either
- 2 posting the copyrighted information or linking
- 3 to their cites for a specific purpose.
- 4 BY MR. BECKER:
- 5 Q. And why is that good practice?
- 6 A. Just sounds like good corporate
- 7 practice to me.
- 8 MR. FEE: Objection.
- 9 THE WITNESS: Why would you link
- 10 without permission.
- 11 BY MR. BECKER:
- 12 Q. Do you think that people typically
- 13 ask for permission each time that they link to
- 14 somewhere on the internet?
- 15 MR. GRIFFIN: Objection.
- 16 MR. FEE: Objection to form.
- 17 THE WITNESS: Well, that's ANSI's
- 18 practice. I can't speak to any other
- 19 organization.
- 20 BY MR. BECKER:
- 21 Q. Is that ANSI's practice for any
- 22 outbound link to another website?

- Page 223
- 1 A. I don't know. You'd have to check
- 2 with our publications staff about that.
- 3 Q. Does ANSI make IBR standards
- 4 available to the print disabled?
 - MR. FEE: Objection to form.
- 6 THE WITNESS: I don't know. You
- 7 would have to look at the portal to see.
 - BY MR. BECKER:
- 9 Q. Are you aware of any availability to
- 10 the print disabled of IBR standards?
- 11 MR. FEE: Objection. Form.
- 12 THE WITNESS: I have no personal
- 13 knowledge.
 - BY MR. BECKER:
 - Q. Slide 16 discusses -- it says:
- 16 "Multiple dimensions of protection."
- 17 Do you know what that is referring
- 18 to, or what do you understand that to refer to?
- 19 A. I am assuming it is referring to the
- 20 bullets that are listed below the title.
- 21 Q. What does -- what is protection
- 22 referring to?

- 1 A. Copyright protection is my
- 2 assumption.
- 3 Q. It says: "Read-only access users
- 4 can only open and read the licensed materials.
- 5 Print restriction, user cannot print the
- 6 licensed material. Text copy prevention,
- 7 contact cannot be copied. Screen shot
- 8 prevention, screen prints are disabled.
- 9 Machine limits, the licensed materials cannot
- 10 be copied to a different computer or network
- 11 file system. Watermarks, a watermark
- 12 containing text provided by the content
- 13 provider will be added to the protected license
- 14 to materials;" is that correct?
- 15 A. That's correct.
- 16 Q. Is this referring to aspects of the
- 17 ANSI read-only portal?
- 18 A. It's referring to the IBR -- the
- 19 ANSI IBR portal, yes.
- 20 Q. It then says on the next page:
- 21 "User will be presented with a form that must
- 22 be completed before the user is given access to

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 58 of 122

Page 225 1 the licensed materials. The form collects such

- 2 information as name, e-mail address, company or
- 3 organization name, and stores this information
- 4 in a secure database."
- Do you know why users were required
- 6 to fill out this form before accessing the ANSI
- 7 IBR portal?
- 8 MR. GRIFFIN: Objection.
- 9 THE WITNESS: I do not.
- 10 BY MR. BECKER:
- 11 Q. Do you know if ANSI still requires
- 12 users to fill out this form in order to access
- 13 the IBR portal?
- A. I do not know that. 14
- Q. Do you know -- what -- do you know 15
- 16 whether this information that is collected is
- 17 used by ANSI in any way?
- A. No. 18
- 19 MR. FEE: Objection to form.
- 20 THE WITNESS: I have no knowledge of
- 21 that.
- 22 BY MR. BECKER:

Page 226

- Q. Who would know whether this
- 2 information collected by ANSI is used in any
- 3 way?
- 4 MR. FEE: Objection to form.
- 5 THE WITNESS: That's a part of our
- 6 business operations so somebody in the
- 7 standards facilitation staff would probably
- 8 know. I don't have that information and I
- 9 don't know who has that information.
- 10 BY MR. BECKER:
- 11 Q. It then says: "User will be
- 12 required to sign an end user license agreement,
- 13 EULA, before being permitted to access a
- 14 licensed material."
- 15 Do you recall any debate within ANSI
- 16 as to whether an end user license agreement
- 17 should be required in order to use the ANSI IBR
- 18 portal?
- 19 A. I do not.
- Q. Do you know what the terms of the 20
- 21 end user license agreement are?
- 22 A. I have no idea.

- Q. On Slide 19, it says: "The portal
 - 2 will also include the following statement:
 - 3 Caution, the standards available on this site
 - 4 are the versions and year dates actually
 - 5 referenced in the respective federal
 - 6 legislation or law. The standard reference may
 - 7 not be the most recent or up-to-date version
 - 8 available. It is possible that the standard
 - 9 and/or technology at issue has changed or been
 - 10 updated during the period of time since the
 - 11 regulation/law was enacted. ANSI does not
 - 12 control which standards and versions hereto are
 - 13 referenced in federal regulations or laws of
 - 14 the U.S.A."
 - 15 Do you know why that statement was
 - 16 included on the ANSI IBR portal?
 - 17 A. I don't have any personal knowledge
 - 18 of why that statement was included.
 - Q. Do you have a guess as to why this
 - 20 statement was included?
 - 21 MR. GRIFFIN: Objection.
 - 22 MR. FEE: Objection to form.

Page 228

- 1 THE WITNESS: You want me to guess.
- 2 I think it's good practice to let individuals
- 3 who access a particular source of information
- 4 know if the reference is not the most recent or
- 5 up-to-date version.
- 6 BY MR. BECKER:
- 7 Q. Is there a concern -- are you
- 8 concerned that there could be a negative
- 9 result, as a result due to somebody relying on
- 10 an out-of-date standard?
- 11 MR. GRIFFIN: Objection.
- 12 MR. FEE: Objection to form.
- THE WITNESS: So as I mentioned 13
- 14 earlier, agencies incorporate standards by
- 15 reference into regulations when it's relevant
- 16 and it helps them fulfill their mission. A
- 17 good practice is that agencies provide dated
- 18 references so it's the responsibility of the
- 19 agency to have a process in place to
- 20 periodically look to update references. But if
- 21 they don't update references, then those are
- 22 the references that are relevant for a

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 59 of 122

Page 229

1 particular regulation.

- 2 BY MR. BECKER:
- 3 Q. What does ANSI do for its IBR portal
- 4 when the regulation incorporating a standard
- 5 doesn't list the particular edition of that
- 6 standard?
- 7 MR. GRIFFIN: Objection.
- 8 THE WITNESS: I don't know the
- 9 answer of that. I don't know the details of
- 10 the portal. I have actually never looked at
- 11 it.
- 12 BY MR. BECKER:
- 13 Q. You've never used the portal?
- 14 A. No, I've never used the portal.
- 15 (Deposition Exhibit 14 was marked
- 16 for identification.)
- 17 BY MR. BECKER:
- 18 Q. I have handed you what has been
- 19 marked as Exhibit No. 14.
- This is a document produced as ANSI
- 21 0328 to 0336.
- 22 Do you recognize this document?

Page 230

- 1 A. I do.
- 2 Q. What is this document?
- 3 A. These appear to be the minutes of
- 4 the -- related to two agenda items on the -- at
- 5 the May 16, 2013 meeting of the ANSI board of
- 6 directors.
- 7 Q. This is the same meeting that we
- 8 have been discussing for the past several
- 9 minutes, correct?
- 10 A. That's correct.
- 11 (Deposition Exhibit 15 was marked
- 12 for identification.)
- 13 BY MR. BECKER:
- 14 Q. I have handed you what has been
- 15 marked as Exhibit No. 15.
- 16 This is the document marked as ANSI
- 17 2860.
- 18 Do you recognize this document?
- 19 A. Yes.
- 20 Q. What is it?
- 21 A. It's an e-mail from Scott Cooper at
- 22 ANSI to Patricia Griffin, Fran Schrotter and

- Page 231

 1 Liz Neiman regarding my participation in an
- 2 ANSI review group.
- 3 Q. Do you know what review group that 4 is?
- 5 A. Let's see. Given the date March 1,
- 6 2012, it is probably a response to the NARA
- 7 request for information, request for input.
- B Q. It says further on: "Mary Saunders,
- 9 she would be pleased to be part of an ANSI
- 10 review group. She didn't think NIST would
- 11 respond on their own but I think she was
- 12 pleased to have the ANSI venue to allow her to
- 13 weigh in."
- 14 Do you know what is being -- what do
- 15 you understand it to mean when Scott Cooper
- 16 says: "She didn't think NIST would respond on
- 17 their own?"
- 18 MR. GRIFFIN: Objection.
- 19 THE WITNESS: That NIST would not
- 20 submit NIST comments to NARA on the -- on the
- 21 request.
- 22 Although, I would note, since you

- 1 have given me now the minutes that NARA --
- 2 there was a comprehensive -- let's see. U.S.
- 3 Government, ICE -- no, never mind. That's not
- 4 relevant.
- 5 Government agencies did not respond
- 6 to NARA's requests I don't think.
- 7 (Deposition Exhibit 16 was marked
- 8 for identification.)
- 9 BY MR. BECKER:
- 10 Q. I have handed you what has been
- 11 marked as Exhibit No. 16.
- 12 This is the document Bates-stamped
- 13 ANSI 3083.
- 14 Do you recognize this document?
- 15 A. I am an addressee on this -- or I'm
- 16 copied on this e-mail to -- it's hard to tell
- 17 who the addressees are, but I'm copied on the
- 18 e-mail.
- 19 Q. It says on February 27 -- excuse me,
- 20 actually let me back up a moment.
- 21 Do you recall receiving this e-mail?
- 22 A. No, I do not.

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 60 of 122

Page 233 Q. Do you have any reason to believe

2 that this e-mail produced by ANSI and listing

- 3 your name and e-mail address as under the BCC
- 4 line is not authentic?
- A. No, I do not.
- 6 Q. Do you have any reason to think that
- 7 you didn't receive this e-mail?
- 8 A. No, I don't have any reason to think
- 9 I didn't get it.
- Q. And the e-mail that's listed for you 10
- 11 is Mary.Saunders@NIST.gov; is that correct?
- 12 A. That's correct.
- 13 Q. Did you always use your NIST e-mail
- 14 address when conversing with ANSI prior to
- 15 leaving NIST?
- A. Yes. 16
- 17 Q. The e-mail says: "On February 27, a
- 18 Federal Register Notice called for comments on
- 19 a petition filed by a group of academics to
- 20 amend the National Archives and Records
- 21 Administration, NARA's regulations governing
- 22 the approval of agency requests to incorporate
 - Page 234
 - 1 materials by reference, IBR, into the Code of
 - 2 Federal Regulation. I am writing to you
 - 3 because you volunteered to take part in a
 - 4 review group that would participate in the
 - 5 development of ANSI's response to this notice;"
 - 6 is that correct?
 - 7 Yes, that's correct.
 - 8 Q. Is this -- is the subject of this
- Exhibit 16 the same as the subject of Exhibit 10 15?
- 11 MR. FEE: Objection to form.
- 12 THE WITNESS: Hold on. Which is
- 13 Exhibit 15?
- 14 BY MR. BECKER:
- 15 Q. That was the e-mail we just looked
- 16 at saying that --
- 17 A. Got it.
- 18 Q. -- "you would be pleased to be part
- 19 of an ANSI review group."
- 20 A. Yes.
- Q. Did you volunteer to take part in 21
- 22 this particular review group?

Page 235

- 1 I must have.
- 2 (Deposition Exhibit 17 was marked
- 3 for identification.)
- BY MR. BECKER: 4
- 5 Q. I have handed you what has been
- 6 marked as Exhibit 17.
- 7 This is produced by ANSI as Bates
- 8 No. 3084 to 3089.
- 9 Do you recognize this document?
- 10 A. It's the ANSI response, request for
- 11 comments on incorporation by reference which
- 12 was sent to the National Archives and Records
- 13 Administration.
- Q. Is this the document that was
- 15 attached to the e-mail we just looked at,
- 16 Exhibit No. 15?
- 17 MR. FEE: Objection. Form.
- THE WITNESS: Well. I don't know. 18
- 19 This is the final -- this is the final document
- 20 that was submitted.
- 21 BY MR. BECKER:
- 22 Are you certain that this is the

- 1 final document?
 - MR. FEE: Objection.
 - 3 THE WITNESS: No, I'm not certain.
- 4 It looks like the final document but I can't
- 5 tell you.
- 6 BY MR. BECKER:
- 7 Q. Looking back at Exhibit 16, the
- 8 e-mail, the attachment line says: "ANSI
- 9 response IBR_031512_review.docX"; is that
- 10 correct?
- A. Yes, it does. 11
- 12 Q. And in the third paragraph -- the
- 13 final sentence of the third paragraph says:
- 14 "As such, we respectfully request that you send
- 15 any comments you have on this document by noon
- 16 on Monday, March 19, staff will then compile
- 17 your comments into a new version that will go
- 18 to the IPRPC;" is that correct?
- 19 A. That's what it says.
- 20 Q. After reviewing that, does this
- 21 refresh -- excuse me.
- Does this refresh your recollection 22

Page 237 Page 239 1 that Exhibit 17 was a draft of the ANSI 1 Q. Do you recall inserting that text 2 response that was attached to Exhibit 16? 2 into the draft? No, but I must have, it's a 3 MR. GRIFFIN: Objection. Α. 4 statement of fact. THE WITNESS: I can't tell. There Do you recall inserting the 5 5 is no date on that document. Q. 6 statement on the next line down: "Which was (Deposition Exhibit 18 was marked 6 passed on a voice vote at the December 2011 7 for identification.) 8 ACUS Plenary?" 8 BY MR. BECKER: A. I do not recall, but again, that's a 9 Q. I have handed you what has been 10 marked as Exhibit No. 18 which ANSI produced as 10 statement of fact. Q. And then under Bullet Point No. 9, 11 11 Bates No. 3121 to 3122. 12 Do you recognize this document? 12 the final sentence of that paragraph says: A. Yes. 13 "This could have a chilling effect on agencies' 13 14 willingness to refer to voluntary standards in 14 Q. What is this document? 15 support of regulatory actions." 15 A. It's an e-mail from -- that I sent 16 Do you recall adding that text to 16 to Liz Neiman at ANSI noting that I had 17 attached comments on the draft document all on 17 this draft? 18 A. No, but I take the point that I must 18 Page 6 of the draft. 19 have added it. 19 Q. It lists an attachment on this 20 Q. How would an extended review period 20 e-mail; is that correct? 21 at various stages of rulemaking have a chilling 21 A. Riaht. 22 22 effect on agencies' willingness to refer to (Deposition Exhibit 19 was marked Page 238 Page 240 1 for identification.) 1 voluntary standards in support of regulatory 2 BY MR. BECKER: 2 actions?" 3 Q. I have handed you what has been 3 MR. FEE: Objection. THE WITNESS: My -- I don't have 4 marked as Exhibit 19. 5 This is the document produced as 5 memory -- my memory is not specific enough to 6 ANSI 3123 to ANSI 3128. 6 remember the context. I mean, at the time, I 7 Is this the draft that you had sent 7 obviously had read the NARA petition and 8 as part of Exhibit No. 18? 8 related documents but it's been seven years so 9 9 I don't remember. MR. GRIFFIN: Objection. 10 THE WITNESS: Well, I can't tell. 10 BY MR. BECKER: 11 There is no date or any other identification. Q. Do you know what was being referred BY MR. BECKER: 12 to there regarding an extended review period? 12 13 Q. If you turn to the -- actually, can 13 A. No, I don't remember it. It must 14 you compare the final page of Exhibit 19 with 14 have been part of the petition. 15 the final page of Exhibit 17. 15 (Deposition Exhibit 20 was marked A. Yes. 16 16 for identification.) 17 Do you see that in Exhibit 19, in 17 BY MR. BECKER: 18 the -- let's see. The second line at the top Q. I have handed you what has been 18 19 of the page, it says: "It is both an 19 marked as Exhibit No. 20. 20 independent federal agency and a federal 20 This is a document produced as ANSI 21 advisory committee." 21 3602 to ANSI 3604. 22 A. Yes. 22 Do you recognize this document?

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Page 241

A. I am a recipient of the e-mail, so

2 yes.

1

- 3 Q. What is this e-mail?
- 4 A. It's an e-mail from Liz Neiman of
- 5 ANSI to all ANSI members plus additional
- 6 addressees regarding the fact that the deadline
- 7 for comment has been extended to June 1 for the
- 8 ANSI -- deadline for comment on the NARA
- 9 incorporation by reference petition.
- 10 Q. Do you know why you were
- 11 specifically BCC'd on that?
- 12 A. It's not BCC. Those are all -- I'm
- 13 an addressee but in order to avoid every
- 14 addressee getting responses, they put you all
- 15 on BCC. I misspoke the first time.
- No, I don't know why we are called out separately.
- 18 Q. Do you know -- when it refers to all
- 19 ANSI members, is that all organizations that
- 20 are part of ANSI or is that a broader group?
- 21 A. I don't know what that e-mail alias
- 22 refers to specifically.

Page 242

- 1 Q. The following page lists questions
- 2 from the notice and the first one is: "Does
- 3 reasonably available mean that the material
- 4 should be available for free to anyone online,"
- 5 and then it says: "Create a digital divide by
- 6 excluding people without internet access."
- 7 Do you believe that if reasonable --
- 8 reasonably available meant that a document
- 9 needed to be available for free online that it
- 10 would create a digital divide by excluding
- 11 people with no internet access?
- 12 MR. GRIFFIN: Objection.
- 13 MR. FEE: Objection to form.
- 14 THE WITNESS: So the question here
- 15 is, does reasonably available create a digital
- 16 divide by excluding people without internet
- 17 access.
- 18 Reasonable availability, as I
- 19 understand it under the circular and with
- 20 respect to NARA, includes as one option, if
- 21 available via internet. There are other
- 22 options I mentioned, reading room, hard copy,

Page 243

- 1 depository libraries, so that people without
- 2 internet access could actually have access to
- 3 the documents.
 - BY MR. BECKER:
- 5 Q. So in that case, do you think that
- 6 if reasonably available required online access
- 7 for free, that it wouldn't create a digital
- 8 divide by excluding people without internet
- 9 access?
- 10 MR. GRIFFIN: Objection.
- 11 MR. FEE: Objection.
- 12 THE WITNESS: I don't have an
- 13 opinion on that.
 - BY MR. BECKER:
- 15 Q. Are you aware of whether ANSI has an
- 16 opinion on whether requiring reasonably
- 17 available to include -- excuse me, let me
- 18 strike that.
- Do you -- are you aware of whether
- 20 ANSI has an opinion on whether reasonably
- 21 available requiring free online access would
- 22 result in a digital divide?

- 1 MR. FEE: Objection.
- 2 THE WITNESS: If you want, I can
- 3 read you the relevant section from the ANSI
- 4 response. It does not speak directly to the
- 5 digital divide issue.
- 6 BY MR. BECKER:
- 7 Q. What does it say?
- 8 A. It says: "ANSI believes the text of
- 9 standards and associated documents should be
- 10 available to all interested parties on a
- 11 reasonable basis, which may include
- 12 compensation where appropriate." That
- 13 statement is footnoted.
- 14 "Reasonably available should not be
- 15 strictly defined using terms such as for free
- 16 and to anyone online. Rather, the definition
- 17 should encompass a broad spectrum of access
- 18 options."
- 19 The ANSI response does not address
- 20 the question regarding digital divide, so I
- 21 don't -- I don't see that ANSI took a position
- 22 on that.

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 63 of 122

Page 245

Q. If a standard is not available for

- 2 free online and a person must instead either
- 3 purchase the standard or fly to a location
- 4 where the standard is -- a physical copy of the
- 5 standard is housed to review the standard, does
- 6 that create a financial divide?
- 7 MR. GRIFFIN: Objection.
- 8 MR. FEE: Objection.
- 9 THE WITNESS: Now you've asked me
- 10 about a financial divide. I don't have an
- opinion on that.
- 12 (Deposition Exhibit 21 was marked
- 13 for identification.)
- 14 BY MR. BECKER:
- 15 Q. I have handed you what has been
- 16 marked as Exhibit No. 21.
- 17 This is the document produced by
- 18 ANSI as Bates No. 3792 to 3793.
- A. Yes. 19
- 20 Q. Do you recognize this document?
- 21 I do. A.

1

22 Q. What is this document? 1 felt that the requirements would have

- 2 significant -- of the bill as written
- 3 initially, would have significant adverse
- 4 effects on their ability to carry out their
- 5 regulatory responsibilities and they asked --
- 6 so they were seeking public comment for
- 7 suggestions on how to address that problem or

Page 247

Page 248

- 8 that issue.
- 9 And I also mentioned to you that the
- 10 Department of Transportation worked with the
- 11 Congressional committee to implement, to work
- 12 with the technical, the Congressional committee
- 13 as the committee developed a technical
- 14 correction to the bill which resolved the issue
- 15 further outlined here.
- 16 (Deposition Exhibit 22 was marked
- 17 for identification.)
- 18 BY MR. BECKER:
- 19 Q. I have handed you what has been
- 20 marked as Exhibit 22.
- 21 This is a document Bates-stamped
- 22 ANSI 3844.

Page 246

- 1 This is an e-mail between Scott
 - 2 Cooper and Elizabeth Neiman, CC'ing Patricia
 - 3 Griffin and Fran Schrotter, and it says --
 - 4 well, in the first e-mail, Elizabeth Neiman is
 - 5 asking Scott Cooper about Friday, what is
 - 6 referred to as Friday's workshop on the
 - 7 webcast, and then Scott Cooper responds: "I
 - 8 thought it went quite well. Mary Saunders and
 - 9 Emily Bremer were showcased and were able to
 - 10 make good points on importance of copyright for
 - 11 USG, and need to continue to refine reasonable
 - 12 availability."
 - 13 Do you know what workshop they are
 - 14 referring to?
 - 15 A. It's the workshop that I referred to
 - 16 earlier and which is referred to in the earlier
 - 17 e-mail as well. It was a public workshop. I
 - 18 don't have the dates, but so DOT first is noted
 - 19 in the earlier exchange should the Federal
 - 20 Register Notice seeking public input on the
 - 21 construction of the pipeline safety bill. They
 - 22 asked for public input and they -- public

Well, it's an e-mail string. The

- 3 asking me for my thoughts on Department of
- 4 Transportation's proposed public workshop,
- 5 which is where I participated as a speaker and
- 6 my response to her request.
- 7 Q. Your response says: "Patty, my
- 8 understanding is that DOT feels like they are
- 9 likely to be sued either way. If they make
- 10 docs freely available, violating copyright, or
- 11 if they don't, pipeline safety community"
- 12 issue -- "issues. The issues the FR notice
- 13 outlines are all valid issues. My guess is
- 14 that DOT is looking for additional data to
- 15 support a request to the Hill for more time." 16 What was the basis for your guess
- 17 that DOT was looking for additional data to
- 18 support a request to the Hill for more time?
- 19 A. Well, as I mentioned earlier in our
- 20 discussion about the pipeline safety bill, the
- 21 Department of Transportation, Congressional 22 legislative affairs and the technical folks

Page 251 Page 249 1 comment, they also had a public meeting. 1 Q. -- to 4481. 2 That's the workshop I was referring to. 2 Have you seen either of these 3 It was held at the Department of 3 documents before? 4 Transportation, and as I mentioned earlier, I 4 A. Not that I -- no, not that I 5 was one of the speakers. 5 remember. I am not an addressee on any of the 6 Q. Who is Emily Bremer? 6 e-mails. 7 7 A. Emily Bremer at the time was a staff Q. So on June 29, 2012, Emily Bremer 8 person working for the administrative 8 writes -- excuse me. 9 9 conference of the U.S. She's an administrative Scott Cooper writes to Emily Bremer 10 and describes what looks like elements of 10 law lawyer. 11 perhaps a panel or something like that. The 11 Q. Do you know Emily Bremer? 12 Α. I do know Emily. 12 subject is: "ACUS ANSI IBR Conference." 13 Q. How long have you known Emily Bremer 13 Do you know what is being referred 14 for? 14 to as the ACUS ANSI IBR conference? A. No. I don't. 15 A. I met Emily during the ACUS 16 deliberations. 16 Q. Then Scott Cooper forwards the Q. Did Emily Bremer have a standpoint 17 e-mail and says -- to Joe Bhatia. 17 18 that you understood -- excuse me. 18 Who is Joe Bhatia? Did you understand Emily Bremer to 19 Joe Bhatia is the president and CEO 19 Α. 20 have a standpoint with regard to what 20 of ANSI. 21 reasonable availability meant? 21 Q. And he says: "Dear Joe. There are 22 MR. FEE: Objection. 22 a number of fronts where the IBR issues are Page 252 Page 250 1 THE WITNESS: So as I mentioned 1 being played out. We have developed an 2 earlier, the webcast of the pipeline safety 2 outreach plan to take the ANSI IBR message to 3 workshop is still available online. You can 3 Congress and relevant agencies. Attached is 4 access it. You can listen to Emily's statement 4 the updated outreach list. You and I have our 5 and mine as well. I don't -- I don't remember 5 first meetings with the majority and minority 6 the specifics of Emily's position. 6 staff directors from the technology and 7 BY MR. BECKER: 7 innovation subcommittee of health science on 8 8 July 27. Patty and I are meeting with lawyers Q. Do you know if Emily Bremer 9 advocated against making standards available 9 from ACUS and the Coast Guard to talk about IBR 10 for free? 10 copyright on July 23rd." 11 11 MR. FEE: Objection. And then Exhibit 24 is a spreadsheet 12 THE WITNESS: I don't have that 12 that on the first page is titled: "House 13 information. No, I do not know. 13 Outreach Matrix," and then on the page 14 (Deposition Exhibit 23 was marked 14 Bates-stamped ANSI 4478 is labeled: 15 for identification.) 15 "Administration Outreach Matrix." 16 (Deposition Exhibit 24 was marked 16 Do you see that? 17 for identification.) A. I do. 17 Q. And do you see yourself listed there 18 BY MR. BECKER: 18 Q. I have handed you what has been 19 on Row 140, Mary Saunders. It says: 19 20 "Relevance is missed." 20 marked as Exhibit 23 which is ANSI 4530 to 31, 21 as well as Exhibit 24, ANSI 4472 --21 A. Right. Apparently I am on their A. Right. 22 22 outreach list.

Page 253 Page 255 Q. And then on the following page, Row 1 BY MR. BECKER: 2 140 continued, and under where it says: "Date 2 Q. What are their Hill meetings? 3 of meeting," it says: "11-30-11 conference 3 The Hill meetings is what I am 4 call with Mary Saunders, Henry Wixon, Gordon 4 talking about. 5 Gillerman and Ajit Jillavenkatese." 5 Q. The meetings with each of the A. Jillavenkatese. 6 6 members of Congress and their staff? 7 Q. Pardon me. 7 Α. Yes. 8 Do you recall having that conference 8 Q. What is your understanding of why 9 call? 9 ANSI set up meetings with members of Congress 10 and their staff on this issue? 10 A. I do not. 11 Q. Do you have any reason to doubt that 11 MR. GRIFFIN: Objection. 12 that conference call occurred? 12 MR. FEE: Objection. 13 A. I do not. 13 THE WITNESS: I don't know anything 14 Q. Who is Henry Wixon? 14 more than is in this e-mail. I didn't Henry Wixon is the general counsel 15 participate in any of these meetings and I 15 16 for NIST. 16 don't remember. 17 Q. Who is Gordon Gillerman? 17 BY MR. BECKER: A. Gordon Gillerman and Ajit 18 Q. Bullet Point No. 3 in -- on Exhibit 18 19 Jillavenkatese at that time were both staff 19 23 says: "We have agreement with ACUS to put 20 members of the standards coordination office 20 on a late fall ACUS ANSI IBR event that would 21 working for me. 21 bring in Congressional staff and the SDO 22 Q. Do you know why ANSI would have had 22 community to discuss reasonable availability. Page 254 Page 256 1 an outreach call to you regarding IBR issues? 1 There is a brief discussion on that proposed 2 MR. GRIFFIN: Objection. 2 event attached below." 3 MR. FEE: Objection to form. 3 Do you know what ACUS ANSI IBR event 4 THE WITNESS: I don't know why they 4 is being referred to there? 5 would or would not. 5 A. No, I didn't --6 BY MR. BECKER: 6 MR. GRIFFIN: Objection. 7 7 Q. What is your understanding of the THE WITNESS: Sorry. I do not. purpose of this outreach matrix? 8 (Deposition Exhibit 25 was marked 8 9 for identification.) 9 MR. GRIFFIN: Objection. MR. FEE: Objection to form. 10 10 BY MR. BECKER: THE WITNESS: I have never seen it 11 Q. I have handed you what has been 11 12 so I don't know. I can't speak to -- I mean, 12 marked as Exhibit 25. 13 this is a Scott Cooper document. I don't know. 13 This is a document ANSI produced 14 BY MR. BECKER: 14 Bates-stamped ANSI 8056. 15 Q. What is your understanding of why In the lower e-mail on this page 16 ANSI would have wanted to reach out to you on 16 titled: "For review, IBR testimony for 1/14," 17 the IBR message? 17 in the second paragraph, the second says -- or 18 the first sentence says: "Next step is to send 18 MR. GRIFFIN: Objection. 19 MR. FEE: Objection. 19 to the select group that Scott/Joe e-mailed 20 THE WITNESS: They might -- they 20 yesterday evening. Patty also proposed that we 21 might have wanted to inform us about their Hill 21 include Mary Saunders in this review group." 22 meetings. I don't know. 22 Do you know what review group they

Page 257 Page 259 1 THE WITNESS: I don't know. I 1 were discussing? A. It appears to be a group to review 2 wasn't in on that conversation. 2 3 the testimony that Patty Griffin gave before a 3 (Deposition Exhibit 26 was marked 4 for identification.) 4 Congressional committee on January 14. 5 BY MR. BECKER: Q. In the e-mail above, Joe Bhatia 6 I have handed you what has been 6 writes: "Somewhere, somehow, we should mention marked as Exhibit No. 26. 7 that standards development in this country is This is the document produced as 8 one of the earliest and most successful ANSI 8802 to ANSI 8805. 9 9 examples of the public private partnership 10 In the e-mails below the first and 10 which has benefitted our nation tremendously on 11 most recent one, does this reflect an e-mail 11 many fronts" - particularly, excuse me, 12 correspondence that you had with -- with other 12 competitiveness -- I'm sorry. 13 individuals? 13 "Competitiveness, public safety, successfully 14 Α. Yes. 14 commercializing American innovations globally, 15 Q. Do you recall having this e-mail 15 and on and on. Congressmen particularly the 16 correspondence? 16 Republican ones should eat that up." 17 Α. No. 17 Why do you think that Joe Bhatia 18 Q. Do you have any reason to think that 18 would have suggested that Republican 19 the e-mail correspondence is not accurate or Congressmen would be in favor of referring to a 20 authentic? public private partnership? 21 Α. I do not. 21 MR. GRIFFIN: Objection to form. 22 22 Q. In the earliest e-mail, if you turn THE WITNESS: I have no insight into Page 258 Page 260 1 Joe's thinking on this matter. 1 to ANSI 8804, Patricia Griffin sends to you as 2 BY MR. BECKER: 2 well as Mary McKiel an e-mail. 3 Q. Have you ever heard Joe Bhatia 3 Who is Mary McKiel? 4 suggest that -- the reference to public private Mary McKiel at that time was the 5 partnership should be made related to IBR 5 standards executive for the Environmental 6 Protection Agency. 6 issues? 7 Patricia Griffin says: "Hi Mary and Α. The public private partnership is 8 comprehensive. It's the public private 8 Mary. I hope you are doing well and 9 partnership in the development of voluntary congratulations, Mary S on your new position." 10 consensus standards. What was that new position at the 10 11 time, do you recall? 11 Q. Do you recall any instances when Joe 12 Bhatia has suggested that referring to the A. Must be associate director for 13 public private partnership would be especially 13 management resources position. 14 successful in influencing Republican 14 She goes on to say: "I wanted to 15 Congressmen? 15 bring to your attention that Carl Malamud has 16 He never made that statement to me. 16 filed a declaratory judgment lawsuit Friday 17 17 against an ANSI accredited SDO who has sent MR. GRIFFIN: Objection. 18 BY MR. BECKER: 18 Public.Resource.Org a cease and desist letter 19 What is your understanding of why 19 relating to IBR standard posted to Malamud's 20 Joe Bhatia would have said this? 20 site. I am going to be speaking to some 21 MR. GRIFFIN: Objection. 21 developers at U.S. and non-U.S. later in the

MR. FEE: Objection to form.

22

22 morning about steps others may be taking to

Page 261 Page 263 1 address Malamud's activities." 1 THE WITNESS: I don't know. 2 2 Did you learn of steps that were BY MR. BECKER: 3 3 considered for addressing what is referred to Q. You then respond -- sorry. 4 Mary McKiel responds and then you as Malamud's activities here? 5 respond on top of that, saying: "Patty and 5 MR. FEE: Objection. 6 Mary, the latest version of the draft circular 6 THE WITNESS: I wasn't privy to 7 those conversations. 7 that I have seen still has the neutral language 8 that Mary McKiel references below. I don't 8 BY MR. BECKER: 9 think there is much/any interest at OMB in 9 Q. Ms. Griffin goes on to say: "One 10 question I will be asking is the status of the 10 leaning forward on this issue, that is, in 11 U.S. Government efforts to address the 11 changing current practice dramatically." 12 reasonable availability question is the 12 What did you mean when you were 13 OMB/NARA initiative. Last I recall, OMB had 13 referring to "leaning forward?" A. Changing current practice 14 crafted a draft which it circulated to other 14 15 dramatically. 15 federal agencies for input. My understanding 16 Q. What do you mean by "changing 16 was that a draft (either the original one or an 17 current practice dramatically?" 17 updated one) reflecting other agency comments The question was with respect to 18 18 would then be available for public review at 19 incorporation by reference or reasonable 19 some point. Do you know of any developments 20 availability, so that's what I meant. Changing 20 that you could share with me (and me with other 21 SDOs currently looking into this issue)?" 21 current practice with respect to -- in 2013, 22 Do you know what she is requesting 22 and with respect to reasonable availability. Page 264 Page 262 1 -- what do you understand her to be requesting Q. What was the basis for your belief 1 2 there? 2 that there wasn't much or any interest at OMB 3 MR. GRIFFIN: Objection. 3 in terms of changing current practice THE WITNESS: She is asking if -- if 4 dramatically? 5 and when a draft of the revision to the OMB 5 A. So I think this falls under the 6 circular -- she is asking me when and if a 6 exclusion that you talked with Henry and 7 draft of the revised circular would be 7 Russell Craig about. These are internal 8 available for public comment which it was not 8 government deliberations, specifically with 9 at that time. 9 respect to the circular. I can look at the 10 BY MR. BECKER: 10 letter if you want. 11 Q. How is it that you would know 11 Q. And you shared your -- this 12 whether -- at that time whether a revision to 12 information with Ms. Griffin? 13 the OMB circular was available for public 13 A. No. You asked me how I would know 14 comment at that time? 14 and that is -- those are nonpublic aspects. I A. If it was available for public 15 did not share any nonpublic information, but 16 comment, it would have been posted in the 16 you asked me how I would know about it through 17 Federal Register so I would know about it. 17 discussions with OMB. I made a high-level Q. What is your understanding of why 18 18 statement. 19 Ms. Griffin would have asked you instead of 19 MR. GRIFFIN: I have to instruct her 20 checking the Federal Register herself? 20 not to answer the questions given the agreement 21 MR. GRIFFIN: Objection. 21 that you have with DOC that we put on the

MR. FEE: Objection to form.

22

22 record at the beginning until we get

Page 267 Page 265 1 clarification if you need. 1 privileged and another piece of information is 2 MR. BECKER: I understand that, but 2 not privileged. 3 I would like to know why it would be 3 MR. GRIFFIN: I'm telling you that I 4 permissible to discuss this with Ms. Griffin at 4 think you are crossing the line on what she is 5 that time. 5 permitted pursuant to the agreement to testify 6 to, and I'm going to err on the side of caution 6 MR. GRIFFIN: She just said that she 7 7 and you can discuss it with Russell Craig as didn't. 8 THE WITNESS: I didn't. 8 you agreed to do. 9 9 BY MR. BECKER: BY MR. BECKER: Q. But you said that you believed that 10 10 Q. Ms. Saunders, was it publicly known 11 there wasn't much or any interest at OMB in 11 at that time that OMB did not have much or any 12 changing current practice dramatically? 12 interest in changing current practice 13 A. It was a general statement. 13 dramatically? 14 Q. So it's permissible to share a 14 MR. FEE: Objection to form. THE WITNESS: It might have been. I 15 general statement about internal political 15 16 deliberations, but it's not okay to share more 16 don't have any reason to -- I don't know. 17 specific information? 17 BY MR. BECKER: 18 MR. GRIFFIN: Objection. 18 Q. I'm sorry, you don't have any reason 19 MR. FEE: Objection to form. 19 to what? 20 THE WITNESS: You asked me how I 20 A. I don't have any -- I can't answer 21 knew, which leads -- which would have led me to 21 that question, was it publicly known. It's 22 discuss internal government deliberations. The 22 likely. OMB -- the OMB staff have Page 268 Page 266 1 information I shared was not privileged. 1 conversations with quite a few people, private 2 BY MR. BECKER: 2 sector and government. Do you not know one way or the 3 Q. What would be the distinction 3 Q. 4 between privileged and nonprivileged 4 other? 5 information in this context? 5 A. I do not know one way or the other. 6 MR. GRIFFIN: Objection. (Deposition Exhibit 27 was marked 6 7 MR. FEE: Objection. 7 for identification.) 8 MR. GRIFFIN: Again, I'm going to 8 BY MR. BECKER: 9 instruct her not to answer given the agreement 9 I have handed you what has been 10 you have with DOC. 10 marked as Exhibit No. 27. 11 MR. BECKER: I am not looking for 11 This is a document produced by ANSI 12 the specifics, but I would like to know --12 as 9053 to 9056. 13 MR. GRIFFIN: You are sort of coming On the first page at the bottom, 13 14 close to that though. 14 there is an e-mail from Scott Cooper to Fran MR. BECKER: I want to know what the 15 15 Schrotter and Patricia Griffin and it says: "I 16 basis is for the distinction that she's making. 16 sent a message to Mary Saunders to see if she 17 MR. GRIFFIN: Right. And you're 17 wanted NPC to offer its good offices for the 18 going to have to talk to DOC about that as you 18 corner bakery SDO activities." 19 agreed to do in your letter. What -- do you know what -- what do 20 MR. BECKER: I don't think I need to 20 you understand NPC to mean there? 21 speak with DOC to know what the basis is for 21 A. National -- I don't know. My first 22 thought would have been national policy 22 her saying that one piece of information is

Page 269

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 69 of 122

1 committee, but that doesn't make any sense.

- 2 Why doesn't that make sense?
- 3 Α. It makes no sense to have the ANSI
- 4 national policy committee offer its good
- 5 offices for some bakery meeting. I don't
- 6 understand what this e-mail is meaning.
- 7 Q. Have you ever heard of the corner 8 bakery meetings?
- 9 A. They are -- yes, they are meetings
- 10 of Washington representatives of standards
- 11 developing organizations who get together
- 12 monthly just to share information.
- 13 Q. Do you know what the subjects of the
- 14 meetings are?
- 15 A. Well, I do now since I am an ANSI
- 16 staff, but I didn't then. I was not aware at
- 17 that point of the corner bakery meeting.
- Q. Have you ever provided an office for 18
- 19 a corner bakery meeting?
- 20 Α. No.
- 21 Do you know which standards
- 22 development organizations are involved in the

- 1 corner bakery meetings?
- 2 The -- as I mentioned, it's the
- 3 Washington reps SDOs. Some SDOs have
- 4 Washington offices, others do not. There are,
- 5 I believe about 28 individuals on the e-mail 6 list.
- 7 Q. What is your understanding of why
- 8 SDOs maintain Washington offices?
- 9 MR. GRIFFIN: Objection.
- 10 MR. FEE: Objection to form.
- 11 THE WITNESS: I don't have a
- 12 specific -- the same reason any nonprofit
- 13 organization or company would maintain a
- 14 Washington office. I don't have anything more 14 small businesses."
- 15 specific than that.
- 16 BY MR. BECKER:
- 17 Q. What does that mean?
- 18 MR. GRIFFIN: Objection.
- MR. FEE: Objection to form. 19
- 20 THE WITNESS: I can't speak to the
- 21 construct of individual SDO's Washington
- 22 offices. I just know that some of them have

1 offices with staff in Washington.

Page 271

- BY MR. BECKER:
- 3 Q. Is it to be able to meet with
- 4 policymakers?
- 5 MR. GRIFFIN: Objection.
- 6 MR. FEE: Objection to form.
- 7 THE WITNESS: I can't -- I can't
- 8 answer that.
- 9 (Deposition Exhibit 28 was marked
- 10 for identification.)
- 11 BY MR. BECKER:
- 12 I have handed you what has been
- 13 marked as Exhibit 28.
- And this is a document produced by
- 15 ANSI as ANSI 9121 to ANSI 9124.
- 16 The earliest e-mail in this chain is
- 17 an e-mail from Ms. Griffin and it says: "In
- 18 light of the discussions last week at the NPC
- 19 IPRPC and board meetings, I revamped the
- 20 proposed e-mail to the copyright group and
- 21 given the urgency of these issues, proposed
- 22 sending an e-mail along these lines out today."
- Page 270
- And then in the draft of the
- 2 copyright task group e-mail on the following
- 3 page, it says at the bottom of the second
- 4 paragraph: "Recall that in response to the
- 5 NARA Federal Register Notice, ANSI said that
- 6 'reasonable available' should not be strictly
- 7 defined using terms such as for free and to
- 8 anyone online. Rather, the definition should
- 9 encompass a broad spectrum of access options.
- 10 For example, some SDOs make certain standards
- 11 available online on a read-only basis and many
- 12 SDOs make standards available at discounts or
- 13 without charge to consumers, policymakers and
- Do you believe that making a
- 16 standard that is incorporated by reference
- 17 available at a discount constitutes reasonably
- 18 available?
- 19 MR. GRIFFIN: Objection.
- MR. FEE: Objection to form. 20
- 21 THE WITNESS: As I mentioned
- 22 earlier, there are many different mechanisms

Page 275 Page 273 1 for achieving reasonable availability. That 1 anything, ASME did to make standards reasonably 2 may be one of them. 2 available? 3 3 BY MR. BECKER: MR. GRIFFIN: Objection. 4 Q. Why would SDOs -- what is your 4 THE WITNESS: I do not. I have no 5 understanding of why SDOs would make standards 5 knowledge of that. 6 that are incorporated by reference available at 6 BY MR. BECKER: 7 a discount to policymakers? 7 Q. What is your understanding of what 8 MR. GRIFFIN: Objection. 8 Ms. Neiman meant by "the good work that we 9 9 could include from other organizations like MR. FEE: Objection to form. 10 THE WITNESS: The reference -- the 10 ASTM, NFPA and others?" 11 specific sentence speaks to NIST makes 11 MR. GRIFFIN: Objection. 12 standards at large generally available at 12 MR. FEE: Objection. 13 discounts or without charge to consumers, to 13 THE WITNESS: I don't know. I 14 policymakers and small businesses. It speaks 14 wasn't the addressee on this e-mail. 15 to standards generally. 15 BY MR. BECKER: 16 BY MR. BECKER: 16 Q. Is that referring to the fact that 17 Q. Further down, on the two paragraphs 17 ASTM and NFPA had their own read-only websites? 18 down, Ms. Griffin writes: "In light of the 18 MR. GRIFFIN: Objection. 19 forgoing, I would be grateful if you would send 19 MR. FEE: Objection to form. 20 by me Friday, June 1, specific examples of what 20 THE WITNESS: I don't know. 21 you are doing if anything to make incorporated 21 BY MR. BECKER: 22 22 by reference standards reasonably available." Q. Does it seem to you that that's Page 274 Page 276 1 Are you aware of any compilation by 1 likely what she was referring to? 2 ANSI of means that SDOs had taken to make 2 MR. GRIFFIN: Objection. 3 standards reasonably available? 3 MR. FEE: Objection to form. 4 A. No, I am not. 4 THE WITNESS: It's possible. 5 Q. In the e-mail that follows, 5 BY MR. BECKER: 6 Elizabeth Neiman responds and says: "Hi, 6 Q. I just want to step back a moment to 7 Patty. Thanks very much for this. Just a few 7 Exhibit No. 26. 8 typos below plus some other recommendations are 8 Do you have that in front of you? 9 highlighted. More philosophically, I am not 9 A. I do. 10 sure though including the examples of access in 10 Q. On the second page, there was an 11 our own FR response. Beyond the deadline 11 e-mail from you that was responding to the 12 issue, I think that it is enough for ANSI to 12 earlier e-mail from Ms. Griffin that referred 13 say that there are different ways to get it 13 to the Carl Malamud SMACNA declaratory judgment 14 done, as we have in the excerpt you included 14 lawsuit, and at the bottom of your e-mail, you 15 below. If we get too specific, it may look 15 say: "It would be very interesting to track 16 prescriptive, like, only the few examples given 16 the California case that Public Resource 17 are ANSI-endorsed. I am thinking here of ASME, 17 filed." 18 in particular, who are unlikely to give us an 18 Do you see that? 19 example and may feel slighted by all the good 19 A. I do. 20 work that we could include from other 20 Q. What -- why did you think that it

22

21 organizations, like ASTM, NFPA and others."

Do you know at that time what, if

22 lawsuit?

21 would be interesting to track the SMACNA

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 71 of 122

Page 277 A. I don't remember. Let me look at

- 2 the e-mail to see if I can -- I don't know.
- 3 Did you track the SMACNA lawsuit?
- 4 No. I did not.
- 5 Q. Did you track the lawsuit that ASTM,
- 6 NFPA and ASHRAE have filed against Public
- 7 Resource?

1

- A. I did not. 8
- 9 Have you read any of the documents
- 10 that have been filed in the lawsuit filed by
- 11 ASTM, et al., against Public Resource?
- A. I have. I read the ANSI amicus 12
- 13 filing and I read the recent circuit court
- 14 decision, the appeal, May 11 of last year or
- 15 something like that. That's it.
- 16 No other documents?
- 17 Α. Nο
- 18 Q. When did you read those documents?
- 19 Pretty close to the time that they
- 20 were published.
- 21 Q. Why did you read those documents
- 22 around the time that they were published?

Page 278

1

- A. Why not? I mean, I was on -- I was
- 2 a member of the ANSI board so I think we were
- 3 all -- ANSI membership was -- was circulated a
- 4 copy of the ANSI amicus brief, so I just read
- 5 it for general -- general interest.
- 6 Q. How about the -- why did you read
- 7 the appeal decision?
- A. Because as an ANSI staff member, it 8
- was circulated to me when it was issued.
- 10 Q. Were there other filings in this
- 11 litigation that have been circulated to you?
- 12 MR. GRIFFIN: Objection.
- 13 THE WITNESS: No, not to my
- 14 knowledge.
- 15 BY MR. BECKER:
- 16 Q. Did you have any involvement in the
- 17 organization or drafting of the ANSI amicus
- 18 brief?
- 19 A. I don't remember having involvement
- 20 in the amicus brief.
- (Deposition Exhibit 29 was marked 21
- 22 for identification.)

1 BY MR. BECKER:

2 Q. I have handed you what has been

3 marked as Exhibit No. 29.

4 This document was produced by ASTM,

Page 279

5 Bates-stamped ASTM 015659 to --

6 MR. FEE: Matt, you can't show her

7 this document unless it says on the face of the

8 document that she's received it as a

confidential under the protective order.

10 MR. BECKER: My apologies.

11 MR. FEE: We will just take it away

12 from you.

13 MR. GRIFFIN: I suppose I can't see

14 it either.

It's 5:15 now. Do you know how long

16 you're going to go and if it's longer, maybe we

17 could take a break.

18 MR. BECKER: It is longer, but we

19 can take a break. Sure. That's fine.

20 THE VIDEOGRAPHER: We are going off

21 the record. This is the end of Media Unit No.

22 4. The time is 5:18.

Page 280

2 THE VIDEOGRAPHER: We are going back

3 on the record. This is the start of Media Unit

(A short recess was taken.)

4 No. 5. The time is 5:37.

5 (Deposition Exhibit 30 was marked

6 for identification.)

7 BY MR. BECKER:

8 Q. Ms. Saunders, I have handed you what

9 has been marked as Exhibit No. 30.

10 What is this?

11 A. It's my LinkedIn page.

12 Q. Does this accurately reflect the

13 contents of your LinkedIn profile?

14 A. Yes.

15 Q. Is the information on your profile

16 accurate?

17 A. To the best of my knowledge, yes.

18 MR. GRIFFIN: I think we are on 29.

MR. BECKER: Excuse me. We struck 19

20 29 so this should actually be 30. So we will

21 leave it as 30 and we are striking 29 for the

22 record.

Page 283 Page 281 1 1 BY MR. BECKER: Q. Do agencies enforce standards as one 2 2 of their uses? Q. Under ANSI vice president for 3 A. Agencies enforce regulations. 3 government relations and public policy, can you 4 please read to yourself what it says there. 4 Q. Do agencies enforce regulations that incorporate standards by reference? A. Mary leads ANSI --5 6 MR. GRIFFIN: Objection. 6 MR. GRIFFIN: No, read it to 7 MR. FEE: Objection to form. 7 yourself. BY MR. BECKER: 8 THE WITNESS: Agencies enforce 8 regulations which may incorporate standards by 9 Q. You can read it to yourself. 10 reference. 10 A. Oh, read it to myself. Okay. Fine. 11 11 Okay. BY MR. BECKER: 12 Q. Are you aware of any instances of an 12 Q. Where you write: "Mary leads ANSI" 13 -- excuse me, actually let me just ask, have 13 agency enforcing the terms of a standard as 14 you -- did you write this description? 14 incorporated by reference into a regulation? 15 A. Yes. 15 A. I'm not specifically aware of agency 16 enforcement activities. That is outside of my 16 Q. Where you write: "Mary leads ANSI'S 17 agreement. 17 efforts to advocate greater use of voluntary Q. Are you aware that U.S. federal 18 consensus standards and conformance programs by 18 19 agencies do enforce the terms of standards as 19 government agencies," what do you mean by 20 "use?" 20 incorporated by reference into regulations? 21 A. I mean the same meaning that is in 21 A. Agencies enforce regulations, some 22 of which incorporate standards by reference, so 22 the National Technology Transfer and Page 282 Page 284 1 they enforce the regulation. That's what I'm 1 Advancement Act and in OMB Circular A-119, use 2 in support of agency mission activities, 2 aware of. I don't have any specific examples 3 regulation, procurement and policy activities. 3 of enforcement actions by agencies. 4 Q. Can you break that down a little bit 4 Q. And if those regulations contain 5 more for me, like, what you personally mean 5 standards incorporated by reference, do those 6 here when you say "greater use of voluntary 6 agencies then also enforce the terms of the 7 consensus standards?" standards as incorporated? 8 8 MR. GRIFFIN: Objection. MR. GRIFFIN: Objection. 9 9 BY MR. BECKER: MR. FEE: Objection to form. THE WITNESS: I don't have direct 10 Q. What are the examples of use? 10 11 MR. GRIFFIN: Objection. 11 knowledge of how agencies enforce their 12 THE WITNESS: Agencies may use 12 regulations so I can't speak to that. 13 BY MR. BECKER: 13 standards as we discussed by incorporating by 14 reference in regulation. They may -- agencies 14 Q. You also write: "She also works 15 may use standards internally with respect to 15 with ANSI members to create 16 their internal operations. Agent --16 standardization-related outreach programs to 17 legislators and to increase understanding of 17 procurement agencies may use standards as part 18 of procurement actions. Agencies may use 18 the private sector standards community among 19 agencies involved in trading commerce issues." 19 standards in relationship to their policy 20 A. 20 activities. There is a variety of different Yes. What is the outreach that you are 21 ways of using standards. 21 Q.

BY MR. BECKER:

22

22 describing there?

Page 285

- 1 A. So the most common form of outreach
- 2 are posting panel events on the Hill in -- at
- 3 the Longworth Building and Rayburn Building,
- 4 for example. These are open events where we --
- 5 ANSI hosts and features member organizations
- 6 talking about their standards activities and
- 7 how, in the case of the most recent event,
- 8 standards contribute to technology and
- 9 innovation supporting the nation's
- 10 infrastructure.
- 11 Those are informational events.
- 12 Congressional staff and others are invited to
- 13 attend those events. It's simply an
- 14 information-sharing activity.
- 15 Q. Does outreach legislature -- excuse
- 16 me.
- 17 Does outreach to legislators include
- 18 the suggestion of actions that they can take?
- 19 A. Not by me. ANSI is a 501(c)(3)
- 20 organization. We don't lobby. We educate, so
- 21 I don't make any recommendations about actions
- 22 that legislators might take.

Page 286

- 1 Q. Do you consider making a
- 2 recommendation as to what a legislator -- or
- 3 what action a legislator might take to be
- 4 lobbying?
- 5 MR. GRIFFIN: Objection.
- 6 MR. FEE: Objection to form.
- 7 THE WITNESS: I have a very narrow
- 8 definition of what is permitted under
- 9 educational activities and I adhere to that
- 10 definition.
- 11 BY MR. BECKER:
- 12 Q. Does ANSI have its own definition as
- 13 to what is permitted under educational
- 14 activities?
- 15 A. Not that is written down that I know
- 16 of.
- 17 Q. What is your definition of what is
- 18 permitted under educational activities?
- 19 A. In my personal role as the vice
- 20 president of government relations and public
- 21 policy, I provide fact-based information to
- 22 legislators. I mentioned the Hill event, just

Page 287

- 1 a statement of actions that are activities that
- 2 are taking place, but I don't cross the line
- 3 into making a specific recommendation for --
- 4 with respect to a piece of legislation.
- 5 Q. Does your outreach include the
- 6 suggestion that legislature -- legislation or
- 7 regulation favor the use of voluntary consensus
- 8 standards?
- 9 MR. GRIFFIN: Objection.
- 10 THE WITNESS: So as I have
- 11 mentioned, the law passed by Congress in early
- 12 -- and signed by presidential law in early
- 13 1996, directs federal agencies to rely on, to
- 14 use technical standards developed by voluntary
- 15 consensus standards organizations in conducting
- 16 their mission-related activities, so I hue to
- 17 that direction from Congress notifying
- 18 Congressional staff about the existence of the
- 19 law and the existence of OMB policy. It's a
- 20 fact-based activity.
- 21 BY MR. BECKER:
- 22 Q. Do you provide fact-based

Page 288

- 1 information about regulations that are suitable
- 2 for incorporation by reference?
- 3 A. No.
- 4 Q. Do you provide fact-based
- 5 information about standards that are suitable
- 6 for incorporation by reference?
- 7 MR. GRIFFIN: Objection.
- 8 THE WITNESS: No.
- 9 (Deposition Exhibit 31 was marked
- 10 for identification.)
- 11 BY MR. BECKER:
- 12 Q. I am handing you what has been
- 13 marked as Exhibit 31.
- 14 This is the document produced as
- 15 ASTM 016254 to 016265.
- 16 What is this document?
- 17 A. It's a draft meeting report of the
- 18 ANSI national policy committee meeting on -- of
- 19 October 27, 2011.
- 20 Q. Were you present at that meeting?
- 21 A. Yes. I was the chair of the
- 22 meeting.

Page 291 Page 289 1 Q. Does this draft meeting report 1 entitled: "Standards incorporated by reference 2 appear to accurately reflect the proceedings of 2 into law, presented by Scott Cooper, vice 3 president government relations, and Patricia 3 that meeting? 4 Griffin, vice president and general counsel at A. I'm guessing that it does. I 5 the ANSI board meeting of May 24, 2012." 5 haven't looked at it but I'm sure it does. Q. Is that a PowerPoint presentation 6 (Deposition Exhibit 32 was marked 7 that was presented at that same meeting? 7 for identification.) A. I assume so. 8 8 BY MR. BECKER: 9 MR. FEE: Objection to form. 9 Q. I have handed you what has been 10 marked as Exhibit 32. 10 BY MR. BECKER: 11 Q. Were you present at that meeting? 11 This document was produced as ANSI A. Yes. 12 1179 to ANSI 1187. 12 13 (Deposition Exhibit 35 was marked 13 What is this document? 14 for identification.) 14 A. It's a draft meeting report of the 15 BY MR. BECKER: 15 ANSI national policy committee meeting of May 16 21, 2012. 16 Q. I have handed you what's been marked Q. Does it accurately reflect the 17 as Exhibit 35. 17 18 This is a document produced as ANSI 18 proceedings? 19 A. I assume so. 19 02677. (Deposition Exhibit 33 was marked 20 What is that document? 20 21 21 for identification.) A. It is a draft minutes of the ANSI 22 BY MR. BECKER: 22 board of directors meeting of May 24, 2012, Page 292 Page 290 1 specific excerpts, Agenda Items 2.2 through 1 Q. I have handed you what has been 2 marked as Exhibit 33. 2 2.4. 3 This is the document produced as 3 Q. Does that document accurately 4 reflect the proceedings? 4 ANSI 0263. MR. FEE: Objection to form. 5 What is this document? 5 6 THE WITNESS: Without reading it, I This is a draft proposed agenda for 6 7 the ANSI board of directors meeting of May 24, 7 will stipulate that it does. (Deposition Exhibit 36 was marked 8 2012. 8 9 for identification.) 9 Q. Does it accurately reflect the 10 proceedings? 10 BY MR. BECKER: 11 A. It accurately reflects the proposed 11 Q. I have handed you what has been 12 agenda for that meeting, at least the portion 12 marked as Exhibit 36. This is a document produced as ANSI 13 that is reproduced. 13 14 (Deposition Exhibit 34 was marked 14 0680. 15 for identification.) 15 What is this document? 16 BY MR. BECKER: 16 A. It's entitled: "Proposed agenda Q. I have handed you what's been marked 17 executive committee of ANSI board of 17 18 directors," of a meeting date is March 21, 18 as Exhibit 34. 19 2013, and it's an excerpt covering two agenda 19 This document was produced as ANSI 20 0268. 20 items. 21 21 What is this document? Q. Does this accurately reflect the 22 A. It's a PowerPoint presentation 22 proposed agenda for that meeting?

Page 293 Page 295 1 It appears to. 1 the 14th of May, 2013. Α. 2 Q. Were you present for that meeting? Were you present at that meeting? 3 3 I believe I was. Α. I was. Α. Who prepares the agendas for these Does this draft meeting report 4 4 5 accurately reflect the proceedings? 5 meetings? I will agree that it does. There 6 ANSI staff prepare the agendas for 6 7 these meetings. are two agenda items that are listed. (Deposition Exhibit 37 was marked 8 (Deposition Exhibit 39 was marked 8 9 for identification.) for identification.) 9 10 BY MR. BECKER: 10 BY MR. BECKER: 11 Q. When you say, "staff," what staff 11 Q. I have handed you what has been 12 marked as Exhibit 39. 12 are you referring to? 13 The senior management team. The 13 That's the document produced as ANSI 14 lead is typically taken by ANSI's general 14 0715. 15 counsel and Patricia Griffin with input from 15 What is this document? 16 ANSI senior staff with respect to agenda items 16 It's a draft agenda for the Α. 17 that would be relevant for discussion at either 17 executive committee of the ANSI board of 18 the executive committee or the board. 18 directors meeting, November 6, 2013. Q. I have handed you what has been 19 Were you present for that meeting? 19 20 marked as Exhibit 37. 20 Α. Yes. 21 21 This is a document produced as ANSI Q. Does this document accurately 22 0685. 22 reflect the proceedings? Page 294 Page 296 1 Α Yes. 1 What is this document? 2 2 (Deposition Exhibit 40 was marked It's a draft minutes of the 3 for identification.) 3 executive committee of the ANSI board of BY MR. BECKER: 4 4 directors meeting of March 21, 2013. 5 Q. I have handed you what has been Q. That's the same meeting that the marked as Exhibit 40. 6 previous document was referring to, right? 7 This is the document produced as 7 A. Yes. ANSI 0729. 8 Q. Does that -- does this exhibit 8 9 What is this document? accurately reflect the proceedings? 10 It's a draft minutes of the A. I will stipulate that it does 10 11 without reading it. 11 executive committee of the ANSI board of (Deposition Exhibit 38 was marked 12 directors meeting, November 6, 2013. 12 Is that the same meeting that -- as 13 13 for identification.) 14 the previous exhibit? 14 BY MR. BECKER: 15 Α. Yes. 15 Q. I have handed you what has been 16 And does this document accurately Q. 16 marked as Exhibit 38, which has been produced 17 reflect the proceedings? 17 as ANSI 1527. 18 Α. Yes. 18 What is this document? 19 (Deposition Exhibit 41 was marked A. It's a draft meeting report of the 19 20 for identification.) 20 -- an ANSI policy committee meeting, a joint 21 BY MR. BECKER: 21 meeting of the conformity assessment policy

22 committee and the national policy committee on

I have handed you what has been

22

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 76 of 122 Page 299 Page 297 1 marked as Exhibit 41. 1 standards activities presented at the ANSI 2 This is a document produced as ANSI 3 July 24, 2014." 3 0033. 4 What is this document?

5 A. It's a copy of a PowerPoint

6 presentation entitled: "Discussion on changes

- 7 to the Office of Management and Budget, OMB
- 8 Circular A-119 presented by Patricia Griffin
- 9 March 6, 2014."
- 10 Q. Were you present for that
- 11 presentation on March 6, 2014?
- A. Let's see. It's a webinar. I see.
- 13 I was -- I did participate in the webinar.
- 14 Yes.
- 15 Q. Does -- is this document, Exhibit
- 16 41, accurate and authentic?
- 17 A. I believe so.
- 18 (Deposition Exhibit 42 was marked
- 19 for identification.)
- 20 BY MR. BECKER:
- 21 Q. I have handed you what has been
- 22 marked as Exhibit 42.

- 2 executive committee meeting by Scott Cooper.
- Q. Does this document correspond to the
- 5 same meeting that you said that you were
- present for in the previous exhibit?
- Α. Yes.
 - Q. Is this Exhibit 43 accurate and
- 9 authentic?
- 10 Α. It appears to be. It's not my
- 11 presentation.
- 12 Q. Did you witness that presentation?
- 13 Α. I must have since I was at the
- 14 meeting.
- 15 (Deposition Exhibit 44 was marked
- 16 for identification.)
- 17 BY MR. BECKER:
- 18 Q. I have handed you what has been
- 19 marked as Exhibit 44.
- 20 This document was produced as ANSI
- 21 0783.
- 22 What is this document?

Page 298

- 1 This is a document produced as ANSI
- 2 0771.
- 3 What is this document?
- 4 A. It's a draft agenda of the executive
- 5 committee of the ANSI board of directors
- 6 meeting, July 24, 2014.
- 7 Q. Were you present for that meeting?
- Yes. 8 Α.
- 9 Does this exhibit accurately reflect
- 10 the agenda for that meeting?
- A. Agenda Item 2.1. It's the only one 11
- 12 reproduced.
- 13 (Deposition Exhibit 43 was marked
- 14 for identification.)
- 15 BY MR. BECKER:
- 16 Q. I have handed you what has been
- 17 marked Exhibit 43.
- 18 This is a document produced as ANSI
- 19 0776.
- 20 What is this document?
- A. It's a copy of a PowerPoint 21
- 22 presentation entitled: "Federal engagement and

- A. Draft minutes of the executive 1
- 2 committee meeting of the ANSI board of
- 3 directors on July 24, 2014.
- Were you present for that meeting? 4 Q.
- 5 Α.
- Q. Does that document accurately
- 7 reflect the proceedings?
- A. Yes. 8
- 9 (Deposition Exhibit 45 was marked
- 10 for identification.)
- 11 BY MR. BECKER:
- 12 Q. I have handed you what has been
- 13 marked as Exhibit No. 45.
- 14 This is a document produced as ANSI
- 15 0791.
- 16 What is this document?
- 17 A. Draft minutes of the executive
- 18 committee meeting of the ANSI board of
- 19 directors, November 19, 2014.
- 20 Were you present for that meeting?
- 21 Α. Yes.
- 22 Q. Does this document accurately

Page 300

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 77 of 122

Page 301

1 reflect the proceedings?

- 2 A. With respect to Agenda Item 1.2,
- 3 approval of the agenda, yes.
- 4 Q. Is there anything inaccurate in that
- 5 document?
- 6 A. Not to my knowledge.
- 7 Q. Have you discussed the certiorari
- 8 petition by the State of Georgia to the Supreme
- 9 Court regarding Georgia's litigation with
- 10 Public Resource?
- 11 A. Have I discussed it?
- 12 Q. Yes.
- 13 A. No.
- 14 MR. GRIFFIN: Objection.
- 15 BY MR. BECKER:
- 16 Q. Have you discussed that case?
- 17 MR. GRIFFIN: Objection.
- 18 THE WITNESS: I haven't discussed
- 19 the case.
- 20 (Deposition Exhibit 46 was marked
- 21 for identification.)
- 22 BY MR. BECKER:

Page 302

- 1 Q. I have handed you what's been
- 2 produced by your attorney in response to the
- 3 requests for production that were delivered to
- 4 you along with the subpoena that you are
- 5 responding to today.
- 6 Do you recognize these documents?
- 7 A. Yes.
- 8 Q. These are the documents produced as
- 9 SAU 1 to 162, and it -- along with the cover
- 10 letter from your -- from the law firm of your
- 11 attorney; is that correct?
- 12 A. Yes.
- 13 Q. So did you -- were you the one who
- 14 gathered the documents that are produced as
- 15 Exhibit 46?
- 16 A. Yes.
- 17 Q. Are there -- let's see.
- 18 How did you go about gathering the
- 19 documents to produce for Exhibit 46?
- 20 A. I searched my e-mail files and my
- 21 hard copy files for relevant -- and my notes
- 22 for relevant information.

Page 303

- 1 Q. Could you please turn to SAU 004.
- 2 A. Yes.
- 3 Q. This is an e-mail between you and
- 4 someone at the FAA; is that correct?
- 5 A. That's correct.
- 6 Q. Is this e-mail you produced
- 7 accurate?
- 8 A. Yes.
- 9 Q. The individual at the FAA -- is that
- 10 the Federal Aviation Administration?
- 11 A. That's correct.
- 12 Q. He says in his e-mail towards the
- 13 end of his e-mail: "The portal description
- 14 says that these documents are accessible if
- 15 they are referenced in the C.F.R.s. In most
- 16 cases, the references are in official advisory
- 17 circulars, guidance documents to the rules in
- 18 the C.F.R.s or in policy documents used in
- 19 conjunction with the C.F.R.s. Do these
- 20 references count?"
- 21 And your response in the second
- 22 paragraph says that: "Standards referenced in
- 2 |

Page 304

- 1 advisory circulars and/or policy documents are
- 2 not accessible via the IBR portal."
- Why is it that those documents are
- 4 not accessible via the IBR portal?
- 5 A. The IBR portal specifically focuses
- 6 on standards incorporated as referenced in the
- 7 Code of Federal Regulations.
- 8 Q. Are these -- let's see.
- 9 Could you please turn to SAU 090.
- 10 A. Yes.
- 11 Q. Is this your handwriting?
- 12 A. It is
- 13 Q. And in this and the following pages
- 14 through SAU 100, what is this that you are
- 15 writing about?
- 16 MR. GRIFFIN: Objection.
- 17 THE WITNESS: So I attended a
- 18 meeting on April 18, 2018, of the pipeline --
- 19 pipeline standards developing organization
- 20 coordinating committee.
- 21 BY MR. BECKER:
- 22 Q. And what was discussed at that

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 78 of 122 Page 307 Page 305 1 meeting? 1 agreed to contact staff of these Congress 2 people to set up informational meetings. 2 A. So the meeting included the 3 organizations listed in my notes as well as 3 Contacts were only made actually 4 with the House administration committee 4 representatives of the Department of 5 Transportation's public -- Pipeline and 5 members. No other contacts were made. 6 Hazardous Materials Safety Administration. It 6 Who prepared this document? 7 is a standing committee that the DOT has 7 Alec French who is an outside 8 consultant to the National Fire Protection 8 created. 9 9 Association. Information was exchanged on what 10 standards are currently under development by 10 Q. Alec French is at Thorsen French 11 these organizations. 11 Advocacy; is that correct? I believe so. 12 You want me to read my notes? 12 Α. 13 Q. If you turn to SAU 155. 13 Q. Sure. 14 Α. Yes. 14 MR. GRIFFIN: Objection. You want 15 Q. Is that an e-mail from Alec French 15 her to read the entire document? MR. BECKER: Well, I just want to 16 that is attaching the lobbying assignment 16 documents that we just discussed --17 know what the substance of the discussion was. 17 MR. GRIFFIN: Objection to form. 18 18 MR. GRIFFIN: I think he means to 19 THE WITNESS: Yes. 19 review it and see if you can summarize them. 20 BY MR. BECKER: 20 THE WITNESS: As I remember, it was 21 21 a general information session, the various Q. -- as well as a draft of the 22 organizations updated the DOT folks on their 22 copyright protection for codes and standards Page 306 Page 308 1 current standards activities. I spoke about 1 document as well as -- excuse me. No, just 2 the IBR portal and ANSI accreditation of SDOs 2 those two documents? 3 generally. 3 MR. GRIFFIN: Objection. 4 4 THE WITNESS: As I said, the title BY MR. BECKER: 5 of the attachment is inaccurate. I did not 5 Q. Could you please turn to -- towards 6 the end of this compilation of papers. 6 engage in any -- we did not -- the group did Could you please turn to SAU 157, 7 not engage in any lobbying activities that I 7 8 very close to the end. participated in. 9 9 A. Ah, yes. BY MR. BECKER: 10 This is a document titled: 10 Q. Is Thorsen French Advocacy a 11 "Lobbying assignments for SDO education 11 lobbying organization? 12 outreach." 12 MR. GRIFFIN: Objection. THE WITNESS: I have no idea. 13 What is this document referring to? 13 A. Oxymoron. These are -- it's 14 14 BY MR. BECKER: 15 referring to members of the House 15 Q. Do you know whether anyone 16 administration committee and you can see 16 instructed Mr. French about lobbying restrictions on 501(c)(3) organizations? 17 members of the House oversight and reform 18 committee and House judiciary. It's a very 18 Α. I have no idea. 19 long list, and individual staff representatives 19 Q. Turning to SAU 161. 20 of government relations representatives, in my 20 Α. Yes.

21 case of ANSI, and in other cases of specific

22 SDOs, agreed to -- it's an inaccurate title,

Is this an e-mail to you -- excuse

22 me, an e-mail from you to Alice Yates and

21

Q.

	Page 309			Page 3	11
1	others?	1		MR. FEE: I think it will be best if	
2	MR. GRIFFIN: Objection.			take just a two or three-minute break.	
3	THE WITNESS: No. On 161?				
4	BY MR. BECKER:	3		MR. BECKER: Sure.	
		4		THE VIDEOGRAPHER: We are going off	
5	Q. Excuse me, you are right. This is			record. This is the end of Media Unit No.	
6	from		5.	The time is 6:20.	
7	A. It's an e-mail from Alice Yates to	7		(A short recess was taken.)	
8	me.	8		THE VIDEOGRAPHER: We are going back	
9	Q. Yes, to you. And does this e-mail	9	on t	the record. This is the start of Media Unit	
10	contain the attachment that the following	10	No.	. 6. The time is 6:28.	
11	page SAU 162?	11	EXA	AMINATION BY COUNSEL FOR ASTM INTERNATIONA	٨L
12	A. Yes.	12		BY MR. FEE:	
13	Q. What is that document?	13	C	Q. I just have a few questions for you.	
14	A. It's a one-pager providing	14	А	A. No problem.	
15	fact-based information on the importance of	15	C	Q. I want to ask you primarily	
16	copyright protection for codes and standards.	16		estions about your time at NIST and the	
17	Q. Did anyone object to the		-	sitions that you took on behalf of NIST	
18			-	ing your employment there. Okay?	
19	individuals in government as potentially being	19		4. Yes.	
20	lobbying?	20		Q. So during the time that you were at	
21	MR. FEE: Objection to form.			ST, did NIST have a position as to whether or	
22	THE WITNESS: I'm not clear where			the standards development organization's	
	THE WHITEGO: THI HOT GIOGI WHOTE	~~	HOL	the standards development organizations	
	D 040			D 0	40
1	Page 310	1	الماد	Page 3	12
1	you're going with this. Did anyone object?	1		evelopment of standards was a benefit to	12
2	you're going with this. Did anyone object? BY MR. BECKER:	2	2 sc	evelopment of standards was a benefit to ociety?	12
2	you're going with this. Did anyone object? BY MR. BECKER: Q. Did anybody object to this document	3	sc }	evelopment of standards was a benefit to ociety? MR. BECKER: Object to form.	12
2 3 4	you're going with this. Did anyone object? BY MR. BECKER: Q. Did anybody object to this document as being impermissible lobbying?	3 4	2 sc }	evelopment of standards was a benefit to ociety? MR. BECKER: Object to form. THE WITNESS: Yes. NIST doesn't	12
2 3 4 5	you're going with this. Did anyone object? BY MR. BECKER: Q. Did anybody object to this document as being impermissible lobbying? MR. FEE: Objection to form.	2 3 4 5	2 sc 3 4 5 in:	evelopment of standards was a benefit to ociety? MR. BECKER: Object to form. THE WITNESS: Yes. NIST doesn't estitute, felt that the activities of the	12
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	you're going with this. Did anyone object? BY MR. BECKER: Q. Did anybody object to this document as being impermissible lobbying? MR. FEE: Objection to form. THE WITNESS: This is not a lobbying document. I shared this with ANSI, ANSI's general counsel as well as the other senior staff. It's a fact-based statement of it's a fact-based statement, it's not a lobbying document. BY MR. BECKER: Q. Did anybody object to the document titled: "Lobbying assignments," on the basis that you used the word "lobbying?" MR. FEE: Objection to form. THE WITNESS: I don't think anybody was paying that much attention to the title of the attachment. As I said, it's not the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	2 sc 3 st 5 in: 5 st 6 st 6 st 7 be 6 st 6 st 7 be 6 st 7 be 7 st 8 st 8 st 9 vc 9 vc	evelopment of standards was a benefit to ociety? MR. BECKER: Object to form. THE WITNESS: Yes. NIST doesn't astitute, felt that the activities of the tandards development organizations are a enefit do benefit society. BY MR. FEE: Q. Can you identify some of the enefits that NIST believed were arose out the standards development organization's evelopments? MR. BECKER: Object to form. THE WITNESS: So a primary ontribution of the standards developing reganizations is to convene a wide range of takeholders in a particular technical activity and to manage the process by which those olunteers collaborate on the development of	t ;

Page 315 Page 313 1 BY MR. FEE: 1 Q. Did NIST have a position during the 2 Why did NIST believe it was 2 time that you were there as to whether or not 3 it was appropriate for standards development 3 important to have a wide range of interests 4 organizations to fund their operations at least 4 participating in the development process as 5 in part through the sale and licensing of 5 opposed to just having industry regulators? 6 copyrighted documents? 6 MR. BECKER: Object to form. 7 MR. BECKER: Object to form. 7 THE WITNESS: So as the national THE WITNESS: I don't remember NIST 8 8 measurement institute for the United States and taking a position one way or the other on that. 9 also with NIST's broader responsibilities given 10 BY MR. FEE: 10 to the institute by Congress under the National 11 Technology Transfer and Advancement Act, the 11 Q. Does ANSI have a position with 12 institute felt strongly that bringing in the 12 respect to that? 13 MR. BECKER: Object to form. 13 largest -- a large range of interested and 14 THE WITNESS: ANSI strongly supports 14 affected stakeholders was a best practice way 15 the current private sector model of standards 15 to produce robust documents that would meet the 16 broadest range of needs. In fact, NIST 16 development in the United States. 17 BY MR. FEE: 17 followed -- follows still that practice in its 18 Q. Does that include support for the 18 own activities. 19 ability to fund standards development through 19 BY MR. FEE: 20 the use of copyrights on the standard at issue? 20 Q. During your time at NIST, did you 21 21 become aware of the fact that it cost money to MR. BECKER: Object to form. 22 develop these standards? 22 THE WITNESS: Yes, that's an ANSI Page 314 Page 316 1 Yes, I was aware of the fact that it 1 position. 2 is a costly endeavor to support the 2 BY MR. FEE: 3 infrastructure that enables the development of 3 Q. During the time that you were at 4 voluntary consensus standards. 4 NIST, did the federal government have the 5 Q. Do you have an understanding based 5 ability to write all the standards that were 6 on your time at NIST, as to how standards 6 adopted or incorporated by reference if there 7 development organizations fund their 7 were not standards development organizations 8 development activities? 8 running those standards? 9 9 A. Generally speaking, yes. MR. BECKER: Object to form. MR. BECKER: Object to form. 10 10 THE WITNESS: So in my personal THE WITNESS: I am not familiar with 11 opinion, no, and -- in my personal opinion, no, 11 12 the business model -- specific business model 12 federal agencies did not and do not have the

14 BY MR. FEE:

- 15 Q. Were you aware of the fact that many 16 SDOs relied on copyright protection as part of
- 17 their method for funding their development
- 18 activities?
- 19 MR. BECKER: Object to form.

13 for individual standards developers.

- THE WITNESS: Yes, I'm aware of that 20
- 21 fact.
- 22 BY MR. FEE:

16 their mission responsibilities. BY MR. FEE:

- 18 Q. And is that belief based upon the
- 19 work that you did at NIST?
- 20 MR. BECKER: Object to form.

13 capacity, the technical capacity or the

14 administrative capacity to develop all the

15 standards that they would need to carry out

THE WITNESS: Yes. Pursuant to the 21 22 direction from Congress to federal agencies

[8/15/2019] 2019 0815 SAUNDERS, MARY (VIDEO)

17

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 81 of 122

Page 317 1 under the National Technology Transfer and

- 2 Advancement Act, we at NIST had several -- had
- 3 interactions with federal agencies and were
- 4 very cognizant of the limited technical
- 5 resources, the limited budget resources and the
- 6 value of relying on the private sector that led
- 7 to the standardization system.
- BY MR. FEE: 8
- During the time that you were at 9
- 10 NIST, did NIST take any positions with respect
- 11 to whether or not incorporation by reference
- 12 should respect copyright protection?
- 13 A. No.
- 14 Q. During the time you were at NIST,
- 15 were you aware of any other government agencies
- 16 taking the position on that front?
- 17 A. No.
- 18 MR. BECKER: Object to form.
- 19 BY MR. FEE:
- 20 Q. Do you know if the OMB A-119 takes
- 21 any position with respect to whether government
- 22 agencies should respect copyrights of standards

Page 318

- 1 development organizations?
- 2 MR. BECKER: Object to form.
- 3 THE WITNESS: Beginning with the
- 4 1998 version of the OMB Circular A-119, which
- 5 is the first one with which I am familiar, all
- 6 versions pursuant -- succeeding versions have
- 7 directed agencies to respect the copyrights of
- 8 the standards developing organizations.
- 9 BY MR. FEE:
- 10 Q. Are you familiar with 1 C.F.R. Part
- 11 51?
- 12 No. Does it have a title? Α.
- 13 Q. Yeah. It's the Office of Federal
- 14 Register's regulation with respect to
- 15 incorporated by reference.
- 16 A. Yes, I am familiar with it.
- 17 Do you know if the Office of Federal
- 18 Register's regulations with respect to
- 19 incorporation by reference, take the position
- 20 with respect to whether or not copyrights
- 21 should be terminated upon incorporation by
- 22 reference?

- 1 MR. BECKER: Object to form.

 - 2 THE WITNESS: I believe the
 - 3 regulations as well as the related IBR handbook

Page 319

Page 320

- 4 direct agencies to respect the copyrights of
- 5 standards developing organizations.
- 6 BY MR. FEE:
- 7 Q. During the time that you were at
- 8 NIST, were you involved in any discussion with
- either the OMB or OFR with respect to the issue
- 10 of copyright protection for standards that are
- 11 incorporated by reference?
- 12 A. I was involved in discussions with
- 13 OMB, the office of international -- information
- 14 and regulatory affairs and with representatives
- 15 of the Office of the Federal Register about --
- 16 about the policy of incorporation by reference.
- 17 Q. Did you support OMB and OFR's
- 18 positions with respect to protection of
- 19 copyrighted works after incorporation by
- 20 reference?
- 21 MR. BECKER: Object to form.
 - THE WITNESS: Yes, and that was the

22

- BY MR. FEE:
- 3 Q. During the time that you were at

1 Commerce Department's position as well.

- 4 NIST, did NIST take any positions with respect
- 5 to whether or not reasonable accessibility
- 6 required free online, ability to print and save
- standards incorporated by reference?
- We -- the institute did not take a 8 Α.
- 9 position.
- Are you aware of any government 10 Q.
- 11 agencies that took a position with respect to
- 12 that issue during the time that you were at
- 13 NIST?
- 14 MR. BECKER: Object to form.
- 15 THE WITNESS: No.
- 16 BY MR. FEE:
- 17 Q. Are you aware of any government
- 18 agency that have ever required free online
- 19 access, including the ability to print and
- 20 download in order to be deemed reasonably
- 21 accessible under the Freedom of Information
- 22 Act?

Page 321 Page 323 1 MR. BECKER: Object to form. 1 MR. GRIFFIN: Okay. 2 THE WITNESS: No, I'm not aware of 2 FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT 3 any. 3 BY MR. BECKER: 4 BY MR. FEE: 4 Q. Ms. Saunders, prior to -- when Mr. Q. During the time that you were on the 5 5 Fee started talking to you at 6:28 today, were 6 ANSI board as -- you're acting on behalf of 6 you aware of any of the subjects that Mr. Fee NIST, correct? 7 7 might ask you in the past several minutes since A. That's correct. 8 8 he first began questioning you? 9 Did you, on behalf of NIST, express A. No. 10 any objections to the positions that ANSI took 10 Q. You said that it cost money to 11 with respect to copyrightability of standards 11 develop standards, correct? 12 after they become incorporated by reference? 12 A. Yes. 13 A. I did not. 13 Q. Do only SDOs pay those costs to 14 To the best of your recollection, 14 develop a standard? 15 did you agree with the positions that ANSI took 15 MR. FEE: Objection to form. 16 with respect to the need for copyright THE WITNESS: SDOs bear the cost of 17 protection after incorporation by reference? 17 maintaining the infrastructure, including IT 18 Yes, I did. Α. 18 infrastructure and organizational 19 Q. And you were doing that on behalf of 19 infrastructure, staff, et cetera, to enable the 20 NIST? 20 development of standards. That's an expense on 21 Α. That's correct. 21 the part of SDOs. 22 MR. BECKER: I will object to form 22 BY MR. BECKER: Page 324 Page 322 1 to that last one. 1 Do the individuals who participate 2 BY MR. FEE: 2 in the development of standards bear costs in 3 3 order to develop those standards? Were you doing that on behalf of Q. 4 NIST? So it varies based on the interest 5 MR. BECKER: Object to form. 5 category in which the -- in which the 6 THE WITNESS: Yes. 6 participants are categorized. I mentioned many 7 BY MR. FEE: 7 standards developing organizations maintained Q. Okay. Are you aware of any instance 8 8 low or zero participation fees for the 9 in which an individual was unable to access an 9 volunteers, but volunteers or their home --10 ASTM standard? 10 and/or their home organizations will of course 11 bear the cost of the travel of the staff to 11 No, I am not aware of an instance. 12 Q. Are you aware of any instance when 12 participate in a technical committee meeting 13 an individual was unable to access an NFPA 13 when that travel is necessary. 14 standard? 14 Q. And those costs might also include 15 A. No. 15 hotel or accommodation costs as well, correct? 16 Q. Are you aware of any instance when 16 A. It's possible, yes. 17 an individual was unable to access an ASHRAE 17 Q. And those costs might also involve 18 standard? 18 time off of their job and other things like 19 that, correct? 19 A. No, I am not. 20 20 MR. FEE: I have no other questions. MR. FEE: Objection to form. MR. BECKER: I would just like to do THE WITNESS: So the costs of the 21 21 22 existing private sector-led standards 22 a quick redirect on that.

Page 325 Page 327 1 development system are shared by all of the 1 MR. FEE: Objection to form. 2 2 participants in the system. The standards THE WITNESS: I actually don't --3 I'm not familiar with how universities fund or 3 developing organizations as I mentioned bear a 4 significant share of the cost and the various 4 do not fund their participants. I'm only 5 participants across a broad range of 5 familiar with the government agencies and company representatives. 6 stakeholders also bear some share of those 7 BY MR. BECKER: 7 costs as well, distributed across a large range 8 8 of interested individuals and organizations. Q. Do the participants who develop the 9 standards receive any of the proceeds of the BY MR. BECKER: 10 Q. Companies pay costs for their 10 sales of those standards? 11 employees to participate in standards 11 MR. FEE: Objection to form. 12 development, correct? 12 THE WITNESS: No. They are not the MR. GRIFFIN: Objection. 13 13 copyright owner. 14 MR. FEE: Objection. 14 BY MR. BECKER: THE WITNESS: Companies have an --15 15 Q. Is that the sole determinant of who 16 that have an interest in standards because 16 should receive the proceeds? 17 those standards are relevant to their business 17 MR. FEE: Objection to form. 18 18 models in either domestic or global MR. GRIFFIN: Objection. 19 competitiveness, they find that that's a 19 THE WITNESS: In my experience, the 20 business expense that is relevant for 20 participants in voluntary standards development 21 companies. 21 process do not receive a share of the proceeds 22 BY MR. BECKER: 22 from the sale and licensing of those documents. Page 326 Page 328 Q. Governments pay costs for their 1 BY MR. BECKER: 1 2 employees who participate in the development of 2 Q. Even though they bear part of the 3 those standards, correct? 3 costs for the development of those documents? 4 A. Government --4 MR. GRIFFIN: Objection. 5 5 MR. GRIFFIN: Objection. MR. FEE: Objection to form. 6 MR. FEE: Objection to form. 6 THE WITNESS: As I said, the cost is 7 THE WITNESS: Government agencies do 7 borne across the entire private sector-led 8 support their technical staff participating in 8 system, it is widely distributed. 9 standards development. BY MR. BECKER: Q. You testified that SDOs have a wide 10 BY MR. BECKER: 10 11 Q. That's at both the federal and state 11 range of volunteer stakeholders and that they 12 level, correct? 12 manage the process by which -- sorry, one 13 A. I can't --13 second, excuse me. 14 MR. GRIFFIN: Object to form. 14 You testified that SDOs have a wide 15 MR. FEE: Objection to form. 15 range of volunteers or stakeholders and that THE WITNESS: -- speak to the state 16 16 they manage the process by which those people 17 level. 17 collaborate; is that correct? 18 BY MR. BECKER: 18 MR. GRIFFIN: Objection. Q. Academics or their institutions pay 19 MR. FEE: Objection to form. 19 THE WITNESS: Can you clarify what 20 costs for the academics to participate in 20 21 standards development, correct? 21 you mean by "manage the process by which they

22

22 collaborate."

Page 329 Page 331 1 BY MR. BECKER: 1 MR. FEE: Objection to form. 2 Q. Do SDOs manage the collaboration 2 THE WITNESS: That activity includes 3 between individuals in -- in developing 3 the process of developing the standard from 4 standards? 4 start to finish and participating in both -- as 5 MR. GRIFFIN: Objection to form. 5 the document moves from stage to stage. I 6 MR. FEE: Objection to form. 6 can't speak to the details of whether federal 7 THE WITNESS: ANSI-accredited SDOs, 7 agencies staff actually put pen to paper. 8 I can speak to from personal experience, manage 8 BY MR. BECKER: 9 a process which adheres to the ANSI essential 9 Q. Do state and municipal governments 10 requirements which are also reflected in the 10 also send employees to participate in the 11 World Trade Organization's technical barriers 11 development of standards? 12 to trade agreement, so that -- those processes 12 MR. GRIFFIN: Objection. 13 are open to all materially interested and 13 MR. FEE: Objection to form. 14 affected stakeholders. 14 THE WITNESS: I have no knowledge of 15 There is a policy of seeking 15 the state and municipal level activities. 16 balance, ensuring lack of dominance, ensuring 16 MR. BECKER: Okay. All set. Thank 17 that there are dispute settlement procedures 17 you. 18 and reaching consensus. 18 MR. FEE: I actually have one more 19 BY MR. BECKER: 19 question. 20 Q. You had said just earlier that SDOs 20 FURTHER EXAMINATION BY COUNSEL FOR ASTM 21 managed the process by which volunteers 21 INTERNATIONAL 22 collaborate; is that correct? 22 BY MR. FEE: Page 330 Page 332 1 MR. GRIFFIN: Objection. 1 Can you turn to Saunders Exhibit 1, 2 MR. FEE: Objection to form. 2 please, the subpoena. 3 THE WITNESS: Did I say that 3 A. Yes. 4 specifically? Q. I want you to look at Exhibit A 5 BY MR. BECKER: 5 which is this -- this issue in this case. 6 Q. That was my recollection. 6 A. Yes. 7 MR. GRIFFIN: Objection. That was Q. My question is: Do you have any 8 the question. 8 knowledge as to whether any government employee 9 BY MR. BECKER: 9 played any role in any of the standards listed 10 Q. Did those volunteers include U.S. 10 in Exhibit A? 11 Government employees? 11 A. I do not. 12 MR. GRIFFIN: Objection. MR. FEE: Okay. That's the only 12 13 MR. FEE: Objection to form. 13 question I had. 14 THE WITNESS: In specific cases 14 MR. GRIFFIN: Thank you all. 15 where the standards development activity or the 15 MR. BECKER: Thank you. 16 -- either a new standard or the maintenance of THE VIDEOGRAPHER: We are off the 16 17 a standard has a direct -- is of a direct 17 record at 6:47 p.m. This concludes today's 18 interest to a particular agency, the agency may 18 testimony given by Mary Saunders. The total 19 assign staff to participate in that activity. 19 number of media units used was six and will be 20 BY MR. BECKER: 20 retained by Veritext Legal Solutions. Q. And does that activity include the 21 21 (Whereupon, the proceeding was 22 drafting of standards? 22 concluded at 6:47 p.m.)

	Page 333	
1		
2	I declare under penalty of perjury	
3	under the laws that the foregoing is	
4 5	true and correct.	
6	Executed on, 20,	
7	at,	
8		
9		
10		
11	MARY SAUNDERS	
12		
13		
14	SUBSCRIBED AND SWORN TO BEFORE ME	
15		
16	THIS, 2019.	
17		
18		
19	(NOTARY PUBLIC) MY COMMISSION EXPIRES:	
20		
21		
22	D 004	
1	Page 334 CERTIFICATE OF NOTARY PUBLIC	
2	02.00.000.000.000.000.000.000.000.000.0	
3	I, Bonnie L. Russo, the officer before	
4	whom the foregoing deposition was taken, do	
5	hereby certify that the witness whose testimony	
6	appears in the foregoing deposition was duly sworn by me; that the testimony of said witness	
7	was taken by me in shorthand and thereafter	
8	reduced to computerized transcription under my	,
9	direction; that said deposition is a true	
10	record of the testimony given by said witness;	
11	that I am neither counsel for, related to, nor	
12	employed by any of the parties to the action in	
13	which this deposition was taken; and further, that I am not a relative or employee of any	
14	attorney or counsel employed by the parties	
15	hereto, nor financially or otherwise interested	
16	in the outcome of the action.	
17		
18 19		
20		
21	Notary Public in and for	
	the District of Columbia	
22	My Commission expires: June 30, 2020	

Case 1:13-cv-01215-TSC Document 204-43 Filed 11/13/19 Page 86 of 122 Transcript Word Index

[& - 1-8-14]

&	031512	1 (cont.)	12th
&	236:9	241:7 273:20 302:9 318:10	4:5
3:6,16 4:5,13 11:18,22	0327	332:1	13
12:7	205:16	1.2	6:10 205:10,14 215:21
	0328	301:2	14
0	229:21	1/14	6:13 216:21 229:15,19
001-162	0328-0336	256:16	257:4
9:22	6:15	1:11	140
00167221	0336	115:21	252:19 253:2
191:6	229:21	1:13	14th
00167221-7222	0638	1:4 11:4	295:1
6:7	179:16	10	15
00264718	0638-0644	6:3 179:12,15 212:6	1:16 5:7 6:15 10:5 55:22
119:3	6:5	10:16	230:11,15 234:10,13
00264718-723	0644	1:17 10:4	235:16
5:12	179:16	100	150
00264721		1	5:13
119:13	0680	304:14	I .
00264723	292:14	10005	1512866
	0680-684	4:15	93:18
119:3	8:17	10-27-11	1527
0033	0685	8:5	294:17
297:3	293:22	11	1527-535
0033-51	0685-691	6:6 190:14 191:4 277:14	8:22
9:8	8:20	1111	1536
004	0715	3:7	5:11 117:6
303:1	295:14	11-19-14	155
01215	0715-719	9:18	307:13
1:4 11:4	9:2	11-30-11	156
015659	0729	253:3	5:16
279:5	296:8	1155	157
016254	0729-736	3:17	5:19 306:7
288:15	9:5	11-6-13	16
016265	0771	9:4	5:9 6:17 223:15 230:5
288:15	298:2	117	1
0263	0771-775	1	232:7,11 234:9 236:7
290:4		5:10	237:2 160
0263-267	9:11	1179	1
	0776	289:12	5:21
8:10	298:19	1179-187	161
02677	0776-782	8:8	308:19 309:3
291:19	9:14	118	162
0268	0783	5:11	302:9 309:11
290:20	299:21	1187	164
0268-0276	0783-790	289:12	6:2
8:13	9:16	119	167222
0277-284	0791	9:8 34:10 282:1 297:8	191:6
8:15	300:15	317:20 318:4	17
0303	0791-797	12	6:19 235:2,6 237:1 238:1
204:8	9:19	5:3 6:8 28:1 39:7 55:22	179
0303-307	090	78:20,21 204:1,5 215:18	6:3
6:9	304:9	12,000	17th
0307		133:10	24:6
204:8	1	12:23	18
0308	1		I .
205:16	1:22 5:7 10:14 15:3,4,8	115:17	7:2 124:2 237:6,10 238:8
	115:17 160:21 162:6	1250	304:18
0308-0327	165:17 177:19 220:5 231:5	2:12 11:6	1-8-14
6:12			7:15

[18th - 30]

1404	loops	loo	le= ()
18th	2004	22	27 (cont.)
24:1,5	181:8	7:10 181:6 184:2,14	233:17 252:8 268:6,10
19	2007	247:16,20	288:19
7:3 227:1 236:16 237:22	46:21 61:22	2-27-12	271
238:4,14,17 300:19	2008	7:19	7:21
190	24:2,6 46:22 62:1 185:9	2-27-13	278
6:6	191:9	7:17	8:2
1968	2010	229	28
199:12,13,16 200:6,8	53:15 56:5 61:6	6:13	7:21 270:5 271:9,13
1988	2011	2296	2845
22:1	23:11 24:2 151:7 180:10	5:18 156:22	185:14
1989	185:13 194:11,19 239:7	23	2860
28:21	288:19	7:12 161:10 250:14,20	6:16 230:17
1993	2012	255:19	288
24:15,16 25:2 44:13 47:11	22:9,17,22 23:12 53:15	230	8:4
47:13,18 48:2,8 121:2	56:5 61:7 179:20 181:6	6:15	289
1995	182:19 184:2,14 189:10	232	8:7,9
27:15,19,21 28:2	211:5 214:11,13 231:6	6:17	29
1996	251:7 289:16 290:8 291:5	235	8:2 251:7 278:21 279:3
25:5 287:13	291:22	6:19	280:18,20,21
	2013	237	
1998			290 8:11
318:4	214:11,13 230:5 263:21	7:2,3	
1st	292:19 294:4 295:1,18	23rd	291
21:7	296:12	252:10	8:14
2	2014	7.44.050.40.04.050.44	292
2	57:6 297:9,11 298:6 299:3	7:14 250:16,21 252:11	8:16
4:14 5:9 16:1,2,6 20:10	300:3,19	290:7 291:5,22 298:6	293
115:21 159:20 163:3 166:8	2015	299:3 300:3	8:18
206:5 207:17	57:6 117:13,14	240	294
2.1.	2016	7:6 210:2	8:21
298:11	66:13,16 70:11 71:16,18	245	295
2.2	135:10,15 139:4,6,8	7:8	9:2
292:1	2017	247	296
2.3	21:7,15 22:11 57:6	7:10	9:3,6
180:5	2018	25	297
	6:2 92:9 164:18 304:18	7:15 45:2 47:18 256:8,12	9:9
2.4.	2019	250	298
292:2	1:16 10:5 117:18 333:16	7:12,14	9:12
2.6	2020	2538	299
180:18	334:22	5:20 159:10	9:15
2:00	202-220-1115	256	3
18:4,18 19:2	3:19	7:15	
2:07	202-739-5596	259	3
159:20	3:9	7:17	5:10 70:18 116:21,22
2:36	204	26	117:4 123:7 124:17 151:19
160:2	6:8	7:17 161:1 259:3,7 276:7	160:2 161:11 199:11
20	205	268	203:18 219:19 255:18
7:6 240:15,19 333:6	6:10	7:19	285:19 308:17
20004	207	2690	3:29
3:8,18	44:17 122:1 123:4	150:6	203:18
2001	21	2690-2692	3:41
24:5,20 25:1 49:3 194:11	7:8 151:7 245:12,16	5:15	203:22
194:19	289:16 292:18 294:4	2692	30
2003			199:6 280:5,9,20,21
45:1	212-238-8672	150:6	334:22
	4:16	7.10 102.10 211.5 222.10	
		7:19 182:19 211:5 232:19	

[300 - a.m.]

300	3602	4530	70
9:17	240:21	250:20	199:6,10,13,17 200:6
801	3602-3604	4530-531	7-16-12
9:20	7:7	7:13	7:10,12
083	3604	46	7.10 , 12
6:18 232:13	240:21	9:20 301:20 302:15,19	9:10,15
8084	37	5	7-29-19
235:8	8:18 293:8,20	5	5:9
084-3089	3792	5:13 149:22 150:4 154:1	73
6:22	245:18	180:17 188:3 280:4 311:6	184:6
8089	3792-793	5:15	75
235:8	7:9	279:15	45:6 46:12
31	3793		75.513-1
8:4 250:20 288:9,13	245:18	5:18	199:12
311	38	279:22	8
5:4	8:21 294:12,16	5:37	
B-1-12	3844	280:4	8
6:15	7:11 247:22	501	5:21 160:16,20 170:6
8121	39	70:18 285:19 308:17	8056
	9:2 295:8,12	51	7:16 256:14
237:11	· ·	318:11	8-28-15
3121-3122	3rd	5-16-13	5:11
7:2	21:14 22:11	6:14	8802
3122	4	5-21-12	259:9
237:11	4	8:7	8802-805
3123	5:11 118:19 119:1,12	5-24-12	7:18
238:6	123:9 180:2 203:22 213:6	8:14	8804
3123-3128			
7:5	279:22	5-29-12	260:1
3128	40	7:21	8805
238:6	9:3 296:2,6	53	259:9
3-15-12	41	67:19,20	8b
6:17	9:6 296:19 297:1,16	555	169:19
3-18-12	4-10-12	4:5	9
	7:6	57.12048	9
7:2	415-875-2300	199:6	~
32	4:7	6	6:2 164:12,16 165:9
8:7 289:6,10	42		177:15,16 239:11
3-21-13	9:9 297:18,22	6	9053
8:19	4-21-11	5:16 156:16,20 157:16	268:12
3-22-12	5:14,17,20	158:8,19,22 160:10 237:18	
6:4	4-27-12	295:18 296:12 297:9,11	7:20
323		311:10	9056
5:3	6:6	6:20	268:12
33	43	311:6	9121
8:9 289:20 290:2	9:12 298:13,17 299:8	6:28	271:15
331	44	311:10 323:5	9121-124
5:4	9:15 299:15,19	6:47	7:22
	4472	332:17,22	9124
4.00	250:21	,	
1:22	4472-4481	6-27-12	271:15
34	7:15	7:8	93
8:11 290:14,18	4478	6-28-19	24:20 45:1
3461686	252:14	9:20	94104
1:21		7	4:6
35	4481	7	а
8:14 291:13,17	251:1	•	
	45	5:19 157:10 158:19 159:9	a.m.
36	9:17 300:9,13	160:11 165:8	1:17 10:4

[a119 - agencies]

[arro agonoloo]			
a119	accreditation (cont.)	actions	administered
45:22 79:3 85:3 102:6,7,9	82:11 83:5,19 129:19	99:8 128:4 164:9 239:15	44:16 123:4
102:10 114:2 139:7 150:17	I to the second	240:2 282:18 284:3 285:18	
204:22	accreditations	285:21 287:1	78:9 80:2 131:2
ability	81:4		administration
178:3 247:4 315:19 316:5	accredited	9:13 27:2,3,7,8,10 28:6	23:21 24:14 25:6,8 28:20
320:6,19	79:21 127:21 131:4,13	30:10,13 39:11,12,17,17	29:1 34:4 47:10 55:1 82:1
able	210:2,5 220:7,13 260:17	40:4 43:13 45:20 48:17,20	84:22 85:10,20 175:13
19:22 43:22 132:11 141:21	329:7	49:6,7 51:4,5,18 52:7,17	192:17 199:4 211:4,9
145:13 170:10 171:22	accreditor	54:2 62:8,12,14,19 63:3	212:14 214:20 233:21
197:11 248:9 271:3	75:7	68:1 69:4,6 71:6,7 72:16	235:13 252:15 303:10
abridges	accreditors	72:21 73:5,20 74:13,18,19	305:6 306:16 307:4
4:9	77:1 82:16 83:19	74:21 75:2,13,14 77:19	administration's
academics	accredits	79:1,4,10 96:4 102:13	85:7 182:22
211:7 233:19 326:19,20	74:17,20 123:2 130:18	119:18 152:10 180:6,18	administrative
accepted	131:8	181:10 197:8 204:16,20	99:2,9 100:13 101:2 104:2
71:19	accrue	261:1,4 268:18 282:2,3,20	143:13,14,15,20 144:8
access	106:19	283:16 285:6 286:9,14,18	147:21 163:7 170:2 249:8
136:5 138:8 140:15,19	accurate	287:1,16 299:1 306:1	249:9 316:14
141:16 142:2,3,6 145:7,14	I .	308:7 312:5 313:18 314:8	adopted
146:9,17 147:4,12 148:5	259:19 280:16 297:16	314:18 331:15	316:6
148:15 149:2,10 152:1,5,8	299:8 303:7	activity	advancement
	accurately	31:4 81:13 285:14 287:20	27:15,19 30:11 39:6 45:18
155:13 166:12,18 167:12	155:21 280:12 289:2,17	312:17 330:15,19,21 331:2	70:20 71:4 78:19 92:19
168:22 169:12,15 170:7,20	290:9,11 292:3,21 294:9	actual	93:16 152:17 178:9 218:16
170:21 172:16 174:16	295:5,21 296:16 298:9	47:1 130:17 137:7	282:1 313:11 317:2
207:12 208:1,7,12,19,20	300:6,22	144.9 12 170.2 220.9	adverse
208:21 209:3,14,16,19,20	achieve	144:8,13 170:2 239:8	247:3
210:11 217:3,7,10,14	36:14 58:6 155:8	249:15 251:12,14 252:9	advice
218:4 219:7,11 220:3	achieved 38:6	255:19,20 256:3 add	66:4 170:19 186:12,13 advise
224:3,22 225:12 226:13 228:3 242:6,11,17 243:2,2		129:6	62:11
243:6,9,21 244:17 250:4	273:1	added	advisement
272:9 274:10 320:19 322:9		224:13 239:19	89:3
322:13,17	208:7	adding	advisory
accessibility	acquisitions	239:16	44:16 121:21 122:8 123:3
320:5	73:1	addition	123:4 238:21 303:16 304:1
accessible	acronym	135:20 160:13 201:8	advocacy
303:14 304:2,4 320:21	195:3 196:2	additional	307:11 308:10
accessing	act	21:20 88:19 123:9 202:18	advocate
129:4 170:12 171:6,13	27:15,19,21 30:11 39:6	203:6,12 241:5 246:14,17	107:15 113:5,12 115:3
172:2,4 175:2 225:6	45:18 77:17 78:5,19 79:14	address	281:17
accommodate	80:7,16 81:15,17 82:3	14:13 130:7,7 188:1,21	advocated
155:7,12	83:16 84:6,10 89:11 92:19	225:2 233:3,14 244:19	250:9
accommodation	93:16 99:2,9 100:14 101:3	247:7 261:1,11	advocates
324:15	104:3 109:18 152:17 178:9	addressee	107:20 111:20
account	185:12 218:16 282:1	232:15 241:13,14 251:5	affairs
101:4 102:1	313:11 317:2 320:22	275:14	25:11 214:5 246:22 319:14
accredit	acted	addressees	affect
79:19 131:8	186:7	232:17 241:6	137:12
accreditation	acting	addressing	affiliated
49:16 74:17 75:3,4,19 76:3	321:6	140:3 261:3	189:13
76:6,7,9,11,14,16,17,18,20	I .	adhere	affiliations
77:2,8,13,14 78:1,7,14	15:13 127:20 202:22 203:7	286:9	11:15 32:12,14
79:15 80:1,5,10,12,17,22	286:3 334:12,16	adheres	agencies
81:2,5,6,11,12,16,19 82:4		329:9	27:5 28:3 30:8,12,15 37:9
			'

[agencies - apparently]

agencies (cont.)	ago	amount	ansi (cont.)
39:8,10 40:1 41:14 73:18	19:8 47:18 55:17 156:4	29:5	225:17 226:2,15,17 227:11
73:18,19 78:21 79:9 85:12	171:21 183:6 186:3	anab	227:16 229:3,20 230:5,16
85:17 86:1,7,20 89:2 90:15		82:5	230:22 231:2,9,12 232:13
94:1,9 95:11 96:4 98:21,21	_	andrew	233:2,14 234:19 235:7,10
99:6 102:1,11 105:9	agreed	4:4 11:20	236:8 237:1,10,16 238:6,6
107:21 108:7,21 111:1,21	55:2 151:20 266:19 267:8	annual	240:20,21 241:5,5,8,19,20
112:1 113:3 114:12 134:1	306:22 307:1	83:7,11,12	243:15,20 244:3,8,19,21
136:10 137:4 139:9 147:1	agreement	ansi	245:18 247:22 250:20,21
150:19 151:22 152:5,6,7,7	5:21 20:3 26:5,13 79:7	5:10,11,15,18,20 6:5,9,12	251:12,14,20 252:2,14
152:12,18 155:8,13 167:11	T	6:15,16,18,19,22 7:2,3,5,7	253:22 254:16 255:9,20
167:20 168:4,10,14,17,21	255:19 264:20 266:9 267:5	7:9,11,13,15,16,18,20,22	256:3,13,14 259:9,9 260:1
169:4,20 170:19 188:7	283:17 329:12	8:8,10,13,15,17,20,22 9:2	260:17 268:11 269:3,15
195:20 197:21 200:18	ah	9:5,8,11,14,16,19 21:2,10	271:15,15,15 272:5 274:2
201:13 217:4 218:17	306:9	23:4 38:9 40:12,13,15,16	274:12,17 277:12 278:2,3
219:20 220:2 228:14,17	ahead	40:20,21 41:6,10,11,12,14	278:4,8,17 281:2,5,12
232:5 239:13,22 252:3	78:10	42:11,12,13,15,18,22 43:1	284:15 285:5,19 286:12
261:15 281:19 282:12,14	aid	43:6,9,13,17 44:1,5 47:7	288:18 289:11,12,15 290:4
282:17,18 283:1,3,4,8,19	140:12	47:14 48:2,3,10,13,20 49:6	290:7,19 291:5,18,21
283:21 284:3,6,11,19	air	49:8,12,15,20 50:6,22 51:2	292:13,17 293:6,16,21
287:13 316:12,22 317:3,15		51:3,12,20 52:2,3 53:3,5	294:3,17,20 295:13,17
317:22 318:7 319:4 320:11		64:18 65:1,10,18,22 66:2,4	296:8,11 297:2 298:1,5,18
326:7 327:5 331:7	253:5,18	66:10 67:3,5,6,8,10,17,18	299:1,20 300:2,14,18
agency	al	67:19,22 68:6,21,22 69:16	306:2,21 310:7 315:11,14
31:1,2,5,11,17,21 40:1,1,5	15:18 277:11	70:3 71:11 72:11,15 73:15	315:22 321:6,10,15 329:7
40:6 45:18 96:3 99:3,11,19		73:22 74:14,16 75:6,19	329:9
99:21,21 100:20 102:21	307:7,10,15	76:3,6,6,9,16,22 80:5,8	ansi's
108:5,17,22 109:5,14,18	alias	81:3,10,14,18 82:1,4,5	40:16 68:1 69:4,4,5 73:16
109:22 110:4,7,7,8,9 111:1	241:21	83:19 105:11 107:9,15,20	81:7 83:4 190:2 219:22
111:9 112:16 113:4,4,6,13	alice	111:20 113:5,12,18 114:1	222:17,21 234:5 281:16
115:9,13 137:21 140:3	308:22 309:7	114:5,7 116:6 117:6,6,10	293:14 310:7
154:4 155:1 164:3,5 166:1	allow	117:14,20 118:2 120:1,3,4	answer
166:6,9,20 167:1,8,13,14	151:21 231:12	120:4,6,8,11,12,14,20	29:22 31:14 32:8 37:22
167:17,18 168:18,18	allowed	122:22 123:2,10,19,19,20	47:20,21 77:12 84:1,7
178:11 196:5,18,22 197:6	176:12	124:1,3,5,6,8,15,18 125:5	111:4 129:7 138:19 142:10
197:8,9,12,15 198:3,6,12	allows	125:12,17 127:11,11,12,17	148:10 155:19 175:10
198:13 199:20 200:1,13	100:22	128:3,10,16,18,19,20	229:9 264:20 266:9 267:20
201:3,15,15,17,20,20	altered	129:19 130:12,14,18,21	271:8
202:2,3,6 211:10 228:19	214:2	131:2,7,13,17 134:5,7	answered
233:22 238:20 260:6	alternative	135:20,21 136:2,4,12,15	90:2 147:7,15 149:5
261:17 282:2 283:13,15	34:15	136:19,22 137:2,3,3,7,11	answers
320:18 330:18,18	amend	137:17 138:8,14 139:3,11	13:5 14:11 116:1 160:6,7
agency's	160:8 182:21 211:7 233:20	139:16,18,21 140:7,11,16	anybody
30:21 113:9,16 115:6	america	140:22 141:8 146:5 150:6	143:7 214:9,14 310:3,13
agenda	61:11	150:6,6,11 151:2,5,19	310:17
5:16,19 6:8 8:9,16 9:2,9	american	156:10,21,22 157:6 159:6	anyway
157:2 159:4,13 160:10,11	1:3,7 3:2 10:17,20 20:21	159:10 168:15,15 179:16	189:16
180:5,18 204:10 205:21	20:22 38:10 52:4 74:17	179:19 181:4,10,12,15,17	api
230:4 290:6,12 292:1,16	81:1 82:4 127:15 128:1,4	182:3,7,12,17 183:8,9,11	208:18 209:5,10
292:19,22 293:16 295:7,16		183:12,20,21 184:1,6	apologies
298:4,10,11 301:2,3	132:17 133:1,3,6,7,16,18	189:11,22 190:6,8,12	279:10
agendas	133:22 134:3,6,20 136:9	204:8,8,10 205:15,16	apologize
157:4,7 293:4,6	136:11 209:12 257:14	210:5 211:17,22 216:21	190:20
agent	amicus	217:2,22 219:1 220:7,10	apparently
282:16	277:12 278:4,17,20	220:13,19 221:1,2,9,14,15	252:21
		223:3 224:17,19 225:6,11	

[appeal - aware]

annoal	arguments	associations	audio
appeal 127:20,22 128:3 277:14	207:7,9,15,20	42:7	10:11,11
278:7	arose	assume	audit
appeals	312:10	200:5 209:8 289:19 291:8	191:21
118:6 127:6 128:2	arrange	assumed	august
appear	140:18 151:20	64:14	1:16 10:4
230:3 289:2	ashrae	assuming	auspices
appearances	277:6 322:17	223:19	147:20
3:1 4:1 11:15	asked	assumption	authentic
appears	18:12 54:21 55:5,7,9 63:20	224:2	233:4 259:20 297:16 299:9
119:20 196:15 199:7,14	64:9,14 69:9 103:18	assumptions	authoritative
206:17 257:2 293:1 299:10	1	196:17,21	92:12 94:14 95:2,8
334:6	116:5 139:4 147:14 191:15		authorities
applicable	203:10 245:9 247:5 248:22	142:1 169:11	108:6
163:7	262:19 264:13,16 265:20	astm	authority
application	asking	1:4 3:3 10:18 12:3,5 15:18	177:19 197:7
161:15 162:3	13:4 19:8 25:21 75:21 76:6	32:20 44:13,15 45:7,12	authorized
	82:14 105:22 114:19 175:3	46:4,8,13 53:11,13,15,17	174:6,8
applied	190:22 191:19 212:22		authorizing
70:4,14,16,17,19 71:1 175:20	246:3 248:5 261:10 262:4	53:19,21 54:2,6,13,16,19	110:15,18 178:5
		54:22 55:6,9,13,20 56:3	,
applies	262:6	58:17 59:14 60:4 61:7,9,13	
46:12	asme 188:5 274:17 275:1	61:16 121:1,7 122:4,14	68:17 123:18,20 125:5,21
apply		123:5 188:4 208:17,22	availability
70:9 130:20 162:16 175:15		209:3 274:21 275:10,17	52:11 138:12 139:9,13
approach	59:18 60:11 224:16 264:14	277:5,11 279:4,5 288:15	140:4 141:10,13 142:1
187:1	assessment	311:11 322:10 331:20	165:11 170:1,8 178:1
appropriate	74:5,8,13,15,18 75:2,6,8	astmo16254-265	220:3 223:9 242:18 248:12
28:6 85:13 190:3 244:12	75:14,18 76:2,12 78:22	8:6	249:21 255:22 261:12
315:3	79:4,10 82:10,11 83:17	astm's	263:20,22 273:1
approval	84:5 294:21	209:1	available
211:10 233:22 301:3	assign	attached	18:13,14 31:5,10 50:18
approve	330:19	235:15 237:2,17 252:3	53:3 62:11 83:7 86:11
58:11	assignment	256:2	140:9 141:3,18 142:8,18
approved	307:16	attaching	143:5,9 144:17,21 147:1
127:16 161:13 162:1,21	assignments	307:16	165:13,21 166:3,7 167:3,8
approves	306:11 310:14	attachment	167:20 168:2 169:22 177:3
69:12	assist	9:21 236:8 237:19 308:5	177:10 189:8 207:9,16
approving	140:2	309:10 310:19	208:16 210:18 212:4,17
124:13	assistance	attend	213:2,9 215:2,6 220:11
approximately	140:12 141:9	59:3,9 68:2 285:13	223:4 227:3,8 242:3,4,8,9
44:20,22 55:19 57:4 66:17	assistant	attendance	242:15,21 243:6,17,21
80:11 83:3 123:22 124:2	23:19	204:11	244:10,14 245:1 246:10
127:3	assisted	attended	250:3,9 261:18 262:8,13
april	52:20 182:7	304:17	262:15 272:6,11,12,17,18
151:7 304:18	assisting	attending	273:6,12,22 274:3 275:2
archives	220:1	11:14 68:9	avenue
84:22 85:6,9,20 175:12	associate	attention	3:7
182:21 211:3,8 233:20	16:11 21:11 22:7 23:5,9	260:15 310:18	aviation
235:12	72:12,17,19 138:20 260:12		303:10
area	associated	142:13,22	avoid
35:15 57:16 84:11 108:20	75:15 244:9	attorney	241:13
112:18 207:1	association	116:16 302:2,11 334:14	avoids
areas	1:6 3:14 4:21 10:19 46:17	attributor	90:7
30:22	61:21 62:7 63:1,20 64:5,7	206:16 216:10	aware
argument	70:19 71:3 81:2 189:20	audible	15:20 31:18 48:11 75:18
213:13,18	199:5 209:15 216:2 307:9	13:15	76:1 94:21 97:17,21 98:1,5

[aware - board]

aware (cont.)
102:14 103:1,11,16,21
104:6,8,15,20 105:16
111:8 112:20 117:15 129:2
130:11,13 145:5,18 147:19
148:3 166:16 167:10
168:20 169:7 171:3,12,13
178:10,17 179:1,5 185:3
206:12 221:2,15 223:9
243:15,19 269:16 274:1
283:12,15,18 284:2 313:21
314:1,15,20 317:15 320:10
320:17 321:2 322:8,11,12
322:16 323:6
b
back
10 10 55 15 00 10 11

19:18 55:15 66:13,14 67:11 77:16 79:12 115:19 123:7 133:15 147:8 159:22 180:21 185:19 193:19,20 203:20 232:20 236:7 276:6 280:2 311:8

background 30:19 60:5,6 backwards

23:10.18

bad 35:17 bakery

268:18 269:5,8,17,19 270:1

balance

34:14 36:2,5,6,14 38:5 58:6 128:22 129:12,13 130:2,3 177:21 329:16

balancing 177:17

barriers

5:22 26:4 79:6 131:22 160:21 161:4 329:11

based

68:20 208:15 286:21 287:20,22 288:4 309:15 310:9,10 314:5 316:18 324:4

basis

67:12 69:7 122:22 137:2 139:16 166:6 176:16 193:16 198:15 208:16 213:20 244:11 246:16 264:1 266:16,21 272:11 310:14

bates

117:6 119:12 232:12 235:7 237:11 245:18 247:21

bates (cont.)

252:14 256:14 279:5 bcc

233:3 241:12,15

bcc'd

241:11

bear

323:16 324:2,11 325:3,6 328:2

becker 4:3 5:3 11:17,18 12:17 15:2,6,22 16:4 19:15,19 20:6,11 25:16 26:15 28:15 31:8,15 32:11 33:10,21 35:8 37:3,13 39:1,14 40:7 41:19 42:2 43:5,20 45:9 46:3 47:22 48:18 50:4,10 50:16 53:10 54:10 58:9,15 59:6,17 60:1 62:3 63:6 64:16 65:8,14 69:14 70:1 73:12 77:7,20 78:11 79:11 80:4 82:17 83:2 84:3,12,17 85:5 86:16 87:4 88:1,14,20 90:3.18 91:8.13.18 92:10 93:1 94:22 95:6,13,20 96:7 96:14 97:11 98:14 99:10 100:5,16 101:6,17 102:5 102:22 103:15 104:7,14 105:10,19 106:4,11,20 108:2 109:3 110:1,16 111:7,15,19 112:12 114:6 114:13 115:2,14,22 116:20 117:2,19 118:12,21 119:22 120:17 121:12 122:12 123:6 125:16 126:1 127:2 128:15 130:10 131:10 132:9.22 133:14.21 134:10 136:1 137:10 138:13 139:1 beginning 140:5,20 141:14 142:14 143:2 144:1,14 145:4,21 146:6,14 147:6 148:2,12 148:21 149:7 150:2 152:3 153:1,13,21 155:2,20 156:6,18 157:12,15 158:6 158:17 159:8,16 160:3,18 163:22 164:14 168:19 169:5,13 170:4 171:2,11 171:19 172:18 173:14,20 174:7,20 175:17 176:2,15 177:7,14 178:16,22 179:14 182:6,11 183:18 186:15 187:7 190:17 194:8,20 195:22 197:17 201:6 203:13 204:3 205:12 210:7

213:16 215:17 217:21

218:11,22 219:10 220:4

becker (cont.)

221:13 222:4,11,20 223:8 223:14 225:10.22 226:10 228:6 229:2,12,17 230:13 232:9 234:14 235:4.21 236:6 237:8 238:2,12 240:10,17 243:4,14 244:6 245:14 247:18 250:7,18 254:6,14 255:1,17 256:10 258:2,18 259:5 261:8 262:10 263:2 265:2,9 266:2,11,15,20 267:9,17 268:8 270:16 271:2,11 273:3,16 275:6,15,21 276:5 278:15 279:1,10,18 280:7,19 281:1,8 282:9,22 283:11 284:13 286:11 287:21 288:11 289:8,22 290:16 291:10,15 292:10 293:10 294:14 295:10 296:4,21 297:20 298:15 299:17 300:11 301:15,22 304:21 305:16 306:4 307:20 308:9,14 309:4 310:2,12,21 311:3 312:3 312:13 313:6 314:10,19 315:7,13,21 316:9,20 317:18 318:2 319:1,21 320:14 321:1,22 322:5,21 323:3,22 325:9,22 326:10 326:18 327:7,14 328:1,9 329:1,19 330:5,9,20 331:8 331:16 332:15

bedrock

131:19

began

25:4 323:8

264:22 318:3

begun

135:20

behalf

2:15 3:2,13 4:2,11 12:3,5,8 board 48:9 61:12 211:18 311:17 321:6,9,19 322:3

belief

264:1 316:18

believe 19:7 26:6,11,12 44:14 46:21 48:14 53:3 55:8,22 61:11,22 80:16 81:1 82:6 83:6 107:12 116:21 121:1 124:14 135:19 136:15 141:6,8 143:18 158:18,21 161:20 184:3 186:10 216:5 220:14 233:1 242:7 270:5

believe (cont.)

272:15 295:3 297:17 307:12 313:2 319:2

believed

265:10 312:10

believes

192:7 244:8

believing

221:2,15

belongs

221:6

beneficial

154:7

benefit

106:12,18 123:8 131:12,18 312:1.7.7

benefits

113:18 114:8 132:10,21 190:4 312:10

benefitted

257:10

best

14:22 116:19 130:2 156:1 195:19 197:18 280:17 311:1 313:14 321:14

better

62:18 200:3

beyond

87:21 116:9 171:5 175:9 274:11

bhatia

251:17,18,19 257:5,17 258:3,12,20

bill

185:13,15 212:7,10 213:6 213:22 214:6,10,16,22 246:20 247:2,14 248:21

billed

154:5

bit

29:21 30:19 62:22 116:13 282:4

46:17 48:15 49:16 51:21 53:15,17,18 54:3,6,16,19 54:22 55:3,4,12,14,20 56:5 61:6,21 62:6,21 63:3,8,12 63:15,17,18,21 64:10,17 64:19 65:1,5,7,10,20 66:3 66:9 67:12,18,19,20 68:8 68:14,16,18,19,20,21 69:3 69:5,7,9,12,12,16 74:17 76:17 106:21 107:2,4,6,9 107:10 118:2,6 124:6,10 127:7,12 128:2 179:19 183:22 184:2 189:11

[board - changes]

board (cont.)	brandant	conchilities	celluler
board (cont.) 204:10,11 205:21 230:5	broadest 313:16	capabilities 175:10	cellular 10:8
271:19 278:2 290:7 291:5	bsi	capacity	centers
291:22 292:17 293:18	202:14 203:6	17:7 44:10 45:13,14 46:15	168:11
294:3 295:17 296:11 298:5		46:17 47:4 48:4 56:4 61:8	ceo
300:2,18 321:6	9:8 69:12 100:3 297:7	78:1 316:13,13,14	66:4 67:22 251:19
boards	317:5	capital	certain
32:15 153:10	budgetary	25:9 28:22	60:2 100:1,2,22 110:2
bockius	54:9,12	captured	200:18 235:22 236:3
3:6	building	202:18	272:10
bodies	285:3,3	career	certainly
28:5 39:10 61:11 76:16	bullet	25:5 32:20	66:12,15 156:14
	161:11 162:6 207:17 219:6		,
79:20 80:12 81:5	219:19 239:11 255:18		certainty 185:12
body	bullets	143:3,18 184:7,13,16 185:20 186:17 191:12	
40:21,22 75:11,12 76:14			certificate
80:10,17,22 81:15,19 82:5	223:20	260:15 276:13	334:1
122:22 123:1 133:7,8	burden	carry	certification
140:17 161:14 162:2,22	141:9	108:8,18 109:20 110:5	74:11 75:12 79:20
bonnie	bureau	112:2,17 247:4 316:15	certifier
1:20 11:11 334:3	21:19 23:22	carrying	75:11
borne	business	107:22 111:22 215:16	certify
328:7	154:5 155:6,18 156:10	carter	334:5
bottom	157:6 158:9 159:2,6	4:13 11:22	certiorari
161:11 165:10 169:19	172:10,11 226:6 314:12,12		301:7
170:5 201:7 268:13 272:3	325:17,20	1:3 11:4 13:2,15 14:1	cetera
276:14	businesses	121:19 123:3 166:4,4	323:19
box	272:14 273:14	172:17 196:6 202:20	chain
184:5	buy	220:17 243:5 276:16 285:7	
hea-il	170.6 11	204,46,40,206,24,222,5	7.10 01 101.00 071.16
brazil	173:6,11	301:16,19 306:21 332:5	7:19,21 134:22 271:16
207:1	C	cases	chair
207:1 break	С	cases 31:19 76:7 138:2 168:14	chair 43:10 49:11,12,14 50:20
207:1 break 14:6 19:19 111:16,17	c.f.r.	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4	c c.f.r. 193:4,6,7 195:4 196:16	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s.	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category 37:12,15,21 38:3 41:13,15	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category 37:12,15,21 38:3 41:13,15 41:18,18 42:4 44:7 46:5	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category 37:12,15,21 38:3 41:13,15 41:18,18 42:4 44:7 46:5 125:7 129:14 130:5,6	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category 37:12,15,21 38:3 41:13,15 41:18,18 42:4 44:7 46:5 125:7 129:14 130:5,6 324:5	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category 37:12,15,21 38:3 41:13,15 41:18,18 42:4 44:7 46:5 125:7 129:14 130:5,6	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category 37:12,15,21 38:3 41:13,15 41:18,18 42:4 44:7 46:5 125:7 129:14 130:5,6 324:5	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3	c c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance 14:16
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8 211:6 233:18 241:16	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring 255:21 260:15	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8 211:6 233:18 241:16 campaign	cases 31:19 76:7 138:2 168:14 213:15,20 221:8 303:16 306:21 312:20 330:14 categories 36:8,11 38:4,8,12,17 41:12 41:20 44:6 124:19,21 125:1 categorized 324:6 category 37:12,15,21 38:3 41:13,15 41:18,18 42:4 44:7 46:5 125:7 129:14 130:5,6 324:5 catherine 20:15 cause 139:4	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance 14:16 change 35:18 102:14 103:2,21
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring 255:21 260:15 bringing	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8 211:6 233:18 241:16 campaign 188:6,17	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance 14:16 change
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring 255:21 260:15 bringing 313:12	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8 211:6 233:18 241:16 campaign 188:6,17 candidate	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance 14:16 change 35:18 102:14 103:2,21
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring 255:21 260:15 bringing 313:12 brings	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8 211:6 233:18 241:16 campaign 188:6,17 candidate 55:3,10	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance 14:16 change 35:18 102:14 103:2,21 116:3 117:13 198:2
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring 255:21 260:15 bringing 313:12 brings 190:5	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8 211:6 233:18 241:16 campaign 188:6,17 candidate 55:3,10 candidates	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance 14:16 change 35:18 102:14 103:2,21 116:3 117:13 198:2 changed
207:1 break 14:6 19:19 111:16,17 115:14 159:17 160:4 203:14 279:17,19 282:4 311:2 bremer 248:9 249:6,7,11,13,17,19 250:8 251:7,9 bridges 4:4 11:20 20:8 brief 256:1 278:4,18,20 briefed 69:6 briefings 67:21 69:3 bring 255:21 260:15 bringing 313:12 brings 190:5 broad	c.f.r. 193:4,6,7 195:4 196:16 199:6,12,22 201:9,12,18 202:15 318:10 c.f.r.s 303:18 c.f.r.s. 303:15,19 cadence 116:18 california 4:5,6 276:16 call 75:2 174:5 175:10 253:4,9 253:12 254:1 called 24:16 31:6 167:21 173:8 211:6 233:18 241:16 campaign 188:6,17 candidate 55:3,10	cases	chair 43:10 49:11,12,14 50:20 65:2,3,18,19,21 66:4,9,10 67:2,5,10 68:11 116:8 118:4,9 123:16 124:13 151:13 153:9 288:21 chairing 67:13 68:10,12 chairman 66:3,8 123:16 189:11 chairs 65:4,7 66:2,2,8 68:16 123:18,20 challenge 166:1 challenging 184:8 chance 14:16 change 35:18 102:14 103:2,21 116:3 117:13 198:2 changed 227:9

[changing - compliance]

changing	citing	coming	committees (cont.)
263:11,14,16,20 264:3	195:6 199:7	57:8 266:13	153:7
265:12 267:12	civil	comment	committee's
characteristics	5:8 15:13	14:18 99:3 100:15,17	215:14
34:13 35:2 36:1 162:11	clarification	101:1 102:17 142:22 143:1	
characterize	265:1	145:10,19 146:4 149:20	35:12,19 285:1
155:22	clarify	154:22 189:5 211:6 241:7	commonly
characterizes	33:8 75:22 126:5 328:20	241:8 247:6 249:1 262:8	21:1
63:11	classified	262:14,16	communications
charge	37:11	commented	19:4 79:19 126:3,4 187:22
81:3,5,10 184:8 213:9	clear	56:10 122:9	190:2
272:13 273:13	59:22 76:5 88:18 174:18	comments	community
charged	309:22	6:20 7:3 60:12,14 99:4	25:10 29:2,7,11 51:4 52:9
193:14	clearest	101:3,4 143:21 145:19	52:10 73:22 74:2 109:2,7
chart	14:2	148:1 196:7,10 231:20	140:3 151:21 164:6 211:19
5:10 117:11,14,21 123:10	clm.com	233:18 235:11 236:15,17	214:18 246:11 255:22
check	4:17	237:17 261:17	284:18
58:17 110:22 223:1	close	commerce	companies
checking	266:14 277:19 306:8	16:13 21:19 23:22 25:4	135:5 173:6 325:10,15,21
262:20	closed	48:10 71:16 72:2 187:21	company
chief	158:3,14 159:14 160:13	284:19 320:1	41:17 173:7,10 189:15,17
16:11 24:7,22 49:2,3,9	closer	commercializing	225:2 270:13 327:6
73:2,3,10 149:13,16 185:7	202:19	257:14	compare
chilling	coast	commission	238:14
239:13,21	202:3 252:9	29:3 41:3 51:7 79:19	compared
china	code	333:19 334:22	193:3
51:10 206:22	85:15 86:3,14 87:19,20	commit	compatibility
chronological	94:11 109:11 135:13 136:7	203:8	80:1
49:20	136:21 137:20,22 183:2	commitments	compensation
circuit	193:15 194:18 195:17	156:13	244:12
	1		244:12
circuit	193:15 194:18 195:17	156:13	· -
circuit 277:13	193:15 194:18 195:17 199:6 203:9 211:11 234:1	156:13 committee	244:12 competence
circuit 277:13 circular	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes	156:13 committee 41:2 43:9,11,12 44:13,15	244:12 competence 75:5 76:19 77:15 82:2
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12	244:12 competence 75:5 76:19 77:15 82:2 competent
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16 101:21 102:7,9,10 114:2	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20,22 147:22	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20,22 147:22 150:17,20 152:18 170:3	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20,22 147:22 150:17,20 152:18 170:3 242:19 262:6,7,13 263:6	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20,22 147:22 150:17,20 152:18 170:3 242:19 262:6,7,13 263:6 264:9 282:1 297:8 318:4	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20,22 147:22 150:17,20 152:18 170:3 242:19 262:6,7,13 263:6 264:9 282:1 297:8 318:4 circulars 303:17 304:1 circulated	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1
circuit 277:13 circular 9:8 34:10 45:22 79:3 85:3 89:4 90:14 92:5,8,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20,22 147:22 150:17,20 152:18 170:3 242:19 262:6,7,13 263:6 264:9 282:1 297:8 318:4 circulars 303:17 304:1	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5 collected	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15 292:17 293:18 294:3,20,22	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14 completed
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5 collected 225:16 226:2	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15 292:17 293:18 294:3,20,22 294:22 295:17 296:11	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14 completed 224:22
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5 collected 225:16 226:2 collects	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15 292:17 293:18 294:3,20,22 294:22 295:17 296:11 298:5 299:2 300:2,18	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14 completed 224:22 completely
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5 collected 225:16 226:2 collects 225:1	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15 292:17 293:18 294:3,20,22 294:22 295:17 296:11 298:5 299:2 300:2,18 304:20 305:7 306:16,18	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14 completed 224:22 completely 14:12
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5 collected 225:16 226:2 collects 225:1 columbia	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15 292:17 293:18 294:3,20,22 294:22 295:17 296:11 298:5 299:2 300:2,18 304:20 305:7 306:16,18 307:4 324:12	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14 completed 224:22 completely 14:12 completing
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5 collected 225:16 226:2 collects 225:1 columbia 1:2 11:4 334:21	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15 292:17 293:18 294:3,20,22 294:22 295:17 296:11 298:5 299:2 300:2,18 304:20 305:7 306:16,18 307:4 324:12 committees	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14 completed 224:22 completely 14:12 completing 92:7
circuit	193:15 194:18 195:17 199:6 203:9 211:11 234:1 304:7 codes 307:22 309:16 codified 45:22 cognizant 317:4 collaborate 166:9,17 312:19 328:17,22 329:22 collaborated 168:21 collaboration 329:2 colleague 11:20 172:22 174:2,12 175:5 collected 225:16 226:2 collects 225:1 columbia	156:13 committee 41:2 43:9,11,12 44:13,15 44:19,21 45:4,8,13 49:12 49:15 50:22 51:2,2,12,14 51:16,16,19,20 52:18,19 53:2,4,4,12 56:8,17 59:4 62:9,20 65:3,4 67:6,7,13 118:3,5,7,9,16,17 119:9,19 120:13,21 121:7,11,14,15 121:18 122:1,7 123:14,17 123:19,21 124:1,4,5,7,8,12 127:7,11 150:11,16,16,21 151:5,5,14 153:8,9 157:19 158:2,5,15 179:19 181:18 182:1 183:13,22 213:13,18 214:5 215:13 238:21 247:11,12,13 257:4 269:1 269:4 288:18 289:15 292:17 293:18 294:3,20,22 294:22 295:17 296:11 298:5 299:2 300:2,18 304:20 305:7 306:16,18 307:4 324:12	244:12 competence 75:5 76:19 77:15 82:2 competent 78:8 80:18 competitiveness 257:12,13 325:19 compilation 274:1 306:6 compile 236:16 compiled 199:1 complained 129:3 complaining 145:13 complete 136:14 completed 224:22 completely 14:12 completing

[comply - copyrighted]

comply	confusion	constitutes	contribution
164:7 172:14 215:14	196:1	272:17	312:15
component	congratulations	construct	contributions
24:8 28:22 52:14 68:13	260:9	270:21	188:8
78:18 163:21 202:3	congress	construction	control
components	27:17 93:21 96:6,12	248:21	227:12
164:1	109:19,19 110:5 178:12	consultant	convene
comprehensive	219:20 252:3 255:6,9	307:8	312:16
232:2 258:8	287:11,17 307:1 313:10	consultation	convened
comprised	316:22	178:10	214:20
55:20 150:18	congressional	consulted	conversation
computer	73:20 213:13,18 214:4	175:18	17:3,12,18,20 18:1 259:2
224:10	215:13 246:21 247:11,12	consulting	conversations
computerized	255:21 257:4 285:12	179:2,8	10:8 261:7 268:1
334:8	287:18	consumer	conversing
concern	congressmen	36:12 38:13 41:18	233:14
140:6,22 141:7,11 147:19	257:15,19 258:15	consumers	cooper
192:21 228:7	conjunction	272:13 273:13	184:5 230:21 231:15 248:2
concerned	303:19	contact	248:5,7 251:9,16 254:13
192:2 228:8	connections	149:20 198:6 224:7 307:1	268:14 291:2 299:2
concerning	116:10	contacted	coordinate
179:4,10	consecutive	212:14	78:22
concerns	66:22		coordinating
101:13,19 206:12	consecutively	contacting 309:18	26:22 304:20
concluded	49:14	contacts	coordination
155:4 310:22 332:22			23:13 26:16,19,22 105:5
	28:5 34:6,7,9,11,14,16	307:3,5 contain	
concludes			139:15 149:15,18 253:20 coordinator
332:17	35:1,21 36:2,18 37:5 39:9	284:4 309:10	
conditioning	93:22 94:8 102:11 107:22	contained	132:19
1:8 10:21 216:1	111:21 129:1,15 131:19	162:10 195:1	copied
conduct	152:20 181:14 182:14	containing	200:22 224:7,10 232:16,17
25:20	195:5 211:18,21 212:2	200:14 224:12	copies
conducted	218:18 258:10 281:18	content	168:5 173:13 206:14
151:11	282:7 287:7,15 314:4	128:14 138:6 198:2 224:12	
conducting	329:18	contents	19:16 50:1,17 128:18
152:9 172:11 287:15	consider	18:6 91:10 101:9 280:13	167:6,18 173:7,11 174:17
conference	95:7,10 286:1	context	175:15 224:6 242:22 245:4
143:13,15,16 144:9 147:21		25:18 26:18,21 27:6 29:15	278:4 297:5 298:21 302:21
170:2 249:9 251:12,14	36:10 131:6,14 166:5	29:17 84:16,18 85:21	copyright
253:3,8,12	considerations	114:4,5 214:22 240:6	6:10 88:11,22 89:6,7,9,11
confidential	57:13 89:2 90:15 101:22	266:5	89:14,21 90:7,12 101:13
279:9	166:5	continue	101:19 173:12,16,19
confirm	considered	10:12 97:2 215:15 248:11	175:19,20 178:2,11,12,17
220:16	134:22 195:19 261:3	continued	179:3,3,9,9 180:19 181:11
confirming	considers	4:1 6:1 7:1 8:1 9:1 253:2	181:12,15,20 182:3,8,13
74:13	131:17	continuous	205:21 206:6,21 207:10,11
conform	consistent	161:15 162:3	208:4 221:6,7,11 224:1
130:1 135:1 172:14	152:19	contract	246:10 248:10 252:10
conformance	consortia	193:14	271:20 272:2 307:22
128:10 130:22 281:18	35:4	contractor	309:16 314:16 317:12
conformity	constituencies	135:18,19	319:10 321:16 327:13
74:5,9,15,18 75:2,6,8,14	145:10	contractor's	copyrightability
75:18 76:2,12 78:22 79:4,9	_	216:1	178:18 321:11
82:10,11 83:17 84:4	147:2	contribute	copyrighted
294:21	constitute	59:12 285:8	88:12 89:10,17 166:2,22
	175:6		173:5,7 176:11 206:19

[copyrighted - delivered]

		1	1 -
copyrighted (cont.)	counsel (cont.)	current	dear
221:10 222:2 315:6 319:19	323:2 331:20 334:11,14	92:5,8 117:10 180:18	251:21
copyrighting	count	192:22 263:11,14,17,21	debate
206:8	303:20	264:3 265:12 267:12 306:1	226:15
copyrights	counter 207:9	315:15	december
315:20 317:22 318:7,20		currently 20:19 42:10 127:9 211:16	24:2,6 71:16,18 239:7
319:4	counterclaimant 1:11 11:2	220:1 261:21 305:10	decision
corner 268:18 269:7,17,19 270:1	counterdefendants	CV	98:15,21 99:13 113:9,17 115:7 138:15,19,22 139:17
corporate	1:9 10:22	1:4 11:4	139:19 198:4 200:1 277:14
222:6	countries	cycle	278:7
correct	207:5 208:1,3,6,9	165:21	decisionmakers
14:12 20:10 21:3 33:3,4	country		99:20
36:3,4 43:2 52:18 57:1	257:7	d	decisionmaking
73:9 101:14 102:8 112:7	couple	d.c.	54:2
118:15 120:2 151:6,12	19:7 44:13 56:6	1:15 2:13 3:8,18 11:7	decisions
162:4,8,17 163:8 180:11	course	daily	54:7 57:14 68:22 72:9,11
188:2 191:13,17,18,22	38:16 129:8 156:9 157:5	193:16	72:15
192:1,4,8,9 193:1,10,11	158:9 159:2,6 172:9	daniel	declaratory
194:12 196:8,19,20 200:1	186:11 324:10	4:22 11:8	260:16 276:13
200:2 202:12 204:17,18	court	dar	declare
205:8 206:10 207:12 208:4	1:1 11:3,10 12:10 13:9,11	1:4 11:4	333:2
208:5,9,10,13 211:19	116:15 277:13 301:9	data 50:2 194:10 198:18 246:14	declined
212:17 215:19 216:2,4,12	cover	246:17	130:14
218:1,2,8,10 220:8,21	302:9	database	deemed
224:14,15 230:9,10 233:11	covered	119:10,20 120:5,9,12,16	320:20
233:12 234:6,7 236:10,18	78:19 116:4,8 134:20	120:22 121:3 135:11,17	deems
237:20 302:11 303:4,5,11	covering	136:22 137:1,13,16,18	164:5
307:11 321:7,8,21 323:11	292:19	138:5,16 139:3,5,16	defendant
324:15,19 325:12 326:3,12	craft	184:20,22 186:5 187:2,5	1:11 10:16 11:2 12:16
326:21 328:17 329:22	190:2	191:16,21 192:22 193:4,10	323:2
333:4	crafted	193:18 194:4,11 195:1,3	defense
corrected	261:14	198:12 201:1,16 202:16,20	201:22 202:1,4
187:6	craig	203:4,11 225:4	deferred
correction	16:10,18 17:3,13,19,20	date	92:6
213:21 214:6 247:14	18:7,13,18 19:2,4,7 20:4	181:6 184:14 195:2 199:17	define
correspond	264:7 267:7	227.7 220.5 10 221.5	25:17 169:14
299:4	create	237:5 238:11 253:2 292:18	defined
correspondence	139:18 242:5,10,15 243:7	dated	
187:9 191:11 259:12,16,19	245:6 284:15	5:9,11 6:6,15,17 7:2,6,8,10	defines
corresponding	created	7:12,15,17,19,21 9:20 92:9	163:5
59:3,7	56:18 139:21 305:8 creating	228:17	definition 26:2,3,5,13 161:7,10,20
cost 217:7,10 313:21 323:10,16	187:1	dates	162:7 244:16 272:8 286:8
324:11 325:4 328:6	creation	49:1 67:14 227:4 248:18	286:10,12,17
	137:2,11 138:14 139:3	day	definitions
314:2	185:12	172:11 193:8,8,19 194:4	25:19 26:6,7
costs	criteria	333:16	delegated
323:13 324:2,14,15,17,21	60:2	days	21:22
325:7,10 326:1,20 328:3	cross	167:21	deliberated
council	201:8 287:2	deadline	124:10
51:21 127:13 180:9 204:21		241:6,8 274:11	deliberations
counsel	267:4	deal	17:10 249:16 264:8 265:16
4:21 10:16 11:13 12:16	currency	29:7 162:14	265:22
17:4 20:8 181:3,6,7 253:15	193:3	dealing	delivered
291:4 293:15 310:8 311:11		49:16	302:3

[demonstrated - discussion]

demonstrated	describing	development (cont.)	direction
80:17	200:17 284:22	104:21 105:8,12,17,21	45:21 109:19 218:20
demonstrating	description	106:6,13,17,22 107:5	219:19,21 287:17 316:22
77:15	132:1 281:14 303:13	121:16 129:18 132:2	334:9
demonstration	designated	135:21 144:12 152:2,11,13	
76:19	133:3,18 134:3 136:11	152:22 153:3 154:12,17	78:20
dent	desist	155:9 166:10 168:12 179:2	
123:15	216:10 260:18	181:11 202:8 209:10	48:16,19 68:20 72:20
department	despite	210:10 221:8 234:5 257:7	86:12 87:2 106:5 145:19
16:12 21:19 23:22 25:4	106:21	258:9 269:22 305:10	244:4
48:10 71:15 72:2 73:7	detail	311:22 312:1,6,11,19	director
169:9 187:21 198:15 201:1	26:12	313:4 314:3,7,8,17 315:3	21:11 22:7 23:5,9,12 64:4
201:2,22,22 202:4 212:12	details	315:16,19 316:7 318:1	64:22 65:6 67:9,14,17 68:6
214:3,14,18 215:4,11	44:8 84:10 90:13 103:8	323:20 324:2 325:1,12	68:13 72:12,18,19 138:20
246:3,21 247:10 249:3	229:9 331:6	326:2,9,21 327:20 328:3	149:17 260:12
305:4	determinant	330:15 331:11	directors
	327:15	developments	68:19 118:2 179:20 204:10
departments	determination	6:12 51:8 79:5 206:1	204:12 230:6 252:6 290:7
73:8 198:16	200:10 210:14	216:15,19 261:19 312:12	291:22 292:18 294:4
department's		develops	295:18 296:12 298:5 300:3
320:1	determine 213:11	100:20	300:19
depending	determined	l .	
25:18 36:9 37:2 38:12		devoting 130:8	directs
108:5 164:3	77:14 153:8	l .	28:3 39:7,10 45:18 78:21
depends	determining	dialogue 210:22	79:19 152:18 218:16 287:13
37:17 38:5,6,14,21 109:17	75:5 detriments	differ	
109:22 164:10	113:19 114:9	37:1	disabled
deposition	develop	difference	223:4,10 224:8
1:14 2:9 5:8 10:11,15 11:5		26:8 97:3 109:7 160:14	disclaimer 72:7
12:19 13:3 14:15 15:4,13	29:19 30:5,7,8,15 41:5 42:8 56:19 122:4 218:7	163:11	
16:2,14 17:21 20:1 116:18		different	disclosure
116:22 118:19 149:22	219:14 313:22 316:14	l .	71:15 72:1,4
156:16 157:10 160:16	323:11,14 324:3 327:8	34:19 35:6,18 44:5 46:7	discount
164:12 165:5 179:12	developed	68:16 109:12 114:17	154:14 272:17 273:7
190:14 204:1 205:10	28:4 31:17,20 32:4,5 34:20	122:16,19 124:19 130:9 137:16 141:21 147:4 155:5	discounts
229:15 230:11 232:7 235:2	35:1 39:9 58:22 59:5	170:11 172:1 224:10	272:12 273:13
237:6,22 240:15 245:12	120:13 122:3 127:16 134:9	I .	discovery
247:16 250:14,16 256:8 259:3 268:6 271:9 278:21	139:12 143:16 156:13	272:22 274:13 282:20 differentiations	119:7 187:16
	159:5 211:17,22 220:7,12		discuss 35:15 53:7 113:18 114:8
280:5 288:9 289:6,20	247:13 252:1 287:14	115:1 differs	
290:14 291:13 292:8 293:8	-		125:8 167:2,11 214:20
294:12 295:8 296:2,19	150:13 260:21 314:13	110:6 113:3 difficult	255:22 265:4,22 267:7
297:18 298:13 299:15	developing	29:21	discussed 61:15 101:7 105:20 107:2
300:9 301:20 334:4,6,9,12	28:7 57:10 122:1 127:21	I .	
depository 147:3 243:1	128:12 129:22 130:19,20	difficulty 129:3	107:4,9 124:11 157:3
	131:1,9 132:4 138:4	I .	180:8 181:10 184:5 205:6
deputy	140:13 153:11 210:3,15	digital 242:5,10,15 243:7,22	212:10 282:13 301:7,11,16
23:19	217:16 218:18 269:11 304:19 312:15 318:8 319:5		301:18 304:22 307:17
derived		244:5,20	discusses
83:4	324:7 325:3 329:3 331:3	dimensions 162:13 223:16	215:19 216:21 223:15
describe	development		discussing
200:12	32:13,16,18 33:5,13,18,22	direct 72:14 08:8 284:10 310:4	165:5 230:8 257:1
described	34:2,5 36:18 37:5,10,18	72:14 98:8 284:10 319:4	discussion
27:17 35:12 175:2	38:10,22 39:3,11,16 40:3	330:17,17	9:6 17:6 18:11 51:19 85:3
describes	40:14 41:7,16 42:4 44:10	directed	90:14 139:8 144:5,12
251:10	45:20 47:3 52:4 71:7 82:9	93:21 110:5 318:7	155:4,22 169:22 188:16
	82:15 103:5,17 104:9,16		204:17 246:20 256:1

[discussion - electrical]

discussion (cont.)	document (cont.)	draft (cont.)	early
293:17 297:6 305:17 319:8	292:13,15 293:21 294:1,6	157:2,4,7 160:10,12	46:21 184:18 287:11,12
discussions	294:18 295:13,15,21 296:7	179:18 237:1,17,18 238:7	easier
53:22 122:10 143:12,18	296:9,16 297:2,4,15 298:1	239:2,17 261:14,16 262:5	23:16 217:5,8,19 219:7
147:20 264:17 271:18	298:3,18,20 299:4,20,22	262:7 263:6 272:1 288:17	easy
319:12	300:6,14,16,22 301:5	289:1,14 290:6 291:21	57:20
dispute	305:15 306:10,13 307:6	294:2,19 295:4,16 296:10	eat
127:18 128:7 329:17	308:1 309:13,18 310:3,7	298:4 300:1,17 307:21	257:16
disputes	310:11,13 331:5	drafted	economic
128:6	documentary	91:5	100:2
distinction	27:2,7,9	drafting	economics
95:21 122:14 193:21	documentation	278:17 330:22	60:7
201:19 266:3,16	147:5	drafts	economist
distribute	documents	56:21 58:21 59:5 60:15	24:16
198:14	26:12 31:6 56:11,12,13	90:22	edicts
distributed	57:18 59:10 79:8 88:12	dramatically	178:19
198:10 325:7 328:8	89:10 92:17,21 93:15,19	263:11,15,17 264:4 265:12	edition
distribution	93:20 94:2,3,5,21 95:14	267:13	195:2,6,13,20 196:4
309:18	97:4,9,13,17 98:2,6,10	drug	197:12,19 198:7 199:7,8
district	100:7 107:13 109:10 114:3	81:22	199:11,13,14,17 200:6,8
1:1,2 11:3,3 334:21	121:16 122:9 128:19 138:9		229:5
divide	140:19 160:15 166:13,19	34:14 36:2 128:22 202:17	educate
242:5,10,16 243:8,22	167:12,19 168:16 172:16	228:9	285:20
244:5,20 245:6,10	173:5 184:5 187:16,17,20	dues	education
division	191:1,2 192:12,16,17	44:8 45:3,7,10 154:7	51:17,17 52:6,14,15,15,16
16:12 24:7,19,22 49:4,9	201:12 206:19 208:19	duly	52:19,20 53:2,4 306:11
74:16 82:5 135:19 149:14	209:6 213:8 240:8 243:3	12:13 334:6	educational
149:17 185:7	244:9 251:3 277:9,16,18	duplicating	286:9,13,18
doc	277.21 302.6 8 14 19	172:20 173:22 174:10	effect
doc 264·21 266·10 18 21	277:21 302:6,8,14,19 303:14.17.18 304:1.3	172:20 173:22 174:10 dving	effect 87:11 16 177:1 239:13 22
264:21 266:10,18,21	303:14,17,18 304:1,3	dying	87:11,16 177:1 239:13,22
264:21 266:10,18,21 docs	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6	dying 111:17	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3	dying 111:17 e	87:11,16 177:1 239:13,22 effects 247:4
264:21 266:10,18,21 docs 246:10 doctrine	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing	dying 111:17 e e.g.	87:11,16 177:1 239:13,22 effects 247:4 efficiency
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19	dying 111:17 e e.g. 208:17	87:11,16 177:1 239:13,22 effects 247:4 efficiency 88:9 101:13,19
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3	dying 111:17 e e.g. 208:17 e50	87:11,16 177:1 239:13,22 effects 247:4 efficiency 88:9 101:13,19 effort
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic	e e.g. 208:17 e50 44:15 53:12 56:4 61:6	87:11,16 177:1 239:13,22 effects 247:4 efficiency 88:9 101:13,19 effort 56:19
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18	e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10	87:11,16 177:1 239:13,22 effects 247:4 efficiency 88:9 101:13,19 effort 56:19 efforts 130:2 151:22 166:16 261:11 281:17
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14	e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22	e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt	ee.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13	87:11,16 177:1 239:13,22 effects 247:4 efficiency 88:9 101:13,19 effort 56:19 efforts 130:2 151:22 166:16 261:11 281:17 eight 156:4 183:5,6 208:6 either 37:20 53:5 80:6 107:4 135:2 137:5 158:19 208:1 220:19 222:1 245:2 246:9 251:2 261:16 279:14 293:17 319:9 325:18 330:16
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14 235:9,14,19 236:1,4,15	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11 download	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13 200:5,16,21 212:10 219:6	87:11,16 177:1 239:13,22 effects 247:4 efficiency 88:9 101:13,19 effort 56:19 efforts 130:2 151:22 166:16 261:11 281:17 eight 156:4 183:5,6 208:6 either 37:20 53:5 80:6 107:4 135:2 137:5 158:19 208:1 220:19 222:1 245:2 246:9 251:2 261:16 279:14 293:17 319:9 325:18 330:16 elected
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14 235:9,14,19 236:1,4,15 237:5,12,14,17 238:5	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11 download 320:20 draft	dying 111:17 e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13 200:5,16,21 212:10 219:6 228:14 246:19 248:16,16	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14 235:9,14,19 236:1,4,15 237:5,12,14,17 238:5 240:20,22 242:8 245:17,20	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11 download 320:20 draft 5:13,16 6:3,8,13 8:4,7,9,14	e e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13 200:5,16,21 212:10 219:6 228:14 246:19 248:16,16 248:19 249:4 250:2 272:22	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14 235:9,14,19 236:1,4,15 237:5,12,14,17 238:5 240:20,22 242:8 245:17,20 245:22 247:21 254:13	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11 download 320:20 draft 5:13,16 6:3,8,13 8:4,7,9,14 8:16,18,21 9:2,3,9,15,17	e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13 200:5,16,21 212:10 219:6 228:14 246:19 248:16,16 248:19 249:4 250:2 272:22 276:12 329:20	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14 235:9,14,19 236:1,4,15 237:5,12,14,17 238:5 240:20,22 242:8 245:17,20 245:22 247:21 254:13 256:13 259:8 268:11	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11 download 320:20 draft 5:13,16 6:3,8,13 8:4,7,9,14 8:16,18,21 9:2,3,9,15,17 56:10,11,12,16 57:14,18	e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13 200:5,16,21 212:10 219:6 228:14 246:19 248:16,16 248:19 249:4 250:2 272:22 276:12 329:20 earliest	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14 235:9,14,19 236:1,4,15 237:5,12,14,17 238:5 240:20,22 242:8 245:17,20 245:22 247:21 254:13 256:13 259:8 268:11 271:14 279:4,7,8 288:14	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11 download 320:20 draft 5:13,16 6:3,8,13 8:4,7,9,14 8:16,18,21 9:2,3,9,15,17 56:10,11,12,16 57:14,18 58:1,12,19 59:18 60:3,3,8	e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13 200:5,16,21 212:10 219:6 228:14 246:19 248:16,16 248:19 249:4 250:2 272:22 276:12 329:20	87:11,16 177:1 239:13,22 effects
264:21 266:10,18,21 docs 246:10 doctrine 176:4,6,8,20,22 document 15:9,11 16:7,8,9,14 27:11 35:16 87:8,9 89:17,17 90:5 91:22 95:2,8 98:16 101:10 117:5,7,9,12 119:2,4,6 138:7 150:5,7,9 151:8 156:21 157:1 158:22 159:11 161:2,5 162:11 164:17,20,22 165:1 172:21 173:7,11,13 174:1,11,16 175:4 176:11 179:17 180:3 191:5,7 201:22 204:6,7 205:15,17,19 229:20,22 230:2,16,18 232:12,14 235:9,14,19 236:1,4,15 237:5,12,14,17 238:5 240:20,22 242:8 245:17,20 245:22 247:21 254:13 256:13 259:8 268:11	303:14,17,18 304:1,3 307:17 308:2 313:15 315:6 327:22 328:3 doing 23:17 260:8 273:21 321:19 322:3 domestic 325:18 dominance 129:9,11,12,14 130:3,8 329:16 dot 213:7,10 214:3,9 246:8,14 246:17 248:18 305:7,22 dot's 198:15 doubt 253:11 download 320:20 draft 5:13,16 6:3,8,13 8:4,7,9,14 8:16,18,21 9:2,3,9,15,17 56:10,11,12,16 57:14,18 58:1,12,19 59:18 60:3,3,8 60:21 61:2 98:22 131:5,5	e.g. 208:17 e50 44:15 53:12 56:4 61:6 121:1,7,19 122:4 e60 56:7,9 57:2,9,10 58:1,10 58:22 59:3 60:14,19,22 61:3,5 earlier 45:17 48:7 53:14 58:5 60:9 65:2,16 68:15 101:7 114:3 116:2 118:2 124:18 127:8 128:20 136:8 139:14 152:16 159:12 161:6,12 165:5 173:4 184:18 193:13 200:5,16,21 212:10 219:6 228:14 246:19 248:16,16 248:19 249:4 250:2 272:22 276:12 329:20 earliest	87:11,16 177:1 239:13,22 effects

[electro - exhibit]

electro	ends	epa	example
189:18	160:22	31:18 32:3,10 80:2,9	77:18 135:3 148:10 198:21
electromagnetic	energy	epa's	198:22 199:1,11 272:10
79:22	80:2	80:2	274:19 285:4
electronic	enforce	err	examples
59:10 167:21 168:4 209:2	283:1,3,4,8,19,21 284:1,6	267:6	79:13 80:6 97:12 257:9
electronics	284:11	error	273:20 274:10,16 282:10
32:22 189:15,17,18	enforcement	196:14	284:2
electrotechnical	170:13 177:9 283:16 284:3	errors	excel
41:3 51:7	enforcing	192:3,7 200:18	200:14
elements	283:13	especially	excerpt
251:10	engage	166:2 184:9 258:13	274:14 292:19
elimination	30:12 74:14,19 105:6	esq	excerpts
210:15	126:2 155:12 190:1,13	3:4,5,15 4:3,4,12	292:1
elizabeth	308:6,7	essential	exchange
248:2,4 274:6	engaged	38:9 52:2,3 127:17 128:11	116:8 186:22 248:19
embarking	19:8 48:17,20 63:2 168:17	128:16,19,21 129:9 130:1	exchanged
29:3	190:6	131:2,18 329:9	305:9
emily	engagement	essentially	exchanges
248:9 249:6,7,11,12,13,15	9:12 49:5 62:1 63:4,11	59:2	184:17 185:4 186:3 187:14
249:17,19 250:8 251:7,9	180:6 204:16 298:22	established	excluding
emily's	engagements	78:6 133:13 150:17	242:6,10,16 243:8
250:4,6	105:7	establishing	exclusion
employed	engages	75:1	264:6
22:15,21 23:3 44:2 106:17	34:3 71:6 166:21	estimate	exclusively
189:16 334:12,14	engaging	80:14 83:9 91:14 187:12	162:14
employee	72:3	187:13	excuse
22:20 45:14 46:2,15,18	engineer	et	86:18 97:21 130:12 136:13
54:8 92:13 93:3,7,10,13	189:20	15:18 277:11 323:19	144:17 158:20 195:11
125:20 148:4,14 153:6	engineering	eula	210:9 232:19 236:21
186:11 332:8 334:13	52:14	226:13	243:17 249:18 251:8
employees	engineers	european	257:11 280:19 281:13
40:9,11 45:19 55:12 153:2	1:8 10:21 33:1 172:15	25:10 29:2,3,5,7,11,12	285:15 308:1,21 309:5
153:15 325:11 326:2	ensure	51:9	328:13
330:11 331:10	130:2 166:12,18 168:22	evaluate	executed
employer	172:17 215:13	59:19	333:6
189:14	ensuring	evaluated	executive
employment	52:10 172:13 329:16,16	80:8 82:1	51:21 64:4 93:18 123:13
21:8 22:12 23:8,15 24:11	entire	evening	123:19,21 124:1,4,5,7,12
25:3 70:13 71:14 311:18	27:20 89:16 132:17 174:16	256:20	127:11,13 179:18 183:21
emulates	305:15 328:7	event	260:5 292:17 293:18 294:3
128:11	entities	61:10,13 212:19 255:20	295:17 296:11 298:4 299:2
enable	127:14	256:2,3 285:7 286:22	300:1,17
215:15 323:19	entitled	events	executives
enables	291:1 292:16 297:6 298:22	285:2,4,11,13	150:18 200:13
314:3	entity	everett	exhibit
enacted	22:16 90:6 149:1,9	4:20 12:9,9	5:7,9,10,11,13,16,19,21
227:11	entries	ΘX 	6:2,3,6,8,10,13,15,17,19
encompass 244:17 272:9	194:22	65:5 68:18	7:2,3,6,8,10,12,14,15,17 7:19,21 8:2,4,7,9,11,14,16
	enumerate	exact	
encourage	42:10	189:6	8:18,21 9:2,3,6,9,12,15,17
79:8 218:4	environment 312:22	exactly 125:2 158:13 196:15	9:20 15:3,4,8 16:1,2,6 20:10 116:21,22 117:4
endeavor 314:2	environmental	examination	118:19 119:1,12 123:7,8
endorsed	31:20 44:18 49:16 260:5	5:2 12:16 311:11 323:2	124:16 149:22 150:4 154:1
274:17	31.20 44.10 49.10 200.3	331:20	156:16,20 157:10,16 158:8
214.11		331.20	150.10,20 157.10,10 156.6

[exhibit - filings]

ovhihit (cont)	avaraged	feasible	fee (cont.)
exhibit (cont.)	expressed 27:16	79:10 213:12,14,19	175:8 176:9 177:5,12
158:19,19,22 159:9 160:10 160:11,16,20 164:12,16	expressing	features	178:14 186:20 190:10
165:9 177:16 179:12,15	147:18	285:5	193:22 197:14 209:21
190:14 191:4 204:1,5	extended	february	213:4 215:9 217:12 218:9
205:10,14 229:15,19	239:20 240:12 241:7	21:15 22:11 182:19 211:5	218:14 219:4,17 221:19
230:11,15 232:7,11 234:9	extensive	232:19 233:17	222:8,16 223:5,11 225:19
234:9,13 235:2,6,16 236:7	79:3 90:14 101:22 139:8	fed	226:4 227:22 228:12
237:1,2,6,10,22 238:4,8,14		192:11,11	234:11 235:17 236:2 240:3
238:15,17 240:15,19	extent	federal	242:13 243:11 244:1 245:8
245:12,16 247:16,20	62:1 186:5	9:12 21:14 22:20 27:4 28:3	249:22 250:11 254:3,10,19
250:14,16,20,21 252:11	extenuating	30:8 32:19 37:9 39:8 45:18	255:12 258:22 261:5
255:18 256:8,12 259:3,7	176:14	73:17,18,18 78:21 79:8,18	262:22 265:19 266:7
268:6,10 271:9,13 276:7	externally	85:10,15,21 86:2,4,14,14	267:14 270:10,19 271:6
278:21 279:3 280:5,9	27:4	87:18,19,21 89:17 91:2	272:20 273:9 275:12,19
288:9,13 289:6,10,20	eye	94:1,9,12 96:2,3,3 100:21	276:3 279:6,11 283:7
290:2,14,18 291:13,17	2:12 11:6	102:11 107:21 109:12	284:9 286:6 291:9 292:5
292:8,12 293:8,20 294:8	f	111:21 129:5 135:13 136:7	309:21 310:5,16 311:1,12
294:12,16 295:8,12 296:2		136:21 137:4,20,22 140:2	312:8 313:1,19 314:14,22
296:6,14,19 297:1,15,18	faa	150:19 151:22 152:4,6,7	315:10,17 316:2,17 317:8
297:22 298:9,13,17 299:6	303:4,9	152:12,18 153:2,14 154:4	317:19 318:9 319:6 320:2
299:8,15,19 300:9,13	face	155:1,8,12 164:18 165:2	320:16 321:4 322:2,7,20
301:20 302:15,19 332:1,4	279:7	167:5 168:16 180:5 182:20	323:5,6,15 324:20 325:14
332:10	faced	183:2 186:11 187:19	326:6,15 327:1,11,17
exhibits	206:20,21	193:15 194:18 195:18	328:5,19 329:6 330:2,13
5:7 6:1 7:1 8:1 9:1	facilitation	201:10,11 203:10 204:15	331:1,13,18,22 332:12
existed	226:7	211:6,11,13 217:4 218:17	feel
194:19	facilities	219:20 220:2 227:5,13	274:19 310:21
existence	72:22	233:18 234:2 238:20,20	feels
121:3 218:1 287:18,19	fact	248:19 261:15 262:17,20	246:8
existing	146:22 170:19 202:17	272:5 283:18 287:13	fees
324:22	203:5 239:4,10 241:6	298:22 303:10 304:7 316:4	44:4,6 81:5 208:17 324:8
expanding	275:16 286:21 287:20,22	316:12,22 317:3 318:13,17	felt
63:1	288:4 309:15 310:9,10	319:15 326:11 331:6	247:1 312:5 313:12
expectation	313:16,21 314:1,15,21 factor	federation	fenwick
58:7	138:15 219:1	41:12	4:5 11:18
expense	fair	fee	fenwick.com
323:20 325:20	176:3,6,7,12,13,20,21	3:4 5:4 12:2,2 32:7 36:19	4:8,9
experience	fall	37:7 38:20 39:20 43:16,22	fiduciary
54:5 98:8 153:5 221:14	70:11 255:20	45:15 46:8,12 58:3,13 59:1	54:9,12 69:11
327:19 329:8	falls	59:16 77:4,10 78:3,16	field
experienced	264:5	79:17 81:3,7,10,13 82:13	189:18
54:17	familiar	82:21 83:22 84:8,15,19	figure
expertise	15:17 28:17 77:18 84:21	86:9,22 87:14 88:4,16	197:11
55:2 63:13 64:15 84:11	85:3 93:20 95:18 96:3	89:22 90:9 94:18 95:3,9,16	file
112:19	211:13 314:11 318:5,10,16	96:10 97:6 98:19 99:17	224:11
experts	327:3,5	100:11 105:15 106:15	filed
35:14 175:19	favor	107:19 108:19 110:13,20	11:2 71:14 72:1 211:7
expires	257:19 287:7	112:8 119:16 120:10 122:5	233:19 260:16 276:17
333:19 334:22	fcc	134:4 137:14 141:5 142:20	277:6,10,10
explain	80:6,9	145:16 146:2,11,19 147:16	files
190:3 200:3 218:12	fcc's	148:7,18 152:14 153:4,17	302:20,21
explaining	79:21	154:20 155:14 156:2,11	filing
186:22	fda	158:11 163:19 168:7	277:13
express	78:5,8 80:19 82:6 84:2	169:17 170:17 171:7,15	filings
321:9	. 0.0,0 00.10 02.0 04.2	172:6 173:2 174:4,13	278:10
I	I .	I	ı

[fill - getting]

fill	folks	form (cont.)	friday
225:6,12	214:5 246:22 305:22	310:5,16 312:3,13 313:6	248:5 260:16 273:20
final	follow	314:10,19 315:7,13,21	friday's
58:16 99:5,13 128:3 137:7	86:8,20 158:1 171:10	316:9,20 317:18 318:2	248:6
160:11 170:9,22 235:19,19		The state of the s	front
236:1,4,13 238:14,15	159:15 313:17	322:5 323:15 324:20 326:6	123:9 141:22 276:8 317:16
239:12	following	326:14,15 327:1,11,17	fronts
finalized	17:16 22:20 30:3 46:6	328:5,19 329:5,6 330:2,13	251:22 257:11
57:11	47:12 68:7 92:3 158:12	331:1,13	fulfill
finally	171:18 177:21 180:17	format	228:16
170:22 202:13	207:22 227:2 242:1 253:1	199:21	full
financial	272:2 304:13 309:10	forms	90:5 102:4
73:2 245:6,10	follows	71:15 72:2,5 134:17	fund
financially	12:15 274:5 313:17	forth	314:7 315:4,19 327:3,4
334:15	food	51:10	funding
find	77:17 78:4,6 79:14 80:7,15		314:17
128:18 132:6,8 198:7	81:14,20,22 82:3 83:15		further
217:6,9,20 325:19	84:6,10	125:22 126:2,5,6,14,15,22	124:9 183:9 188:3 231:8
finding	footnoted	150:12 151:3 156:14	247:15 273:17 323:2
166:6 192:10	244:13	157:21,22	331:20 334:12
fine	fora	1	future
279:19 281:10	125:6	118:14 124:15 125:6	52:10,20
fingertips	foregoing	forward	·
67:15 83:8 102:3	333:3 334:4,6	23:17 263:10,13	g
finish	foreign	forwards	gathered
331:4	206:22	251:16	302:14
fire	forgoing	found	gathering
1:5 3:13 4:21 10:18 189:19		138:1 195:3 199:9	302:18
1.5 5.15 4.21 10.16 169.19		founder	general
	forgot	184:7	4:20 16:11 17:4 36:12,21
firm	129:10		37:11,14,19 38:3,11 40:5
11:9,11,18 190:1,7,13	form	four	97:8 141:7 142:11 146:15
302:10	32:6 36:19 37:7 38:20	66:1,2,8 187:13 208:8 fr	147:10 148:10,11 176:5,19
first	39:20 45:15 58:3,13 59:1	246:12 274:11	181:3,5,7 192:16 207:19
12:13 28:16,19 29:13 47:6	59:16 77:4,10 78:3 79:17		221:21 253:15 265:13,15
48:1,19 90:20 91:15 116:5			221.21 233.13 203.13,13
400.40 404.40 40 400.00		frame	278:5,5 291:4 293:14
123:16 124:10,10 180:22	86:9,22 87:14 88:4,16	49:5 57:7	
220:11 241:15 242:2 248:4	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17	49:5 57:7 fran	278:5,5 291:4 293:14
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19	49:5 57:7 fran 230:22 248:3 268:14	278:5,5 291:4 293:14 305:21 310:8
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16	49:5 57:7 fran 230:22 248:3 268:14 francisco	278:5,5 291:4 293:14 305:21 310:8 generally
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3 focus	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12 225:19 226:4 227:22	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18 freedom	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia 301:8
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3 focus 34:5	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12 225:19 226:4 227:22 228:12 234:11 235:17	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18 freedom 320:21	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia 301:8 georgia's
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3 focus 34:5 focused	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12 225:19 226:4 227:22 228:12 234:11 235:17 242:13 254:3,10 257:21	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18 freedom 320:21 freely	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia 301:8 georgia's 301:9
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3 focus 34:5 focused 52:16	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12 225:19 226:4 227:22 228:12 234:11 235:17 242:13 254:3,10 257:21 258:22 262:22 265:19	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18 freedom 320:21 freely 207:9,15 246:10	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia 301:8 georgia's 301:9 gerald
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3 focus 34:5 focused 52:16 focuses	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12 225:19 226:4 227:22 228:12 234:11 235:17 242:13 254:3,10 257:21 258:22 262:22 265:19 267:14 270:10,19 271:6	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18 freedom 320:21 freely 207:9,15 246:10 french	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia 301:8 georgia's 301:9 gerald 4:12 11:21
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3 focus 34:5 focused 52:16 focuses 51:17 304:5	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12 225:19 226:4 227:22 228:12 234:11 235:17 242:13 254:3,10 257:21 258:22 262:22 265:19 267:14 270:10,19 271:6 272:20 273:9 275:19 276:3	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18 freedom 320:21 freely 207:9,15 246:10 french 307:7,10,10,15 308:10,16	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia 301:8 georgia's 301:9 gerald 4:12 11:21 gestures 13:16
220:11 241:15 242:2 248:4 248:18 252:5,12 256:18 259:10 268:13,21 318:5 323:8 five 202:14 flexible 166:3 214:3 floor 4:5 fly 245:3 focus 34:5 focused 52:16 focuses	86:9,22 87:14 88:4,16 94:18 95:3,9,16 97:6 99:17 100:11 106:15 107:19 108:19 110:13,20 119:16 122:5 134:4,14 145:16 146:11,19 148:7 152:14 153:4,17 154:20 155:14 156:2,11 168:7 169:17 170:17 171:7,15 173:2 175:19 176:9 186:20 197:14 209:21 213:4 215:9 218:9 219:4 222:16 223:5 223:11 224:21 225:1,6,12 225:19 226:4 227:22 228:12 234:11 235:17 242:13 254:3,10 257:21 258:22 262:22 265:19 267:14 270:10,19 271:6	49:5 57:7 fran 230:22 248:3 268:14 francisco 4:6 free 153:16 154:9,9,15 188:21 189:2,8 207:12 208:1,7,19 208:20 209:14,16,19 210:11 212:17 213:2,9 215:7 242:4,9 243:7,21 244:15 245:2 250:10 272:7 310:21 320:6,18 freedom 320:21 freely 207:9,15 246:10 french	278:5,5 291:4 293:14 305:21 310:8 generally 15:20 31:18 36:10 41:10 76:18,20 78:17 98:1 104:8 104:15 114:14 133:9 142:17 155:17 157:8 176:20 206:7 273:12,15 306:3 314:9 geneva 122:21 georgia 301:8 georgia's 301:9 gerald 4:12 11:21 gestures

[gillerman - hat]

	l	cuiffin (cont.)	I
gillerman	governance	griffin (cont.)	growing
253:5,17,18	183:9,20,21	101:16,20 102:18 103:13	52:12
give	governing	104:4,13 105:2,14 106:2,9	gsa
14:2 30:18 47:19,21 97:12	182:22 211:9 233:21	107:18 109:16 110:12,21	192:16 201:11
135:5 148:9 191:8 198:21	government	111:2,13,18 112:9 113:22	guard
274:18	17:8,9 20:20 21:9 23:4	114:11,21 117:16,22	202:3 252:9
given	28:7 30:2,4,5,6,9,15,21,22	119:15 121:9 122:17	guardian
109:20 129:19 156:3 195:2	31:1,7,17 37:4,17 39:2,16	125:15,19 126:20 128:8	206:16 216:10
220:19 224:22 231:5 232:1		129:20 130:16 131:16	guess
264:20 266:9 271:21	44:7 45:14 46:4,8,15 48:4	132:13 133:5,19 135:16	45:1 113:2 200:11 227:19
274:16 313:9 332:18	52:10 54:7 55:11 70:3,13	136:18 138:17 140:1,10	228:1 246:13,16
334:10	71:10,13 73:14,17,19 77:3	141:4 142:9,19 143:10	guessing
gives	77:9 79:7 92:13 93:3,7,9	144:6,22 146:20 147:14	289:4
132:19	93:13 118:10,11,13 125:3	148:8,19 149:4,12 151:17	guidance
giving	125:4,10,11,12,18,21,22	153:18 154:19 155:15	86:8 108:20 109:13,15
13:7 14:22	126:3,14,22 148:4,14	157:14,17 158:10 159:3	115:8 303:17
global	150:12,21 151:2,4 154:17	163:18 169:2,8,16 170:16	guidelines
49:2 325:18	157:21,22 158:4 166:17	171:8,16 172:5 173:1,17	40:2
globally	178:11,19 181:13 182:13	174:3,14 175:7,22 177:4	h
35:7 133:10 257:14	186:11 187:20 188:1	177:11 178:20 181:1,2,3,9	half
gmf	192:19 208:18 209:5 218:7	182:5,9 183:7,17 186:9,19	149:19
151:1,2	219:14 232:3,5 261:11	194:16 195:15 200:20	handbook
go	264:8 265:22 268:2 281:3	209:22 213:3 215:8 217:11	6:2 85:1,8,12 86:11,21
10:13 19:18 21:21 23:10	281:19 286:20 291:3	218:13 219:3,16 221:5,18	87:17 88:7 89:1 90:17,19
47:19 48:21 55:15 67:11	306:20 309:19 316:4	222:15 225:8 227:21	91:1,4,10,15,20 92:1,2,9
77:16 78:9 83:10 84:2 99:3		228:11 229:7 230:22	92:11,20 93:3,6,8,13,17
147:8 193:19,20 236:17	326:7 327:5 330:11 332:8	231:18 237:3 238:9 242:12	94:6 95:7,11 164:18 165:1
279:16 302:18	governments	243:10 245:7 246:2 248:3	165:4 175:2 319:3
goal	326:1 331:9	254:2,9,18 255:11 256:6	handed
217:5	government's	257:3,21 258:17,21 260:1	117:3 118:22 150:3 159:9
goes	218:5 219:12	260:7 261:9 262:3,19,21	160:19 164:15 179:15
189:21 194:9 208:11	governors	264:12,19 265:4,6,18	191:3 205:13 229:18
260:14 261:9	61:22 62:6,21 63:9,13,15	266:6,8,13,17 267:3	230:14 232:10 235:5 237:9
going	63:18,18,22 64:11	268:15 270:9,18 271:5,17	238:3 240:18 245:15
10:4 13:4 14:1 23:18 79:12	grants	272:19 273:8,18 275:3,11	247:19 250:19 256:11
113:2 115:15,19 123:7	73:1	275:18 276:2,12 278:12	259:6 268:9 271:12 279:2
133:15 147:8 159:18,22	grateful	279:13 280:18 281:6 282:8	280:8 289:9 290:1,17
161:18 185:19 190:18	273:19	282:11 283:6 284:8 286:5	291:16 292:11 293:19
200:11 203:16,20 204:19	great	287:9 288:7 291:4 293:15	294:15 295:11 296:5,22
205:4,5 260:20 266:8,18	19:20 52:8 117:20	297:8 301:14,17 304:16	297:21 298:16 299:18
267:6 279:16,20 280:2	greater	305:14,18 307:18 308:3,12	300:12 302:1
310:1 311:4,8	155:8 281:17 282:6	309:2 323:1 325:13 326:5	handing
good	griffin	326:14,22 327:18 328:4,18	15:7 16:5 156:19 204:4
10:3 11:17 12:18 94:10	4:12,17 11:21,21 19:17,21	329:5 330:1,7,12 331:12	288:12
167:6 169:3 221:22 222:5	20:7,10 25:15 26:9 28:12	332:14	handwriting
222:6 228:2,17 248:10	28:14 30:17 31:12 32:6	group	304:11
268:17 269:4 274:19 275:8		The state of the s	happened
goods	41:21 43:3,18 45:5 47:16	123:4 180:19 181:11,16,20	135:15 139:4
25:9 28:22	48:5 49:21 50:7,12 52:22	181:21,22 182:3,8 211:7	happy
gordon	54:4 58:2,14 59:20 61:19	231:2,3,10 233:19 234:4	49:22 50:13
253:4,17,18	62:17 64:12,21 65:11 69:1	234:19,22 241:20 256:19	hard
gorman	69:20 73:11 78:2,15 79:16	256:21,22 257:2 271:20	116:17 167:18 200:22
64:3,9	83:21 84:20 87:13 88:5,17	272:2 308:6	232:16 242:22 302:21
gotten	90:10 91:7,11,16,21 92:14	groups	hat
71:10	94:19 95:4,17 96:1 98:13	123:3 181:18,19	67:4
	98:18 99:16 100:10,19		01.7

[hazardous - incorporating]

hazardous 212-13 214-19 30-56 hoad 234-12 home 50/2,9 53-20 55-18 69-22 80/13 111:11 132:16 home 324-19 10 hope 260/8 324-9 10 hope 260/8 324-9 10 host 260/8 281-12 205-11 49-15 280-12 232-2 235-3 281-12 207-5 280-13 111:11 132:16 host 260/8 hosting 61:10 256/8 259-12 232-2 235-3 227-2 243-17 241:11 240-16 286-12 232-2 235-3 227-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-2 243-17 241:11 240-16 286-12 232-2 235-3 287-16 240-16 240-16 240-16 287-16 240-16 240-16 240-16 287-16	[nazardous - meorporating]			
head home	hazardous	hold (cont.)	identification (cont.)	include (cont.)
502,9 53:20 55:18 69:22 3249,10 190:15 204:2 205:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 235. 334:17 244:11 229:16 20312 2328 229:16 20312 229:17 293:17 229:17 293:17 239:17 239:17 239:17 239:17	212:13 214:19 305:6	234:12	150:1 156:17 157:11	152:10 162:14 164:4,8
8013 111:11 132:16 headquartered 149:15 headquartered 122:21 hosting 260:08 hosting 260:08 237.7 238.1;11 240:15 256:12 274:02 275:09 2894 288.7 271:10 278:22 280:5 288:10 289.7 178:22 280:5 288:10 289.7 178:22 280:5 288:10 289.7 178:22 280:5 288:10 289.7 178:22 280:5 288:10 289.7 198:22 280:5 288:10 289.7 198:22 280:5 288:10 289.7 198:22 280:5 289:24 289.5 289.2 289.1 122:22 hear 111:14 house 138:6 193:9 194:5 196:6 199:10,22 202:14,16 203:5 188:14 299:16 300:10 301:21 199:10,22 202:14,16 203:5 188:14 299:16 300:10 301:21 199:10,22 202:14,16 203:5 188:14 299:16 300:10 301:21 199:10,22 202:14,16 203:5 188:14 299:16 300:10 301:21 199:10,22 202:14,16 203:5 189:10,22 303:12 189:10,22 202:14,16 203:5 189:10,22 303:12 189:10,22 202:14,16 203:5 189:10,20 303:40;4,16 61:18,21 189:10,22 303:17 190:13 12:21 house 287:16 288:10,20 188:13	head	home	160:17 164:13 179:13	171:5 172:12,20 173:22
149.15 156.08 16.10 16.11 16	50:2,9 53:20 55:18 69:22	324:9,10	190:15 204:2 205:11	174:10 220:6,12,20 221:4
headquartered 122:21				227:2 243:17 244:11
122/21 hosts 285:5 hosts 285:5 285:5 289:22 2806; 288:10 289:7 1:77 3:1 133:12 199:3 252:7 312:22 hour 299:11:14 299:19 30:22 299:11 299:14 299:19 30:10 30:121 194:3,5 227:16,18,20 299:18 300:10 30:121 194:3,5 227:16,18,20 299:18 300:10 30:121 194:3,5 227:16,18,20 299:18 300:10 30:121 194:3,5 227:16,18,20 299:18 300:10 30:121 194:3,5 227:16,18,20 299:18 300:10 30:121 194:3,5 227:16,18,20 299:18 300:10 30:121 194:3,5 227:16,18,20 299:18 300:10 30:121 199:18 199:2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16 20:35 199:10,2 20:14,16		1		
heads 188-6 hosts 285-5 285-5 289:12 290:15 291:14 101:12 120:15 193:17 194:3,5 227:16,18,20 274:14 305:2 199:3 252:7 312:22 hear 111:14 hour 136:5 hour 136:6 193:19 194:5 196:6 138:6 193:19 194:5 196:6 138:6 193:19 194:5 196:6 138:6 193:19 194:5 196:6 138:6 193:19 194:5 196:6 138:6 193:19 194:5 196:6 138:10 202:14,16 203:5 160:12 242:20 331:2 identify 32:22 14,16 203:5 160:12 242:20 331:2 identify 33:25 38:71:6 96:17 109:1,6 141:15 185:14 159:13 160:12 242:20 331:2 identify 33:25 38:71:6 96:17 109:1,6 141:15 185:14 159:13 160:12 242:20 331:2 identify 33:25 38:71:6 96:17 109:1,6 141:15 185:14 199:13 160:12 242:20 331:2 identify 33:25 38:71:6 96:17 109:1,6 141:15 185:14 199:13 160:12 242:20 331:2 identify 33:25 38:71:6 96:17 109:1,6 141:15 185:14 160:12 245:5 160:14 160:	_		1	
188.6 health 298.5 hotel 324.15 hote 324.15 hour 299.9 3.92.413.95.9 296.3.20.297.19.298.14 299.9 3.92.413.95.9 296.3.20.297.19.298.14 299.16.300.10.301.21 dentified 341.25.52.271.61.8,20 35.12.53.19.141.15.142.5 house 142.11,15.16.21.143.3.7 144.15.18.145.3.12.146.7 245.5 house 144.15.18.145.3.12.146.7 245.5 house 142.20.0 howard 20.16 hr 185.13 heating 20.16 hr 185.13 hote 29.91.52.14.6 233.3.46.14.16.61.18.2.1 242.20.331.2 incorporate 199.13.2.2 house 140.17.18.20.1.2 159.13.2.2 house 140.17.18.20.1.2 159.13.2.2 house 140.17.18.20.1.2 159.13.2 house 140.17.18.20.1.2 house 140.17.18.20.1.2 159.13.2 house 140.17.18.20.1.2 house 140.17.18.2 house 140.17.18.2 house 140.17.1	122:21	61:10		
health 29:8 17:7 3:1 133:12 19:3 252:7 312:22 hour 111:14 hour 10:5 ho				
299:16 300:10 301:21 house				
199:3 252:7 312:22 hour				
hear 111:14 house			,	
106.5 heard 35:12 53:19 141:15 142:5 142:75 252:12 306:15 306:17, 18 307:4 housed 199:10,22 202:14,16 203:5 203:12 including 35:2 53:8 71:6 96:17 142:15 143:3,7 245:5 house 199:10,22 202:14,16 203:5 203:12 including 35:2 53:8 71:6 96:17 142:157:13 163:6 199:10,22 202:14,16 203:5 203:12 including 35:2 53:8 71:6 96:17 142:157:13 163:6 199:10,22 202:14,16 203:5 203:12 including 35:2 53:8 71:6 96:17 142:157:13 163:6 199:10,22 202:14,16 203:5 203:12 including 35:2 53:8 71:6 96:17 274:10 320:19 323:17 incurrent 35:10 14:	199:3 252:7 312:22			
heard 35:12 53:19 141:15 142:5 36:17, 18 307:4				
36:17,18 307:4 142:11,15,16,21 143:3,7 144:15,18 145:3,12 146:7 176:19 258:3 269:7 hearing 212:20 hearing 217:10:20 heavily 60:5 held 2.9 11:5 21:4,6 23:2 25:6 49:20 50:6 64:77 177:21 19:11 31:221 help 19:13 13:221 help 228:16 herro 228:16 herro 228:16 herro 228:16 herro 227:12 334:15 hi 260:7 274:6 hir 176:14,176:1				
142:11,15,16,21 143:3,7 144:75,18 145:3,12 146:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 258:3 269:7 176:19 269:3 28:16 176:19 258:3 269:6 176:19 269:3 28:16 176:19 258:3 269:6 176:19 269:3 28:1		1		
144:15.18 145:3.12 146:7 176:19 258:3 269:7 hearing 212:20 heating 17: 10:20 heating 20:16 17: 10:20 heavily 60:5 held 2:9 11:5 21:4,6 23:2 25:6 hub 287:16 huse 287:16 hum 73:2.7 helps 190:1 312:21 helps 190:1 312:21 helps 190:1 312:21 helps 190:1 312:21 helps 173:2.7 1 iibr 139:3.1 21:3 18:9 19:2 253:4,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 21:1,17 138:8,14 139:3.1 13:1,17 13:		1		_
176:19 258:3 269:7 hearing		I .		
hearing 212:20 howard 109:13 identifying 109:13 incorporate 85:10,20 howard 109:13 iec 140:17,18 217:17 220:8,13 189:10 157:14,6 23:2 25:6 hub 287:16 63:20 64:17 117:21 215:12 49:3 helps 228:16 helry 173:21 18:9 19:2 253:4,14 139:31,12:18 139:31,13:18 139:31				
212:20		1		
heating		I a la l		
1.7 10:20 heavily 185:13 leee 140:17,18 217:17 220:8,13 139:10 167:1 177:20 197:13 211:10 228:14 233:3 46:14,16 61:18,21 232:2 283:5,9,22 283:5,9,22 283:5,9,22 215:5 214:9:3 215:1 249:3 215:1 249:3 228:16 heart 173:2 1 165:17 228:16 228:16 hereto 173:3,21 18:9 19:2 253:4,14 228:14 233:3 24:12 25:3 92:4 100:7 101:10 103:6,18 109:11 129:4 135:11 136:6 137:11,17 138:8,14 139:3,12,18,21 140:7,22 164:17 165:1,4,12 168:15 171:14 175:2 205:8 207:5 227:12 334:15 226:12 277:6,9 13.2 219:1,22 220:6,10 223:3 224:18,19 225:7,13 226:17 227:16 229:3 234:1 236:9 251:12,14,22 252:2 252:9 254:1,17 258:5 260:19 35:3 274:9 167:15 161:1 111:13 111:13 hold 155:16:3 147:1 118:20 136:11 111:13 hold 155:16:3 147:1 118:20 136:11 111:13 hold 155:16:3 147:1 118:20 136:14 136:14 136:14 136:14 136:3 139:10 167:1 177:20 197:13 211:10 228:14 233:3 46:14,16 61:18,21 233:3 46:14,16 61:18,21 233:3 46:14,16 61:18,21 232:3 18:10 197:13 211:10 228:14 233:3 228:5,9,22 18:20 23:2,9,15 63:20 64:8,11 10:19 11:18 7:20 99:11 291:11 97:5,10,13,16 97:18 98:2,7,10 99:7,12,14 100:7 101:10 103:6,18 109:11 129:4 135:11 136:6 137:1,16,18 138:9 140:7 247:11 100:7 101:10 103:6,18 109:11 129:4 135:11 136:6 137:1,16,18 139:10 167:1 177:20 18:14 100:7 101:10 103:6,18 109:11 129:4 135:11 136:6 137:1,16,18 139:10 167:1 177:20 137:12 139:10 137:12 140:72 140:72 147:11 136:10 137:12 136:6 137:1,16,18 139:10 167:1 177:20 137:12 137:12 139:10 137:12 139:10 137:12 139:10 137:12 139:10 137:12 139:10 137:12 139:10 137:12 139:10 137:12 139:10 137:12 139:10 137:12 139:10 137:13 11:10 139:10 137:13 11:10 133:13 139:10 167:14 139:10 133:14				-
heavily 60:5 hue 287:16 huh 217:1 immediately 218:25:3,811,20 63:2,9,15 63:20 64:8,11 62:2,5,8,11,20 63:2,9,15 63:20 64:8,11 62:2,5,8,11,20 63:2,9,15 63:20 64:8,11 63:20				
held 2:9 11:5 21:4,6 23:2 25:6 49:20 50:6 64:17 117:21 215:1 249:3 help 190:1 312:21 helps 228:16 herry 17:3,21 18:9 19:2 253:4,14 253:15 264:6 hereto 227:12 334:15 hi 260:7 274:6 hii 260:7 274:6 hiii 260:7 274:6 hiiii 260:7 274:6 hiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiiii				
held 2:9 11:5 21:4,6 23:2 25:6 buh 62:2,5,8,11,20 63:2,9,15 incorporated 8:11 10:19 11:1 87:20 49:20 50:6 64:17 117:21 217:1 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:21 217:1 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:22 49:20 50:6 64:17 117:22 49:20 50:6 64:17 117:22 49:20 50:6 64:17 117:22 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:21 49:20 50:6 64:17 117:22 40:20 50:6 64:17 117:22 40:20 50:6 64:17 117:22 40:20 50:6 64:17 117:22 40:20 50:6 64:17 117:25 40:20 50:6 64:17 117:11 117:20 40:20 50:6 64:17 129:4 135:3 124:4 40:20 50:6 64:17 129:5 10,13,16 40:20 50:6 64:17 129:4 135:3 124:4 40:20 50:6 64:17 129:5 10,13,16 40:20 50:6 64:17 129:5 11,14 40:20 50:1 120:1 129:3 120:1		_		
2.9 11:5 21:4,6 23:2 25:6				
49:20 50:6 64:17 117:21 217:1 human 73:2,7				_
215:1 249:3 help			,	
help			_	
190:1 312:21 helps 228:16 hereto 17:3,21 18:9 19:2 253:4,14 253:15 264:6 hereto 227:12 334:15 hii 260:7 274:6 hiigh as 8 93:20 105:6 264:17 highlighted 35:3 274:9 hill 167:15 hit 111:13 hold hill 11:13 hold hill 11:13 hold hill 11:13 hold hill 13:10:1 hill 11:13 hold hill 13:10:1 hill 13:1		1		
Table Tabl			1	
137:1,16,18 138:9 140:7		l l		
henry	_			
17:3,21 18:9 19:2 253:4,14 253:15 264:6 hereto 227:12 334:15 hi 260:7 274:6 hierarchy 75:1 highl as:8 93:20 105:6 264:17 highlighted 35:3 274:9 hill 246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 139:3,12,18,21 140:7,22 164:17 165:14,12 168:15 177:14 175:2 205:8 207:5 208:4,12,16 210:18 211:1 216:21 217:6,9,13,22 219:1,22 220:6,10 223:3 223:10 224:18,19 225:7,13 226:17 227:16 229:3 234:1 150:20 172:13 highlighted 35:3 274:9 hill 246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 139:3,12,18,21 140:7,22 164:17 165:14,12 168:15 177:12 168:6 164:11 186:12,18 181:13 182:13 181:13 182:13 181:13 182:13 181:13 182:13 181:13 182:13 18			-	1 1
253:15 264:6 hereto 227:12 334:15 hi 2260:7 274:6 hierarchy 75:1 high 38:8 93:20 105:6 264:17 highlighted 35:3 274:9 hill 246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 139:3,12,18,21 140:7,22 164:17 165:14,12 168:15 171:14 175:2 205:8 207:5 208:4,12,16 210:18 211:1 216:21 217:6,9,13,22 219:1,22 220:6,10 223:3 223:10 224:18,19 225:7,13 226:17 227:16 229:3 234:1 236:9 251:12,14,22 252:2 255:9 254:1,17 255:20 255:3 134:6,12,15,18 implemented 164:11 186:12,18 implementing 150:10 172:13 implications 181:13 182:13 importance 248:10 309:15 important 188:20 218:3 313:3 importantly 88:11,21 199:2 202:10 205:5 207:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:12 212:15 213:1 215:5 208:4,12,16 210:18 211:1 216:21 217:6,9,13,22 219:1,22 220:6,10 223:3 223:10 224:18,19 225:7,13 226:17 227:16 229:3 234:1 236:9 251:12,14,22 252:2 255:9 254:1,17 255:20 255:3 134:6,12,15,18 implemented 164:11 186:12,18 implementing 150:20 172:13 importance 248:10 309:15 important 188:20 218:3 313:3 importantly 88:11,21 217:2 212:15 213:1 215:5 208:4,12,16 210:18 211:1 166:13,19 167:7,12 168:6 169:1,2,1 171:4 172:3,21 173:22 174:1,11,17,22 175:4,20 177:2,9 183:1 184:9,20 186:4 187:2 189:7 193:17 194:3,10 199:2 202:10 205:5 207:4 248:10 309:15 important 188:20 218:3 313:3 importantly 88:11,21 217:4 219:8 272:16 273:6 273:21 283:14,20 284:5,7 291:1 304:6 316:6 318:15 319:11 320:7 321:12 incorporates include 36:11,12,13 38:13,17 incorporating				
hereto 164:17 165:1,4,12 168:15 interest 171:14 175:2 205:8 207:5 implemented 163:16 165:12,20 166:11 166:13,19 167:7,12 168:6 hi 260:7 274:6 126:21 217:6,9,13,22 129:1,22 220:6,10 223:3 120:24:18,19 225:7,13 implementing 150:20 172:13 169:1,21 171:4 172:3,21 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:22 174:1,11,17,22 173:4,20 177:2,9 183:1 181:13 182:13 184:9,20 186:4 187:2 189:7 193:17 194:3,10 189:7 193:17 194:3,10 189:7 193:17 194:3,10 199:2 202:10 205:5 207:4 248:10 309:15 199:2 202:10 205:5 207:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:7 208:2,8 209:4 207:1 20:2,1 20:1 20:1 20:1 20:1 20:1 20:1 217:4 219			•	i i
227:12 334:15 hi 208:4,12,16 210:18 211:1 216:21 217:6,9,13,22 219:1,22 220:6,10 223:3 223:10 224:18,19 225:7,13 226:17 227:16 229:3 234:1 236:9 251:12,14,22 252:2 252:9 254:1,17 255:20 256:3,16 258:5 260:19 304:2,4,5 306:2 319:3 ince 246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 171:14 173:2 203:6 207:3 208:4,12,16 210:18 211:1 216:21 217:6,9,13,22 219:1,22 220:6,10 223:3 implications 181:13 182:13 importance 248:10 309:15 important 188:20 218:3 313:3 importantly 88:11,21 importantly 88:11,21 importantly 185:2 importantly 30:20:17 221:15 213:1 215:5 273:21 283:14,20 284:5,7 291:1 304:6 318:15 319:11 320:7 321:12 incorporates 195:11 incorporating			· · · ·	
hi 260:7 274:6 16:21 217:6,9,13,22 150:20 172:13 173:22 174:1,11,17,22 hierarchy 29:1,22 220:6,10 223:3 150:20 172:13 173:22 174:1,11,17,22 high 23:10 224:18,19 225:7,13 181:13 182:13 184:9,20 186:4 187:2 high 236:9 251:12,14,22 252:2 252:9 254:1,17 255:20 248:10 309:15 195:13 197:20 198:8,11 high 35:3 274:9 160:1,51 8 254:21 255:2,3 252:9 254:1,17 255:20 248:10 309:15 199:2 202:10 205:5 207:4 hill 246:15,18 254:21 255:2,3 232:3 169:1,21 171:4 172:3,21 173:22 174:1,11,17,22 historically 256:3,16 258:5 260:19 304:2,4,5 306:2 319:3 169:1,21 171:4 172:3,21 175:4,20 177:2,9 183:1 hill 236:9 251:12,14,22 252:2 248:10 309:15 199:13 197:20 198:8,11 199:2 202:10 205:5 207:4 188:20 218:3 313:3 188:20 218:3 313:3 207:7 208:2,8 209:4 importantly 88:11,21 217:4 219:8 272:16 273:6 185:2 185:2 291:1 304:6 316:6 318:15 incorporates 195:11 incorporates 195:11 incorporating		I .	, -	
260:7 274:6 hierarchy 75:1 high 38:8 93:20 105:6 264:17 highlighted 35:3 274:9 hill 246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 150:20 172:13 150:20 172:13 implications 181:13 182:13 importance 248:10 309:15 important 188:20 218:3 313:3 important 189:2 202:10 205:5 207:4 218:		I to the second	The state of the s	
hierarchy 75:1 219:1,22 220:6,10 223:3 implications 175:4,20 177:2,9 183:1 high 236:9 251:12,14,22 252:2 importance 181:13 182:13 38:8 93:20 105:6 264:17 highlighted 256:3,16 258:5 260:19 304:2,4,5 306:2 319:3 important 199:2 202:10 205:5 207:4 35:3 274:9 hill 188:20 218:3 313:3 207:7 208:2,8 209:4 hill 188:20 218:3 313:3 207:7 208:2,8 209:4 isce 232:3 importantly 210:12 212:15 213:1 215:5 88:11,21 217:4 219:8 272:16 273:6 273:21 283:14,20 284:5,7 291:1 304:6 316:6 318:15 15:5 16:3 117:1 118:20 identification 301:4 306:22 308:5 include 301:4 306:22 308:5 include 301:4 306:22 308:5 include 36:11,12,13 38:13,17 incorporating				· · · · · · · · · · · · · · · · · · ·
75:1 high 223:10 224:16,19 225:7,13 181:13 182:13 184:9,20 186:4 187:2 high 236:9 251:12,14,22 252:2 252:9 254:1,17 255:20 248:10 309:15 189:7 193:17 194:3,10 highlighted 35:3 274:9 256:3,16 258:5 260:19 304:2,4,5 306:2 319:3 188:20 218:3 313:3 199:2 202:10 205:5 207:4 hill 304:2,4,5 306:2 319:3 ice 232:3 232:3 217:4 219:8 272:16 273:6 historically 150:14,15 159:7,14 185:2 273:21 283:14,20 284:5,7 hit 176:5 226:22 308:13,18 16entification 301:4 306:22 308:5 195:11 hold 15:5 16:3 117:1 118:20 36:11,12,13 38:13,17 16corporating				
high 236:9 251:12,14,22 252:2 importance 189:7 193:17 194:3,10 high 38:8 93:20 105:6 264:17 236:9 251:12,14,22 252:2 252:9 254:1,17 255:20 248:10 309:15 195:13 197:20 198:8,11 highlighted 35:3 274:9 304:2,4,5 306:2 319:3 ice 248:10 309:15 199:2 202:10 205:5 207:4 hill 304:2,4,5 306:2 319:3 ice 232:3 important 188:20 218:3 313:3 207:7 208:2,8 209:4 207:7 208:2,8 209:4 historically 167:15 iso:14,15 159:7,14 idea 176:5 226:22 308:13,18 identification 15:5 16:3 117:1 118:20 incorporating hold 36:11,12,13 38:13,17 incorporating		1		
38:8 93:20 105:6 264:17 highlighted 35:3 274:9 hill 246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 250:9 251:12,14,22 252:2 252:9 254:1,17 255:20 256:3,16 258:5 260:19 304:2,4,5 306:2 319:3 ice 232:3 ice 232:3 icsp 150:14,15 159:7,14 idea 176:5 226:22 308:13,18 identification 15:5 16:3 117:1 118:20 248:10 309:15 important 188:20 218:3 313:3 importantly 88:11,21 248:10 309:15 important 188:20 218:3 313:3 277:20 198:8,11 199:2 202:10 205:5 207:4 207:7 208:2,8 209:4 210:12 212:15 213:1 215:5 217:4 219:8 272:16 273:6 273:21 283:14,20 284:5,7 291:1 304:6 316:6 318:15 301:4 306:22 308:5 incorporates 195:11 incorporating		I .		·
highlighted 252.9 254.1,17 253.20 important 199:2 202:10 205:5 207:4 35:3 274:9 304:2,4,5 306:2 319:3 ice 232:3 246:15,18 254:21 255:2,3 ice 232:3 important 207:7 208:2,8 209:4 246:15,18 254:21 255:2,3 ice 232:3 importantly 210:12 212:15 213:1 215:5 246:15,18 254:21 255:2,3 ice 232:3 232:3 217:4 219:8 272:16 273:6 inportantly 217:4 219:8 272:16 273:6 217:4 219:8 272:16 273:6 273:21 283:14,20 284:5,7 291:1 304:6 316:6 318:15 301:4 306:22 308:5 301:4 306:22 308:5 incorporates 301:4 306:22 308:5 include 36:11,12,13 38:13,17 incorporating	_	I .	-	· ·
35:3 274:9 hill 246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 230:3,16 238.5 260.19 304:2,4,5 306:2 319:3 ice 232:3 importantly 88:11,21 importantly 88:11,21 improving 185:2 inaccurate 301:4 306:22 308:5 include 304:2,4,5 306:2 319:3 importantly 88:11,21 217:4 219:8 272:16 273:6 273:21 283:14,20 284:5,7 291:1 304:6 316:6 318:15 319:11 320:7 321:12 incorporates 195:11 incorporating		1		· ·
hill 304.2,4,5 306.2 319.3 importantly 210:12 212:15 213:1 215:5 246:15,18 254:21 255:2,3 285:2 286:22 88:11,21 217:4 219:8 272:16 273:6 232:3 improving 273:21 283:14,20 284:5,7 150:14,15 159:7,14 idea 185:2 291:1 304:6 316:6 318:15 111:13 identification 301:4 306:22 308:5 incorporates 15:5 16:3 117:1 118:20 36:11,12,13 38:13,17 incorporating		I '	· -	
246:15,18 254:21 255:2,3 285:2 286:22 historically 167:15 hit 111:13 hold 232:3 icsp 150:14,15 159:7,14 idea 176:5 226:22 308:13,18 identification 15:5 16:3 117:1 118:20 88:11,21 improving 185:2 inaccurate 301:4 306:22 308:5 include 36:11,12,13 38:13,17 incorporating		I_	importantly	
285:2 286:22	246:15,18 254:21 255:2,3	I .	, -	217:4 219:8 272:16 273:6
150:14,15 159:7,14 idea 176:5 226:22 308:13,18 identification 15:5 16:3 117:1 118:20 150:14,15 159:7,14 idea 176:5 226:22 308:13,18 identification 15:5 16:3 117:1 118:20 185:2 inaccurate 301:4 306:22 308:5 include 36:11,12,13 38:13,17 incorporating	285:2 286:22		improving	273:21 283:14,20 284:5,7
hit 176:5 226:22 308:13,18 idea 301:4 306:22 308:5 include 36:11,12,13 38:13,17 incorporating 195:11	historically		185:2	291:1 304:6 316:6 318:15
hit 176:5 226:22 308:13,18 identification 15:5 16:3 117:1 118:20 301:4 306:22 308:5 include 195:11 incorporating	167:15	l	inaccurate	319:11 320:7 321:12
111:13 identification 195:11 incorporating 195:11 incorpora			301:4 306:22 308:5	-
hold				
22:6,12 24:3 118:18 52:13 94:13 119:20 138:5 87:8 89:4 90:16 95:12				
	22:6,12 24:3 118:18	10.20	52:13 94:13 119:20 138:5	87:8 89:4 90:16 95:12

[incorporating - issue]

incorporating (cont.)	inform	institute (cont.)	interior's
102:2 112:22 113:7,13	254:21	209:13 312:5 313:8,10,12	198:16
137:21 197:21 198:4 229:4		320:8	internal
282:13	51:3 53:2 72:8 73:4 83:6	institutions	17:9,9 29:4 99:19,21 264:7
incorporation	92:12 94:15 102:20 125:9	326:19	265:15,22 282:16
6:11,20 7:4 84:14 85:1,2,4	125:13 135:12 179:7	instruct	internally
85:7,11 87:5,7,11,16 88:2	184:21 185:1,2 193:3	264:19 266:9	27:1 282:15
89:12,15,19 94:16 101:8	200:9 204:17 210:20	instructed	international
102:15 103:3,22 107:3,8	217:18 221:10 222:2 225:2	308:16	1:4 3:3 10:18 23:21 24:14
107:11,16 108:10,14 109:8	225:3,16 226:2,8,9 228:3	instructions	24:15 25:5,7,8 26:2 28:20
109:9 110:10 111:10 112:5	231:7 250:13 264:12,15	85:12,17,22 86:6,6,12,18	29:1 32:20 34:21 41:1,3,4
112:14 113:19 114:9 115:4	265:17 266:1,5,22 267:1	86:20 88:7 102:10	41:5 43:12 47:10 49:11
134:1,14 135:8,22 136:2	269:12 280:15 285:14	instrumentation	50:21,21 51:1,4,5,7,10
136:10,16,20 143:17	286:21 288:1,5 302:22	70:20 71:4	55:1 63:2,4 65:2 74:22
178:13 179:4,10 181:13	305:9,21 309:15 319:13	insurance	75:15 118:9 121:21 122:20
182:14 199:15,18 201:9	320:21	135:5	132:1 178:2 311:11 319:13
205:7,22 214:21 235:11	informational	intellectual	331:21
241:9 263:19 288:2,6	285:11 307:2	181:17,22 183:12	internet
317:11 318:19,21 319:16	infrastructure	intended	206:8,13 213:9 217:7,10
319:19 321:17	285:10 314:3 323:17,18,19	193:5 196:18,22 197:13	222:14 242:6,11,16,21
incorporations	infringement	198:8 199:16 219:22	243:2,8
135:13	6:10 90:8 205:22 206:6	intends	interpret
incorrect	initial	167:1 217:2	166:3
116:3 160:6 187:5	56:19 199:1	intent	interpretation
increase	initially	36:13 199:19 215:14	199:19
284:17	47:15 247:3	intention	inventory
independent	initiative	175:12	199:2
238:20	261:13	interactions	invited
independently	innovation	179:6 317:3	61:9,12 285:12
000-40	000.7 000.0	intorogonov	line and large
220:16	252:7 285:9	interagency	involve
index	innovations	150:11,15 151:14 157:19	62:15 100:18 324:17
index 193:5	innovations 257:14	150:11,15 151:14 157:19 158:2,4,15	62:15 100:18 324:17 involved
index 193:5 india	innovations 257:14 input	150:11,15 151:14 157:19 158:2,4,15 interest	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14
index 193:5 india 207:2	innovations 257:14 input 35:16,17 91:9 100:6 103:4	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19
index 193:5 india 207:2 indirectly	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12
index 193:5 india 207:2 indirectly 106:6	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement
index 193:5 india 207:2 indirectly 106:6 individual	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16 278:19
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3	innovations	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16 278:19 involving
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16 278:19 involving 157:22
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13	innovations	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16 278:19 involving 157:22 ipc 65:7 123:16 iprpc 183:8,11,15 236:18 271:19 irresponsible 197:2,4
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16 278:19 involving 157:22 ipc 65:7 123:16 iprpc 183:8,11,15 236:18 271:19 irresponsible 197:2,4 ise
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5 173:9 228:2 259:13 270:5	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19 39:13,18 40:19 58:6,7,8	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances 69:8 75:17 103:12,16	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5 173:9 228:2 259:13 270:5 309:19 324:1 325:8 329:3 industries	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances 69:8 75:17 103:12,16 104:16 111:8,12 129:2	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19 39:13,18 40:19 58:6,7,8 76:22 125:8 313:3	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5 173:9 228:2 259:13 270:5 309:19 324:1 325:8 329:3 industries 172:8	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances 69:8 75:17 103:12,16 104:16 111:8,12 129:2 168:20 169:7 192:6,6	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19 39:13,18 40:19 58:6,7,8 76:22 125:8 313:3 interfere	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5 173:9 228:2 259:13 270:5 309:19 324:1 325:8 329:3 industries 172:8 industry	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances 69:8 75:17 103:12,16 104:16 111:8,12 129:2 168:20 169:7 192:6,6 195:9 258:11 283:12	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19 39:13,18 40:19 58:6,7,8 76:22 125:8 313:3 interfere 10:10	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5 173:9 228:2 259:13 270:5 309:19 324:1 325:8 329:3 industries 172:8 industry 38:15,17 129:17 133:2,13	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances 69:8 75:17 103:12,16 104:16 111:8,12 129:2 168:20 169:7 192:6,6 195:9 258:11 283:12 institute	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19 39:13,18 40:19 58:6,7,8 76:22 125:8 313:3 interfere 10:10 interference 10:8	62:15 100:18 324:17 involved
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5 173:9 228:2 259:13 270:5 309:19 324:1 325:8 329:3 industries 172:8 industry	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances 69:8 75:17 103:12,16 104:16 111:8,12 129:2 168:20 169:7 192:6,6 195:9 258:11 283:12	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19 39:13,18 40:19 58:6,7,8 76:22 125:8 313:3 interfere 10:10 interference 10:8	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16 278:19 involving 157:22 ipc 65:7 123:16 iprpc 183:8,11,15 236:18 271:19 irresponsible 197:2,4 ise 69:6 iso 26:14 44:17 69:6 75:4 122:3,8,10,13 123:2 140:17,18 161:19 217:17 220:8,13
index 193:5 india 207:2 indirectly 106:6 individual 30:8,12,14 35:14 37:9,20 38:7 40:1 115:13 135:3 142:12 145:6,13,20 146:7 146:8,16 147:11,18 154:13 155:18 166:20 168:9 173:6 173:11 179:8 193:14 194:17 200:1 270:21 303:9 306:19 314:13 322:9,13,17 individuals 67:20 123:22 143:20 173:5 173:9 228:2 259:13 270:5 309:19 324:1 325:8 329:3 industries 172:8 industry 38:15,17 129:17 133:2,13 133:17 172:7 313:5	innovations 257:14 input 35:16,17 91:9 100:6 103:4 183:9 231:7 248:20,22 261:15 293:15 inserting 239:1,5 insight 257:22 inspection 74:12 75:11 instance 76:1 103:1 104:9,20 105:17 130:11,13 145:5 148:3,13 202:21 322:8,11 322:12,16 instances 69:8 75:17 103:12,16 104:16 111:8,12 129:2 168:20 169:7 192:6,6 195:9 258:11 283:12 institute 17:5 20:21 21:1,12,18 22:5	150:11,15 151:14 157:19 158:2,4,15 interest 36:6,8,10,12,13 37:12,15 37:19 38:3,13 52:8 57:17 62:22 129:13,14 130:5,6 263:9 264:2 265:11 267:12 278:5 324:4 325:16 330:18 interested 36:7 37:1 53:5 109:1,6 167:16 168:14 217:6,9,19 244:10 313:13 325:8 329:13 334:15 interesting 276:15,21 interests 36:15 38:11,13,15,19 39:13,18 40:19 58:6,7,8 76:22 125:8 313:3 interfere 10:10 interference 10:8 interior	62:15 100:18 324:17 involved 12:21 29:4,14,16 47:6,14 48:2,3 49:8 269:22 284:19 319:8,12 involvement 61:14 65:9 221:1 278:16 278:19 involving 157:22 ipc 65:7 123:16 iprpc 183:8,11,15 236:18 271:19 irresponsible 197:2,4 ise 69:6 iso 26:14 44:17 69:6 75:4 122:3,8,10,13 123:2 140:17,18 161:19 217:17 220:8,13 issue

[issue - level]

issue (cont.)	k	l	lawyers
247:8,14 255:10 261:21		lah	252:8
263:10 274:12 315:20	keep	lab	lays
319:9 320:12 332:5	216:18	75:10	162:11
issued	keeping	labeled	lead
91:15 278:9	73:19 216:15	165:17 252:14	170:13 293:14
issues	kevin	labeling	leads
51:15 54:9 60:6,10 66:5	3:4 12:2	162:16	34:4 265:21 281:5,12,16
102:21 107:1 170:14	kevin.fee	labor	leaning
178:13 179:3,10 206:20,21	3:10	36:13 38:13	263:10,13
246:12,12,13 251:22 254:1	kind	laboratories	learn
258:6 271:21 284:19	49:7 56:13 95:14 97:4	79:22	71:9 148:22 149:8 261:2
issuing	128:6 155:11 202:7	laboratory	learned
201:14,20	knew	81:2	71:16 145:12
item	265:21	lack	leave
180:5,18 298:11 301:2	know	129:9,11,12,13 130:3,7	280:21
items	13:21 14:3,7,12 25:13	329:16	leaving
54:9,9,12 230:4 292:1,20	26:10 31:13,16,22 32:3	laid	233:15
293:16 295:7	44:4,20 64:1,9 66:17 70:8	38:8	led
293.10 293.7	71:19 77:12,22 79:15	language	1 3 3
j	80:11 81:7 82:20 83:3	196:15 263:7	29:2 30:21 40:17 265:21 317:6 324:22 328:7
jane	84:13 90:19,22 91:4,9 95:5		
3:5 12:4	98:9 116:17 126:12 138:18	29:5 30:7 52:9 65:1,6 67:9	ledyard
jane.wise	139:21 148:13 155:1,16	67:14,17,18 68:6,19 210:5	4:13 11:22
3:11	161:2 168:8,10 174:18	273:12 313:13 325:7	left
january	176:3,6,7,13,20 178:6	larger	124:16
25:5 139:8 257:4	181:5 182:12 183:3,19	130:5	legal
jillavenkatese	184:16 185:4,15 186:7	largest	2:11 11:6,9,11 52:15
253:5,6,19	188:11 189:2 190:6,11,12	313:13	332:20
jim	192:14 197:16 203:4	late	legislation
55:8 189:10	207:14 209:9,18 210:8	255:20	29:6,13 96:12 108:6
job	212:21 221:20 223:1,6,17	latest	110:15,18 185:17 212:16
1:21 71:17,20 72:3,17	225:5,11,14,15,15 226:1,8	193:4 263:6	213:1 214:1 215:6 227:6
185:12 324:18	226:9,20 227:15 228:4	latin	287:4,6
joe	229:8,9 231:3,14 235:18	61:11	legislations
251:17,18,19,21 256:19	240:11 241:10,16,18,21	law	96:20
257:5,17 258:3,11,20	248:13 249:11,12 250:8,13	8:12 11:18 13:9 39:10 46:1	legislative
joe's	251:13 253:22 254:4,12,13	77:3,9,12 84:18 88:13 90:5	214:4 246:22
258:1	254:22 255:13 256:3,22	90:7 95:15,19,21 96:16,18	legislator
joint	259:1 261:19,22 262:11,17	101:11 143:20 152:16	286:2,3
150:8,10 157:18,20 159:13	263:1 264:13,16 265:3	164:10 173:16,19 178:2	legislators
159:15 160:10 294:20	266:12,15,21 267:16 268:3	205:5 207:5,7 208:2,8	284:17 285:17,22 286:22
judgment	268:5,19,21 269:13,21	218:21 219:21 227:6,11	legislature
260:16 276:13	270:22 274:22 275:13,20	249:10 287:11,12,19 291:2	285:15 287:6
judiciary	277:2 279:15 286:15	302:10	letter
306:18	305:17 308:15 317:20	laws	5:9 9:20 16:10,15,17,18,21
judy	318:17	77:19 96:5,8 227:13 333:3	17:1,14,16 18:7 19:13 20:2
64:3,9	knowledge	lawsuit	216:10 260:18 264:10
july	53:8 82:19 106:3,10	15:18,21 215:21 216:16,19	266:19 302:10
6:2 24:15 25:2 47:11,13	133:20 148:20 156:1 209:7	260:16 276:14,22 277:3,5	letters
48:2,8 164:18 252:8,10	210:2 213:20 223:13	277:10	195:1
298:6 299:3 300:3	225:20 227:17 275:5	lawsuits	level
_	278:14 280:17 284:11	12:22	38:8 75:4 93:20 96:3 105:6
june 241:7 251:7 273:20 334:22	301:6 331:14 332:8	lawyer	107:2,4,9 114:15,17 118:6
justification	known	90:12 249:10	120:15 128:3 264:17
212:21	21:13 184:13 249:13	00.12 243.10	326:12,17 331:15
212.21	267:10,21		
I	201.10,21	I	l l

[levels - mary]

levels	lists (cont.)	m	managed
127:20 162:12	237:19 242:1		329:21
lewis	litigation	machine	management
3:6 12:3,5	16:12 17:15,19,22 18:19	224:9	9:7 21:12 22:7 23:5 44:18
libraries	18:22 19:5,6 278:11 301:9	maiden	49:17 72:13,18,20,22 73:1
147:3 243:1	little	20:15	80:16 100:3 138:21 201:4
library	29:21 30:19 116:13 149:19	mail	260:13 293:13 297:7
178:12	282:4	5.11 6.6, 15, 17 7.2,0,6, 10	managing
license	liz	7:12,15,17,19,21 19:7,16	127:14
173:9 224:13 226:12,16,21	231:1 237:16 241:4	188:1 194:9,14 203:7	mandatory
licensed		225:2 230:21 232:16,18,21	76:7 161:16 162:4 163:8
224:4,6,9 225:1 226:14	3:6,16 4:5,13	233:2,3,7,10,13,17 234:15	163:13
, ,	lobby	235:15 236:8 237:15,20	
licensing 315:5 327:22	285:20	241:1,3,4,21 246:1 248:1,4	manipulation 35:16,17
		248:17 251:17 255:14	
lieu	lobbying	256:15 257:5 259:11,15,19	manner
28:7 89:16 218:6,18	286:4 306:11 307:16 308:7	259:22 260:2 268:14 269:6	166:4 199:21
219:14	308:11,16 309:20 310:4,6	270:5 271:16,17,20,22	manufacturing
life	310:10,14,15,20	272:2 274:5 275:14 276:11	23:20
165:21 170:12	located	276:12,14 277:2 302:20	march
light	11:6	303:3,6,12,13 307:15	21:7 23:11,11 24:2 181:6
271:18 273:18	location	308:21,22 309:7,9	184:2,14 231:5 236:16
limited	245:3	mailed	292:18 294:4 297:9,11
35:11 48:15 60:19 142:2	long	256:19	mark
152:10 317:4,5	14:3,7 21:4 22:6 44:20	mails	15:2,22 111:14 116:20
limits	47:8 91:19 133:13 249:13	187:10 251:6 259:10	marked
224:9	279:15 306:19	maintain	15:4,8 16:2,6 116:22 117:4
line	longer	138:10 270:8,13	118:19 119:1 149:22 150:3
233:4 236:8 238:18 239:6	279:16,18	maintained	156:16,20 157:10 160:16
267:4 287:2	longworth	135:10,18 156:9,14 157:5	160:20 164:12,16 179:12
lines	285:3	157:8,9 158:8 159:1,1,5	190:14 191:4 204:1,5
271:22	look	217:15 324:7	205:10,14 229:15,19
link	19:18 46:20,22 48:21	maintaining	230:11,15,16 232:7,11
138:11 220:20 221:17	51:14 53:1 55:15 67:11	138:16 139:5 323:17	235:2,6 237:6,10,22 238:4
222:9,13,22	80:19 83:10 84:2 110:3	maintains	240:15,19 245:12,16
linkedin	198:18 202:19 203:11	137:3	247:16,20 250:14,16,20
8:2 280:11,13	223:7 228:20 264:9 274:15	maintenance	256:8,12 259:3,7 268:6,10
linking	277:1 332:4	135:21 137:12 330:16	271:9,13 278:21 279:3
222:2	looked	majority	280:5,9 288:9,13 289:6,10
list	26:11 57:18 58:5 60:7 97:8	58:11 129:17 252:5	289:20 290:2,14,17 291:13
102:4 120:4,18,22 137:19	229:10 234:15 235:15	making	291:16 292:8,12 293:8,20
208:11 229:5 252:4,22	289:5	185:1 207:14 213:12,17	294:12,16 295:8,12 296:2
270:6 306:19	looking	250:9 266:16 272:15 286:1	296:6,19 297:1,18,22
listed	70:12 120:18 236:7 246:14	287:3	298:13,17 299:15,19 300:9
74:19 81:14,18 82:5,7,8	246:17 261:21 266:11	malamud	300:13 301:20
94:20 120:9,20 124:16	looks	143:3,19 184:7,13,16,17	market
137:18 202:10 204:15	117:17,18 236:4 251:10	185:3,20 186:17 187:10	29:4
210:16 221:20 223:20	lot	191:12,15 203:1 260:15	marking
233:10 252:18 295:7 305:3	192:10	276:13	162:16
332:9	low	malamud's	mary
listen	324:8	186:8 196:10 203:7 260:19	1:14 2:9 5:2 8:3 10:15
250:4	lower	261:1,4	12:12 16:13 20:13,15
listing	256:15	manage	231:8 248:8 252:19 253:4
118:13 119:13 233:2	lunch	312:18 328:12,16,21 329:2	256:21 260:2,3,4,7,8,9
lists	158:2	329:8	263:4,6,8 268:16 281:5,12
50:14 89:1 119:17 120:1,3			281:16 332:18 333:11
120:4 141:20 208:6,8			

[mary.saunders - moment]

į			
mary.saunders	mechanisms	members	milburn
233:11	272:22	37:4 39:15 41:14 48:15	4:13 11:22
material	media	51:3,3 53:5 58:10 63:3,17	military
85:13 86:13 90:16 94:11	10:14 115:16,20 159:19	63:18 65:5 67:19 68:16,17	201:11,21 202:1,5
94:12,16 95:12 99:7,12,14	160:1 203:17,21 279:21	68:18 69:3 100:6 109:1,6	miller
165:12,19 166:2,11 167:3	280:3 311:5,9 332:19	123:18,20 125:12 126:3	3:15 12:6,7
169:21 170:11 171:4,6	medical	129:17 153:7 158:4 241:5	mind
172:1,3,12,19 173:22	70:20 71:4	241:19 253:20 255:6,9	116:12 232:3
174:6,9,22 177:20 214:19	meet	284:15 306:15,17 307:5	mine
224:6 226:14 242:3	125:7,12 126:15,17 127:1	membership	199:3 250:5
materially	151:22 170:7 188:6 271:3	41:15 43:15,21 44:6,7 45:3	
36:7,22 329:13	313:15	45:7 46:5,12 55:4,6,16	176:10
materials	meeting	63:19 119:14 124:19,20	minimize
1:4 3:3 10:17 53:6 86:1	8:4,7,21 59:4,9 150:8,12	125:1,7 154:7,10,14,16	141:9
87:17 88:10 89:5 165:12	151:4,9,12,16,19,20	278:3	minimum
183:1 211:11 212:13 224:4	153:14 155:22 156:4,8,12	memorializes	167:8
224:9,14 225:1 234:1	157:3,19,22 158:1 159:13	20:3	minority
305:6	159:15 160:11 179:19,21	memory	252:5
matrix	184:14 188:16 204:10,12	56:1 57:8 107:1 126:22	minute
7:14 252:13,15 254:8	214:18 215:1 230:5,7	146:13,15 147:10,18	311:2
matt	249:1 252:8 253:3 269:5	149:21 153:19 180:1	minutes
279:6	269:17,19 288:17,18,20,22	182:16 186:6 211:16 240:5	6:3,13 8:14,18 9:3,15,17
matter	289:1,3,14,15 290:7,12	240:5	111:16 179:18 230:3,9
10:16 17:13 258:1	291:5,7,11,22 292:18,22	memos	232:1 291:21 294:2 296:10
matthew	293:2 294:4,5,19,20,21	93:19	300:1,17 323:7
4:3 11:18	295:2,4,18,19 296:12,13	mention	missed
mbecker	298:6,7,10 299:2,5,14	65:16 116:5,7 123:13,15	252:20
4:8	300:2,4,18,20 304:18	257:6	missing
mckiel	305:1,2 324:12	mentioned	189:15
260:2,3,4 263:4,8	meetings	22:10 30:10 34:22 39:7	mission
mean	68:3,9 107:10 126:7,9,11	44:5 45:16 47:9,17 48:6	21:20 27:16 28:5 30:10
16:17 26:17 30:1 32:14	126:13,19 144:11 156:8,14	49:1,10 53:14 58:5 60:9	31:3 39:13,18 40:16,21
36:5 41:6,9,10 52:6 59:8	157:7 252:5 254:22 255:2	61:20 62:20 65:1 68:15	43:14 108:1,18,22 109:5
73:6 76:10 78:9 85:17	255:3,5,9,15 269:8,9,14	69:2 78:4 81:22 85:19	111:22 112:17 152:9,19
88:22 89:8,18 94:4 101:5	270:1 271:19 293:5,7	93:14 100:12 101:12	228:16 282:2 287:16
108:4 126:5,5,18 129:16	307:2	124:18 127:8 128:20	316:16
134:11 142:11 170:15	meets	139:13 152:15 169:18	missions
174:18,19 175:10 193:12	67:20 124:7 member	173:4 193:13 200:21 219:5	45:21 108:9 112:3
193:21 194:15 231:15	32:17,20,21 33:9,11 41:11	219:18 228:13 242:22 246:19 247:9 249:4 250:1	misspoke 241:15
240:6 242:3 254:12 263:12	41:13,17 42:11,13,14,18	270:2 272:21 286:22	
263:16 268:20 270:17	42:19,22 43:9 44:1,12,19	287:11 324:6 325:3	mistaken 52:19
278:1 281:19,21 282:5 328:21	44:21 46:8,10,13,16 48:9		
	51:11 53:11,16,18 54:3,15	message 252:2 254:17 268:16	misunderstanding 188:22
meaning 269:6 281:21	54:19,21,22 55:12,13 56:3	messaging	
	56:4,7,9,18 57:2,9 58:1,22	190:3	misuse 196:2
means 26:22 27:3 59:9 77:14	59:3,7 60:14,18,22 61:3,5	met	model
83:17 84:14 99:2 100:14	61:6,6 63:8,14 64:10 65:10	180:10 249:15	314:12,12 315:15
129:21 139:12 146:22	65:19 67:12 68:8,21	metal	models
147:4 170:21 183:21 274:2	i i	215:22	154:6 155:6 325:18
305:18	118:11,13 121:10,13,15	method	modernization
meant	125:3,4,5,11,18,21,21,22	314:17	77:17 78:5 79:14 80:7
126:21 154:8 194:2 242:8	126:14,22 150:12 151:2	methods	81:15,20 82:3 83:15 84:6
249:21 263:20 275:8	157:21,22 182:2,3 183:14	31:19 153:9 162:15	84:10
measurement	189:19 278:2,8 285:5	microphones	moment
21:17 22:5 313:8		10:6,10	171:21 185:19 232:20
21.17 22.0 010.0		. 3.3, . 3	17 1.21 100.10 202.20

[moment - object]

moment (cent)	nara's	neiman (cont.)	nonpublic
moment (cont.) 276:6	85:12,16 211:9 212:5	248:4 274:6 275:8	264:14,15
	232:6 233:21	neither	
monday			nonspecific
236:16	narrow	334:11	145:2
money	286:7	network	noon
313:21 323:10	nation	224:10	236:15
month	257:10	neutral	normal
144:11	national	263:7	172:9
monthly	1:5 3:13 4:21 10:18 17:4	new	northwest
269:12	20:21,22 21:12,17 22:4	4:15,15 56:19,21 63:18	11:7
morgan	24:9 27:14,18,21 28:1	236:17 260:9,10 330:16	notary
3:6 12:2,4	30:10 38:10 39:5 40:21,22	nfpa	333:19 334:1,21
morganlewis.com	41:2 42:16,19 43:9,10	12:8,9 188:5 189:13 199:5	note
3:10,11	45:17 49:13,14 51:12,14	199:6,13,17 200:5 208:19	10:6 160:9 198:17 202:13
morning	51:15,16,19 52:5 57:17	209:14,16 274:21 275:10	231:22
10:3 11:17 12:18 260:22	61:10 65:4 74:17 76:14,16	275:17 277:6 322:13	noted
motivation	78:18 82:4 84:22 85:6,9,19	nist	118:2 154:4 183:7 188:4
218:3,12	92:18 93:15 118:3,4,7	21:13,16,17 22:1,2,8,21	188:20 194:22 248:18
move	122:22 123:1,17 127:7,10	23:6,9,13 24:14,20 27:1,6	notes
101:4	127:15 128:2,4,12 131:6	27:14 43:1,7,13,14,15,21	302:21 305:3,12
moved	131:15 132:6,12,17 133:1	44:2,6,11 45:3 46:2,18	notice
47:9 48:7	133:3,6,7,16,18,22 134:3,7	47:10 48:7,8 54:17,18,18	2:15 87:9 99:22 100:15,17
moves	134:20 136:9,12 140:16	56:7 57:18 61:12 72:14,21	100:22 137:6 167:4 182:20
99:4 331:5	152:16 175:12 178:8 180:8	73:5 93:21 105:4 107:14	211:6,14 233:18 234:5
moving	182:21 189:19 199:4,5	115:3,8 119:9 135:7,10	242:2 246:12 248:20 272:5
58:19 215:18	204:21 209:15 211:3,8	136:22 139:5,14 145:18	notices
msha	216:1,5 218:15 233:20	146:1 153:6,6 184:19	167:18
199:4,9,12 200:6,7	235:12 268:21,22 269:4	191:10,20 195:2 196:21	notifying
mto.com	281:22 288:18 289:15	197:5,5,6,11 198:6 199:1,9	287:17
3:20	294:22 307:8 313:7,10	199:14 200:4,13,17 231:10	
multiple	317:1	231:16,19,20 233:13,15	155:4 237:16
76:15 223:16	nation's	253:16 273:11 311:16,17	november
multiplicity	285:9	311:21,21 312:4,10 313:2	22:9,17,22 23:12 295:18
76:13	ndq	313:16,20 314:6 315:1,8	296:12 300:19
munger	195:1 196:2 199:7	316:4,19 317:2,10,10,14	npc
3:16 12:7	necessarily	319:8 320:4,4,13 321:7,9	65:7 268:17,20 271:18
municipal	213:14,19	321:20 322:4	nspa
331:9,15	necessary	nist.gov	199:10
	72:1 164:6 166:8 200:10	233:11	nttaa
n	324:13	nist's	28:2 177:21 178:6
n.w.		27:16 48:13 138:15 196:14	
2:12 3:7,17	need		
name	13:15 14:6 31:2 102:1	198:19 202:17 313:9	44:14 52:12 83:8 126:19
11:8,17 20:15 169:6	152:19 170:20 190:1	nominated	130:5 138:2,3,7 173:9
189:15 225:2,3 233:3	248:11 265:1 266:20	67:5	187:9 210:5,19 217:15,16
	316:15 321:16	nominating	220:18 251:22 332:19

names 20:13 31:22 86:10 87:17 88:7 89:1,1 90:17,19,22 91:4,10,15,20 92:1,2,6,9,11,20 93:2,6,8 93:12,17 94:6 169:19

211:1,2 231:6,20 232:1 240:7 241:8 242:20 261:13 272:5

neiman

316:15 321:16 needed 18:14 221:3,16 242:9 needs 124:13 151:22 152:4 155:7,12 non 260:21 172:14 194:2 313:16 negative nondated 199:15 210:21 228:8 neglected 266:4 65:16 116:5,7 123:13

231:1 237:16 241:4 248:2

nominating 67:6,7 118:16 nominations nonprivileged nonprofit

71:5 270:12

7 20 :5 220:18 251:22 332:19 0 oath

13:7 object 218:9 309:17 310:1,3,13 312:3,13 313:6 314:10,19 315:7,13,21 316:9,20 317:18 318:2 319:1,21 320:14 321:1,22 322:5

326:14

[objection - organization]

		FF: ()	1 ()
objection	objection (cont.)	office (cont.)	open (cont.)
25:15 26:9 28:12 30:17	254:2,3,9,10,18,19 255:11	297:7 318:13,17 319:13,15	285:4 329:13
31:12 32:6,7 33:7,19 34:17	255:12 256:6 257:21	officer	opening
36:19 37:7 38:20 39:4,19	258:17,21,22 261:5 262:3	73:3,4 334:3	151:12
39:20 41:8,21 43:3,18 45:5	262:21,22 265:18,19 266:6		openness
45:15 47:16 48:5 49:21	266:7 267:14 270:9,10,18	73:10	34:13 36:1 128:21
50:7,12 52:22 54:4 58:2,3	270:19 271:5,6 272:19,20	offices	operate
58:13,14 59:1,16,20 61:19	273:8,9 275:3,11,12,18,19	25:7 27:5 268:17 269:5	75:20 76:4 83:18
62:17 64:12,21 65:11 69:1	276:2,3 278:12 282:8,11	270:4,8,22 271:1	operated
69:20 73:11 77:4,10 78:2,3	283:6,7 284:8,9 286:5,6	office's	121:20 122:1
78:15,16 79:16,17 82:13	287:9 288:7 291:9 292:5	178:18	operates
82:21 83:21,22 84:8,15,19	301:14,17 304:16 305:14	official	114:5 121:20
84:20 86:9,22 87:13,14	307:18 308:3,12 309:2,21	17:8 126:4 303:16	operational
88:4,5,16,17 89:22 90:9,10	310:5,16 323:15 324:20	officio	72:21 73:4
91:7,11,16,21 92:14 94:18	325:13,14 326:5,6,15,22	65:5 68:18	operations
94:19 95:3,4,9,16,17 96:1	327:1,11,17,18 328:4,5,18	ofr	53:21 155:18 226:6 282:16
96:10 97:6 98:13,18,19	328:19 329:5,6 330:1,2,7	196:7,11 319:9	315:4
99:16,17 100:10,11,19	330:12,13 331:1,12,13	ofr's	operative
101:16,20 102:18 103:13	objections	319:17	94:2,3 246:2
104:4,13 105:2,14,15	116:17 321:10	oh	opine
106:2,9,15 107:18,19	objectives	194:13 281:10	142:5,16 144:18 153:15
108:19 109:16 110:12,13	69:4	okay	opined
110:20,21 112:8,9 113:22	obligation	14:13 20:7 23:10 28:14	154:6
114:11,21 117:16,22	89:13,20	56:21 82:9 94:6 96:15	opinion
119:15,16 120:10 121:9	obligations	116:11 161:22 180:4,16	83:1 215:11 243:13,16,20
122:5,17 125:15,19 126:20	89:6,6,7,8 177:22 178:3	181:9 188:3 203:15 265:16	245:11 316:11,11
128:8 129:20 130:16	obviously	281:10,11 311:18 322:8	opposed
131:16 132:13 133:5,19	153:10 196:12 240:7	323:1 331:16 332:12	46:9 101:9 115:4 154:12
134:4 135:16 136:18	occasions	olsen	313:5
137:14 138:17 140:1,10	118:16	12:7	option
	118:16 occupied	12:7 olson	option 242:20
137:14 138:17 140:1,10			l -
137:14 138:17 140:1,10 141:4,5 142:9,19,20	occupied	olson	242:20
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16	occupied 24:1	olson 3:16	242:20 options 242:22 244:18 272:9
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16	occupied 24:1 occur 196:2	olson 3:16 omb	242:20 options 242:22 244:18 272:9
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12	occupied 24:1 occur 196:2 occurred	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3	242:20 options 242:22 244:18 272:9 order
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18	occupied 24:1 occur 196:2 occurred	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring 212:19 occurs 111:12 october 24:5 25:1 288:19	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring 212:19 occurs 111:12 october 24:5 25:1 288:19 offer 268:17 269:4	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring 212:19 occurs 111:12 october 24:5 25:1 288:19 offer 268:17 269:4	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring 212:19 occurs 111:12 october 24:5 25:1 288:19 offer 268:17 269:4 offered 71:17 139:12	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4 215:8,9 217:11,12 218:13	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16 online	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17 104:10,17,21 105:18,22
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4 215:8,9 217:11,12 218:13 218:14 219:3,4,16,17	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16 online 168:2 208:17,20 209:20	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17 104:10,17,21 105:18,22 106:7,13,18 114:8 117:21
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4 215:8,9 217:11,12 218:13 218:14 219:3,4,16,17 221:5,18,19 222:8,15,16	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16 online 168:2 208:17,20 209:20 210:11 212:17 213:2 215:7	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17 104:10,17,21 105:18,22 106:7,13,18 114:8 117:21 120:15 121:22 122:20
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4 215:8,9 217:11,12 218:13 218:14 219:3,4,16,17 221:5,18,19 222:8,15,16 223:5,11 225:8,19 226:4	occupied	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16 online 168:2 208:17,20 209:20 210:11 212:17 213:2 215:7 242:4,9 243:6,21 244:16	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17 104:10,17,21 105:18,22 106:7,13,18 114:8 117:21 120:15 121:22 122:20 123:10 127:22 131:2,9,13 132:4 138:4 140:17 168:11
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4 215:8,9 217:11,12 218:13 218:14 219:3,4,16,17 221:5,18,19 222:8,15,16 223:5,11 225:8,19 226:4 227:21,22 228:11,12 229:7	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring 212:19 occurs 111:12 october 24:5 25:1 288:19 offer 268:17 269:4 offered 71:17 139:12 offhand 31:16 office 9:7 23:13 24:17,18 25:9,10 26:19,22 28:21 47:11 48:7 48:12 85:10,21 86:2 91:2	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16 online 168:2 208:17,20 209:20 210:11 212:17 213:2 215:7 242:4,9 243:6,21 244:16 245:2 250:3 272:8,11	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17 104:10,17,21 105:18,22 106:7,13,18 114:8 117:21 120:15 121:22 122:20 123:10 127:22 131:2,9,13
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4 215:8,9 217:11,12 218:13 218:14 219:3,4,16,17 221:5,18,19 222:8,15,16 223:5,11 225:8,19 226:4 227:21,22 228:11,12 229:7 231:18 234:11 235:17	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring 212:19 occurs 111:12 october 24:5 25:1 288:19 offer 268:17 269:4 offered 71:17 139:12 offhand 31:16 office 9:7 23:13 24:17,18 25:9,10 26:19,22 28:21 47:11 48:7 48:12 85:10,21 86:2 91:2 100:2,21 105:5 139:15	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16 online 168:2 208:17,20 209:20 210:11 212:17 213:2 215:7 242:4,9 243:6,21 244:16 245:2 250:3 272:8,11 320:6,18	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17 104:10,17,21 105:18,22 106:7,13,18 114:8 117:21 120:15 121:22 122:20 123:10 127:22 131:2,9,13 132:4 138:4 140:17 168:11 168:12,12 173:8,10 179:2
137:14 138:17 140:1,10 141:4,5 142:9,19,20 143:10 144:6,22 145:16 146:2,11,19,20 147:14,16 148:7,8,18,19 149:4,12 151:17 152:14 153:4,17,18 154:19,20 155:14,15 156:2 156:11 157:14,17 158:10 158:11 159:3 163:18,19 168:7 169:2,8,16,17 170:16,17 171:7,8,15,16 172:5,6 173:1,2,17 174:3,4 174:13,14 175:7,8,22 176:9 177:4,5,11,12 178:14,20 182:5,9 183:17 186:9,19,20 190:10 193:22 194:16 195:15 197:14 200:20 209:21,22 213:3,4 215:8,9 217:11,12 218:13 218:14 219:3,4,16,17 221:5,18,19 222:8,15,16 223:5,11 225:8,19 226:4 227:21,22 228:11,12 229:7 231:18 234:11 235:17 236:2 237:3 238:9 240:3	occupied 24:1 occur 196:2 occurred 185:5 188:16 253:12 occurring 212:19 occurs 111:12 october 24:5 25:1 288:19 offer 268:17 269:4 offered 71:17 139:12 offhand 31:16 office 9:7 23:13 24:17,18 25:9,10 26:19,22 28:21 47:11 48:7 48:12 85:10,21 86:2 91:2 100:2,21 105:5 139:15 149:15,18 164:18 165:2	olson 3:16 omb 34:10 45:22 79:2 85:3 89:3 90:13 92:5,5,7,20 93:16 101:21 102:7,9,10 114:2 139:7 141:19,20 147:22 150:17 152:18 170:3 204:22 261:13,13 262:5,13 263:9 264:2,17 265:11 267:11,22,22 282:1 287:19 297:7 317:20 318:4 319:9 319:13,17 once 126:16 ones 41:22 257:16 online 168:2 208:17,20 209:20 210:11 212:17 213:2 215:7 242:4,9 243:6,21 244:16 245:2 250:3 272:8,11 320:6,18 open	242:20 options 242:22 244:18 272:9 order 49:20 58:11 75:20 76:4 134:21 221:3,16 225:12 226:17 241:13 279:9 320:20 324:3 orders 93:18 organic 108:5 109:18 organization 5:10 22:16 26:2 33:2,18 34:1,2,3 37:20 40:14 41:1 51:6 71:5 75:9,19 76:3 83:18 84:5 103:5,17 104:10,17,21 105:18,22 106:7,13,18 114:8 117:21 120:15 121:22 122:20 123:10 127:22 131:2,9,13 132:4 138:4 140:17 168:11 168:12,12 173:8,10 179:2 202:9 209:11 221:9 222:19

[organizational - permitted]

[organizational - permitted]			
organizational	owning	part (cont.)	passed
41:14 42:3 117:11,14	167:2 168:11,11 222:1	323:21 328:2	96:6 239:7 287:11
323:18	oxymoron	participants	passes
organizations	306:14	38:4 130:6 154:8 324:6	96:12
32:13,16,18 33:6,13 34:20		325:2,5 327:4,8,20	patent
41:4,7,16,17 42:5,5,6,9	р	participate	62:9,20
44:10 47:3 70:18 72:6,9	p.m.	36:17 37:4,10 39:3,11,16	patricia
75:6 78:8 82:10,12,15	332:17,22	40:3 43:6 44:1,9 45:19	230:22 248:2 260:1,7
105:8,13 106:22 107:5	packaging	46:14 54:1 69:15 121:16	268:15 291:3 293:15 297:8
120:6,8 122:19 128:9	162:15	125:17 126:8 144:2 152:21	
129:22 130:19,20 153:11	page	153:3 211:21 234:4 255:15	181:3 246:7 252:8 256:20
166:10 210:3,6,9,10,16	5:2 119:11 153:22 154:3	297:13 324:1,12 325:11	257:3 263:5 274:7
217:17 222:1 241:19	160:21 161:1,10 165:8,10	326:2,20 330:19 331:10	pauley
269:11,22 274:21 275:9	169:19 170:6 177:15 180:2	participated	188:20 189:4,9,10,12,22
285:5 287:15 305:3,11,22	180:17,17 188:3 194:14	42:22 43:11,12 44:12 47:2	pauley's
308:17 312:6,16 314:7	201:7 204:14 206:6 207:3	56:3 61:7,16,18 63:8 69:19	189:14
315:4 316:7 318:1,8 319:5	210:22 220:5 224:20	105:13 119:18 122:10	pause
324:7,10 325:3,8	237:18 238:14,15,19 242:1	123:11 126:10 143:19	28:13 111:2,4
organization's	252:12,13 253:1 256:15	144:4 153:7 214:17,22	pay
26:4 79:6 131:21 161:3	268:13 272:3 276:10	246:5 308:8	43:15,21 45:3 46:7,9 154:7
311:22 312:11 329:11	280:11 309:11	participating	173:8 323:13 325:10 326:1
organizes	pager	43:17 45:4,8,12 46:1 59:13	326:19
140:13	309:14	121:6 122:7 313:4 326:8	paying
original	pages	331:4	154:12 310:18
261:16	1:22 132:17 207:22 304:13	participation	pen
outbound	paid	30:22 39:22 43:16,22	331:7
222:22	44:6 45:6	48:13,14 60:18 102:12	penalty
outcome	panel	119:10,20 120:14,22 121:1	333:2
334:16	251:11 285:2	122:21 144:10 152:2	pending
outlined	paper	153:10 154:11,17 155:9	14:8
151:19 247:15	181:12 182:13 183:8 331:7	231:1 324:8	pennsylvania
outlines	papers	particular	3:7
169:20 246:13	306:6	35:15 36:15 40:2 48:22	people
outreach	paragraph	76:21 103:9,9 110:4 111:1	55:20 167:16 222:12 242:6
7:14 188:5,17 252:2,4,13	151:19 154:2 162:21	128:1 129:14 130:15 132:5	242:11,16 243:1,8 268:1
252:15,22 254:1,8 284:16	165:16 180:20,22 184:4	134:6 135:6 144:16,19	307:2 328:16
284:21 285:1,15,17 287:5	188:19 194:21 195:4	152:8 169:6 172:14,15	performance
306:12	198:22 199:11 200:12	193:8 197:19 202:11 203:1	162:13
outside	236:12,13 239:12 256:17	214:21 228:3 229:1,5	period
112:18 202:4 283:16 307:7	272:4 303:22	234:22 274:18 312:17	28:21 32:21 44:19 49:17
overall	paragraphs	330:18	101:1 214:11 227:10
78:9 114:4 133:8	155:3 273:17	particularly	239:20 240:12
oversaw	paraphrasing	27:8 257:11,15	periodic
73:6	34:11	parties	198:14 202:17
oversee	pardon	2:16 10:13 36:7 37:1	periodically
62:13	253:7	167:16 168:15 170:10	92:2 126:6,6 127:1 132:20
	part	171:22 217:6,9,20 244:10	198:10 228:20
overseeing 52:2	24:19 31:1 40:20 85:15	334:12,14	
	109:13,15 119:7 120:19	partnership	perjury 333:2
oversees 62:7	127:17 134:22 137:5	257:9,20 258:5,7,9,13	permissible
	138:21 139:17,19 143:12	parts	ı•
oversight 78:6 306:17	143:14,17 154:10,16 159:5	51:9	19:9,10 265:4,14
	164:7 167:2 170:1 226:5	l .	permission
owner	231:9 234:3,18,21 238:8	party	220:19 221:3,11,16 222:10
166:22 221:7,12 327:13	240:14 241:20 282:17	179:8	222:13
owners	314:16 315:5 318:10	passage	permitted
206:21		29:5	110:15,18 226:13 267:5

[permitted - prevention]

permitted (cont.)	planning	portal (cont.)	powerpoint
286:8,13,18	18:12	205:8 209:2 210:18 216:22	290:22 291:6 297:5 298:21
person	plans	217:3,13,14,22 219:1,22	practice
44:1 48:12 63:20 64:1	70:12 71:13 188:6	220:10 223:7 224:17,19	167:6 169:4 195:19 196:14
149:1,9 203:9 245:2 249:8	play	225:7,13 226:18 227:1,16	197:18 221:21,22 222:5,7
personal	214:12	229:3,10,13,14 303:13	222:18,21 228:2,17 263:11
17:7 45:13 47:4 114:19	played	304:2,4,5 306:2	263:14,17,21 264:3 265:12
223:12 227:17 286:19	252:1 332:9	portion	267:12 313:14,17
316:10,11 329:8	please	83:4 157:21 172:20 174:1	practices
personally	10:6,9 11:16 12:11 13:20	174:10,17 175:4 176:11	94:10,15
42:16,21 43:19 45:8 93:4	14:7 15:2,22 77:6 116:20	201:2 246:2 290:12	practitioners
103:20 104:5 178:15 179:5	165:8 180:2 281:4 303:1	portions	143:20
182:18 282:5	304:9 306:5,7 332:2	198:11 200:22	predated
personnel	pleased	pose	121:2
75:12	231:9,12 234:18	166:1	preference
petition	plenary	position	135:6
182:20 183:3 211:1,7	239:8	21:4,6 23:3,14 24:1,3 25:9	preliminaries
233:19 240:7,14 241:9	plus	28:17,19 62:4 66:18 70:4,7	13:3
301:8	160:12 241:5 274:8	70:10,19 71:10 72:7 92:16	prepare
petroleum	point	123:16 145:17 146:1,5	86:1,13 293:6
209:12	13:19 108:21 109:4 116:4	149:16 151:13 178:18	prepared
phase	161:11 162:6 163:2 168:10	181:12 182:12 183:8	14:16 156:9 157:5,8 158:8
220:5	170:5 198:1 200:17 239:11	244:21 250:6 260:9,10,13	159:1 307:6
philosophically	239:18 255:18 261:19	311:21 315:1,9,11 316:1	prepares
274:9	269:17	317:16,21 318:19 320:1,9	293:4
phmsa	pointed	320:11	prescriptive
212:14,16 213:1 215:6	92:17 168:14 187:4	positions	274:16
phone	points	22:13,16 25:6 49:19 50:6	present
18:14	248:10	50:11,15 64:17,19 65:13	2:15 4:19 11:13 151:9
phones	policies	70:14,15,17,22 116:6	179:21 180:16 206:2
10:9	79:8	117:20 122:2 123:10 124:9	288:20 291:11 293:2 295:2
phrased	policy	124:14 311:17 317:10	295:19 297:10 298:7 299:6
208:3	20:20 21:10 23:4 27:8,10	319:18 320:4 321:10,15	300:4,20
physical	43:9,10,12 46:1 48:14,17	positive	presentation
167:15 245:4	49:6,7,11,15 50:21 51:1,10	210:20	132:18 205:20 206:3
pick	51:12,14,16,19,20 65:2,4	possibility	290:22 291:6 297:6,11
10:7	67:13 68:10,12,17,22 70:3	98:6 105:21	298:22 299:11,12
picked	71:11 73:15 105:6 118:3,4	possible	presented
194:7	118:7,9 120:15 123:17	19:15 38:12 55:17 113:3	69:5 185:2 224:21 291:2,7
piece	124:9 127:7,10 150:11,16	135:5 146:12 149:19 227:8	297:8 299:1
185:17 266:22 267:1 287:4	151:14 156:13 157:20	276:4 324:16	presenting
pipeline	158:3,16 181:18 182:1	post	204:15
185:11,13,15 212:7,10,13	183:13 268:22 269:4 281:3	70:13 71:13 221:9	president
214:10,15,19 246:11,20	282:3,19 286:21 287:19	posted	4:20 20:19 53:19 55:9 66:4
248:21 250:2 304:18,19	288:18 289:15 294:20,21	182:17 260:19 262:16	67:22 96:13 251:19 281:2
305:5	294:22 303:18 304:1	posting	286:20 291:3,4
place	319:16 329:15	206:7,13,19 216:11 222:2	presidential
10:9,12 18:2 137:22 151:7	policymakers	285:2	287:12
156:4 171:1 217:18,19	271:4 272:13 273:7,14	postings	presumably
228:19 287:2	political	206:22	71:21
places	60:7 265:15	posts	pretty
125:7	portal	168:16	277:19
plaintiffs	135:22 136:3,4,5 137:3,3,9	-	preventing
1:9 10:22	137:12,17 138:8,11,15	54:22 171:3,14	14:21
plan	139:12,16,18,22 140:7,12	potentially	prevention
252:2	140:22 141:8 168:13,15	309:19	224:6,8

[previous - purposes]

provious	proceedings (cent.)	project	providing (cont.)
previous 129:6 294:6 296:14 299:6	proceedings (cont.) 300:7 301:1	project 132:5	providing (cont.) 220:2 309:14
previously	proceeds	promise	provision
14:11 42:14 54:19 61:15	327:9,16,21	14:3	78:7 127:19 128:7
123:12	process	promote	provisions
primarily	17:10 34:4,12,14 35:1,22	93:21	120:5 140:15 155:7,11
63:12 311:15	36:2 58:20 99:5,22 101:5	promotion	163:7
primary	103:10 127:15,18 128:11	94:7	public
312:14	128:22 129:15,22 131:1,20	promulgating	17:19 20:20 21:10 23:4
principle	132:1,18 134:8 144:12	199:20	57:11 70:3 71:11 73:14
140:4	147:22 154:12,18 155:9	property	83:13 99:3 100:6,15,18
print	175:16 210:14 228:19	72:22 181:17,22 183:12	102:16 144:10 147:2
223:4,10 224:5,5 320:6,19	312:18 313:4 327:21	propose	152:19 166:12,18 168:22
printout	328:12,16,21 329:9,21	177:19	188:5,17 190:1,4,6,13
119:8	331:3	proposed	215:22 216:9 246:4 247:6
prints	processes	6:8 8:9,16 63:17 87:9	248:17,20,22,22 249:1
224:8	26:1 99:19 132:5 329:12	99:22 100:4,22 101:1	257:9,13,20 258:4,7,8,13
prior	procurement	102:15 103:2,22 137:6	261:18 262:8,13,15 276:16
23:14,18 24:12 25:2,3	282:3,17,18	167:4,19 168:17 246:4	277:6,11 281:3 286:20
29:17 72:2 92:4,7 160:6	produce	256:1,20 271:20,21 290:6	301:10 305:5 312:21
183:9 184:13 233:14 323:4	187:15 302:19 313:15	290:11 292:16,22	333:19 334:1,21
private	produced	proposing	public.resource.org
10:7 27:6 30:21 31:5,10	34:12 35:22 117:5,12	99:6,7,12	1:11 4:2 11:1,19 15:19
40:17 46:10 52:9 79:1,9	119:2 150:5 156:21 165:2	protect	107:12 184:7 205:7 215:19
93:22 94:8 189:16 218:5	179:16 191:5 192:18 204:7	89:6,7,9,13,20 312:21	260:18
218:17 219:13 257:9,20	205:15 229:20 233:2 235:7	protected	
	237:10 238:5 240:20	17:10 89:11 207:11 224:13	public.resources.org 196:7
258:4,7,8,13 268:1 284:18 315:15 317:6 324:22 328:7	245:17 256:13 259:8	protection	publication
	268:11 271:14 279:4	1:5 3:13 4:21 10:19 31:20	•
privately 32:5	288:14 289:11 290:3,19	88:12 173:12 189:20 199:5	86:2 92:3,4 publications
	291:18 292:13 293:21	209:15 223:16,21 224:1	223:2
privilege 17:11	294:16 295:13 296:7 297:2		
		260:6 307:8,22 309:16	publicly
privileged	298:1,18 299:20 300:14	314:16 317:12 319:10,18	220:11 267:10,21
266:1,4 267:1,2	302:2,8,14 303:6	321:17	publish
privy	producer	protective	167:4
155:17 261:6	36:11 37:21 38:11,16	279:9	published
pro	producing	provide	58:12 86:13 87:18 88:10
5:12 6:7 119:3,3,13 191:6	89:16	13:5 14:8 50:1,14 53:6	90:20 139:7 277:20,22
probably	product	80:5 81:10,15,19 82:2,10	publishers
44:13 47:20 57:6 66:14	29:6,8 74:11 75:10 134:19	82:11 115:8 130:14 140:14	166:11
69:8 126:10 189:19 226:7	162:12,17 172:13 175:16 production	166:6 168:5 200:22 204:20	100:21 103:5
231:6	16:14 302:3	209:2 210:11 217:2 228:17 286:21 287:22 288:4	
problem			publishing
207:1,4 247:7 311:14	products	provided	90:5,6
procedural	26:1 135:2,3	14:11 80:7 83:12 107:12	purchase
177:18	professionals	119:7 135:12 136:22	175:15 245:3
procedure	52:11,21	139:15 140:11 141:8	purchaser
104:2	profile	186:18 224:12 269:18	134:19
procedures	8:2 280:13,15	provider	purchasers
99:2,9 100:14 101:3	program	224:13	76:21 135:2
329:17	29:4 49:2 78:6,9 80:2,3	provides	purpose
proceeding	programs	51:2 85:22 86:5 114:4	16:20 17:1 57:22 58:4
104:2 170:2 332:21	52:15,16 53:9 166:1	138:8 217:14 219:6,22	151:15,18 190:7 222:3
proceedings	169:10 281:18 284:16	providing	254:8 310:20
289:2,18 290:10 292:4	prohibited	81:3 136:5 172:21 174:2	purposes
294:9 295:5,22 296:17	213:6,7	174:11 175:5 200:13 218:4	176:13 221:11

[pursuant - reference]

pursuant	reached	reasons	record (cont.)
2:15 46:1 96:5 267:5	167:11 213:11	88:8,8,9,11,22 101:8,12,18	279:21 280:3,22 311:5,9
316:21 318:6	reaching	recall	332:17 334:10
purview	329:18	50:5 55:19 61:1 69:18	recorded
121:18	read	80:21 127:3 132:15 185:22	10:15 119:19
put	77:16 93:6,8,12,19 136:5,5	212:19,20 226:15 232:21	recording
67:4 241:14 255:19 264:21	138:8 140:15 141:16 142:2	239:1,5,9,16 253:8 258:11	10:12
331:7	142:3,6 154:2 170:7,20	259:15 260:11 261:13	records
q	171:21 196:10 208:16	272:4	84:22 85:7,9,20 144:9
qualified	209:2 213:6 217:3,14	recalling	175:13 182:21 200:15
1 -	221:4,10,17 224:3,4,17	132:20	211:3,8 233:20 235:12
80:10,12 135:4	240:7 244:3 272:11 275:17	receive	recuse
quality 162:12	277:9,12,13,18,21 278:4,6	15:16 19:11 69:3 233:7	54:8,11 72:8,10
	281:4,6,9,10 305:12,15	327:9,16,21	recused
question	readability	received	54:8 69:11
13:20 14:4,8 29:22 32:9	60:9	15:15 53:21 59:10 62:9,10	redirect
36:21 38:1 40:5 46:6 59:22	reading	145:19 146:4 179:7 279:8	322:22
65:13 75:22,22 76:5 79:12	147:2 167:8,13,15,20,21	receives	reduced
86:17 95:1 97:8 114:7	168:1,5,9,13 170:12 171:6	67:21	334:8
133:15 140:21 145:2,11	171:13 172:2,4 175:1	receiving	reducing
147:8 149:6 158:7 173:21	208:17,22 210:17 242:22	154:13 232:21	88:9
190:19 242:14 244:20	292:6 294:11	recess	refer
261:10,12 263:18 267:21	real	115:18 159:21 203:19	25:12 27:10 40:8 64:6 66:6
330:8 331:19 332:7,13	193:5	280:1 311:7	74:1,8 88:6 90:13 92:11
questioning	realignment	recipient	93:2 96:15,19 97:2 102:4
323:8	24:20	241:1	110:9 197:18 199:16
questions	realization	recognition	207:22 223:18 239:14,22
13:4 14:2 20:4 116:2	160:5	79:21	reference
128:10 184:21 191:16	realize	recognize	6:11,21 7:4 8:12 84:14
242:1 264:20 310:22	14:10	15:9 117:7 150:7 157:1	85:1,4,8,11,14 87:6,7,8,12
311:13,16 322:20	realized	159:11 164:20 179:17	87:16,20 88:2 89:5,13,15
quick	116:2	191:7 204:6,9 205:17	89:20 90:16 94:11,16
322:22	reason	212:9 229:22 230:18	95:12,15 97:5,13,16,19
quite	14:7,21 123:14 158:18,21	232:14 235:9 237:12	98:2,7,10,16 100:8 101:8
30:3 62:22 171:10 248:8	190:22 220:16 233:1,6,8	240:22 245:20 302:6	102:2,15 103:3,7,19,22
268:1	253:11 259:18 267:16,18	recognized	104:11,18 105:1 106:1,8
r	270:12	80:9 161:14 162:2,22	106:14 107:3,8,11,16
rachel	reasonable	recollection	108:11,15 109:8,9,11
3:15 12:6	49:5 138:11 139:9,13	114:20 180:14 187:8	110:10 111:10 112:5,14,22
rachel.miller	140:3 141:10,12 142:1	188:15 236:22 321:14	113:7,13,19,20 114:9,10
3:20	166:12,18 168:22 169:12	330:6	115:3,5,9,10 129:5 134:2
raise	169:14 170:1,8 177:22	recommendation	134:14 135:8,11,22 136:3
128:10	208:12,20 209:19 220:2,3	143:16 144:13 203:1 286:2	136:6,10,16,21 137:1,5,16
raises	242:7,18 244:11 248:11	287:3	137:18,19,20,21 138:1,10
66:5 192:21	249:21 255:22 261:12	recommendations	139:10 140:8 141:1,17
range	263:19,22 272:6 273:1	184:22 185:20 186:1,8,17	142:7,17 143:4,8,17
36:15 75:13 169:10 194:10	I and the second	274:8 285:21	
I .	1		144:20 145:8,14 146:10,18
219:7 312:16 313:3,13,16 325:5,7 328:11,15	reasonably	recommended 67:7	147:13 148:6,16 149:2,11
	140:9 141:2,18 142:7,18		158:13 159:14 163:16
ranging 51:4	143:5,9 144:16,20 165:13	reconstituted	165:20 167:7 168:6 171:4
	165:20 166:3,7 167:3	118:17	175:1,21 177:20 178:13
rayburn	169:21 177:3,10 242:3,8	record	179:4,10 183:1 184:10,20
285:3	242:15 243:6,16,20 244:14	10:4,13 11:16 115:16,20	186:5 187:2 189:7 193:18
reach	272:17 273:22 274:3 275:1	159:19 160:1 193:9 194:2	194:4,6 195:12,14 197:20
137:7 166:21 221:22	320:20	196:3,5 199:8,13 203:17	198:5,8,12 199:3 200:5
254:16		203:21 212:5 214:1 264:22	202:11 205:5,7,22 207:4,7

[reference - replaced]

reference (cont.)	reflect (cont.)	regulation (cont.)	relationships
209:4 210:12 211:11	296:17 298:9 300:7 301:1	202:11 209:4 227:11 229:1	73:17
212:16 213:1,7 214:21	reflected	229:4 234:2 282:3,14	relative
215:6 218:5 219:8,12	131:21 137:8 195:17	283:14 284:1 287:7 318:14	334:13
227:6 228:4,15 234:1	329:10	regulations	released
235:11 241:9 258:4 263:19	reflecting	29:10 77:13,21 78:13	57:11
272:16 273:6,10,22 282:14	261:17	79:13 83:16 85:2,14,15	relevance
283:5,10,14,20,22 284:5	reflects	86:4,15,19 87:19,21 92:6	252:20
288:2,6 291:1 316:6	290:11	94:12,17 95:19,22 96:5,17	relevant
317:11 318:15,19,22	reform	96:20 97:2,5 99:1,7,8,13	28:6 39:12,17 43:14 44:7
319:11,16,20 320:7 321:12	306:17	99:15 100:8,13 102:3,21	45:20 53:9 73:21 92:17
321:17	refresh	108:13,15 109:12 135:9,14	93:15 94:5,7 95:11 108:22
referenced	180:13 236:21,22	136:7,21 137:20 138:1	109:5 114:3 153:12 165:22
83:20 138:7 139:2 161:6	refrigerating	140:8 141:2,17 142:7,17	169:11 175:16 228:15,22
161:12 199:4,17 200:14	1:7 10:20	143:5,9 144:20 147:4	232:4 244:3 252:3 293:17
202:5,15 205:21 227:5,13	refused	152:11 168:6 171:5 182:22	302:21,22 312:21 325:17
303:15,22 304:6	130:12	183:2 193:15 194:18	325:20
references	regard	195:10,18 203:10 211:9,12	reliance
162:7 163:2 187:5 192:6	249:20	218:6 219:9,13 227:13	93:22 94:7 107:21 108:3
192:11 195:5,10 199:10,12		228:15 233:21 283:3,4,9	relied
201:8,16 202:19 203:12	17:5 18:10 19:9 156:7	283:20,21 284:4,12 288:1	314:16
228:18,20,21,22 263:8	170:19 177:22 179:3,9	304:7 318:18 319:3	rely
303:16,20	182:20 184:18,19 188:17	regulators	79:9 108:7,17 111:21
referencing	231:1 240:12 241:6 244:20	313:5	112:2,16 113:3 218:17
170:6 195:21 196:11 213:7	254:1 301:9	regulatory	287:13
referred	register	98:21,22 109:21 115:13	relying
21:1 22:18 33:3 35:20	85:11,21 86:2,14 87:18	152:7 165:22 167:18	112:4 228:9 317:6
114:2,3 183:19 188:11	91:3 100:21 164:19 165:3	185:12 188:7 196:15,18,22	
200:6,7 216:7 240:11	167:6 182:20 211:6,14	197:6,7,9 199:20 215:16	187:20
248:6,15,16 251:13 256:4	233:18 248:20 262:17,20	239:15 240:1 247:5 319:14	
261:3 276:12	272:5 319:15	reimbursed	16:19 42:1 46:21 54:6
referring	register's	45:10	55:18 57:12 63:10 65:17
20:9 25:13 26:6 27:12,13	318:14,18	relate	69:9 71:22 150:8 151:15
28:9 33:17 40:9,10 48:3	regular	89:13,20 128:21	170:6 179:11 182:18 183:5
60:13 64:7 74:3,4,10,21	69:7 159:2,6	related	184:22 185:17 186:3,13,21
91:19 96:8,11 102:6,7	regularly	21:20 22:3 27:2,3,7,8,11	186:22 187:3 190:20 212:1
110:17 112:6,14,21 113:6	126:12,15,18 156:9 157:5	27:11 29:6,6 31:3 51:15,17	212:2 240:6,9,13 250:5
113:14 161:19 162:21	regulate	52:7 60:6 62:8,14,19 63:4	251:5 255:16 277:1 278:19
183:4 189:5,21 191:13	178:4	71:7 72:9,11 78:20 82:2	305:20 315:8
201:5 202:22 207:17	regulated	83:16 93:17 128:4 129:13	remind
223:17,19,22 224:16,18	109:2,7 147:2 164:6	147:5 178:13 185:10 196:5	47:1 48:22 184:1
248:14 249:2 257:19	170:10 171:22 172:8	214:1 230:4 240:8 258:5	remotely
258:12 263:13 275:16	regulation	284:16 287:16 319:3	11:14
276:1 293:12 294:6 306:13	31:2,3 77:3,19 81:18 82:7	334:11	renamed
306:15	85:22 86:7 87:2 90:6,7	relates	24:19
refers	92:16,22 93:5 97:9,14,16	130:22	repeat
111:9 178:7 182:19 185:10	97:19 98:3,11,17 101:11	relating	75:21 141:22 149:6 171:10
185:11 192:15 199:16	102:16 103:4,19 104:1,11	260:19	repeated
212:6 215:21 219:19	104:18 105:1 106:1,8,14	relation	161:14 162:2
241:18,22	107:17 113:1,8,14,21	219:12	repetition
refine	114:10 115:5,11 129:5	relations	218:19
248:11	145:8,15 146:10,18 147:13	20:20 21:9 23:4 70:3 71:11	
reflect	148:6,17 149:3,11 163:3	73:14 188:5 190:1,7,13	13:21 22:13 59:22 77:6
79:5 132:15 203:5 259:11	163:12,16,17,21 164:2,4	281:3 286:20 291:3 306:20	
280:12 289:2,17 290:9	165:22 177:2,9 196:18	relationship	201:14
292:4,21 294:9 295:5,22	197:1 198:9 199:21 201:18	282:19	

[report - safety]

29:8 38:9 58:18 81:20

	1	1	
report	requirements (cont.)	responsibility (cont.)	right (cont.)
5:13 8:4,7,21 83:7,11,12	127:18 128:17,19,21 130:1	198:19,20 228:18	169:19 216:13 237:21
148:22 149:6,8 150:10	131:3,18,20 135:4 162:16	responsible	250:22 252:21 266:17
155:21 288:17 289:1,14	164:5,8 247:1 329:10	52:1 72:20 73:16 99:6,12	294:6 309:5
294:19 295:4	requires	124:13 127:14 134:7 166:9	rights
reported	75:19 76:3 77:12 80:1	203:9	181:18,22 183:13 184:8
1:19 51:22 73:3,9,10	208:12 225:11	restriction	ring
reporter	requiring	224:5	67:4
11:10 12:11 13:12 116:15	208:1,20 209:19 243:16,21	restrictions	risumi
reporting	resolved	308:17	46:20,22 48:22 50:1,14,17
164:8	247:14	result	66:11
reports	resource	19:13 102:16 103:4 104:1	robust
51:8 53:19,20,21 62:9,10	17:19 215:22 216:9 276:16	107:13 203:6 228:9,9	313:15
107:11 156:7,12	277:7,11 301:10	243:22	role
represent	resources	retailers	22:6 65:21 84:4 105:11
40:17,19 107:7 193:6	21:12 22:7 23:6 72:13,18	135:3	121:8 122:7 124:3 127:6
representation	72:20 73:2,7 138:21	retained	152:12 286:19 332:9
36:14	140:14 260:13 317:5,5	201:16 332:20	roles
representative	respect	retired	53:12
125:4	18:10 20:4 27:1 72:15 82:1		room
representatives	89:4 128:4 141:10 152:1	187:19	11:13 167:9,13,15,16
38:18 39:2 269:10 305:4	175:13 193:2 206:22 222:1		168:1,13 208:18,22 242:22
306:19,20 319:14 327:6	242:20 263:18,21,22 264:9	70:12 71:13	rooms
representing	282:15 287:4 293:16 301:2		147:3 167:22 168:5,9
11:19,22 40:22 43:13	315:12 317:10,12,21,22	271:19	210:17
123:1	318:7,14,18,20 319:4,9,18	revenues	row
represents	320:4,11 321:11,16	83:4	252:19 253:1
1 -			
1 41·7 10	respectfilliv	reverity	ITIIIE
41:7,10	respectfully	reverify 193:19:21	rule 87·10 99·5 101·2 137·7
reproduced	236:14	193:19,21	87:10 99:5 101:2 137:7
reproduced 176:13 290:13 298:12	236:14 respective	193:19,21 review	87:10 99:5 101:2 137:7 170:9,22,22
reproduced 176:13 290:13 298:12 reproducing	236:14 respective 2:16 227:5	193:19,21 review 14:16 51:22 86:12 99:22	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking
reproduced 176:13 290:13 298:12 reproducing 89:16	236:14 respective 2:16 227:5 respond	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9
reproduced 176:13 290:13 298:12 reproducing 89:16 reps	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required 28:17 31:11 68:13 71:14	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16 241:14	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7 revises	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3 s safety 29:8 73:2 77:17 78:5,7
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required 28:17 31:11 68:13 71:14 76:20 77:2,9 86:7,20	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16 241:14 responsibilities	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7 revises 201:17	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3 s safety 29:8 73:2 77:17 78:5,7 79:14 80:7,15 81:14,20
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required 28:17 31:11 68:13 71:14 76:20 77:2,9 86:7,20 116:18 165:11 225:5	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16 241:14 responsibilities 21:21 22:2,4 27:13 51:13	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7 revising	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3 s safety 29:8 73:2 77:17 78:5,7 79:14 80:7,15 81:14,20 82:3 83:15 84:6,10 133:12
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required 28:17 31:11 68:13 71:14 76:20 77:2,9 86:7,20 116:18 165:11 225:5 226:12,17 243:6 320:6,18	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16 241:14 responsibilities 21:21 22:2,4 27:13 51:13 67:16 68:6 72:14 73:13	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7 revises 201:17 revising 147:22	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3 \$ safety 29:8 73:2 77:17 78:5,7 79:14 80:7,15 81:14,20 82:3 83:15 84:6,10 133:12 162:13 185:11 199:3
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required 28:17 31:11 68:13 71:14 76:20 77:2,9 86:7,20 116:18 165:11 225:5 226:12,17 243:6 320:6,18 requirement	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16 241:14 responsibilities 21:21 22:2,4 27:13 51:13 67:16 68:6 72:14 73:13 105:3,4 108:1 109:21	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7 revises 201:17 revising 147:22 revision	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3 \$ safety 29:8 73:2 77:17 78:5,7 79:14 80:7,15 81:14,20 82:3 83:15 84:6,10 133:12 162:13 185:11 199:3 208:18 209:6 212:7,14
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required 28:17 31:11 68:13 71:14 76:20 77:2,9 86:7,20 116:18 165:11 225:5 226:12,17 243:6 320:6,18 requirement 52:4 128:11 129:10 170:8	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16 241:14 responsibilities 21:21 22:2,4 27:13 51:13 67:16 68:6 72:14 73:13 105:3,4 108:1 109:21 110:4,6 215:16 247:5	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7 revises 201:17 revising 147:22 revision 22:1 27:22 56:15 79:2	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3 \$ safety 29:8 73:2 77:17 78:5,7 79:14 80:7,15 81:14,20 82:3 83:15 84:6,10 133:12 162:13 185:11 199:3 208:18 209:6 212:7,14 214:20 246:11,20 248:21
reproduced 176:13 290:13 298:12 reproducing 89:16 reps 270:3 republican 257:16,18 258:14 request 6:19 7:3 107:14 119:8 168:16 212:15 231:7,7,21 235:10 236:14 246:6,15,18 requesting 19:17 261:22 262:1 requests 211:10 232:6 233:22 302:3 require 78:1,14 79:15 required 28:17 31:11 68:13 71:14 76:20 77:2,9 86:7,20 116:18 165:11 225:5 226:12,17 243:6 320:6,18 requirement	236:14 respective 2:16 227:5 respond 101:4 193:2 231:11,16 232:5 263:3,5 responding 276:11 302:5 responds 99:4 248:7 263:4 274:6 response 6:19 7:3 19:11 21:20 119:7 203:7 211:18,22 212:3 216:11 231:6 234:5 235:10 236:9 237:2 244:4,19 246:6,7 272:4 274:11 302:2 303:21 responses 13:16 111:22 187:16 241:14 responsibilities 21:21 22:2,4 27:13 51:13 67:16 68:6 72:14 73:13 105:3,4 108:1 109:21	193:19,21 review 14:16 51:22 86:12 99:22 127:12 183:10,20,22 194:10 200:15 201:3 202:17 231:2,3,10 234:4 234:19,22 239:20 240:12 245:5 256:16,21,22 257:2 261:18 305:19 review.docx 236:9 reviewed 60:16 195:19 reviewing 60:3 194:18 203:9 236:20 reviews 100:3 201:17 revised 139:7 262:7 revises 201:17 revising 147:22 revision	87:10 99:5 101:2 137:7 170:9,22,22 rulemaking 86:3 87:10 100:1,22 103:9 137:6 166:21 167:5 168:18 170:9,13 217:5 239:21 rules 100:1,4 167:19 303:17 running 316:8 runs 194:11 russell 16:10,18 19:2,7 20:3 264:7 267:7 russo 1:20 4:22 11:8,11 334:3 \$ safety 29:8 73:2 77:17 78:5,7 79:14 80:7,15 81:14,20 82:3 83:15 84:6,10 133:12 162:13 185:11 199:3 208:18 209:6 212:7,14

14:4,6 111:17 132:16

115:12 127:10 197:3,8

[sale - significant]

		1	1 -
sale	scott (cont.)	security	session
315:5 327:22	268:14 291:2 299:2	312:22	158:1,3,15 159:14 160:13
sales	screen	seeing	305:21
327:10	224:7,8	200:7	set
sally	sdo	seeking	13:3 126:18 132:17 255:9
4:20 12:9	40:12 120:1,3,4,6,20	72:6 247:6 248:20 329:15	307:2 331:16
san	151:21 167:2 216:4 221:4	seen	setting
4:6	221:16 255:21 260:17	16:7,8 119:4 160:14 191:1	210:9
sau	268:18 306:11	251:2 254:11 263:7	settlement
9:22 302:9 303:1 304:9,14		select	127:19 128:7 329:17
306:7 307:13 308:19	119:14 120:8,14 131:4	256:19	seven
309:11	138:10 141:9 155:5,11,18	selected	149:14,17 183:6 240:8
saunders	166:17 167:11 168:21	67:6 70:5	share
1:14 2:9 5:2 8:3 10:15	169:11 184:8 188:8 208:15	I .	125:8,12 261:20 264:15
12:12,18 15:7 16:5,13 20:5		50:19 236:14 256:18	265:14,16 269:12 325:4,6
20:12,13,17 116:1,11	212:14,22 213:11 215:5	273:19 331:10	327:21
118:22 160:4,19 180:7	220:7,13,18 261:21 270:3	sending	shared
231:8 248:8 252:19 253:4	270:3,8 272:10,12 273:4,5	271:22	125:8 264:11 266:1 310:7
256:21 267:10 268:16	274:2 306:2,22 314:16	sends	325:1
280:8 323:4 332:1,18	323:13,16,21 328:10,14	260:1	sharing
333:11	329:2,7,20	senior	285:14
save	sdo's	132:19 293:13,16 310:8	sheet
320:6	221:17 270:21	sense	215:22
saying	se 17.00	96:22 135:12 269:1,2,3	short
90:4 142:4 146:8 149:1,9	17:22	sensitive	115:18 159:16,21 203:14
186:16 234:16 263:5	search	10:7	203:19 280:1 311:7
266:22	72:3	sent	shortened
says	searched	18:7 19:6 63:19 183:8	185:13
119:8 151:8,11 155:4	302:20	184:6 185:20 216:9 235:12	
160:21 161:22 162:10	searches	237:15 238:7 260:17	334:7
165:11,19 166:8 170:5	206:18	268:16	shot
171:20 177:17 180:7,22	searching	sentence	224:7
181:9 183:7 184:4 186:16	193:15	171:20 236:13 239:12	show
188:4,13,19 191:19 192:5	second	256:18 273:11	279:6
192:10 204:14,19 205:3	25:9 43:4 111:3,5 118:18 158:14 171:20 180:20	separate 66:20 198:3	showcase 151:21
206:5,11 207:3,13 208:15	191:10 206:6 238:18	separately	
209:18 210:22 211:5,17 212:12 216:13 217:2 218:3		241:17	showcased 248:9
220:5,9,15,18,22 223:15	303:21 328:13	serve	sibr
224:3,20 226:11 227:1	secretary	64:10	137:12 138:5,16 139:5,15
231:8,16 232:19 233:17	23:19	served	191:16,21 195:1 196:3
236:8,13,19 238:19 239:12		32:15 43:10 44:15 49:12	202:15 203:4
242:5 244:8 246:7 248:3	28:1 39:7 78:20,21 79:3	55:13,21 56:2 65:18 66:18	sibrs
251:17,21 252:19 253:2,3	101:22 198:17 213:6 244:3	1	199:22
255:19 256:17,18 260:7	sections	serves	side
268:15 271:17 272:3 274:6		124:6	124:16 267:6
279:7 281:4 303:12,14,22	sector	service	sides
schrotter	27:6 30:21 31:5,11 35:13	21:14 81:13 206:18 209:8	207:20
230:22 248:3 268:15	35:19 40:17 46:10 52:9	209:17	sign
science	71:8 79:1,9 218:5 219:13	services	226:12
60:7 180:8 204:21 252:7	268:2 284:18 315:15 317:6	l .	signed
scope	324:22 328:7	26:1 47:12 48:8,13 49:4,9	96:12 287:12
84:5 110:4 197:3	sectors	82:2 135:19 149:14,17	significant
scott	133:13	185:7 192:16	143:12 207:1 247:2,3
230:21 231:15 248:1,5,7	secure	serving	325:4
251:9,16 254:13 256:19	225:4	153:10	

[similar - standards]

18 19 20 20 20 20 20 20 20 2	similar	sounds	specification	standard (cont.)
simpler 219:7111 5imply source 91:22 92:12 94:14 228:3 5ources 163:61.2 201:21 202:2 5pecification 106:11 0.015 10.09.17 106:13 10.09.15 109:15 10.09.17 106:13 10.09.15 106:13 10.09.15 109:15 10.09.17 115:45.9 10.015 10.19.9 19 115:45.9 10.015 10.19.9 19 122:15 128.13.14 12.015 11.19.9 19 115:45.9 10.19.15 10.19.19 122:13 124.15.2 18.19.11 115:47.19.17 10.19.11 115:47.19.17 10.19.11 115:47.19.17 10.19.11 115:47.19.17 10.19.11 115:47.19.17 10.19.11 115:47.19.17 10.19.11 115:47.19.17 10.19.11 115:47.19.17 10.19.19.19 115:47.19.17 10.19.19.19 115:47.19.17 10.19.19.19 115:47.19.17 10.19.19 115:47.19.17 10.19.19.19 115:47.19.17 10.19.19.19 115:47.19.17 10.19.19.19 115:47.19.17 10.19.19.19.19 115:47.19.19.19.19.19 115:47.19.19.19.19.19.19 115:47.19.19.19.19.19.19 115:47.19.19.19.19.19.19 115:47.19.19.19.19.19.19 115:47.19.19.19.19.19.19 122:11.19.19.19.19.19.11 132:67.13.14.10.10.19.19.19.19.19.11 132:67.13.14.10.10.19.19.19.19.10.11.10.10.10.10.10.10.10.10.10.10.10.			-	` ,
219.71 21.14 138.6 160.9 35.18 50.00 20.11 12.02.15 20.11				
simply 1126 it 13:14 138:6 160:9 35:18 20:11:11 172:1 175:1 218:19 35:18 20:11:11 172:1 175:1 218:19 35:18 36:18 36:18 36:18 36:18 36:18 36:18 36:18 36:18 36:18 37:22 20:21 22:14 37:23 39:34 36:18 37:23 39:34 36:11 36:13 36:18 36:19 36:18 36:19 36:18 36:19 36:18 36:19 36:19 36:18 36:19 36:18 36	_		,	
1126 11314 138.6 160.9 space 108.22 span 5810 108.22 span 5810 168.9 176.6,21 126.11 12.41 129.4 129.1 130.15 131.8,15 122.13 129.1 126.11 12.14 129.1 126.1	,			
170.11 172.1 175.1 218.19 space 108.22 span 219.21 285.13 319.22 21.22 21.24 27.17 227.3 200.20 221.4,7 221.5 108.22 speak 27.20 22 36.21 .22 37.16 37.22 40.4 54.18 594. 75.5 78.21 37.81 32.0 135.1,18 137.5 37.22 40.4 54.18 594. 75.5 78.21 37.81 32.0 135.1,18 137.5 37.22 40.4 54.18 594. 75.5 78.21 37.81 32.0 135.1,18 137.5 37.81 34.13,20 135.1,18 137.5 37.81 34.21 16.13,21 16.23,21			1	
site site span 219:21 286:13 108:22 specifics 69:10 168:9 176:6.21 136:14 187:3 250:6 266:12 129:18 130:15 131:8,15 136:14 187:3 250:6 266:12 136:14 187:3 250:6 266:12 136:14 187:3 250:6 266:12 136:14 187:3 250:6 266:12 136:14 187:3 250:6 266:12 136:14 187:3 250:6 266:12 136:14 187:3 250:6 266:12 137:8 183:14 187:5 137:8 138:14 187:5				
site span 69:10 188:9 176:6,21 132:6,11,12 133:3,4 17,18 145:7,14 146:9,17 147:12 137:14 146:9,17 147:12 132:6,11,12 133:3,4 17,18 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 145:7,14 146:9,17 147:12 147:12 159:22:18 144:177:29 147:12 179:19 179:15 199:15	I .			
173.9 220.21 221.4,17 215.1 speak 27.20,22 36.21,22 37:16 37.22 40.4 54.18 59.4 75.5 59.00				
sitting 77:22 78:13 103:11 77:22 78:13 103:11 77:22 78:13 103:11 77:22 78:13 103:11 77:22 78:13 103:11 78:17 87:2,15,21 88:15 114:4 90:12 977:99:18 103:10 106:18 110:19 116:12,18 30:14 139:20 146:1 146:21 139:20 146:1 146:21 144:11 155:5 332:19 144:11 155:5 332:19 144:11 155:5 332:19 222:18 244:4 254:12 206:9 206:9 206:9 206:19 222:18 244:2 54:12 206:20 270:20 284:12 206:20 270:20 284:12 206:5 207:13 212:6 215:18 215:18,21 216:13,211 220:15 221:21 223:15 227:11 220:15 221:21 233:15 227:12 233:15 227:12 233:15 227:13 227:15 227:11 237:16 216:7,9,11,15,19,276:13 276:21 277:3 smacna 216:7,9,11,15,19,276:13 276:21 277:3 smacla 216:7,9,11,15,19,276:13 276:21 277:3 smacla 216:7,9,11,15,19,276:13 276:21 277:3 small 66:5,6,133:8,140:12 141:9 special 225:7 special 225:7 special 225:7 special 33:7 33:715 solety 37:77 sole 37:717 sole 37:717 sole 27:712 78:12 79:13 37:715 solutions 21:11 11:6,9,12 332:20 274:15 284:2 287:3 292:1 308:13 13:2:6 247:12 208:22 23:2 40:5 265:17 209:22 23:11,10 209:22 23:11,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,20 209:22 23:12,		1 -		
Trick Tric				1
37:22 78:13 103:11 37:22 40:4 54:18 59:4 75:5 for 78:18 103:10 specity 134:21 48:5,15 149:2,10,14,16 161:22 162:20 163:15 161:22 162:20 163:15 161:22 162:20 163:15 177:215 175:15 175:15 175:14 177:21 01:12:15 175:14 177:21 01:12:15 175:14 177:21 01:12:15 175:14 177:21 01:12:15 175:14 177:21 01:12:15 175:14 177:21 01:12:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71,21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13 196:3 190:4 195:5,71:21:13:13 196:3 190:4 195:5,71:21:13:13:13:13:13:13:13:13:13:13:13:13:13				,
Situation			I .	
114.4 90:12 97.7 99:18 103:10 244:17 272:9 167.7 169:1 172:15 175:14 177:2,10 179:1 186.4 199:1,11 136.5 199:1,11 136.5 136.1 199:1,1 136.5 136.1 199:1,1 136.5 136.1 199:1,1 136.5 136.1 199:1,1 136.5 136.1 199:1,1 136.5 136.1 199:2,1 136.5 136.1 199:2,1 136.5 136.1 199:2,1 136.5 136.1 199:2,1 136.5 136.1 199:2,1 136.5 136.1 199:2,1 136.5 136.1 199:2,1 136.5 136.1 136.5 136.1			1 -	
Situations 106:18 110:19 116:12,18 244:17 272:9 177:2,1 0 179:1 186:4 190:4 195:5,7,12,13 196:3 196:2 187:2,1 0 179:1 186:4 190:4 195:5,7,12,13 196:3 196:4 197:12,10 (199:1 199				l .
30:14 six 139:20 145:1 146:21 six speculate 190:4 195:5,7,12,13 196:3 196:4 195:5,7,12,13 196:3 196:4 195:5,7,12,13 196:3 196:4 197:12,192 198:1 199:15 spoke 190:4 195:5,7,12,13 196:3 196:4 196:15 199:15 spoke 190:4 195:5,7,12,13 196:3 196:4 196:15 spoke 190:4 195:5,7,12,13 196:3 196:4 196:20 196:5 196:4 197:12,192 20:9 198:1 202:2 202:1 202:0 198:1 202:2 202:2 202:1 202:0 198:1 202:2 202:2 202:1 202:0 198			, -	I .
six 154:22 164:9 210:19 199:15 199:15 196:4 197:12,19;2 298:1 198:2,7 201:12 202:9 213:8 221:4 227:6,8 198:2,7 201:12 202:9 213:8 221:4 227:6,8 198:2,7 201:12 202:9 213:8 221:4 227:6,8 198:2,7 201:12 202:9 213:8 221:4 227:6,8 198:2,7 201:12 202:9 213:8 221:4 227:6,8 228:10 229:4,6 245:1,3,4,5 245:5 260:19 272:16 245:5 260:19 272:16 228:13 315:20 322:10,14 322:18 323:14 330:16,17 33:13 315:20 323:14,14 322:18 323:14 330:16,17 33:13 315:20 323:14,14 322:18 323:14 330:16,17 33:13 323:14 325:11 31:13 21:14 21:11 32:11 12 32:14 227:12 32:11 12 32:14 227:12 32:11 12 32:14 227:12 32:11 12 32:14 227:12 32:11 12 32:14 227:12 32:11 12 32:14 227:12 32:11 12 32:14 227		The state of the s	l .	I ·
144:11 155:5 332:19 skyrocketed 206:21 270:20 284:12 206:9 326:16 329:8 331:6 speaker 63:17 slide 206:5 207:13 212:6 215:18 229:5 speakers 215:18,21 216:13,21 220:15 221:21 223:15 227:1 314:9 220:15 221:21 223:15 227:1 316:13 speaks 274:19 slower 216:13 116:13 small 276:21 277:3 small 276:21 277:3 small 276:21 277:3 specialist 277:19 61:5,6 133:8 140:12 141:9 272:14 273:14 275:12 37:17 society 37:17 society 37:17 society 37:17 society 37:17 solicy 37:17 so			, -	
skyrocketed 266:21 270:20 284:12 326:16 3298 331:6 19:1 306:1 spoken 213:6 221:4 227:6,8 226:1,3,4,5 state (63:17 slide speaker (63:17 slide 20:5; slide 20:5; 20:5; 221:21 223:15 20:6; 20:5; 221:21 223:15 221:21 223:21 222:21 161:20 189:1 22:22			l .	
206:9 slate speaker 63:17 63:17 63:17 63:17 63:17 63:17 63:17 63:17 63:17 63:17 63:17 63:18 44:18 43:18 44:18 43:18 44:18 41:1			, •	I ·
slate speaker 214:8.14 245:5 260:19 272:16 63:17 61:9,12 246:5 sponsoring 283:13 315:20 322:10,14 206:5 207:13 212:6 215:18 215:18,21 216:13,21 220:15 221:21 223:15 249:5 speaking 331:3 220:15 221:21 223:15 36:10 38:8 41:10 260:20 spreadsheet 252:11 standardization 274:19 94:10 273:11,14 speaks staff 200:14 51:15 73:21 74:2,7 121:22 slower 192:11 98:22 151:20 153:6 223:2 staff 229:12 291:2 161:14 162:20 189:1 smacna 216:7,9,11,15,19 276:13 154:13 226:7 36:16 2497 252:6 253:19 255:6,10,21 267:22 standardization 272:14 277:3 special 154:13 226:7 236:16 2497 252:6 253:19 255:6,10,21 267:22 253:19 255:6,10,21 267:22 253:19 255:6,10,21 267:22 253:19 255:6,10,21 267:22 253:11 32:15 267:19 247:9,11 241:8,12 20:1 241:8,12 20:1 241:8,12 20:1 241:8,12 20:1 241:8,12 20:1 241:8,12 20:2 253:19 255:6,10,21 267:22 253:19 255:6,10,21 267:22 253:19 255:6,10,21 267:22 253:19 255:6,10,21 267:22 253:19 255:6,10,21 267:22 253:19			l .	1
63:17 siide siide 206:5 207:13 212:6 215:18 215:18,21 216:13,21 220:15 221:21 223:15 227:1 314:9 36:10 38:8 41:10 260:20 314:9 36:10 238:8 41:10 260:20 314:9 36:10 274:19 39:10 273:11,14 3peaks 274:19 3peaks 274:19 3peaks 216:7,9,11,15,19 276:13 3pecial 216:7,9,11,15,19 276:13 3pecial 216:7,9,11,15,19 276:13 3pecial 216:7,9,11,15,19 276:13 3pecial 276:21 277:3 3pecial 275:15 327:17 327:17 32		I .	-	
slide 206:5 207:13 212:6 215:18 speaking 332:18 323:14 330:16,17 206:5 207:13 212:223:15 249:5 5peaking 331:3 220:15 227:21 223:15 36:10 38:8 41:10 260:20 314:9 5peaks 252:11 274:19 94:10 273:11,14 speaks 51:15 73:21 74:2,7 12:22 12:20 161:20 189:1 26:3 30:20 40:18 41:1 51:6 51:15 73:21 74:2,7 12:22 12:20 161:20 189:1 26:3 30:20 40:18 41:1 51:6 51:15 73:21 74:2,7 12:22 12:20 161:20 189:1 20:14 standardization 26:3 30:20 40:18 41:1 51:6 51:15 73:21 74:2,7 12:22 12:20 161:20 189:1 20:01:4 standardization 26:3 30:20 40:18 41:1 51:6 51:15 73:21 74:2,7 12:22 12:20 161:20 189:1 12:11:22 22:1 18:48:12 12:11:19 284:16 317:7 26:3 19 64:1 67:22 91:2 29:20 161:20 189:1 21:11:19 284:16 317:7 25:11 34:12 23:12 26:16 221:18 48:12 25:7 25:17 23:16 62:49:7 25:26 25:17 23:16 62:49:7 25:26 25:17 28:17 28:28 26:16 221:20 23:11,11 21:11 29:22 20:11 21:11 29:22 20:11 22:11 27:23 26:16 249:7 25:26 25:17 28:12 29:32 29:12 25:17 28:13 22:32 29:12 25:17 28:12 29:32 29:12 25:17 28:12 29:32 29:12 25:17 28:12 29:32 29:12 25:17 28:13 29:13 25:1		1 -	,	I and the second
206:5 207:13 212:6 215:18		I control of the cont	, .	
215:18,21 216:13,21 220:15 221:21 223:15 227:1			I .	1
220:15 221:21 223:15 227:1 227:1 2314:9 314:10 260:20 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:10 260:20 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:10 260:20 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:10 260:20 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:9 314:10 260:20 314:9 314:9 314:9 314:10 260:20 314:9 314:9 314:9 314:10 273:11,14 37:9 40:3,8 42:12,18 48:12 263:19 264:1 67:22 91:2 266:1 284:9 725:6 319 264:1 67:22 91:2 266:1 284:7 25:6 319 264:1 67:22 91:2 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 36:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 326:10 326			, -	
227:1 slighted			I .	
slighted speaks 94:10 273:11,14 staff 37:9 40:3,8 42:12,18 48:12 211:19 284:16 317:7 slower 116:13 special 192:11 37:9 40:3,8 42:12,18 48:12 211:19 284:16 317:7 smacna 216:7,9,11,15,19 276:13 special 226:7 236:16 249:7 25:6 223:2 standardizing 161:14 162:2,22			, -	I .
Second			l .	I to the second
slower spec 63:19 64:1 67:22 91:2 standardizing 116:13 special 246:7,9,11,15,19 276:13 25:7 25:11 25:31 9 255:6,10,21 267:22 25:11 267:22 25:4 25:11 267:22 25:22 22 25:11 267:22 25:23:22 25:23:13 24:7,9,17 25:11 267:23 25:2 25:11 267:22 25:2 </td <td>slighted</td> <td>eneake</td> <td>statt</td> <td>│ 122·20 161·20 189·1</td>	slighted	eneake	statt	│ 122·20 161·20 189·1
116:13 smacna 216:7,9,11,15,19 276:13 special 154:13 special 154:13 special 154:13 special 154:13 specialist 25:7 specific 26:5,6 133:8 140:12 141:9 272:14 273:14 society 31:1 32:15 47:19,21 54:7 solety 12:19 137:19 146:13 132:7 15 149:21 166:4 168:20 180:1 solety 193:7,9 195:4,6 196:3,4,16 193:7,9 195:4,6 196:3,4,16 193:7,9 195:4,6 196:3,4,16 21:11 11:6,9,12 332:20 27:10:12,12 273:11,20 22:6 6 228:9 sorry 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7 44:14 57:12 77:22 76:9 96:20,21 97:20 122:6 standard specific 25:7 31:4,10 32:5,13 34:8 75:1,3,4,15 76:13 78:19 35:23 69:93:18 38:7,12 35:23 69:93:18 38:7,12 35:23 69:93:18 38:7,12 35:23 69:93:18 38:7,12 35:23 69:93:18 38:7,12 35:23 69:93:18 38:7,12 35:24:11 326:8 330:19 32:2 36:16 249:7 252:6 standards 22:11:12		1 -		I .
smacna special 226:7 236:16 249:7 252:6 standards 216:7,9,11,15,19 276:13 specialist 25:19 255:6,10,21 267:22 8:11 9:13 17:5 20:21 21:1 small 25:7 266:5,6 133:8 140:12 141:9 25:7 287:18 293:6,11,11,16 24:18,19,21 25:12,20,21 society 31:1 32:15 47:19,21 54:7 31:1 32:15 47:19,21 54:7 322:11 105:7,7 109:10 322:11 105:7,7 109:10 322:11 32:2 33:15,5 29:9,12,14,16,20,22 30:5,7 sole 121:119 137:19 146:13 121:19 137:19 146:13 322:15 322:10:12:19 23:12:17 30:9,12,16 31:7,16 32:4,15 solely 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 329:32 32:16,17 33:5,12,17,22 solutions 270:12,15 273:11,20 210:8 222:3 240:5 265:17 33:14 325:6 328:11,15 329:14 34:2,5,6,19,20 35:1,4,5,6 sorry 306:21 314:12 330:14 306:12 314:12 330:14 322:12 247:21 32:12 25:5,7,11,13,20 53:8 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 32:10,17,3,4,15 76:13 78:19 328:12 11:16 198:13,13 266:13 128:13 141:20 164:10 33:14 325:6 328:11,15 35:22 36:9 37:18 38:7,12 35:12 55:7,11,13,20 12:1	274:19	94:10 273:11,14	37:9 40:3,8 42:12,18 48:12	211:19 284:16 317:7
216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 solety 37:15 solety 37:17 solutions 27:11 11:6,9,12 332:20 27:12 198:1 199:7,11 solutions 27:11 11:6,9,12 332:20 27:12 287:13 243:15 287:13 293:6,11,11,16 28:13 38:14 293:6,11,11,16 28:213 11:3 2:15 23:13 24:7,9,17 28:306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 32:16,17 33:5,12,17,22 38:10:17,20 312:2,7 solutions 21:1 11:6,9,12 332:20 27:15; 27:2 198:1 199:7,11 20:22 20 203:11 209:7 210:1 306:21 314:12 330:14 specific 32:11 32:15 47:19,21 54:7 stage 170:9,22 331:5,5 stages 32:16,17 33:5,12,17,22 38:11 32:16 31:7,16 32:4,15 stages 32:16,17 33:5,12,17,22 38:11 32:16 31:7,16 32:4,15 stages 32:11,11:6,9,12 332:20 27:12,15 273:11,20 20:22 02 203:11 209:7 210:1 306:13 34:12 330:14 stages 38:11 9:13 17:5 20:21 21:1 24:18,19,21 25:12,20,21 25:22,22 26:16,18,22 12:12 27:3,7,9,11 28:4,7,9,10,18 stages 32:16,17 33:5,12,17,22 38:11 32:15 47:19,21 54:7 38:41; 32:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,22 12:2 269:16 271:1 278:8 285:12 25:22,22 26:16,18,22 12:12 27:3,7,9,11 28:4,7,9,10,18 stages 32:16,17 33:5,12,17,22 38:11 32:15 47:19,21 54:7 30:9,12,14 13:26:8 330:19 331:7 30:9,12,16 31:7,16 32:4,15 32:11 32:3 23:3 23:19 25:22,22 26:16,18,22 12:2 269:16 271:1 278:8 285:12 25:22,22 26:16,18,22 12:12 27:3,7,9,11 28:4,7,9,10,18 stages 32:16,17 33:5,12,17,22 38:11 32:15 47:19,21 54:7 30:9,12 331:5,5 30:9,12,16 31:7,16 32:4,15 30:19 30:11 310:9 323:19 30:19 30:7:1 310:9 323:19 32:11 32:15 47:19,21 54:7 32:2 33:13 24:7,9,17 32:2 18:11 32:6 330:19 331:7 30:11 30:9 323:19 32:11 32:15 47:12,20 23:12 32:11 32:6 330:19 331:7 30:9,12,16 31:7,16 32:4,15 32:11 32:16 31:7 30:11,16 40:3,13,12,12 32:11 32:11 32:12 32:12 247:21 31:13 22:3 23:13 24:7,9,17 32:21 10:17,90:10 32:11 11:10,9,12 32:12 32:11 11:10,9,12 32:12 32:11 11:10,9,12 32:12 32:12 247:21 32:13 14:12 330:14 32:14 13:16 18:13 14:12 330:14 32:11 11:16 40:3,13 32:11 11:16 40:3,13 32:11 11:16 40:3,13 32:11 1	274:19 slower	94:10 273:11,14 spec	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2	211:19 284:16 317:7 standardizing
276:21 277:3 specialist small 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 27:2,14 273:14 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 32:12,20,21 306:19 307:1 310:9 323:19 32:2,22 26:16,18,21 27:2,2 32:2,22 26:16,18,21 27:2 32:2,22 26:16,18,21 27:2 32:2,22 26:16,18,21 27:2,2 32:2,2 26:16	274:19 slower 116:13	94:10 273:11,14 spec 192:11	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2	211:19 284:16 317:7 standardizing 161:14 162:2,22
small 25:7 287:18 293:6,11,11,16 24:18,19,21 25:12,20,21 66:5,6 133:8 140:12 141:9 272:14 273:14 specific 306:19 307:1 310:9 323:19 25:22,22 26:16,18,21 27:2 society 76:7 77:21 78:12 79:13 32:11 32:15 47:19,21 54:7 stage 29:9,12,14,16,20,22 30:5,7 sole 121:19 137:19 146:13 327:15 193:7,9 195:4,6 196:3,4,16 stages 32:16,17 33:5,12,17,22 solely 193:7,9 195:4,6 196:3,4,16 36:17 132:6,7 312:17 36:17 132:6,7 312:17 36:17 132:6,7 312:17 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 solutions 202:20 203:11 209:7 210:1 202:20 203:11 209:7 210:1 202:23 240:5 265:17 329:14 44:9 45:19 46:16 47:3,11 somebody 270:12,15 273:11,20 274:15 284:2 287:3 292:1 36:21 314:12 330:14 329:14 48:12 49:2,4,9 51:8,18,21 sort 13:16 198:13,13 266:13 42:12 77:20 77:20 122:6 42:13 141:20 164:10 36:10 30:1 30:1 30:1 37:17 39:11,16 40:3,13,21 39:11,16 40:3,13,21 39:11,16 40:3,13,21 39:11,16 40:3,13,21 39:11,16 40:3,13,21 39:11,16 40:3,13,21 39:11,16 40:3,13,21 39:11,16 40:3,13,21 30:13 30:11 30:13 30:11	274:19 slower 116:13 smacna	94:10 273:11,14 spec 192:11 special	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards
66:5,6 133:8 140:12 141:9 272:14 273:14 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 32:15 46:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 37:17 solutions 2:11 11:6,9,12 332:20 203:11 209:7 210:1 21:10 137:19 129:7 210:1 20:22 0203:11 209:7 210:1 20:22 0203:11 209:7 210:1 20:22 0203:11 209:7 210:1 20:22 0203:11 209:7 210:1 30:14 325:6 328:11,15 30:14 325:6 328:11,15 32:14 32:15 37:22 198:1 39:11,16 40:3,13,21,22 30:14 stakeholders 30:17 stakeh	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13	94:10 273:11,14 spec 192:11 special 154:13	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1
272:14 273:14 31:1 32:15 47:19,21 54:7 324:11 326:8 330:19 331:7 27:3,7,9,11 28:4,7,9,10,18 society 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 170:9,22 331:5,5 30:9,12,16 31:7,16 32:4,15 sole 193:7,9 195:4,6 196:3,4,16 199:7,11 stages 32:16,17 33:5,12,17,22 solutions 197:22 198:1 199:7,11 stakeholders 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 somebody 200:20 203:11 209:7 210:1 329:14 44:9 45:19 46:16 47:3,11 sorry 306:21 314:12 330:14 specifically 19:12 232:12 247:21 56:14,16,20,22 57:10,15 328:12 96:20,21 97:20 122:6 44:14 57:12 71:22 76:9 96:20,21 97:20 122:6 54:21 55:7 63:21 211:2 58:1,3,21 59:13 61:10,10,21 62:7,8,12,14 sort 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 329:15 75:1,3,4,15 76:13 78:19 328:12 32:16,17 33:5,12,17,92 329:14 32:16,17 33:5,12,17,22 32:17 32:11,15 32:14 32:6,7 312:17 32:11,15 32:14 32:6,7 312:17 32:11,15 32:14 32:6,7 312:17 32:14 32:6,7 312:17 32:14 32:6,7 312:17 32:14 32:6,7 312:17 32:14 32:6,7 312:17 32:14 32:6,	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3	94:10 273:11,14 spec 192:11 special 154:13 specialist	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17
society 76:7 77:21 78:12 79:13 stage 29:9,12,14,16,20,22 30:5,7 1:3,7 3:2 10:17,20 312:2,7 97:21 105:7,7 109:10 170:9,22 331:5,5 30:9,12,16 31:7,16 32:4,15 sole 121:19 137:19 146:13 stages 32:16,17 33:5,12,17,22 solely 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 stakeholders 36:18 37:6,10 38:10 39:8,9 solutions 202:20 203:11 209:7 210:1 313:14 325:6 328:11,15 39:11,16 40:3,13,21,22 somebody 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 stamped 48:12 49:2,4,9 51:8,18,21 sorry 306:21 314:12 330:14 specifically 54:21 55:7 63:21 211:2 56:14,16,20,22 30:5,7 stand 54:21 55:7 63:21 211:2 56:14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 stages 329:14 34:2,56,19,20 35:1,4,56 36:18 37:6,10 38:10 39:8,9 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 42:4,9,17,19 20:26:6 228:9 274:15 284:2 287:3 292:1 30:21 314:12 330:14 30:21 247:21 56:14,16,20,22 57:10,15 30:16:16 22:13,19 28:13 30:21 314:12 330:14 <	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21
1:3,7 3:2 10:17,20 312:2,7 97:21 105:7,7 109:10 170:9,22 331:5,5 30:9,12,16 31:7,16 32:4,15 sole 121:19 137:19 146:13 327:15 149:21 166:4 168:20 180:1 58:19 239:21 34:2,5,6,19,20 35:1,4,5,6 solely 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 solutions 20:20 203:11 209:7 210:1 313:14 325:6 328:11,15 39:11,16 40:3,13,21,22 somebody 270:12,15 273:11,20 274:15 284:2 287:3 292:1 30:214 256:14 279:5 44:9 45:19 46:16 47:3,11 sorry 30:21 314:12 330:14 30:21 22:2 247:21 51:22 52:5,7,11,13,20 53:8 stamped 48:12 49:2,4,9 51:8,18,21 58:1,8,21 59:18 60:3,4,8 11:6 171:9,17 256:7 44:14 57:12 71:22 76:9 54:21 55:7 63:21 211:2 56:14,16,20,22 57:10,15 328:12 96:20,21 97:20 122:6 52:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 sort 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2
sole 121:19 137:19 146:13 stages 32:16,17 33:5,12,17,22 solely 193:7,9 195:4,6 196:3,4,16 58:19 239:21 34:2,5,6,19,20 35:1,4,5,6 solutions 197:22 198:1 199:7,11 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 somebody 202:20 203:11 209:7 210:1 329:14 44:9 45:19 46:16 47:3,11 sorry 306:21 314:12 330:14 stamped 48:12 49:2,4,9 51:8,18,21 sorry 306:21 314:12 330:14 specifically 325:14 256:14 279:5 56:14,16,20,22 57:10,15 stand 58:1,8,21 59:18 60:3,4,8 58:1,8,21 59:18 60:3,4,8 59:1,2 263:3 267:18 328:12 46:10 28:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 sort 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 32:11 33:14,12,22 32:10 37:10 38:10 39:14 33:14 325:6 328:11,15 32:14 44:9 45:19 46:16 47:3,11 32:14 55:19 46:16 47:3,11 32:14 55:19 46:14 279:5 32:14 55:14 279:5 32:14 247:21 31:12 25:25:5,7,11,13,20 53:8 32:14 25:14 256:14 279:5 32:14 25:14 256:14 279:5 32:14 25:14 256:14 279:5 32:14 25:14 256:14 279:5 32:14 25:14 256:14 279:5 32:14 25:14 256:14 279:5 32:14 25:15 73:21 74:4,6,9,15 32:14 25:15	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18
327:15 149:21 166:4 168:20 180:1 58:19 239:21 34:2,5,6,19,20 35:1,4,5,6 solely 193:7,9 195:4,6 196:3,4,16 stakeholders 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 solutions 202:20 203:11 209:7 210:1 313:14 325:6 328:11,15 39:11,16 40:3,13,21,22 somebody 270:12,15 273:11,20 stamped 48:12 49:2,4,9 51:8,18,21 226:6 228:9 274:15 284:2 287:3 292:1 306:21 314:12 330:14 stamped 48:12 49:2,4,9 51:8,18,21 sorry 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7 54:21 55:7 63:21 211:2 56:14,16,20,22 57:10,15 stand 54:21 55:7 63:21 211:2 58:1,8,21 59:18 60:3,4,8 59:10,20,21 97:20 122:6 30:17 132:6,7 312:17 30:11,16 40:3,13,21,22 44:9 45:19 46:16 47:3,11 44:9 45:19 46:16 47:3,11 44:9 45:19 46:16 47:3,11 45:12 25:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 54:21 55:7 63:21 211:2 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 54:21 55:7 63:21 211:2 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 54:21 55:7 63:21 211:2 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7
solely 193:7,9 195:4,6 196:3,4,16 stakeholders 36:18 37:6,10 38:10 39:8,9 solutions 202:20 203:11 209:7 210:1 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 somebody 270:12,15 273:11,20 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 stamped 48:12 49:2,4,9 51:8,18,21 sorry 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7 44:14 57:12 71:22 76:9 54:21 55:7 63:21 211:2 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 sort 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 39:11,16 40:3,13,21,22 44:9 45:19 46:16 47:3,11 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 44:9 45:19 46:16 47:3,11 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 54:21 55:7 63:21 211:2 58:1,8,21 59:18 60:3,4,8 57:15,3,4,15 76:13 78:19 30:11,16 40:3,13,21 30:11,16 40:3,13,21 30:11,16 40:3,13,21 30:11,16 40:3,13,21 30:11,16 40:3,13,21 41:5,7,11,13,21 41:5,7,11,13,21 41:5,7,11,1	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15
37:17 197:22 198:1 199:7,11 36:17 132:6,7 312:17 39:11,16 40:3,13,21,22 solutions 202:20 203:11 209:7 210:1 313:14 325:6 328:11,15 41:5,7,11,15 42:4,8,17,19 2:11 11:6,9,12 332:20 210:8 222:3 240:5 265:17 329:14 44:9 45:19 46:16 47:3,11 somebody 270:12,15 273:11,20 27:15 284:2 287:3 292:1 306:21 314:12 330:14 329:14 329:14 44:9 45:19 46:16 47:3,11 sorry 306:21 314:12 330:14 306:21 314:12 330:14 520:14 256:14 279:5 56:14,16,20,22 57:10,15 specifically 27:16 28:1,3 37:22 39:7 54:21 55:7 63:21 211:2 58:1,8,21 59:18 60:3,4,8 328:12 44:14 57:12 71:22 76:9 54:21 55:7 63:21 211:2 61:10,10,21 62:7,8,12,14 5ort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22
solutions 202:20 203:11 209:7 210:1 313:14 325:6 328:11,15 41:5,7,11,15 42:4,8,17,19 2:11 11:6,9,12 332:20 210:8 222:3 240:5 265:17 329:14 44:9 45:19 46:16 47:3,11 somebody 270:12,15 273:11,20 stamped 48:12 49:2,4,9 51:8,18,21 25crry 306:21 314:12 330:14 specifically 55:14 256:14 279:5 56:14,16,20,22 57:10,15 stand 58:1,8,21 59:18 60:3,4,8 57:12 263:3 267:18 44:14 57:12 71:22 76:9 54:21 55:7 63:21 211:2 61:10,10,21 62:7,8,12,14 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 sort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6
2:11 11:6,9,12 332:20 210:8 222:3 240:5 265:17 270:12,15 273:11,20 226:6 228:9 274:15 284:2 287:3 292:1 306:21 314:12 330:14 252:13,19 28:13 111:6 171:9,17 256:7 257:12 263:3 267:18 328:12 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 252:14 256:14 279:5 252:14 256:14 279:1 252:14 256:14 279:1 252:14 252:14 270:1 252:14 256:14 279:1 252:14	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9
somebody 270:12,15 273:11,20 stamped 48:12 49:2,4,9 51:8,18,21 226:6 228:9 274:15 284:2 287:3 292:1 119:12 232:12 247:21 51:22 52:5,7,11,13,20 53:8 sorry 306:21 314:12 330:14 252:14 256:14 279:5 56:14,16,20,22 57:10,15 specifically 58:1,8,21 59:18 60:3,4,8 257:12 263:3 267:18 27:16 28:1,3 37:22 39:7 44:14 57:12 71:22 76:9 54:21 55:7 63:21 211:2 61:10,10,21 62:7,8,12,14 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 sort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22
226:6 228:9 274:15 284:2 287:3 292:1 119:12 232:12 247:21 51:22 52:5,7,11,13,20 53:8 sorry 306:21 314:12 330:14 252:14 256:14 279:5 56:14,16,20,22 57:10,15 10:16 22:13,19 28:13 27:16 28:1,3 37:22 39:7 54:21 55:7 63:21 211:2 58:1,8,21 59:18 60:3,4,8 257:12 263:3 267:18 27:16 28:1,3 37:22 39:7 27:12 76:9 44:14 57:12 71:22 76:9 54:21 55:7 63:21 211:2 62:19 63:1,20 64:4,6 71:6 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 sort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19
sorry 306:21 314:12 330:14 252:14 256:14 279:5 56:14,16,20,22 57:10,15 16:16 22:13,19 28:13 specifically 58:1,8,21 59:18 60:3,4,8 111:6 171:9,17 256:7 27:16 28:1,3 37:22 39:7 54:21 55:7 63:21 211:2 61:10,10,21 62:7,8,12,14 257:12 263:3 267:18 44:14 57:12 71:22 76:9 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 306:21 314:12 330:14 252:14 256:14 279:5 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 58:1,8,21 59:18 60:3,4	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11
16:16 22:13,19 28:13 specifically stand 58:1,8,21 59:18 60:3,4,8 111:6 171:9,17 256:7 27:16 28:1,3 37:22 39:7 54:21 55:7 63:21 211:2 61:10,10,21 62:7,8,12,14 257:12 263:3 267:18 44:14 57:12 71:22 76:9 standard 62:19 63:1,20 64:4,6 71:6 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 sort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21
111:6 171:9,17 256:7 27:16 28:1,3 37:22 39:7 54:21 55:7 63:21 211:2 61:10,10,21 62:7,8,12,14 257:12 263:3 267:18 44:14 57:12 71:22 76:9 standard 62:19 63:1,20 64:4,6 71:6 328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 sort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8
257:12 263:3 267:18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9 sorry	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21 252:14 256:14 279:5	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15
328:12 96:20,21 97:20 122:6 25:17 31:4,10 32:5,13 34:8 72:15 73:21 74:4,6,9,15 sort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9 sorry 16:16 22:13,19 28:13	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 specifically	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21 252:14 256:14 279:5 stand	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8
sort 128:13 141:20 164:10 34:9,11,16 35:9,11,13,21 75:1,3,4,15 76:13 78:19 13:16 198:13,13 266:13 187:11 207:19 241:11,22 35:22 36:9 37:18 38:7,12 82:9,15 94:1,8,13 97:15,18	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9 sorry 16:16 22:13,19 28:13 111:6 171:9,17 256:7	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21 252:14 256:14 279:5 stand 54:21 55:7 63:21 211:2	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14
13:16 198:13,13 266:13	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9 sorry 16:16 22:13,19 28:13 111:6 171:9,17 256:7 257:12 263:3 267:18	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7 44:14 57:12 71:22 76:9	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21 252:14 256:14 279:5 stand 54:21 55:7 63:21 211:2 standard	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 62:19 63:1,20 64:4,6 71:6
	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9 sorry 16:16 22:13,19 28:13 111:6 171:9,17 256:7 257:12 263:3 267:18 328:12	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7 44:14 57:12 71:22 76:9 96:20,21 97:20 122:6	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21 252:14 256:14 279:5 stand 54:21 55:7 63:21 211:2 standard 25:17 31:4,10 32:5,13 34:8	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 62:19 63:1,20 64:4,6 71:6 72:15 73:21 74:4,6,9,15
264:8 283:15 304:5 330:4 38:22 39:3 48:8 58:11 98:4 102:2,12,12 103:17	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9 sorry 16:16 22:13,19 28:13 111:6 171:9,17 256:7 257:12 263:3 267:18 328:12 sort	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7 44:14 57:12 71:22 76:9 96:20,21 97:20 122:6 128:13 141:20 164:10	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21 252:14 256:14 279:5 stand 54:21 55:7 63:21 211:2 standard 25:17 31:4,10 32:5,13 34:8 34:9,11,16 35:9,11,13,21	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 62:19 63:1,20 64:4,6 71:6 72:15 73:21 74:4,6,9,15 75:1,3,4,15 76:13 78:19
	274:19 slower 116:13 smacna 216:7,9,11,15,19 276:13 276:21 277:3 small 66:5,6 133:8 140:12 141:9 272:14 273:14 society 1:3,7 3:2 10:17,20 312:2,7 sole 327:15 solely 37:17 solutions 2:11 11:6,9,12 332:20 somebody 226:6 228:9 sorry 16:16 22:13,19 28:13 111:6 171:9,17 256:7 257:12 263:3 267:18 328:12 sort	94:10 273:11,14 spec 192:11 special 154:13 specialist 25:7 specific 31:1 32:15 47:19,21 54:7 76:7 77:21 78:12 79:13 97:21 105:7,7 109:10 121:19 137:19 146:13 149:21 166:4 168:20 180:1 193:7,9 195:4,6 196:3,4,16 197:22 198:1 199:7,11 202:20 203:11 209:7 210:1 210:8 222:3 240:5 265:17 270:12,15 273:11,20 274:15 284:2 287:3 292:1 306:21 314:12 330:14 specifically 27:16 28:1,3 37:22 39:7 44:14 57:12 71:22 76:9 96:20,21 97:20 122:6 128:13 141:20 164:10 187:11 207:19 241:11,22	37:9 40:3,8 42:12,18 48:12 63:19 64:1 67:22 91:2 98:22 151:20 153:6 223:2 226:7 236:16 249:7 252:6 253:19 255:6,10,21 267:22 269:16 271:1 278:8 285:12 287:18 293:6,11,11,16 306:19 307:1 310:9 323:19 324:11 326:8 330:19 331:7 stage 170:9,22 331:5,5 stages 58:19 239:21 stakeholders 36:17 132:6,7 312:17 313:14 325:6 328:11,15 329:14 stamped 119:12 232:12 247:21 252:14 256:14 279:5 stand 54:21 55:7 63:21 211:2 standard 25:17 31:4,10 32:5,13 34:8 34:9,11,16 35:9,11,13,21 35:22 36:9 37:18 38:7,12	211:19 284:16 317:7 standardizing 161:14 162:2,22 standards 8:11 9:13 17:5 20:21 21:1 21:13 22:3 23:13 24:7,9,17 24:18,19,21 25:12,20,21 25:22,22 26:16,18,21 27:2 27:3,7,9,11 28:4,7,9,10,18 29:9,12,14,16,20,22 30:5,7 30:9,12,16 31:7,16 32:4,15 32:16,17 33:5,12,17,22 34:2,5,6,19,20 35:1,4,5,6 36:18 37:6,10 38:10 39:8,9 39:11,16 40:3,13,21,22 41:5,7,11,15 42:4,8,17,19 44:9 45:19 46:16 47:3,11 48:12 49:2,4,9 51:8,18,21 51:22 52:5,7,11,13,20 53:8 56:14,16,20,22 57:10,15 58:1,8,21 59:18 60:3,4,8 61:10,10,21 62:7,8,12,14 62:19 63:1,20 64:4,6 71:6 72:15 73:21 74:4,6,9,15 75:1,3,4,15 76:13 78:19 82:9,15 94:1,8,13 97:15,18

[standards - sworn]

standards (cont.)	standards (cont.)	stop	succeeding
104:9,16,21 105:5,8,12,17	330:22 331:11 332:9	138:15	318:6
105:21 106:6,12,17,22	standards.gov	stores	successful
107:5,16,22 108:8,17,21	92:18	225:3	257:8 258:14
109:4,13 111:9,21 112:2,5	standing	strategic	successfully
112:7,15,16,21,22 119:17	118:17 181:19 305:7	69:4	257:13
120:13,21 121:11,13,15,17		street	sued
122:2,4,11,13,19,22 123:1	249:17,20	2:12 3:17 4:5,14 11:7	246:9
127:12,13,15,21 128:5,12	star	strictly	suggest
129:22 130:19,20 131:1,5	80:2	244:15 272:6	258:4
131:6,9,14,20 132:2,3,18	start	strike	suggested
132:19 133:1,7,9,12,16,22	115:20 160:1 203:21 280:3	214:7 243:18	189:22 257:18 258:12
134:2,3,7,8 135:6,8,11	311:9 331:4	striking	suggesting
136:6,9,11,12,17 137:1,15	started	280:21	60:15
137:17 138:4,6 139:15	323:5	string	suggestion
140:7,13,16 141:1,16	starting	246:1	285:18 287:6
142:6,16 143:4,8 149:15	119:11	strongly	suggestions
149:18 150:11,12,16,18	starts	313:12 315:14	247:7
151:14 152:1,2,5,8,13,21	160:20	struck	suitable
153:3,11,16 154:5,9,10,13	state 11:14 301:8 326:11,16	280:19	288:1,5 suite
154:16 155:10,13 157:20 158:3,16 161:7,10 166:10	331:9,15	struggling 207:5	74:22
166:22 168:5 171:14 172:9	The state of the s	subcommittee	summarize
173:4 175:21 178:1 180:6	212:3	180:9 204:22 252:7	305:19
180:9 181:14 182:14 184:6		subcomponent	supplemented
184:9,19 185:7 187:2	148:11 219:20 227:2,15,18	64:8	170:21
188:21 189:2,7 193:17	227:20 239:4,6,10 244:13	subject	suppliers
194:3 198:11 199:2 200:13		99:1,9 100:13,14 176:12	134:21 135:4
201:4 202:8,14 203:6	265:13,15 287:1 310:9,10	234:8,9 251:12	supply
204:16,22 205:4 206:8,14	states	subjects	134:22
207:4,6,8,10,15 208:2,4,7	1:1 11:3 21:18 22:5 29:19	269:13 323:6	support
208:13,16 209:3,10 210:3	30:1,2,2,4,5,6,20 35:7 37:6	submit	28:5 29:13 30:9 31:2 62:19
210:9,10,11,15,18 212:15	40:18 76:15 97:19 98:3,11	60:12,13 131:4,5,14 132:4	152:9 154:11,16 239:15
212:22 215:5 216:6,11	98:17 100:9 133:10 210:4	132:11 231:20	240:1 246:15,18 282:2
217:4,6,9,15,16,20 218:6,7	313:8 315:16	submitted	314:2 315:18 319:17 326:8
218:18,19 219:7,13,15	stating	235:20	supported
220:6,12,20 221:8 223:3	101:9 146:16 147:11	subpoena	29:9 152:17
223:10 226:7 227:3,12	status	5:7 15:12,14 302:4 332:2	supporting
228:14 239:14 240:1 244:9	261:10	subpoenas	285:9
250:9 253:20 257:7 258:10		16:13 subscribed	supports
260:5 269:10,21 272:10,12	96:9,19 178:5 statutory	333:14	219:21 315:14
273:5,12,15,22 274:3 275:1 281:18 282:7,13,15	177:19,22	subscriptions	suppose 175:11 210:13 279:13
282:17,19,21 283:1,5,9,19	std	172:9	supreme
283:22 284:5,7,18 285:6,8	192:11	subsequent	301:8
287:8,14,15 288:5 291:1	step	49:18	sure
299:1 303:22 304:6,19	256:18 276:6	subsequently	18:8 19:19,21 60:2 69:17
305:10 306:1 307:22	steps	216:18	111:12,15 143:21 144:8
309:16 311:22 312:1,6,11	260:22 261:2	subset	206:4 274:10 279:19 289:5
312:15,20,21 313:22 314:4	stint	124:6 133:8 217:3	305:13 311:3
314:6,13 315:3,15,19	191:10	substance	sustainability
316:5,7,8,15 317:22 318:8	stipulate	305:17	56:8,17 57:16
319:5,10 320:7 321:11	292:7 294:10	substantive	swear
323:11,20 324:2,3,7,22	stood	177:18	12:11
325:2,11,16,17 326:3,9,21	197:22	substantively	sworn
327:9,10,20 329:4 330:15		178:4	12:13 333:14 334:6
1	1	ı	

[symbols - training]

1			la
	technology (cont.)	thanks	time (cont.)
162:15	313:11 317:1	274:7	317:9,14 319:7 320:3,12
	telecommunication	thing	321:5 324:18
30:20 40:18 76:12,13	79:20	202:8	times
	telecommunications	things	124:7 127:5 167:10 180:10
224:11 317:7 325:1,2	34:21	324:18	timing
	tell	think	47:1 139:17,20 190:16,21
systems	12:13 49:19 50:2 123:12	47:9 63:10 66:11,19 78:13	
44:18 49:17	232:16 236:5 237:4 238:10	92:3 116:4,9 123:14	138:2,7 223:20 306:22
t	telling	144:11 147:7 169:3 175:11	308:4 310:18 318:12
taken	267:3	181:21 187:4 207:1 221:21	
10:16 12:19 115:18 127:21	temporary	221:22 222:12 228:2	164:17 252:12 256:16
138:19 159:21 186:12	136:13	231:10,11,16 232:6 233:6	306:10 310:14
203:19 274:2 280:1 293:14	ten	233:8 243:5 257:17 259:18	
311:7 334:4,7,12	55:16 186:2	263:9 264:5 266:20 267:4	11:10 13:7 14:22 19:22
talk	tend	274:12 276:20 278:2	20:5,18 22:17 28:8 50:18
18:5,15 19:1 188:7 252:9	133:11,11	280:18 305:18 310:17	77:22 78:14 96:15 103:11
266:18	tended	311:1	116:2 117:15 165:6 212:10
talked	133:12	thinking	271:22 302:5 323:5
18:6,18,22 161:6 264:6	tenure	258:1 274:17	today's
talking	56:7	third	332:17
255:4 285:6 323:5	term	119:11 153:22 204:14	tolles
task	33:17 43:11 46:17 49:10	236:12,13	3:16 12:7
180:19 181:11,15,18,19,20	53:15 54:6 61:22 74:6	thomas	tool
181:21,21 182:3,8 272:2	84:13 96:17 109:10	55:8	220:1
tasked	terminated	thorsen	top
150:19	318:21	307:10 308:10	50:8 55:18 69:21 80:13
tbt	terminology	thought	111:11 119:9 132:16 154:3
26:13	130:18 162:14	90:1 149:5 248:8 268:22	160:22 177:17 238:18
tc	terms	thoughts	263:5
123:4	54:20 66:19,20 96:21 97:9	246:3	topic
team	172:10 187:9 226:20	three	36:16 37:2 51:18 185:10
190:2 293:13	244:15 264:3 272:7 283:13	124:7 155:3 187:13 202:18	topics
technical	283:19 284:6	207:22 210:15 311:2	17:6
5:21 25:22 26:4 28:4,10	test	threshold	total
29:10,12 31:4 35:14,15	31:18 75:10 162:15	100:2	332:18
37:2,8 39:8 40:2,8 44:16	testified	time	touch
44:17 53:20 79:6 121:20	12:15 328:10,14	17:8 18:17,20,21 22:10	128:13
121:22 122:8 123:2,3	testify	28:21,22 29:2,11 32:21	track
128:13 131:22 153:6	5:7 15:12 267:5	44:19 46:5,10 47:8 48:9,14	73:19 120:13 134:5 135:7
160:21 161:4,13 162:1,7	testifying	48:16 49:5,13,17 55:13,16	136:13,16,20 276:15,21
162:19,20 163:3,6,11,12	17:7	55:20 56:18 57:4,7 62:21	277:3,5
163:17,21 164:2,4 213:21	testimony	64:3 67:10 68:11 71:1,22	trade
214:6 246:22 247:12,13	13:7 14:22 256:16 257:3	72:11,13 101:1 115:17,21	5:22 23:21 24:14 25:6,7,8
287:14 312:17 316:13	332:18 334:5,6,10	116:5 132:21 159:20 160:2	26:4,5 28:20 29:1,14 42:7
317:4 324:12 326:8 329:11	testing	189:10,13 191:20 193:5	47:10 55:1,2 60:6 63:13
technically	1:3 3:2 10:17 74:11 79:21	196:12 198:1 203:18,22	64:15 79:6,7 131:21,22
80:18	80:1 162:15	206:13 211:15 214:11,13	160:22 161:3,4 178:2
technology	text	215:15 216:14 217:22	329:11,12
17:5 21:13 22:3 24:8,10	59:12 60:8 136:13 188:14	221:2,15 222:13 227:10	trademark
27:14,18,21 28:2 30:11	195:3,10,11 196:16 218:20	240:6 241:15 246:15,18	181:21
39:6 42:17,20 45:17 71:8	224:6,12 239:1,16 244:8	249:7 253:19 260:4,11	trading
78:18 92:19 93:15 152:16	thank	262:9,12,14 265:5 267:11	284:19
178:8 180:9 204:21 218:16	13:19 14:9 19:20 20:7	274:22 277:19,22 279:22	training
	131:11 203:13 331:16	280:4 311:6,10,16,20	173:15,19
227:9 252:6 281:22 285:8	332:14,15	313:20 314:6 315:2 316:3	

[transcript - videographer]

transcript	typically	unique (cont.)	usg
14:15	31:9 34:5 96:4 124:8 132:3	120:12 207:3	248:11
transcription	175:14 222:12 293:14	unit	V
175:3,5 334:8	typos	10:14 115:16,20 159:19	valid
transfer	274:8	160:1 203:17,21 279:21	246:13
27:15,19,21 28:2 30:11	u	280:3 311:5,9	validation
39:6 45:17 78:18 92:19	u.s.	united	74:12 75:11
93:16 152:17 178:9 218:16	16:12 21:19 30:15 31:17	1:1 11:2 21:18 22:5 29:19	valuable
281:22 313:11 317:1	41:2 76:11,12 121:20	30:1,1,2,4,5,6,20 35:7 37:6	132:7,8
transferred	122:2,8 123:2,2 140:18	40:18 76:15 97:19 98:3,11	value
24:13	143:14,15 144:9 147:21	98:17 100:8 133:9 210:4	53:7 317:6
transparency	166:17 170:3 178:2,2,11	313:8 315:16	varies
34:13 36:1 128:22	178:17 179:9 192:18 195:9	units	40:5 168:18 324:4
transportation	208:15 210:22 212:12	332:19	variety
169:10 198:16 201:1	217:4 218:5 219:12 232:2	universities	25:19,20 35:18 43:8 88:8
212:13 214:4,15,19 215:4	249:9 260:21,21 261:11	52:13 53:7 327:3	130:4,9 141:20 146:22
215:12 246:21 247:10	283:18 330:10	university	147:3 164:8 282:20
249:4	u.s.a.	53:9,9	various
transportation's	208:12 227:14	update	53:8 58:19 62:10 99:20
246:4 305:5	uh	92:6,7 202:20 203:11	108:7 112:1 201:13 239:21
travel	217:1	228:20,21	305:21 325:4
324:11,13	unable	updated	vary
treaty	145:6 146:8,16 147:11	92:1,2 198:2,4 201:14	36:8 39:22
34:20	148:5,15 149:1,10 322:9	203:5 216:15,18 227:10	vcs
tremendously	322:13,17	252:4 261:17 305:22	195:5
257:10	unauthorized	updates	venue
trial	206:7,14	194:6 204:20 205:4,6	231:12
5:8	underlying	uphold	verbatim
4 wind	anaonymg	200.3	verbatiiii
tried	187:1	208:3	101:10
200:17		upper	
200:17 true	187:1	upper 124:16	101:10
200:17 true 136:17 333:4 334:9	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7	upper 124:16 urgency	101:10 verification 74:12 75:12 verified
200:17 true 136:17 333:4 334:9 truth	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21	upper 124:16 urgency 271:21	101:10 verification 74:12 75:12 verified 193:9,12
200:17 true 136:17 333:4 334:9 truth 12:13,14,14	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15	upper 124:16 urgency 271:21 use	101:10 verification 74:12 75:12 verified 193:9,12 verify
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1 turning	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1 turning 308:19	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5 understood	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user 36:11 37:21 38:11,16	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice 4:20 20:19 65:18,19,21
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1 turning 308:19 twice 67:21	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5 understood 14:20 249:18	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice 4:20 20:19 65:18,19,21 66:1,2,8,10 67:2,5,10
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1 turning 308:19 twice	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5 understood 14:20 249:18 unidentified	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user 36:11 37:21 38:11,16 224:5,21,22 226:11,12,16	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice 4:20 20:19 65:18,19,21 66:1,2,8,10 67:2,5,10 116:7 123:19 281:2 286:19
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1 turning 308:19 twice 67:21 type 36:9 39:21 146:5	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5 understood 14:20 249:18 unidentified 155:1	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user 36:11 37:21 38:11,16 224:5,21,22 226:11,12,16	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice 4:20 20:19 65:18,19,21 66:1,2,8,10 67:2,5,10 116:7 123:19 281:2 286:19 291:2,4
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1 turning 308:19 twice 67:21 type	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5 understood 14:20 249:18 unidentified 155:1 union	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user 36:11 37:21 38:11,16 224:5,21,22 226:11,12,16 226:21 users	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice 4:20 20:19 65:18,19,21 66:1,2,8,10 67:2,5,10 116:7 123:19 281:2 286:19 291:2,4 video
200:17 true 136:17 333:4 334:9 truth 12:13,14,14 try 13:21 14:1 116:12 198:7 trying 116:14 174:21 tsc 1:4 11:4 turn 10:9 153:22 161:9,9 165:8 177:15 180:2 238:13 259:22 303:1 304:9 306:5 306:7 307:13 332:1 turning 308:19 twice 67:21 type 36:9 39:21 146:5 types	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5 understood 14:20 249:18 unidentified 155:1 union 29:12 34:22 51:9	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user 36:11 37:21 38:11,16 224:5,21,22 226:11,12,16 226:21 users 224:3 225:5,12	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice 4:20 20:19 65:18,19,21 66:1,2,8,10 67:2,5,10 116:7 123:19 281:2 286:19 291:2,4 video 10:11,15
200:17 true	187:1 understand 13:6,11,18,20 14:4,9,19 16:20 18:13 19:14 23:7 28:8 33:16 39:22 57:21 63:12 97:1 110:2 170:15 170:18 175:14 200:4 223:18 231:15 242:19 249:19 262:1 265:2 268:20 269:6 understandability 60:10 understanding 17:2 18:9 35:10 46:11 91:3 139:11,14 163:10 173:3,12 189:4 209:1 213:10 246:8 254:7,15 255:8 258:19 261:15 262:18 270:7 273:5 275:7 284:17 314:5 understood 14:20 249:18 unidentified 155:1 union	upper 124:16 urgency 271:21 use 28:3,9 33:17 39:8 74:6 96:21 102:11 126:2 134:13 134:13 152:20 170:10 171:22 172:10,11,19 173:10,21 174:6,8,9 175:6 175:11,14 176:3,6,7,12,13 176:20,21 226:17 233:13 281:17,20 282:1,6,10,12 282:15,17,18 287:7,14 315:20 useful 152:6 user 36:11 37:21 38:11,16 224:5,21,22 226:11,12,16 226:21 users 224:3 225:5,12 uses	101:10 verification 74:12 75:12 verified 193:9,12 verify 193:18 veritext 2:11 11:6,9,11 332:20 version 92:5,8 193:4 227:7 228:5 236:17 263:6 318:4 versions 59:10 195:17 227:4,12 318:6,6 versus 10:22 15:18 113:20 114:9 115:10 133:2,17 201:20 vice 4:20 20:19 65:18,19,21 66:1,2,8,10 67:2,5,10 116:7 123:19 281:2 286:19 291:2,4 video

[videographer - writes]

videographer (cont.)	wall	widely	witness (cont.)
115:15,19 159:18,22	4:14	35:7 328:8	231:19 234:12 235:18
203:16,20 279:20 280:2	want	willing	236:3 237:4 238:10 240:4
311:4,8 332:16	23:10 77:5 96:19 175:11	55:10	242:14 243:12 244:2 245:9
videotaped	189:6 198:18 215:5 228:1	willingness	250:1,12 254:4,11,20
1:14 2:9	244:2 264:10 266:15 276:6	239:14,22	255:13 256:7 257:22 259:1
view	305:12,14,16 311:15 332:4	I .	261:6 262:4 263:1 265:8
57:19 176:16,17 177:1,8	wanted	3:5 12:4,4	265:20 267:15 270:11,20
208:20 209:19 213:12,17	18:8 254:16,21 260:14	withdraw	271:7 272:21 273:10 275:4
214:15 215:3	268:17	202:1,9	275:13,20 276:4 278:13
views	washington	withdrawn	282:12 283:8 284:10 286:7
175:19 214:9	1:15 2:13 3:8,18 11:7	201:14	287:10 288:8 292:6 299:12
violating	269:10 270:3,4,8,14,21	witness	301:18 304:17 305:20
246:10	271:1	4:11 12:1,11 26:10 28:13	307:19 308:4,13 309:3,22
violations	watermark	30:18 31:13 32:8 33:8,20	310:6,17 312:4,14 313:7
206:18	224:11	34:18 36:20 37:8 38:21	314:11,20 315:8,14,22
visibility	watermarks	39:5,21 41:9,22 43:19 45:6	316:10,21 318:3 319:2,22
63:2,5	224:11	45:16 47:17 48:6 49:22	320:15 321:2 322:6 323:16
voice	ways	50:8,13 53:1 54:5 58:4	324:21 325:15 326:7,16
239:7	43:8 108:7,16 112:1,15,20	59:2,21 61:20 62:18 64:13	327:2,12,19 328:6,20
volume	113:3 130:4,9 141:21	64:22 65:12 69:2,21 77:5	329:7 330:3,14 331:2,14
88:9	167:3 169:20 274:13	77:11 78:4,17 79:18 82:14	334:5,6,10
voluntary	282:21	82:22 84:1,9,16,21 86:10	wixon
28:4 34:6,7,9,11,16,22	web	87:1,15 88:6,18 90:1,11	17:3,21 18:9,14,22 19:4
35:20 36:18 37:5 39:9	206:18	91:12,17,22 92:15 94:20	253:4,14,15
93:22 94:8 102:11 107:21	webcast	95:5,10,18 96:2,11 97:7	word
108:8,17 112:2,16 131:19	248:7 250:2	98:20 99:18 100:12,20	28:9 35:17 310:15
152:20 181:14 182:14	webinar	101:21 102:19 103:14	wording 189:6
195:5 218:17 239:14 240:1 258:9 281:17 282:6 287:7	297:12,13 website	104:5 105:3,16 106:3,10 106:16 107:20 108:20	work
287:14 312:20 314:4	53:3 80:20 82:8 84:2 86:11	109:17 110:14,22 111:6	20:17 48:3 50:20 51:11
327:20	128:20 182:17 213:10	112:10 114:1,12,22 117:17	180:8 247:11 274:20 275:8
volunteer	222:22	118:1 119:17 120:11	316:19
234:21 328:11	websites	121:10 122:6,18 125:20	worked
volunteered	275:17	126:21 128:9 129:21	102:20 214:5 247:10
234:3	week	130:17 131:17 132:14	working
volunteers	271:18	133:6,20 134:5 135:17	27:4 28:16 188:4 215:12
312:19 324:9,9 328:15	weeks	136:19 137:15 138:18	249:8 253:21
329:21 330:10	19:8	140:2,11 141:6 142:10,21	works
vote	weigh	143:11 144:7 145:1,17	169:11 189:1 190:4 284:14
58:8,11 60:21 61:2 63:19	231:13	146:3,12,21 147:17 148:9	319:19
68:22 69:9,13 239:7	weighted	148:20 149:5,13 151:18	workshop
voted	130:8	152:15 153:5,19 154:21	246:4 248:6,13,15,17
56:10,21 59:11	went	155:16 156:3,12 157:18	249:2 250:3
votes	57:13 248:8	158:12 159:4 163:20 168:8	
69:10,11,16,18	west	169:3,9,18 170:18 171:9	26:3 51:9 79:6 131:21
voting	4:5 11:19	171:17 172:7 173:3,18	161:3 329:11
56:15 57:14,22 58:4 60:19	we've	174:5,15 175:9 176:1,10	write
vp	116:4	177:6,13 178:15,21 182:10	31:6 98:22 196:1 281:12
21:9 23:3 70:2 71:10 73:14	whispering	186:10,21 190:11,16 194:1	281:14,16 284:14 316:5
vs	10:7	194:17 195:16 197:15	writer
1:10	white	200:21 203:15 210:1 213:5	87:2 92:16,22
w	27:5	215:10 217:13 218:10,15	writers
wait	wide	219:5,18 221:6,20 222:9	85:22 86:7,19
43:3	312:16 313:3 328:10,14	222:17 223:6,12 225:9,20	writes
70.0		226:5 228:1,13 229:8	194:22 251:8,9 257:6

[writes - ziegler]

writes (cont.) 273:18 writing 152:11 234:2 304:15 written 19:3 57:20 247:2 286:15 wrong 190:16 wrote 93:5 wto 26:13 у

yates 308:22 309:7 yeah 64:20 77:8 318:13 year

66:19,20 67:21 69:5,13 118:18 124:7 126:16,19 127:5 139:6 149:19 195:20 206:9 227:4 277:14

years 44:14,22 45:2 47:18 55:17 56:6 66:18 149:14,17

156:4 183:6 186:3 240:8

Z

yesterday 18:3,4,18 19:2 256:20 yield 207:11

york 4:15,15 youtube

215:2

zero 324:8 ziegler

3:15,20 12:6,7

Case 1:13-cv-01215-TSC Document 204-44 Filed 11/13/19 Page 1 of 102

EXHIBIT 38

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UNITED STATES DISTRICT COURT
 1
 2
               FOR THE DISTRICT OF COLUMBIA
 3
       AMERICAN SOCIETY FOR : NO.
       TESTING AND MATERIALS : 1:13-cv-01215-TSC-
 4
                          : DAR
 5
       d/b/a ASTM
 6
       INTERNATIONAL;
                               :
 7
       NATIONAL FIRE
       PROTECTION
 8
       ASSOCIATION, INC.;
 9
       and AMERICAN SOCIETY
10
       OF HEATING,
       REFRIGERATION, AND
11
12
       AIR CONDITIONING
13
       ENGINEERS,
       Plaintiffs
14
             vs.
       PUBLIC.RESOURCE.ORG,
15
       INC.,
       Defendant
16
17
             Videotaped deposition of JOHN C.
      JAROSZ taken at the law offices of Veritext
18
      Legal Solutions, 1250 I Street NW,
19
      Washington, DC, commencing at 10:09 a.m.
20
21
      THURSDAY, AUGUST 27, 2015, before Debbie
22
      Leonard, Registered Diplomate Reporter,
23
      Certified Realtime Reporter.
24
25
      PAGES 1 - 260
                                                      Page 1
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1 2	APPEARANCES:	1	INDEX TO WITNESSES	
2	KING & SPALDING	2	WITNESS JOHN C LABOUZ BACE	
3	By: J BLAKE CUNNINGHAM, ESQ	3	WITNESS: JOHN C. JAROSZ PAGE	
4	101 Second Street Suite 2300	4	BY MR. BRIDGES 8	
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5	(415) 318-1200	6		
6	bcunningham@kslaw com Representing the Plaintiff American	7		
	Society For Testing and Materials d/b/a	8		
7 8	ASTM International	9	INDEX TO EXHIBITS	
0	MUNGER, TOLLES & OLSON LLP	10	PAGE	
9	By: THANE REHN, ESQ		EXHIBIT DESCRIPTION MARKED	
10	560 Mission Street 27th Floor	11		
10	San Francisco, California 94105	12	Exhibit 1 Expert Report of John C. 6	
11	(415) 512-4000	1.2	Jarosz L 5 2015	
12	thane rehn@mto com Representing the Plaintiff National Fire	13	June 5, 2015 Exhibit 2 Handwritten notes 97	
12	Protection Association, Inc		Exhibit 3 Handwritten notes 97 Exhibit 3 Handwritten notes 97	
13	MODGANI EWIG & DOGWIIG LLD		Exhibit 4 Spreadsheet 175	
14	MORGAN LEWIS & BOCKIUS LLP By: J KEVIN FEE, ESQ	10	"NFPA Publication Sales	
15	1111 Pennsylvania Avenue NW	17	2009 to 2013"	
16	Washington, DC 20004		JAROSZ02443	
16	(202) 739-3000 jkfee@morganlewis com	18		
17	Representing the Plaintiff American		Exhibit 5 Article 210	
10	Society of Heating, Refrigeration, and Air	19	"ASHRAE Takes on Energy	
18 19	Conditioning Engineers		Standard"	
	(continued)	20		
20 21		21		
22		22 23		
23		24		
24 25		25		
23	Page 2	23		Page 4
_				
	APPEARANCES (continued):	1	DEPOSITION SUPPORT INDEX	
2	FENWICK & WEST LLP	2	DICTRICATION NOT TO ANGLED	
3	By: ANDREW P. BRIDGES, ESQ.	3	INSTRUCTION NOT TO ANSWER:	
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6	abridges@fenwick.com	6		
7	Representing the Defendant		REQUEST FOR PRODUCTION OF DOCUMENTS:	
′	FENWICK & WEST LLP	7		
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10	(650) 988-8500	9		
10	mbecker@fenwick.com Representing the Defendant	10	STIPULATIONS:	
11	Representing the Detendant	12	Page Line	
	ALSO PRESENT:	13	1 age Lille	
13		13	9 16	
	Carl Malamud, Public Resource	14	-	
14	I d D 171	15	QUESTIONS MARKED:	
15	Jonathan Perry, Videographer	16	Page Line	
1/	vonaman i erry, v raeographer	1	NONE	
16 17	onuman i vilj, i lavograpile.			
17	Condition 1 Conf., Talographo	18		
	Contained Torry, Tatographor	18 19		
17 18	Contained Torry, Tatographor	18 19 20		
17 18 19 20 21	Contained Torry, Tabographic	18 19 20 21		
17 18 19 20 21 22	Contained Torry, Talographic	18 19 20 21 22		
17 18 19 20 21 22 23	Contained Torry, Talographic	18 19 20 21 22 23		
17 18 19 20 21 22 23 24	Contained Torry, Talographic	18 19 20 21 22 23 24		
17 18 19 20 21 22 23	Page 3	18 19 20 21 22 23		Page 5

1	* * *	1	Air Conditioning Frainces
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	(Jarosz Exhibit 1 marked for	1 2	Air-Conditioning Engineers. THE VIDEOGRAPHER: Today our
3	identification.)	3	court reporter is Debbie Leonard with
4	* * *	4	Veritext. Would you please swear in
5	THE VIDEOGRAPHER: We are now	5	the witness.
6	on the record.	6	* * *
7	Please note that the	7	JOHN C. JAROSZ,
8	microphones are sensitive and may pick	8	having been first duly sworn, testified as
9	up whispering and private	9	follows:
10	conversations.	10	* * *
11	Please turn off all cell phones	11	EXAMINATION
12	or place them away from the	12	* * *
13		13	BY MR. BRIDGES:
	microphones, as they can interfere		
14	with the deposition audio.	14	Q. Good morning, Mr. Jarosz.
15	Recording will continue until	15	A. Good morning, Mr. Bridges.
16	all parties agree to go off the	16	Q. What do you do for a living?
17	record.	17	A. I'm an economist.
18	My name is Jonathan Perry. I'm	18	Q. What types of work do you do as
19	here representing Veritext. Today's	19	an economist?
20	date is August 27th, 2015. The time	20	A. I'm not exactly sure what
21	is approximately 10:09 a.m.	21	you're asking. I am employed at an economic
22	We are at the offices of	22	consulting firm, and I am involved in applied
23	Veritext, located at 1250 I Street	23	microeconomics and industrial organization,
24	Northwest in Washington, D.C.	24	8
25	The caption on the case is the	25	I apply much of my expertise to
	Page 6		Page 8
1	American Society for Testing and	1	the valuation and evaluation of intellectual
2	Materials, et al., versus	2	property rights. Some of that work is in the
3	Public.Resource.Org, Incorporated,	3	context of damages assessments. Some of it
4	case filed in the US District Court	4	outside such contexts. Some of my work is in
5	for the District of Columbia, Case	5	litigation, and some of my work is not.
6	Number 1:13-cv-0215 [sic] TSC-DAR.	6	Q. Have you valued any of the
7	The name of the witness is	7	intellectual property at issue in this case?
8	John C. Jarosz.	8	MR. FEE: Objection. Form.
9	Would counsel present please	9	MR. REHN: And
10	introduce themselves and state whom	10	MR. FEE: Wait. Before we go
11	they represent.	11	any further, should do you want to
12	MR. BRIDGES: This is Andrew	12	get into a stipulation that they don't
13	Bridges of Fenwick & West for the	13	have to join every objection that one
14	defendant, and with me is Matthew	14	or the other plaintiffs makes, or do
15	Becker.	15	you want us to make them all seriatim?
16	MR. FEE: Kevin Fee from Morgan	16	MR. BRIDGES: I'll stipulate to
17	Lewis on behalf of ASTM.	17	that.
18	MR. REHN: Thane Rehn from	18	MR. FEE: Okay.
19	Munger, Tolles & Olson on behalf of	19	THE WITNESS: I'm not exactly
20	the National Fire Protection	20	sure what you mean by "value," but I
21	Association.	21	haven't done a formal valuation of any
22	MR. CUNNINGHAM: Blake	22	of the IP. I have evaluated the
23	Cunningham of King & Spalding on	23	intellectual property rights, and I
24	behalf of the American Society for	24	have done the assessment that you see
25	Heating, Refrigerating, and	25	in my expert report.
	Page 7		Page 9

```
1 BY MR. BRIDGES:
                                                     1
                                                             A. I don't know that there -- I --
 2
        Q. Have you made any attempt to
                                                        let me start this over again.
 3 put a value on any of the intellectual
                                                     3
                                                                 I believe there are fights
   property rights claimed by the plaintiffs in
                                                        about whether the plaintiffs are entitled to
                                                        these copyrights. I don't know that there's
   this case?
 6
            MR. FEE: Objection to form.
                                                        been a conclusion by this Court that they are
 7
            THE WITNESS: What do you mean
                                                         valid rights. I'm working under the
 8
        by "value"?
                                                         assumption that they are, but I believe the
 9
   BY MR. BRIDGES:
                                                     9
                                                         defendant is disputing those rights.
10
        Q. I mean by "value" what you
                                                     10
                                                                  What did you do to evaluate
11 referred to earlier when you stated that
                                                    11
                                                        trademark rights in this case?
   among your activities is the valuation of
                                                             A. What I've done is summarized in
                                                     12
   intellectual property rights.
                                                        my report. I have an understanding that
                                                     13
        A. I have not done a formal
14
                                                        there are marks and logos at issue that are
15 valuation, and I have not assigned a dollar
                                                         important to the plaintiffs and that Public
                                                         Resource activities impair the rights of the
    amount to any of the intellectual property
                                                        plaintiffs in those trademarks and may
   rights at issue here.
18
            I have evaluated the rights and
                                                        possibly cause confusion in the marketplace.
19 determined issues associated with harm and
                                                    19
                                                             Q. What work did you do to
                                                        determine whether any activities of the
   irreparable harm. You see my results
                                                    20
                                                         defendant does or may cause confusion in the
21
   contained in my report.
                                                    21
22
              What do you mean by "evaluating
                                                    22
                                                         marketplace?
23
   the intellectual property rights"?
                                                    23
                                                                  The work that you see is
24
             I have looked at, from an
                                                        summarized in my report. I haven't done
25
   economist's perspective, the rights and the
                                                        anything beyond that which is summarized
                                             Page 10
                                                                                                  Page 12
   impact of having IP protection or not having
                                                     1
                                                        here.
   IP protection for the subject matter at
                                                     2
                                                                 And by the "report," you're
                                                        referring to Exhibit 1 that I've marked and
 3
   issue.
             Have you done anything else to
 4
        Q.
                                                        placed before you?
   evaluate the intellectual property rights of
                                                     5
 5
                                                             A.
                                                                  Yes.
   the plaintiffs?
                                                             Q.
                                                                  Where did you state your
 6
 7
                                                         conclusions in your report regarding
             MR. FEE: Objection to form.
                                                        trademark rights of the plaintiff -- of the
 8
            THE WITNESS: I've done the
 9
        analyses underlying my report, but the
                                                        plaintiffs?
10
        summary of the work that I've done and
                                                     10
                                                             A. In part, I think it's covered
        the conclusions that I've drawn are
                                                        in paragraphs 150 and 151. It may be covered
11
                                                     11
        contained in my report. I don't have
                                                     12
                                                        in other sections.
12
13
        other conclusions that are not
                                                     13
                                                             Q. Take the time and let me know
14
        contained in those -- in that report.
                                                        what other sections trademark rights are
15 BY MR. BRIDGES:
                                                     15
                                                        covered in.
             What intellectual property
                                                    16
                                                                 MR. FEE: Objection. Are you
   rights of plaintiffs have you evaluated?
                                                    17
                                                             asking him to read the whole report
17
18
             The copyrights at issue here.
                                                     18
                                                             and answer that now?
19
             I'm sorry. Let me be -- let me
                                                     19
                                                                 MR. BRIDGES: No. Presumably
   alter that by saying I have evaluated the
                                                    20
                                                             he's relatively familiar with it, so
21
    alleged copyrights at issue here, and I have
                                                    21
                                                             it wouldn't require him to read it and
22
    evaluated the trademark rights at issue here.
                                                    22
                                                             spend a great deal of time. I
23
            Why did you change your
                                                    23
                                                             don't -- he's referred to his report
24 testimony to refer to "alleged copyrights"
                                                    24
                                                             in his answer, so I just want to make
25 instead of "copyrights"?
                                                    25
                                                             sure that I have a complete
                                             Page 11
                                                                                                  Page 13
```

1		_	
1	understanding.	1	from the facts.
2	MR. FEE: All right. Well,	2	BY MR. BRIDGES:
3	take as long as you need to answer	3	Q. All right. I would like to
4	that, then.	4	know where in the report your report reveals
5	THE WITNESS: In part, you see	5	any observations or conclusions by you about
6	it addressed in paragraph 30.	6	the evaluation of the trademark rights.
7	Right now, those are the	7	MR. FEE: Just so the record is
8	sections that I see that touch on that	8	clear, you're withdrawing the previous
9	topic. There may be others that I'm	9	question now?
10	overlooking right now.	10	MR. BRIDGES: No. It's a new
11	BY MR. BRIDGES:	11	question.
12	Q. And do you need more time?	12	MR. FEE: Okay. Well, he
13	MR. FEE: Objection. Asked and	13	didn't
14	answered.	14	Are you finished going through
15	THE WITNESS: I don't think so.	15	the entire report and identifying
16	I've looked through at a fairly	16	everywhere where you've evaluated the
17	cursory level. If you want me to read	17	trademarks?
18	the whole report to make absolutely	18	Or do you not want him to keep
19	sure, I will, but I'm not sure if	19	doing that?
20 21	you're asking me to do that, but BY MR. BRIDGES:	20	MR. BRIDGES: I just I just
21 22		21 22	asked him a question. I'd like an
23	Q. No, I wouldn't want to take the time, unless counsel is willing to give me	23	answer to the question. MR. FEE: Okay.
24	lots of extra time or if you want to do it	23	BY MR. BRIDGES:
25	during a break. But if you're confident that	25	Q. I'd like to know where in
23	Page 14	23	Page 16
1	4 4 1 4 4	1	1 1 1
	those are the paragraphs that cover the	1	the in the report your report reveals any
2	evaluation of trademark rights, then we can	2	observations or conclusions by you about your
3	proceed.	3	evaluation of the trademark rights of the
3 4	proceed. A. I'm not sure if there's a	3 4	evaluation of the trademark rights of the plaintiffs.
3 4 5	proceed. A. I'm not sure if there's a pending question, but I didn't say I was	3 4 5	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I
3 4 5 6	proceed. A. I'm not sure if there's a pending question, but I didn't say I was confident that those are the only places.	3 4 5 6	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I think it would be misleading if it's
3 4 5 6 7	proceed. A. I'm not sure if there's a pending question, but I didn't say I was confident that those are the only places. Q. Oh, then take more time,	3 4 5 6 7	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I think it would be misleading if it's not stated for the record that he has
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3 4 5 6 7 8 9	proceed. A. I'm not sure if there's a pending question, but I didn't say I was confident that those are the only places. Q. Oh, then take more time, please. A. I think	3 4 5 6 7 8 9	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I think it would be misleading if it's not stated for the record that he has not gotten past paragraph 2 in responding to the prior question, and
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	proceed. A. I'm not sure if there's a pending question, but I didn't say I was confident that those are the only places. Q. Oh, then take more time, please. A. I think Q. Then please A that those are the three that address it. Q. Well, what else reflects your evaluation of trademark rights in this case? A. Okay. If you'd like, I'll take a little bit more time looking at the report. I think in paragraph 2, I	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I think it would be misleading if it's not stated for the record that he has not gotten past paragraph 2 in responding to the prior question, and you've instructed him not to further proceed with respect to that question. You can go ahead and answer the current question. THE WITNESS: So right now, I'm working under the assumption that there's only one pending question, and that is your most recent question.
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	proceed. A. I'm not sure if there's a pending question, but I didn't say I was confident that those are the only places. Q. Oh, then take more time, please. A. I think Q. Then please A that those are the three that address it. Q. Well, what else reflects your evaluation of trademark rights in this case? A. Okay. If you'd like, I'll take a little bit more time looking at the report. I think in paragraph 2, I believe part of the copying is the marks and/or logos. Q. And that paragraph 2 reflects your evaluation? MR. FEE: Objection to form. THE WITNESS: Yes. My	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I think it would be misleading if it's not stated for the record that he has not gotten past paragraph 2 in responding to the prior question, and you've instructed him not to further proceed with respect to that question. You can go ahead and answer the current question. THE WITNESS: So right now, I'm working under the assumption that there's only one pending question, and that is your most recent question. BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	proceed. A. I'm not sure if there's a pending question, but I didn't say I was confident that those are the only places. Q. Oh, then take more time, please. A. I think Q. Then please A that those are the three that address it. Q. Well, what else reflects your evaluation of trademark rights in this case? A. Okay. If you'd like, I'll take a little bit more time looking at the report. I think in paragraph 2, I believe part of the copying is the marks and/or logos. Q. And that paragraph 2 reflects your evaluation? MR. FEE: Objection to form. THE WITNESS: Yes. My evaluation includes understanding the	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I think it would be misleading if it's not stated for the record that he has not gotten past paragraph 2 in responding to the prior question, and you've instructed him not to further proceed with respect to that question. You can go ahead and answer the current question. THE WITNESS: So right now, I'm working under the assumption that there's only one pending question, and that is your most recent question. BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry. Part of the implications of trademark infringement are reflected in paragraph 6, though they're not stated there.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	proceed. A. I'm not sure if there's a pending question, but I didn't say I was confident that those are the only places. Q. Oh, then take more time, please. A. I think Q. Then please A that those are the three that address it. Q. Well, what else reflects your evaluation of trademark rights in this case? A. Okay. If you'd like, I'll take a little bit more time looking at the report. I think in paragraph 2, I believe part of the copying is the marks and/or logos. Q. And that paragraph 2 reflects your evaluation? MR. FEE: Objection to form. THE WITNESS: Yes. My	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	evaluation of the trademark rights of the plaintiffs. MR. FEE: Objection. And I think it would be misleading if it's not stated for the record that he has not gotten past paragraph 2 in responding to the prior question, and you've instructed him not to further proceed with respect to that question. You can go ahead and answer the current question. THE WITNESS: So right now, I'm working under the assumption that there's only one pending question, and that is your most recent question. BY MR. BRIDGES: Q. Yes. A. Part of the implications of loss I'm sorry. Part of the implications of trademark infringement are reflected in

1	encompasses both the harm of loss of	1	report.
2	copyright protection and the repercussions of	2	BY MR. BRIDGES:
3	trademark infringement.	3	Q. What facts did you rely upon
4	Same answer with regard to	4	for that conclusion?
5	paragraph 7.	5	A. Well, I understand that there
6	There are also counterpart	6	has been some inaccurate copying and
7	paragraphs at the end of the report that I	7	
8	think are identical to 6 and 7, so I won't	I	don't recall exactly where I got that
9	identify those numbers.		information from, but I believe that there's
10	Though I didn't say it in a	I	some materials, for instance, that have been
11		11	copied and disseminated that are upside-down.
12		12	There are other materials that are difficult
13	infringement.	13	to read. There may be materials that are
14	I understand that the copyright		disseminated with the thought that those are
15	infringement is associated with certain	15	the most recent standards when, in fact, they
16	_	16	may not be.
17	infringement, though I don't think I	17	Q. You have no idea how you
18	explicitly said that in every section in	18	learned that information?
19	which I discover in which I discussed the	19	A. I don't recall
20	copyright protection and the conclusions	20	MR. FEE: Objection. Vague.
21	flowing from that.	21	And form.
22	I don't think I have anything	22	THE WITNESS: I don't recall,
23	else to add besides what I have discussed	23	sitting here right now. I may have
24	already.	24	seen representations in some of the
25	Q. What conclusions do you see	25	written materials, but I don't recall
	Page 18		Page 20
	1 4 11 11 1 6 6 1 1 4	1	what those written materials are.
1	about a likelihood of conflicton in the		
1 2		_	
2	marketplace arising from the defendant's use	2	BY MR. BRIDGES:
2 3	marketplace arising from the defendant's use of the marks?	2 3	BY MR. BRIDGES: Q. Have you seen any upside-down
2 3 4	marketplace arising from the defendant's use of the marks? A. I haven't drawn any conclusions	2 3 4	BY MR. BRIDGES: Q. Have you seen any upside-down pages in any of the defendant's materials?
2 3 4 5	marketplace arising from the defendant's use of the marks? A. I haven't drawn any conclusions with regard to that topic.	2 3 4 5	BY MR. BRIDGES: Q. Have you seen any upside-down pages in any of the defendant's materials? A. I don't recall seeing that
2 3 4 5 6	marketplace arising from the defendant's use of the marks? A. I haven't drawn any conclusions with regard to that topic. Q. And what conclusions have you	2 3 4 5 6	BY MR. BRIDGES: Q. Have you seen any upside-down pages in any of the defendant's materials? A. I don't recall seeing that personally, no.
2 3 4 5 6 7	marketplace arising from the defendant's use of the marks? A. I haven't drawn any conclusions with regard to that topic. Q. And what conclusions have you drawn about the economic value or dollar	2 3 4 5 6 7	BY MR. BRIDGES: Q. Have you seen any upside-down pages in any of the defendant's materials? A. I don't recall seeing that personally, no. Q. Have you seen any
2 3 4 5 6 7 8	marketplace arising from the defendant's use of the marks? A. I haven't drawn any conclusions with regard to that topic. Q. And what conclusions have you drawn about the economic value or dollar value of the plaintiffs' trademarks?	2 3 4 5 6 7 8	BY MR. BRIDGES: Q. Have you seen any upside-down pages in any of the defendant's materials? A. I don't recall seeing that personally, no. Q. Have you seen any difficult-to-read materials produced by the
2 3 4 5 6 7 8 9	marketplace arising from the defendant's use of the marks? A. I haven't drawn any conclusions with regard to that topic. Q. And what conclusions have you drawn about the economic value or dollar value of the plaintiffs' trademarks? A. I have not assigned a dollar	2 3 4 5 6 7 8 9	BY MR. BRIDGES: Q. Have you seen any upside-down pages in any of the defendant's materials? A. I don't recall seeing that personally, no. Q. Have you seen any difficult-to-read materials produced by the defendant?
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1	it.	1	beyond the document production to verify that
2	Objection to form. You're	2	information.
3	asking him to recall, without having	3	Q. But you don't recall seeing any
4	all the materials in front of him?	4	defective materials yourself, correct?
5	MR. BRIDGES: Yeah.	5	A. That's correct. I do not.
6	MR. FEE: Okay.	6	Q. You just relied upon the word
7	THE WITNESS: It's all laid out	7	of others, correct?
8	in my report, and the sources are	8	MR. FEE: Objection. Vague.
9	provided in my report. I've not	9	Mischaracterizes his testimony.
10	memorized all those.	10	THE WITNESS: I relied upon
11	BY MR. BRIDGES:	11	written documents I saw and
12	Q. But I don't think your report	12	conversations that I had.
13	refers to upside-down materials, does it?	13	BY MR. BRIDGES:
14	A. I don't recall for sure, but I	14	Q. What written documents did you
15	thought some of the documents that I cited	15	see that discussed these issues?
16	make reference to those materials. I'm not	16	MR. FEE: Objection. Asked and
17	sure that I cited the, for instance,	17	answered.
18	upside-down materials, but I think I have	18	THE WITNESS: And I'm sorry. I
19	discussions about that phenomenon.	19	can't point you to the particular
20	Q. With whom?	20	ones. Perhaps, through the course of
21	A. In written materials that I've	21	the day, my memory will be refreshed
22	cited.	22	on that.
23	Q. Have you had oral discussions	23	BY MR. BRIDGES:
24	about what you have referred to as that	24	Q. If you relied upon those
25	phenomenon?		written documents, would you have cited to
	Page 22		Page 24
_			
1	A Vac	1	those written documents in your report?
1 2	A. Yes. O. With whom?	1	those written documents in your report?
2	Q. With whom?	2	A. Perhaps.
2 3	Q. With whom?A. Counsel here.	2 3	A. Perhaps.Q. Why do you say "perhaps"?
2 3 4	Q. With whom?A. Counsel here.Q. With anybody else?	2 3 4	A. Perhaps.Q. Why do you say "perhaps"?A. I can't say with absolute
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1 standards development organization that
        consulting career.
 2 BY MR. BRIDGES:
                                                       you've worked on?
                                                           A. Again, I'd have to go back and
             In what context?
                                                    3
 3
        Α.
             There have been several matters
                                                       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
   standard setting organizations and the
                                                    6
    outputs from those organizations.
                                                    7
                                                           Q. Did you review any of your work
             What organizations?
                                                    8
                                                       in -- from earlier copyright cases involving
 8
        Q.
 9
        A.
             Well, some that come to mind
                                                       standards development organizations in
                                                       connection with your work in this case?
10 are ETSI, IEEE, the Blu-ray Association,
                                                   10
   MPEG, MPEG L.A., the Philips 6C and Philips
                                                                Not to the best of my memory,
                                                   11
12 3C organizations. Those are among the ones
                                                   12
                                                       no.
13 that come to mind.
                                                   13
                                                           Q.
                                                                 What background do you have in
                                                       the creation of standards by standard
        Q. And what types of litigation
                                                       development organizations?
15 did your work relating to those standard
                                                   15
                                                               MR. FEE: Objection to form.
    setting organizations involve?
                                                   16
            MR. FEE: Objection to form.
                                                               THE WITNESS: In the context of
17
                                                   17
18
            THE WITNESS: It was almost all
                                                           some of my consulting assignments, I
                                                   18
19
        intellectual property litigation, with
                                                   19
                                                           have examined processes undertaken by
        probably the bulk of the analyses
20
                                                   20
                                                           SDOs.
21
        undertaken with regard to patent
                                                   21
                                                       BY MR. BRIDGES:
22
                                                   22
        rights.
                                                           O.
                                                                Anything else?
23 BY MR. BRIDGES:
                                                   23
                                                                 Nothing else comes to mind.
             Do you recall --
                                                      I've certainly looked at the output
24
25
             I guess I should -- there were
                                                       associated with those processes, but there's
                                            Page 26
                                                                                               Page 28
   probably some breach of contract matters as
                                                       nothing else that comes to mind.
 2
   well.
                                                    2
                                                                 What processes undertaken by
3
                                                    3
                                                       standards development organizations did you
             Did you work on any matters
 4 involving copyright law where you became
                                                    4
   familiar with the work and outputs of
                                                    5
                                                               MR. FEE: Objection. Are you
   standards setting organizations before this
                                                    6
                                                           asking prior to the report still?
                                                    7
 7
   case?
                                                               MR. BRIDGES: Yes.
 8
             Probably, but I cannot say that
                                                    8
                                                                MR. FEE: Okay.
   with absolute certainty. I've been involved
                                                    9
                                                                THE WITNESS: I'm not quite --
                                                   10
                                                                MR. BRIDGES: Or other than in
10 in several matters over a course of many
11 years.
                                                   11
                                                           this case.
                                                   12
12
             Can you name any copyright
                                                               MR. FEE: Okay.
13 matter involving a standards development
                                                   13
                                                               THE WITNESS: I'm not quite
    organization that you recall?
                                                   14
                                                           sure what you're asking. I've seen
15
             Not now, without going back and
                                                   15
                                                           discussion of the some of the
16 looking at my records.
                                                           processes of various organizations.
                                                   16
             Would they be listed in the
                                                   17
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
             That would summarize some of my
                                                   19
                                                           it somewhat differently.
20 records. The cases that are embodied in my
                                                   20
                                                       BY MR. BRIDGES:
   tab 1 are those that led to deposition or
                                                   21
                                                               Well, no. You said, quote, "I
   trial testimony. I've been involved in many
                                                   22
                                                       have examined processes undertaken by SDOs.'
   matters beyond those.
                                                               So my question is, what
24
             But sitting here, you cannot
                                                       processes undertaken by standards development
25 recall any copyright case involving a
                                                      organizations did you examine?
```

Page 29

Page 27

```
1
        A.
              It sounds like the same
                                                        manufacturers only. Others include a wider
   question to me.
                                                         array of companies.
              Specifically, what processes
                                                      3
                                                                 In all instances, though, the
 3
   did you examine?
                                                        companies are trying to -- the standards
 5
                                                         setting organizations are trying to develop
             That still sounds like the same
                                                         at least some form of consensus -- sometimes
 6
   question, but let me try to answer it by
   saying I've looked, for instance, at the
                                                         it's very broad consensus; sometimes it's
   mechanisms that ETSI undertook in developing
                                                         more narrow consensus -- about what would be
    standards. So I am familiar generally with
                                                         good for that standards setting organization.
                                                     10
                                                                  Sometimes the SSOs are
   the processes that it follows. Similarly
   with regard to other standard setting
                                                     11
                                                         interested in what's best for the
                                                         manufacturers and the ability for them to
12
   organizations.
                                                         supply in an interoperable environment. In
13
        O.
              What other standard setting
   organizations?
                                                         some cases, the SSOs are very alert to the
15
              Well, I think I identified
                                                     15
                                                         needs of consumers and users of products and
                                                         services that comply with standards.
16 those a few moments ago. Do you want me to
                                                                   You've distinguished between
17
   repeat those?
                                                     17
18
                                                     18
                                                        standards setting organizations and standard
        Q.
            Well, if -- are you saying
19
   that, for all of those organizations, you
                                                         development organizations. What is the
    examined their processes?
                                                         distinction that you -- that you identify
21
              In some dimension, probably for
                                                    21
                                                         between the two?
                                                    22
   most of the organizations, I had at least
                                                                  I think I said I didn't know if
                                                             Α.
    some knowledge of the process. I can't say
                                                    23
                                                        there is for sure a distinction, but I think
   that I investigated in depth all of the
                                                         an SSO is perhaps a broader concept than an
   processes for all of the organizations that
                                                         SDO, but I might be wrong on that.
                                             Page 30
                                                                                                  Page 32
   have been involved in my consulting
                                                                 I know the companies -- I --
    assignments that are standards oriented.
                                                         the plaintiffs here are SDOs. The
 3
              What do you recall about your
                                                         associations are, among other things, in the
 4
   investigation of the processes by which
                                                         business of creating and developing
   standards development organizations create
                                                      5
                                                         standards.
   their standards?
                                                      6
                                                                  There could be other SSOs that
        Α.
             I should say I -- SDO is
                                                         have different constituents that are of
    probably not the right term to use. I should
                                                         interest to them. I don't know for sure that
   probably say standards setting organizations.
                                                         an SSO is a broader concept than an SDO, but
10 There may be a distinction between an SSO and
                                                    10
                                                         it could be.
11 an SDO.
                                                     11
                                                             Q.
                                                                   What do you understand to be
                                                     12
                                                        the constituents of the plaintiffs in this
12
             But, generally, each SSO has a
13
    process that's unique to its organization.
                                                     13
                                                         case?
    Some solicit input from a wide range of
                                                     14
                                                                  MR. FEE: Objection to form.
15
   constituents; some from a more narrow range.
                                                     15
                                                                 THE WITNESS: I laid that out
             The ones that I have examined
                                                             in my report. In summary, I believe
                                                     16
   have all been fairly careful in the work that
                                                     17
                                                             they try to include in the process
   they've done, seeking input at many steps
                                                     18
                                                             both those -- both supply-side
   along the way.
                                                     19
                                                             entities and demand-side entities.
20
                                                    20
             Some organizations, like SDOs
                                                        BY MR. BRIDGES:
21
    at issue here, seek a broader array of inputs
                                                    21
                                                             Q.
                                                                   Who else are plaintiffs'
22
                                                    22
   than do others.
                                                         constituents?
23
            Some organizations, standards
                                                    23
                                                                  MR. FEE: Same objection.
                                                    24
                                                                  THE WITNESS: I can't think of
   setting organizations, include primarily or
25 only manufacturers and sometimes large
                                                    25
                                                             anything that doesn't fall within
                                             Page 31
                                                                                                  Page 33
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1	those two categories as the	1	constituents of the plaintiffs?
2	constituents of the plaintiffs.	2	MR. FEE: Objection to form.
3	BY MR. BRIDGES:	3	THE WITNESS: Nothing else
4	Q. Only entities are constituents	4	comes to mind, although I'm certainly
5	of the plaintiffs?	5	open to learning that I have not
6	MR. FEE: Objection. Vague.	6	included something that I should
7	THE WITNESS: An individual can	7	include.
8	be an entity, in my mind. It's not	8	BY MR. BRIDGES:
9	necessarily a company.	9	Q. What about regulators?
10	BY MR. BRIDGES:	10	A. I'm sorry. What's the
11	Q. And what do you mean by a	11	question?
12	supply-side entity or person?	12	Q. What about regulators?
13	A. Those companies or individuals	13	MR. FEE: Objection to form.
14	that provide products or services that, among	14	THE WITNESS: I heard those
15	other things, comply with the standards.	15	words. I don't understand the
16	Q. Do you mean anything else by	16	question.
17	supply-side entities or individuals?	17	BY MR. BRIDGES:
18	MR. FEE: Objection to form.	18	Q. You don't understand the
19	THE WITNESS: I don't think so.	I	question?
	BY MR. BRIDGES:	20	A. Correct.
21	Q. What do you mean by demand-side	21	Q. You've referred to supply-side
22	entities or individuals?	22	entities. You've referred to demand-side
23	MR. FEE: Same objection.	23	entities. I'm saying now what about
24	THE WITNESS: Just so that	24	<i>,</i> E
25	there's no confusion between us, I	25	don't understand that question
	Page 34		Page 36
1	believe an entity can encompass an	1	A. I don't.
1 2	believe an entity can encompass an individual.	1 2	
		1	Q in this context?
2	individual.	2	Q in this context?A. Are you asking whether a
3	individual. BY MR. BRIDGES:	2 3	Q in this context?
2 3 4	individual. BY MR. BRIDGES: Q. I understand, but I want the record to be clear. And since "entity" tends	2 3 4	Q in this context? A. Are you asking whether a regulator is on the demand side or supply side?
2 3 4 5	individual. BY MR. BRIDGES: Q. I understand, but I want the	2 3 4 5	Q in this context? A. Are you asking whether a regulator is on the demand side or supply side? Q. I'm asking whether regulators
2 3 4 5 6	individual. BY MR. BRIDGES: Q. I understand, but I want the record to be clear. And since "entity" tends to suggest a non-breathing person, I would	2 3 4 5 6	Q in this context? A. Are you asking whether a regulator is on the demand side or supply side?
2 3 4 5 6 7	individual. BY MR. BRIDGES: Q. I understand, but I want the record to be clear. And since "entity" tends to suggest a non-breathing person, I would like to include both breathing persons and	2 3 4 5 6 7	Q in this context? A. Are you asking whether a regulator is on the demand side or supply side? Q. I'm asking whether regulators are constituents of the plaintiffs.
2 3 4 5 6 7 8 9	individual. BY MR. BRIDGES: Q. I understand, but I want the record to be clear. And since "entity" tends to suggest a non-breathing person, I would like to include both breathing persons and non-breathing legal persons in my question. A. I'm not sure if that's a	2 3 4 5 6 7 8	Q in this context? A. Are you asking whether a regulator is on the demand side or supply side? Q. I'm asking whether regulators are constituents of the plaintiffs. MR. FEE: Objection to form.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	individual. BY MR. BRIDGES: Q. I understand, but I want the record to be clear. And since "entity" tends to suggest a non-breathing person, I would like to include both breathing persons and non-breathing legal persons in my question. A. I'm not sure if that's a question. Q. The pending question was, what do you mean by demand-side entities or individuals? MR. FEE: Objection to form. THE WITNESS: Okay. I'm not I'm not sure I used the phrase "entities or individuals" when I talked about demand side.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q in this context? A. Are you asking whether a regulator is on the demand side or supply side? Q. I'm asking whether regulators are constituents of the plaintiffs. MR. FEE: Objection to form. BY MR. BRIDGES: Q. Have you ever given that any thought? A. Which question MR. FEE: Objection. Compound. THE WITNESS: should I answer? BY MR. BRIDGES: Q. Both. MR. FEE: Objection to form.
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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	individual. BY MR. BRIDGES: Q. I understand, but I want the record to be clear. And since "entity" tends to suggest a non-breathing person, I would like to include both breathing persons and non-breathing legal persons in my question. A. I'm not sure if that's a question. Q. The pending question was, what do you mean by demand-side entities or individuals? MR. FEE: Objection to form. THE WITNESS: Okay. I'm not I'm not sure I used the phrase "entities or individuals" when I talked about demand side. Regardless, it's companies or individuals that are the users or potential users of products or services that, in part, comply with the standards. BY MR. BRIDGES:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q in this context? A. Are you asking whether a regulator is on the demand side or supply side? Q. I'm asking whether regulators are constituents of the plaintiffs. MR. FEE: Objection to form. BY MR. BRIDGES: Q. Have you ever given that any thought? A. Which question MR. FEE: Objection. Compound. THE WITNESS: should I answer? BY MR. BRIDGES: Q. Both. MR. FEE: Objection to form. THE WITNESS: The question of have I given that any thought, perhaps. To the question of are they a constituent of the plaintiffs here, I guess in some dimension they are.

```
1
 1
        they have both supply-side and
                                                                 The Web sites and information
 2
                                                     2
        demand-side interests that they
                                                             that I looked at for each of the
                                                     3
 3
        consider.
                                                             plaintiffs certainly give more detail.
   BY MR. BRIDGES:
                                                     4
                                                                 But, in essence, a need for a
 5
        Q. Don't they also have regulatory
                                                     5
                                                             standard is brought to the attention
   interests aside from being supply side or
                                                     6
                                                             of the group. That need can be
 6
                                                     7
                                                             identified from any number of places.
 7
    demand side?
                                                     8
                                                                 And then a group is chartered
 8
             MR. FEE: Objection to form.
                                                     9
 9
             THE WITNESS: What do you mean
                                                             with assessing what that need is and
10
        by "regulatory interests"?
                                                    10
                                                             how best to respond to that need.
11
    BY MR. BRIDGES:
                                                    11
                                                                 That group often comes up with
             You don't understand the term?
                                                    12
                                                             proposals to respond to the issue and
12
        O.
        A.
              No, I don't know what you mean
                                                    13
                                                             adjusts that proposal as it gets more
13
                                                             input and gives more thought.
14 by that term.
                                                    14
                                                    15
                                                                 Ultimately consensus is arrived
15
        Q.
             Do they have public interests
    other than supply or demand side interests?
                                                             at for each of the organizations, and
16
                                                    16
             MR. FEE: Objection to form.
                                                    17
                                                             a standard is developed and published.
17
             THE WITNESS: I don't know that
18
                                                    18
                                                                 The processes are slightly
19
        it would be "other than," because I
                                                    19
                                                             different for each of the
        think of the public interest as being
                                                    20
                                                             organizations but generally follow
20
        either demand or supply side. I don't
21
                                                    21
                                                             that route.
22
        know what might not be included.
                                                    22
                                                        BY MR. BRIDGES:
23
   BY MR. BRIDGES:
                                                    23
                                                             Q. How do the processes differ
        Q. What about somebody that has a
                                                        among the three plaintiff organizations?
25
                                                                 MR. FEE: Objection to form.
   safety interest? How do you classify them as
                                                    25
                                                                                                 Page 40
                                                                 THE WITNESS: I don't know all
    a constituent of the plaintiffs?
                                                     1
 2
             MR. FEE: Objection to form.
                                                     2
                                                             of the differences. They may have, in
 3
             THE WITNESS: It depends on who
                                                     3
                                                             part, been summarized in my report. I
        that is. I have an interest in my
                                                             see, for instance, on page 29,
 4
                                                     4
 5
        house being safe, for instance, and I
                                                     5
                                                             paragraph 70, I have identified the
 6
        consider myself as part of the
                                                     6
                                                             four steps that I saw that NFPA
 7
        demand-side constituency.
                                                     7
                                                             follows in developing standards.
                                                     8
 8
             I think that there could be
                                                        BY MR. BRIDGES:
                                                     9
 9
        companies that are in the business of
                                                             Q. I'm just asking you -- you
10
                                                        don't need to spend time going through the
        manufacturing smoke detectors, for
        instance. I would think of them
                                                        report. I just want to know, sitting here
11
        primarily as being on the supply side,
                                                        today, how you understand the processes
12
        although they're certainly alert to
13
                                                    13
                                                        differ.
14
        the demand-side considerations.
                                                    14
                                                                 MR. FEE: Object to form, to
15 BY MR. BRIDGES:
                                                    15
                                                             the extent you are asking him not to
                                                             look at his report. I think he should
        Q. How do you understand the
                                                    16
17
    plaintiffs here -- strike that.
                                                    17
                                                             be permitted to do that.
18
             What do you understand to be
                                                    18
                                                                 THE WITNESS: Just by -- just
    the process by which the plaintiffs develop
                                                    19
                                                             going by memory, I don't recall
    standards?
                                                    20
                                                             substantial differences in the
20
21
             MR. FEE: Objection to form.
                                                    21
                                                             processes. I understand each one to
             THE WITNESS: I don't know all
                                                    22
22
                                                             follow the general scheme that I
23
        the steps. I've summarized some of
                                                    23
                                                             identified a few moments ago. I'm
24
        the steps that I understand in the
                                                    24
                                                             quite sure that there are differences
25
                                                    25
                                                             in each plaintiff's implementation of
        report.
                                             Page 39
                                                                                                 Page 41
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1
 1
        that scheme.
                                                            particular, but the -- the options are
                                                     2
 2 BY MR. BRIDGES:
                                                            federal, state, and local.
        Q. You used the word "group"
                                                     3
                                                        BY MR. BRIDGES:
 3
   several times in discussing the process by
                                                     4
                                                            Q. Have you --
   which the standards -- the plaintiffs develop
                                                     5
                                                                  But I don't know that each
   standards. What did you mean by "group"?
                                                        group assessing the need for a standard
            I don't recall exactly what
                                                        always has representations at each level of
 7
   context I used it in, but I think of a set of
                                                     8
                                                        government.
    individuals representing either themselves or
                                                     9
                                                            Q.
                                                                  What do you know about
   companies that have interest in the topic and
                                                        participation by employees of standards
   might have some thoughts as to how best to
                                                        development organizations in what you call
   address that topic and develop a standard.
                                                        the "groups"?
12
                                                    12
13
            The groups can be wide
                                                    13
                                                                 MR. FEE: Objection to form.
                                                                 THE WITNESS: My memory is that
   assortments. Sometimes they're individual
                                                    14
15 users. Sometimes they're large company
                                                    15
                                                            each one of the standard development
16 representatives. Sometimes they're small
                                                            organizations that are at issue here
                                                    16
   company representatives. Sometimes there
                                                            have at least one employee that's --
                                                    17
   are -- they are employees of the SDO.
                                                    18
                                                            that's involved in the process.
19
            But each one of the SDOs tends
                                                    19
                                                                 Sometimes those employees are
20 to have a fairly wide and diverse set of
                                                    20
                                                            facilitators. Often that's the case.
    groups that addresses these topics.
                                                            Sometimes they have substantive input.
21
                                                    21
22
                                                    22
                                                            But they often help the process along.
        Q. You say some members of the
   groups may be individuals, correct, and their
                                                    23
                                                        BY MR. BRIDGES:
   own -- acting on their own interest; is that
                                                    24
                                                            Q. And what do you mean by
25 correct?
                                                    25
                                                        "substantive input"?
                                            Page 42
                                                                                                 Page 44
                                                                  Some people may have particular
 1
        A.
              That's my understanding, yes.
                                                     1
 2
              Why is that your understanding?
                                                        knowledge about a particular industry or
                                                        topic. They all have some knowledge about
 3 How -- what -- what's the basis of your
   understanding?
                                                        the standards development process.
 5
                                                     5
                                                                  Do you have any understanding
             I think I've probably seen that
   in some of the written materials, but I can't
                                                        as to why the various individuals in the
    point you to particular materials that --
                                                        groups participate in the standards
   that I relied on for that.
 8
                                                     8
                                                        development process?
                                                     9
 9
            And you said that some
                                                                 MR. FEE: Objection to form.
                                                    10
                                                                 THE WITNESS: Generally,
10 individuals may participate in groups as
   representatives of large companies; is that
                                                    11
                                                            they're interested in addressing a
                                                            topic of some concern and coming to a
12
   correct?
                                                    12
                                                            resolution, one that's acceptable to,
13
        A.
                                                    13
              Yes.
14
        O.
             Some individuals may
                                                    14
                                                            at the very least, the party that
15 participate as -- participate as
                                                    15
                                                            they're representing and one that
                                                            is of -- has sufficient consensus
16 representatives of small companies, correct?
                                                    16
17
                                                    17
                                                            support to be a practical and
        A.
              Yes.
18
        O.
             And I don't think you mentioned
                                                    18
                                                            acceptable solution to a pending
   that any individuals participate as
                                                    19
                                                            problem.
   representatives of government?
                                                    20
                                                        BY MR. BRIDGES:
21
             That's probably also the case.
                                                    21
                                                                  What do you mean by "a pending
                                                            Q.
                                                        problem"?
22
             What types of governments?
                                                    22
23
            MR. FEE: Objection. Vague.
                                                    23
                                                                Typically, there's a need
24
                                                        identified, and the SDO has decided a
        Form.
25
                                                        standard may help address that need. For
            THE WITNESS: I don't know in
                                            Page 43
                                                                                                 Page 45
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1	instance, the fire at the shirt factory in	1	do have a JD.
2	New York a hundred years ago, it was	2	Q. You don't have a Ph.D. in
3	identified that we didn't want those	3	economics, correct?
4	disasters to occur in the future and that we	4	A. Correct. I was in the Ph.D.
5	would like to investigate avenues to minimize	5	program and have completed most of the
6	such risks.	6	requirements for my Ph.D. but not all.
7	Q. What do you mean by "avenues to	7	Q. What interests do you
8	minimize such risks"?	8	understand the plaintiffs to have strike
9	A. Well, consideration is given to	9	that.
10	determining whether there should be quality	10	What interests do you
11	standards that manufacturers should comply	11	understand the plaintiffs to have in having
12	with in order to reduce the disastrous	12	standards incorporated into law?
13	outcomes that occur because of fires, for	13	MR. FEE: Objection to form.
14	instance.	14	THE WITNESS: I think that's
15	Q. And what do you mean by	15	laid out in my report in a variety of
16	"quality standards"?	16	ways; but generally, the plaintiffs
17	A. Just by way of example, to have	17	are interested in effectuating their
18	more ingress and egress available to	18	charters, and that is they want to
19	employees and to have that as a requirement	19	address certain problems in an
20	or have a standard that may eventually be	20	effective way. And if those solutions
21	incorporated into law so that buildings are	21	get incorporated into standards and
22	erected in such a way to allow employees to	22	those standards get incorporated by
23	leave the building rather than be engulfed in	23	reference into law, that can be an
24	flames.	24	effective way for dissemination of a
25	Q. And what do you mean by	25	solution.
23	Page 46	25	Page 48
			<u> </u>
1	"incorporated into law"?	1	BY MR. BRIDGES:
2	MR. FEE: Objection. Calls for	2	Q. What do you mean by
3	a legal conclusion. Form.	3	"effectuating" the plaintiffs' charters?
4	THE WITNESS: As an economist,	4	A. Well, each plaintiff has a goal
5	I generally understand it to be that	5	or set of goals it would like to achieve,
6	there's some federal, state, and local	6	whether that's safety or interoperability.
7	laws that make reference to certain	7	But generally, they want to achieve a
8	standards and have that reference as	8	socially good purpose and one that is good
9	part of the law.	9	for members of the industry.
10	The legal implications I am	10	Q. In your answer, you're
11	certainly not an expert in, and I		referring specifically to these plaintiffs?
12	hesitate to characterize any more than	12	A. Yes.
13	I have.	13	Q. Do these plaintiffs have an
14	BY MR. BRIDGES:	14	interoperability goal?
15			
1 /	Q. Well, you, in fact, have a law	15	A. I don't think explicitly, but I
16	degree, correct?	15 16	think I don't think as part of the charter
17	degree, correct? A. I have a law degree. I am not	1	think I don't think as part of the charter for the plaintiff, but I think with regard to
	degree, correct?	16	think I don't think as part of the charter for the plaintiff, but I think with regard to certain topics that they address
17 18 19	degree, correct? A. I have a law degree. I am not	16 17	think I don't think as part of the charter for the plaintiff, but I think with regard to certain topics that they address interoperability helps achieve some of those
17 18	degree, correct? A. I have a law degree. I am not now, nor have I ever been a practicing	16 17 18	think I don't think as part of the charter for the plaintiff, but I think with regard to certain topics that they address
17 18 19 20 21	degree, correct? A. I have a law degree. I am not now, nor have I ever been a practicing attorney. Q. Okay. But you have a juris doctor degree, correct?	16 17 18 19	think I don't think as part of the charter for the plaintiff, but I think with regard to certain topics that they address interoperability helps achieve some of those goals of the individual topics that help achieve the overall goals of the
17 18 19 20 21 22	degree, correct? A. I have a law degree. I am not now, nor have I ever been a practicing attorney. Q. Okay. But you have a juris	16 17 18 19 20 21 22	think I don't think as part of the charter for the plaintiff, but I think with regard to certain topics that they address interoperability helps achieve some of those goals of the individual topics that help
17 18 19 20 21	degree, correct? A. I have a law degree. I am not now, nor have I ever been a practicing attorney. Q. Okay. But you have a juris doctor degree, correct?	16 17 18 19 20 21	think I don't think as part of the charter for the plaintiff, but I think with regard to certain topics that they address interoperability helps achieve some of those goals of the individual topics that help achieve the overall goals of the
17 18 19 20 21 22	degree, correct? A. I have a law degree. I am not now, nor have I ever been a practicing attorney. Q. Okay. But you have a juris doctor degree, correct? A. Is that different from a law	16 17 18 19 20 21 22 23 24	think I don't think as part of the charter for the plaintiff, but I think with regard to certain topics that they address interoperability helps achieve some of those goals of the individual topics that help achieve the overall goals of the organization.

Page 49

Page 47

I -- I didn't know that, but I

24 25

25 plaintiffs?

```
1
        A.
              That I've identified in my
                                                        the problems that they are trying to address?
                                                     2
 2 report?
                                                                 MR. FEE: Same objection.
                                                     3
                                                                 THE WITNESS: Generally, ASTM
 3
        O.
             In your work on -- in your work
   on this matter for the plaintiffs.
                                                     4
                                                             is addressing problems associated with
             I'm not exactly sure what
                                                     5
                                                             public health and safety; support --
        A.
                                                     6
                                                             protection and sustainability of the
 6 you're asking, but I talked about the merits
   of interoperability and why these
                                                     7
                                                             environment; overall quality of life;
   organizations -- why certain standards are
                                                     8
                                                             the reliability of materials, product
    oriented toward interoperability.
                                                     9
                                                             systems, and services; and
10
            I think one of the specific
                                                     10
                                                             facilitating international, regional,
11 illustrations is -- of the need for and the
                                                    11
                                                             and national commerce.
12 achieving of interoperability goals is the
                                                    12
                                                        BY MR. BRIDGES:
                                                    13
13 NEC. That allows one to safely and
                                                             Q.
                                                                  Now, those are problems?
14 effectively receive power across the world.
                                                    14
                                                                  They are trying to achieve
15 That's good for manufacturers, and it's good
                                                     15
                                                        their mission by addressing problems that may
                                                        stand in the way of achieving those missions.
16 for consumers.
                                                     17
                                                                  So please give me an example of
17
             You said that plaintiffs are
18 interested, I believe, in addressing certain
                                                        some problems that the plaintiffs are trying
                                                     18
   problems in an effective way. Do you recall
                                                        to address. My questioning has been focused
20 that?
                                                        on problems. You've been responding about
                                                        mission, but I -- I'd like for you to
21
        A.
              Generally I recall that, yes.
22
             And, generally speaking,
                                                        identify some of the problems, generally
        O.
   referring to these plaintiffs, what are the
                                                        speaking, that you understand the plaintiffs
   problems you understand them to be trying to
                                                        are trying to address.
25 address?
                                                    25
                                                                 MR. FEE: Objection to form.
                                             Page 50
                                                                                                 Page 52
 1
            MR. FEE: Objection to form.
                                                     1
                                                             Compound.
 2
            THE WITNESS: I've laid that
                                                     2
                                                                 THE WITNESS: I thought I did,
 3
        out in my report. In page 64 I've
                                                     3
                                                             so I'll try with some different words.
        laid out, in essence, the ASTM
 4
                                                     4
                                                        BY MR. BRIDGES:
 5
                                                     5
        mission, as I understand it.
                                                             Q. Can you answer without
 6
             In paragraph 68 I've laid out
                                                     6
                                                        reference to your report --
 7
                                                     7
        the NFPA mission, as I understand it.
                                                                  I'd rather --
                                                             Α.
                                                     8
 8
             And in paragraph 73 I've laid
                                                                  -- based on your general
                                                             Q.
 9
        out the ASHRAE mission, as I
                                                        knowledge?
10
                                                    10
        understand it.
                                                             A.
                                                                  I'd rather not.
11 BY MR. BRIDGES:
                                                                  Well, I'd rather that you tell
                                                     11
                                                        us what you can recall about the -- about the
12
              So now my question is, what are
   the problems that you understand the
                                                        problems that plaintiffs are trying to
13
                                                     13
    plaintiffs are trying to address in an
                                                     14
                                                        address.
15
   effective way?
                                                    15
                                                                  So you don't --
             MR. FEE: Objection to form.
                                                                 MR. FEE: Objection.
16
                                                    16
17
             THE WITNESS: Well, generally,
                                                    17
                                                                 THE WITNESS: -- want me to
18
        they're addressing the mission that
                                                     18
                                                             look at my report? This is just a
19
        they have here and their individual
                                                     19
                                                             memory contest?
20
        problems that are brought to the SDOs'
                                                    20
                                                        BY MR. BRIDGES:
21
        attention that, if addressed
                                                    21
                                                             Q. No, it's not a memory contest.
22
        effectively, would help each
                                                    22
                                                        I'd like to know what you happen to know,
23
        organization fulfill its mission.
                                                    23
                                                        sitting here.
24
                                                    24
   BY MR. BRIDGES:
                                                             A.
                                                                  I'd like to do that by looking
25
            So generally speaking, what are
                                                    25 at my report.
                                             Page 51
                                                                                                 Page 53
```

1 1			
1	Q. You may after I get your answer	1	Q. You said standards "provide
2	first.	2	definition around what is a best practice, an
3	A. Okay.	3	advisable practice, and that practice is
4	MR. FEE: Objection to making	4	intended to address existing and potential
5	this a memory test and not allowing	5	problems."
6	him to review materials he's indicated	6	What did you mean by "practice"
7	he needs to review to fully and	7	in that answer?
8	accurately respond to the question.	8	A. It was an example of what
9	If you can answer without	9	somebody should do.
10	looking at your report, go ahead.	10	Q. And what do you mean by "what
11	THE WITNESS: By way of	11	somebody should do"?
12	example, ASTM has addressed problems	12	MR. FEE: Objection. Vague.
13	associated with the safety of	13	THE WITNESS: I don't know how
14	amusement rides.	14	to define it any more than that. I'm
15	By way of example, NFP [sic]	15	•
16	has addressed problems associated with	16	sorry. BY MR. BRIDGES:
17		17	
	electrical fires in buildings.	1	Q. Is it a course of action that
18	By way of example, ASHRAE is		somebody should take?
19	addressing but I'm not thinking of	19	A. That would be another way to
20	a good example for ASHRAE right now.	20	say it. I don't think that's a definition.
21	I apologize. I'd have to look at my	21	It's it's another presentation of what I
22	report.	22	said.
23	BY MR. BRIDGES:	23	Q. Is a suitable method for
24	Q. Okay. And I believe that you	24	1 6 6
25	testified bear with me just a second. Let	25	MR. FEE: Objection to form.
	Page 54		Page 56
1	me get the exact testimony.	1	THE WITNESS: That that
2	You said earlier that the	2	could be an example, yes.
3	plaintiffs are interested in effectuating	3	BY MR. BRIDGES:
4	their charters, and that is they want to	4	Q. And would it be in terms of
5	address certain problems in an effective way.	5	some of plaintiffs' standards?
_		2	some of planting standards:
6	And if those solutions get incorporated into	6	_
1	And if those solutions get incorporated into standards and those standards get	1	MR. FEE: Same objection.
7	standards and those standards get	6	MR. FEE: Same objection. THE WITNESS: I think so.
7 8	standards and those standards get incorporated into law, that can be an	6 7 8	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES:
7 8 9	standards and those standards get incorporated into law, that can be an effective way for dissemination of a	6 7 8 9	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best
7 8 9 10	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution.	6 7 8 9 10	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result?
7 8 9 10 11	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony?	6 7 8 9 10 11	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form.
7 8 9 10 11 12	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony? A. Yes, I do.	6 7 8 9 10 11 12	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form. THE WITNESS: That could be.
7 8 9 10 11 12 13	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony? A. Yes, I do. Q. What did you mean by	6 7 8 9 10 11 12 13	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form. THE WITNESS: That could be. I'm not sure that that's a definition,
7 8 9 10 11 12 13 14	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony? A. Yes, I do. Q. What did you mean by "solutions" in that context?	6 7 8 9 10 11 12 13 14	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form. THE WITNESS: That could be. I'm not sure that that's a definition, but it that's a possibility.
7 8 9 10 11 12 13 14 15	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony? A. Yes, I do. Q. What did you mean by "solutions" in that context? A. Standards are a form of	6 7 8 9 10 11 12 13 14 15	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form. THE WITNESS: That could be. I'm not sure that that's a definition, but it that's a possibility. BY MR. BRIDGES:
7 8 9 10 11 12 13 14 15 16	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony? A. Yes, I do. Q. What did you mean by "solutions" in that context? A. Standards are a form of solution.	6 7 8 9 10 11 12 13 14 15 16	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form. THE WITNESS: That could be. I'm not sure that that's a definition, but it that's a possibility. BY MR. BRIDGES: Q. And does that apply to
7 8 9 10 11 12 13 14 15 16	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony? A. Yes, I do. Q. What did you mean by "solutions" in that context? A. Standards are a form of solution. Q. In what respect?	6 7 8 9 10 11 12 13 14 15 16 17	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form. THE WITNESS: That could be. I'm not sure that that's a definition, but it that's a possibility. BY MR. BRIDGES: Q. And does that apply to plaintiffs' standards?
7 8 9 10 11 12 13 14 15 16 17	standards and those standards get incorporated into law, that can be an effective way for dissemination of a solution. Do you recall that testimony? A. Yes, I do. Q. What did you mean by "solutions" in that context? A. Standards are a form of solution. Q. In what respect? A. They provide definition around	6 7 8 9 10 11 12 13 14 15 16 17 18	MR. FEE: Same objection. THE WITNESS: I think so. BY MR. BRIDGES: Q. Would it be optimal or best procedures for accomplishing a result? MR. FEE: Objection to form. THE WITNESS: That could be. I'm not sure that that's a definition, but it that's a possibility. BY MR. BRIDGES: Q. And does that apply to plaintiffs' standards? MR. FEE: Same objection.
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1	any house that the plaintiff 1 11	1	year instead and WI am at the 41
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		impact from the past would be close to the
3	defendant's activities?	3	1
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.
	S		
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
13	BY MR. BRIDGES:	13	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
18	dissemination have been fairly substantial.	18	conduct to date strike that that you're
	I believe that the purchase of publications	19	<u> </u>
	has declined some at the plaintiffs at the	20	-
	various plaintiffs. It certainly has not	21	
	risen. Those are among the things that come	22	
			۵, ۶
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			
1	among other places, in paragraph 133 of my	1	that statement.
1	among other places, in paragraph 133 of my report.	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	
2	report.	2	MR. FEE: Objection. Asked and
2 3	report. Q. Have you been able to quantify	2 3	MR. FEE: Objection. Asked and answered.
2 3 4	report. Q. Have you been able to quantify any financial losses to plaintiffs as a	2 3 4	MR. FEE: Objection. Asked and answered. THE WITNESS: Among other
2 3 4 5	report. Q. Have you been able to quantify any financial losses to plaintiffs as a consequence of defendant's activities?	2 3 4 5	MR. FEE: Objection. Asked and answered. THE WITNESS: Among other things, paragraphs 112 through 155.
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1	Q. So those would be harms caused	1	think basically what I'm saying is
2	by a court decision?	2	what would or addressing, is what
3	MR. FEE: Same objection.	3	would be the harm to the plaintiffs if
4	THE WITNESS: By continuing	4	there's no permanent injunction.
5	activities by the defendant that are	5	BY MR. BRIDGES:
6	not halted by the Court.	6	Q. Well, what did you mean by
7	BY MR. BRIDGES:	7	"losing copyright protection" in the
8	Q. Well, it comes across, frankly,	8	paragraph in the heading VI on page 48?
9	in your report as though you're identifying	9	A. In essence, you can think of it
10	harms that would flow from a court decision.	10	as what would happen if there's no permanent
11	MR. FEE: Objection.	11	injunction. In other words, what the
12	BY MR. BRIDGES:	12	defendant has done in the past and what it's
13	Q. Is that correct or not?	13	likely to do in the future is allowed to
14	A. No, I think you	14	continue.
15	MR. FEE: Mischaracterizes the	15	Q. And you immediately go into
16	report.	16	paragraph 112 talking about Emily Bremer,
17	THE WITNESS: you misread	17	correct?
18	it. I don't think I said that or	18	
19	meant to say that.	19	A. I don't know what you mean by "immediately." It's the first paragraph in
20	BY MR. BRIDGES:	20	Section VI.
21		21	
			Q. Right. Was Emily Bremer in the
22	from the from the defendant's conduct to date?	22	passage you referred to referring to the
23		23	presence or absence of a permanent injunction
24	A. At the risk of repeating	24	in this case?
25	myself, some of that is summarized in Page 66	25	A. I don't think explicitly she
	1 age 00		1 age 00
1			
1	paragraph 133, with regard to tangible		was addressing that issue, no.
2	evidence on harm. With regard to other	2	Q. Do you think implicitly she was
1	evidence on harm. With regard to other evidence, it's throughout the report.	2 3	Q. Do you think implicitly she was referring to this case?
2	evidence on harm. With regard to other evidence, it's throughout the report. Q. So why would it make a	2	Q. Do you think implicitly she was referring to this case? A. No. I thought you were asking
2 3	evidence on harm. With regard to other evidence, it's throughout the report.	2 3	Q. Do you think implicitly she was referring to this case? A. No. I thought you were asking about permanent injunction. I don't think
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2 3 4 5 6	evidence on harm. With regard to other evidence, it's throughout the report. Q. So why would it make a difference to what the defendant's harms are strike strike that.	2 3 4 5	Q. Do you think implicitly she was referring to this case? A. No. I thought you were asking about permanent injunction. I don't think she was addressing the an injunction
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2 3 4 5 6 7 8	evidence on harm. With regard to other evidence, it's throughout the report. Q. So why would it make a difference to what the defendant's harms are strike strike that. Why would it make a defendants [sic] to the plaintiffs' harms if the plaintiffs' harms were continue with	2 3 4 5 6 7 8 9	Q. Do you think implicitly she was referring to this case? A. No. I thought you were asking about permanent injunction. I don't think she was addressing the an injunction issue. She was addressing the concept of copyright protection.
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1	A. Generally. I think she's	1	Q. "Such products"
2	talking about standards development and	2	A. And in the next two sentences.
3	incorporation by reference. I don't remember	3	Q. And these are other products
4	if she said at the very beginning of the	4	that "could include more sophisticated
5	article that it was about copyright	5	Web-based availability, published
6	protection, but she certainly talks about	6	compilations of incorporated standards, and
7	copyright protection.	7	other ancillary products that incorporate the
8	Q. And you're quoting her about	8	standards"; isn't that correct?
9	losing copyright protection, and you're	9	A. You didn't read that right. It
10	placing it in the context of harms of the	10	starts "such products could include."
11	loss of copyright protection, correct?	11	Q. Okay. Otherwise, that reading
12	MR. FEE: Objection to form.	12	is correct, correct?
13	THE WITNESS: This excerpt	13	A. I think so.
14	doesn't specifically talk about losing	14	Q. You consider that to be harm to
15	copyright protection, but it talks	15	the plaintiffs?
16	about the concept of it. If there was	16	MR. FEE: Objection. Vague.
17	no longer copyright protection granted	17	THE WITNESS: It could be, yes.
18	to the SDOs, what would be the	18	It's likely to be, if the copyright
19	repercussions.	19	infringement or the assumption of a
20	BY MR. BRIDGES:	20	copyright infringement continues. It
21	Q. And that's the context that you	21	could broaden.
22	identified in the first line of	22	BY MR. BRIDGES:
23	paragraph 112, correct?	23	Q. Right. But the fact that these
24	A. Yes.	24	other types of products would enter the
25	MR. FEE: Objection to form.	25	marketplace is part of the harm that you
	Page 70		Page 72
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1
        Q. In other words, if the Court
                                                     1 standards.
 2 makes a decision in a certain way, there will
                                                     2
                                                             O.
                                                                  What further harm would
   be harms from persons or entities other than
                                                        Public.Resource.Org cause to plaintiffs with
   Public.Resource.Org to the plaintiffs? Is
                                                        respect to the standards at issue in this
                                                        case if no -- if the Court does not
   that your testimony?
 6
            MR. FEE: Objection to form.
                                                     6
                                                        permanently enjoin Public.Resource.Org?
            THE WITNESS: You used the
                                                     7
                                                                 MR. FEE: Objection to form.
 7
                                                     8
 8
        phrase "in a certain way." I don't
                                                                 THE WITNESS: If there's no
 9
        know what you mean by that. I'm
                                                     9
                                                             permanent injunction, there will, in
10
        addressing the issue of whether there
                                                    10
                                                             essence, be a message sent to the
11
        should be a permanent injunction or
                                                    11
                                                             marketplace that the standards that
                                                    12
                                                             have already been disseminated are out
12
13 BY MR. BRIDGES:
                                                    13
                                                             there and can be used by others.
14
             So your view is that, if the
                                                    14
                                                                 So right now my expectation is
                                                    15
                                                             that some number of consumers of the
15 Court does not enter a permanent injunction,
   the plaintiffs will suffer harms from parties
                                                             standards have been reluctant or
                                                    16
   other than Public.Resource.Org. Is that your
                                                    17
                                                             unknowing as to the standards
18 testimony?
                                                    18
                                                             disseminated by Public Resource. Now
19
        A.
             That potential exists. I don't
                                                    19
                                                             there will be more knowledge about
20 know for sure. That's, in part, why the harm
                                                    20
                                                             that and more approval of that
   is irreparable or very difficult to quantify.
                                                             activity. That is if there's no
                                                    21
22
                                                    22
        O.
             The -- what harm?
                                                             permanent injunction.
23
        Α.
             Continuing activity of Public
                                                    23
                                                        BY MR. BRIDGES:
24 Resource and others. I don't know exactly
                                                    24
                                                             Q. What harms will plaintiffs
   what will happen, but the potential is that
                                                    25
                                                        suffer if the Court rules that the plaintiffs
                                             Page 74
                                                                                                 Page 76
   there could be very broad dissemination of
                                                        do not own the copyrights in this case?
   the standards, which would impact these SDOs
                                                     2
                                                                 MR. FEE: Objection. Calls for
3
   tremendously.
                                                     3
                                                             speculation.
        Q. What harm would
                                                     4
 4
                                                                 THE WITNESS: In essence,
   Public.Resource.Org cause to plaintiffs if
                                                     5
 5
                                                             you're asking if there's no copyright
   there is no permanent injunction?
                                                     6
                                                             infringement?
              A permanent injunction would --
                                                        BY MR. BRIDGES:
   lack of a permanent injunction would harm the
 8
                                                     8
                                                             Q. No. What harms -- have you
                                                        identified what harms the plaintiffs would
   SDOs.
10
                                                        suffer if the Court rules that the plaintiffs
              That wasn't my question. My
11 question was, what harm would
                                                        do not own the copyrights at issue, that
12 Public.Resource.Org cause to plaintiffs if
                                                        there are no copyrights that the plaintiffs
   there is no permanent injunction?
                                                    13
                                                        own --
13
14
              At the very least, it's
                                                    14
                                                                 MR. FEE: Objection to form.
15 associated with its historical dissemination
                                                    15
                                                        BY MR. BRIDGES:
16 of these standards, and there would be, in
                                                             Q. -- at issue in this case?
                                                    16
   essence, a carte blanche for other
                                                    17
                                                                  I haven't addressed or thought
18
   organizations or individuals to access those.
                                                    18
                                                        about that issue. There are also, don't
19
             So my expectation is that the
                                                    19
                                                        forget, trademark issues.
20 dissemination of the materials that have
                                                                  I'm asking about copyright, so
                                                    20
21
    already been disseminated will expand.
                                                        I ask you to confine your answers to my
                                                    21
22
            It could also be the case that
                                                    22
                                                        questions.
23 Public Resource will undertake further
                                                    23
                                                                 My question is, what -- you
    activities that would disseminate either
                                                        assume for purposes of your analysis that
25 already disseminated standards or other
                                                        plaintiffs own valid copyrights, correct?
                                             Page 75
                                                                                                 Page 77
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1	A. I assume that there's copyright	1	plaintiffs deserve copyright protection for
2	infringement. I don't know that I've made an	2	these standards?
3	explicit assumption with regard to ownership.	3	MR. FEE: Objection to form.
4	Q. And you assume infringement	4	THE WITNESS: I don't have an
5	without assuming ownership of the copyrights?	5	opinion on that one way or the other.
6	A. I haven't made any explicit	6	I have not thought about that topic.
7	assumption with regard to ownership. I know	7	BY MR. BRIDGES:
8	that's an issue in this case, but it's well	8	Q. Do you have any expertise in
9	beyond my expertise.	9	copyright law as a field of law?
10	Q. So if it turns out that do	10	MR. FEE: Objection. Vague.
11	you understand your testimony to have any	11	THE WITNESS: No, I don't have
12	bearing on whether plaintiffs' standards are	12	legal expertise. I have expertise in
13	copyrightable?	13	looking at harm associated with
14	MR. FEE: Objection. Calls for	14	copyright infringement.
15	speculation.	15	BY MR. BRIDGES:
16	I would instruct you to not	16	Q. Do you have any expertise with
17	disclose any communications you had	17	respect to harm caused by invalidation of
18	with counsel that weren't the basis	18	copyrights?
19	for any of your opinions in this case.	19	MR. FEE: Same objection.
20	You can otherwise answer.	20	THE WITNESS: I'm not quite
21	THE WITNESS: Could you read	21	sure I'm fully appreciating your
22	that back or ask it again, please?	22	question. Again, I'm an expert in the
23	BY MR. BRIDGES:	23	economics of IP protection. One of
24	Q. Do you understand your	24	the areas in which I do work is harm
25	testimony and opinions in this case to have	25	associated with copyright protection.
	Page 78		Page 80
1	any bearing on whether plaintiffs' standards	1	BY MR. BRIDGES:
2	are copyrightable?	2	Q. Have you done any work in this
3	MR. FEE: Same objection and	3	case to quantify what harms plaintiffs would
4	instruction. Plus objection, calls	4	suffer if a court were to rule that they
5	for a legal conclusion.	5	lacked copyright rights in the standards at
6	THE WITNESS: I don't know one	6	issue in this case?
7	way or the other. I've not taken on	7	MR. FEE: Objection to form.
8	that assignment.	8	Go ahead.
9	BY MR. BRIDGES:	9	THE WITNESS: Not explicitly,
10	Q. Do you understand whether your	10	to my knowledge.
11	testimony and opinions in this case are	11	BY MR. BRIDGES:
12	relevant to whether plaintiffs deserve	12	Q. Have you done anything
13		13	implicitly?
	copyright protection in this case?		ž •
14	MR. FEE: Objection. Calls for	14	MR. FEE: Same objection.
14 15	MR. FEE: Objection. Calls for a legal conclusion.	14 15	MR. FEE: Same objection. THE WITNESS: Not to my
14 15 16	MR. FEE: Objection. Calls for a legal conclusion. And same objection with respect	14 15 16	MR. FEE: Same objection. THE WITNESS: Not to my knowledge.
14 15 16 17	MR. FEE: Objection. Calls for a legal conclusion. And same objection with respect to communications between you and	14 15 16 17	MR. FEE: Same objection. THE WITNESS: Not to my knowledge. BY MR. BRIDGES:
14 15 16 17 18	MR. FEE: Objection. Calls for a legal conclusion. And same objection with respect to communications between you and counsel that were not the bases for	14 15 16 17 18	MR. FEE: Same objection. THE WITNESS: Not to my knowledge. BY MR. BRIDGES: Q. Have you done any work in this
14 15 16 17 18 19	MR. FEE: Objection. Calls for a legal conclusion. And same objection with respect to communications between you and counsel that were not the bases for your opinions or your report.	14 15 16 17 18 19	MR. FEE: Same objection. THE WITNESS: Not to my knowledge. BY MR. BRIDGES: Q. Have you done any work in this case to analyze the incentives that
14 15 16 17 18 19 20	MR. FEE: Objection. Calls for a legal conclusion. And same objection with respect to communications between you and counsel that were not the bases for your opinions or your report. THE WITNESS: I don't know one	14 15 16 17 18 19 20	MR. FEE: Same objection. THE WITNESS: Not to my knowledge. BY MR. BRIDGES: Q. Have you done any work in this case to analyze the incentives that participants have in the standards
14 15 16 17 18 19 20 21	MR. FEE: Objection. Calls for a legal conclusion. And same objection with respect to communications between you and counsel that were not the bases for your opinions or your report. THE WITNESS: I don't know one way or the other. I did not take on	14 15 16 17 18 19 20 21	MR. FEE: Same objection. THE WITNESS: Not to my knowledge. BY MR. BRIDGES: Q. Have you done any work in this case to analyze the incentives that participants have in the standards development process?
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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.
23	Page 82	23	Page 84
1	1 11 11		THE WITCH I I I
1	mean by "creates the text."	1	THE WITNESS: I think,
2	Q. Who actually suggests the	2	generally, they want consensus among
2 3	Q. Who actually suggests the words?	2 3	generally, they want consensus among interested parties in how to address a
2 3 4	Q. Who actually suggests the words? A. I think a number of	2 3 4	generally, they want consensus among interested parties in how to address a particular issue or problem that those
2 3 4 5	Q. Who actually suggests the words? A. I think a number of constituents do, typically.	2 3 4 5	generally, they want consensus among interested parties in how to address a particular issue or problem that those constituents face.
2 3 4 5 6	 Q. Who actually suggests the words? A. I think a number of constituents do, typically. Q. What types of constituents 	2 3 4 5 6	generally, they want consensus among interested parties in how to address a particular issue or problem that those constituents face. They are each non-profit
2 3 4 5 6 7	Q. Who actually suggests the words? A. I think a number of constituents do, typically. Q. What types of constituents suggest the words of the standards?	2 3 4 5 6 7	generally, they want consensus among interested parties in how to address a particular issue or problem that those constituents face. They are each non-profit organizations, so they're not
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1	clearinghouse for resources.	1	standards, print copies of standards,
2	BY MR. BRIDGES:	2	and disseminate copies of standards.
3	Q. When you say they "create	3	They are involved in teaching
4	versions of the proposed standards," it's, in	4	and training sometimes associated with
5	fact, the various groups, as you call them,	5	standards.
6	that create versions, perhaps with a staff	6	They participate in advertising
7	member from the organizations themselves,	7	campaigns about the output of the SDO.
8	correct?	8	Those are among the things that
9	MR. FEE: Objection to form.	9	they contribute.
10	Vague.	10	BY MR. BRIDGES:
11	THE WITNESS: I think that's	11	Q. And when you say "providing
12	sometimes correct.	12	people to be involved and pay salaries,"
13	BY MR. BRIDGES:	13	you're talking about the generally
14	Q. Do you know that	14	speaking, the staff members who may functions
15	A. Perhaps often.	15	as liaisons to various committees and groups
16	Q. Or perhaps always?	16	that draft the standards?
17	A. Perhaps always.	17	MR. FEE: Objection to form.
18	MR. FEE: Objection.	18	Lack of foundation.
19	BY MR. BRIDGES:	19	BY MR. BRIDGES:
20	Q. How do the plaintiffs serve as	20	Q. Is that what you understand?
21	clearinghouses for resources?	21	A. Staff people that help
22	A. They allow a forum for the	22	
23	•	23	logistics front. Others are helping on a
24	issues that those constituents face in a	l	more substantive front. They pay their
	particular subject area.		salaries. They pay taxes, provide benefits.
	Page 86		Page 88
1	Q. What investments do you	1	They provide travel expenses. Those are some
2	understand the plaintiffs to make in the	2	
3	standards development process?	3	Q. On page 76 sorry page 33.
4	MR. FEE: Objection to form.	4	
5	THE WITNESS: Are you asking	5	your report. Are you there?
6	for dollar amounts, or are you asking	6	A. I am, yes.
7	for types of activities?	7	Q. In the final sentence, it says,
8	BY MR. BRIDGES:	8	"In fiscal year 2014, ASHRAE spent more than
9	Q. Types of types of	9	\$1 million to cover the costs of developing
10	expenditures.		or updating its standards."
11	MR. FEE: Same objection.	11	Do you see that?
12	THE WITNESS: There are many	12	A. I do, yes.
13	types, as I understand it. One type	13	Q. Are on how many years is
14	is simply providing people to be	14	the typical cycle for revision of ASHRAE's
15	involved in the process and paying the	15	90.1 standard?
16	salaries of those people.	16	A. That is under continuous
17			maintenance, and I think that's it's
18	I think they probably provide	17	· · · · · · · · · · · · · · · · · · ·
	computing resources to help produce the standards.	18	supplemented and updated automatically every
19 20		19 20	three years. Perhaps they address it more
	I think they probably provide	l	frequently, but at least every three years.
21	meeting resources.	21	Q. So it would be fair to assume
22	I think they probably provide	22	that, during one cycle, ASHRAE spent
23	an e-mail exchange mechanism by which	23	something over \$3 million to cover the costs
24	information is shared.	24	of developing or updating its standards?
25	I think they create copies of	25	A. You said at least \$3 million?
	Page 87		Page 89

1	Q. Right. Or approximately	1	THE WITNESS: Again, I don't
2	\$3 million?	2	have an estimate.
3	A. Are you limiting it just to	3	BY MR. BRIDGES:
4	90.1 or all its standards?	4	Q. Do you know did ASHRAE pay
5	Q. Well, that's a good question.	5	for the time, the hotel bills, and the plane
6	What what's what did you intend the	6	fares of its volunteer members in updating
7	last sentence in paragraph 76 to refer to?	7	the ASHRAE 90.1 standard?
8	All of its standards or 90.1?	8	A. I would expect rarely. It's
9	A. I think it's all of its	9	possible that there are certain instances in
10	standards, but we could visit the screenshot	10	which there was some set of out-of-pocket
11	from the Web site to confirm that.	11	expenses covered, but I would imagine the
12	Q. Okay.	12	bulk of the time it's the volunteer's
13	A. I I could be wrong. I don't	13	employer.
14	think I am, but I could be.	14	MR. BRIDGES: Sorry. How long
15	Q. Okay. In the previous	15	have we been going? I didn't get when
16	sentence, you say, "ASHRAE and its volunteer	16	we went back on.
17	members devoted more than 86,400 man-hours,	17	MR. FEE: 34 minutes.
18	3,600 hotel nights, and 1,200 round-trip	18	BY MR. BRIDGES:
19	flights as part of the process."	19	Q. Did you speak with Emily Bremer
20	And that "the process"	20	at any point in this case?
21	appears to refer to updating the ASHRAE 90.1	21	A. No.
22	standard, correct?	22	Q. How did you become acquainted
23	A. Yes.	23	with her writings?
24	Q. When you say "ASHRAE and its	24	A. I think Kevin Fee and/or
25	volunteer members," and then you give those	25	
	Page 90		Page 92
		4	
1	statistics, those statistics refer primarily	1	she had written on this topic. I don't
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	statistics, those statistics refer primarily to the man-hours, hotel nights, and		she had written on this topic. I don't recall whether then we separately obtained
1			
2	to the man-hours, hotel nights, and	2	recall whether then we separately obtained
2 3	to the man-hours, hotel nights, and round-trip flights of the volunteer members?	2 3	recall whether then we separately obtained her two articles or Mr. Fee slash Ms. Rubel
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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	to the man-hours, hotel nights, and round-trip flights of the volunteer members? MR. FEE: Objection. Vague. THE WITNESS: Probably. As opposed to ASHRAE-employed staff. BY MR. BRIDGES: Q. Do you know how much ASHRAE's volunteer members and their employers strike that. Do you know how much ASHRAE's volunteer members and their employers spent in salaries and disbursements for the man-hours, hotel nights, and round-trip flights that were part of the process of updating the ASHRAE 90.1 standard? A. I don't know, but it I would imagine it's a noticeable amount, but I don't know the amount. Q. What would be your best estimate? A. I don't have a best estimate. Q. Would it be probably over	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	recall whether then we separately obtained her two articles or Mr. Fee slash Ms. Rubel provided those to us. Q. What independent work did you do to research writings regarding the economics of standards development? MR. FEE: Objection to form. THE WITNESS: We did independent research in the sense that people that work with me did a literature search to determine what writings had been done in the area. I was previously aware of some amount of the scholarship to begin with. BY MR. BRIDGES: Q. How is that literature search reflected in any documents? A. The results are shown in my tab 2, and in particular it is page 2 of my tab 2, at the bottom. Q. And were these items found by

1	THE WITNESS: Yes, with the		the various plaintiffs.
2	exception that, in the first instance,	2	Q. With whom?
3	lawyers at Morgan Lewis brought to our	3	A. They are all identified in
4	attention the Bremer the existence	4	paragraph 10 of my report.
5	of Bremer articles.	5	Q. Which of those did you
6	BY MR. BRIDGES:	6	personally have conversations with?
7	Q. Did you study any of the	7	A. All of them, as I recall. It's
8	materials that Bremer strike that.	8	possible there's someone I did not, but I'm
9	Bremer's articles are law	9	not remembering that being the case.
10	review articles, correct?	10	Q. Approximately how long did you
11	A. Yes.	11	spend with did you have conversations with
12	Q. Did any plaintiff did your	12	any of them together?
13	team's research identify any articles that	13	A. Yes, several of them were
14	you chose not to include in tab 2?	14	together.
15	A. I don't think so.	15	Q. Which ones?
16	Q. Did any plaintiff or its	16	A. I don't recall all
17	counsel furnish you with correspondence	17	combinations. I can say with some confidence
18	between the plaintiffs and Emily Bremer for	18	that there was never more than one plaintiff
19	review?	19	on a call. In other words, there were
20	A. No, not to my knowledge.	20	several people from a particular plaintiff on
21	Q. How many conversations with	21	a call, but not more than one plaintiff.
22	representatives of the plaintiffs did you	22	So I had various combinations
23	have?	23	
24	MR. FEE: Objection.	24	· ·
25	I would instruct you not to		occasions; and with ASHRAE, one or two
23	Page 94	23	Page 96
			8
1	answer questions regarding	1	occasions.
2	communications with counsel, unless	2	Q. And approximately how long
2 3	communications with counsel, unless they formed the basis of your	2 3	Q. And approximately how long total did you spend in conversations with
2 3 4	communications with counsel, unless they formed the basis of your opinions, in which case you can answer	2 3 4	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff?
2 3 4 5	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those	2 3 4 5	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff? MR. FEE: Objection to form.
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2 3 4 5 6 7 8	communications with counsel, unless they formed the basis of your opinions, in which case you can answer questions with respect to those conversations. BY MR. BRIDGES: Q. So I I'll change my question	2 3 4 5 6 7 8	Q. And approximately how long total did you spend in conversations with representatives of each plaintiff? MR. FEE: Objection to form. THE WITNESS: Cumulatively, somewhere between three and five hours is my best guess right now.
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1 BY MR. BRIDGES:
                                                     1
                                                       Hamasaki?
                                                    2
 2
        Q. Mr. Jarosz, I'm handing you
                                                                MR. FEE: Objection. Vague.
 3 Exhibits 2 and 3. I'll represent that these
                                                    3
                                                                THE WITNESS: Yes, in part.
   were furnished to us by e-mail last night, I
                                                       BY MR. BRIDGES:
   think around 6 p.m. Eastern or thereabouts.
                                                     5
                                                            Q. What else, other than relying
 6
            Can you please identify
                                                     6
                                                       upon conversations with them?
7
   Exhibits 2 and 3?
                                                    7
                                                                 And the memory that I had of
 8
                                                    8
                                                       the conversations with the individuals.
            MR. FEE: Objection to form.
9
            THE WITNESS: To the best of my
                                                    9
                                                                 And you -- but you didn't rely
10
        knowledge, Exhibit 2 is notes that
                                                    10
                                                       upon your own notes?
11
        Mr. Chapman took in conversations that
                                                    11
                                                            A. Not at the point that I was
        we had with various people, and
                                                    12
                                                        drafting up footnotes, no.
12
        Exhibit 3 is notes that Mr. Hamasaki
                                                    13
                                                                 Why would you take notes and
13
14
        took in conversations with plaintiff
                                                       then dispose of them before you wrote your
15
        personnel.
                                                    15
                                                       report?
16 BY MR. BRIDGES:
                                                    16
                                                                 Well, I find it -- I find it
                                                            A.
                                                       useful to follow along in a conversation by
17
            Did you take any notes of
   conversations with plaintiffs' personnel?
                                                       taking notes so that I can follow up with
18
19
        A. I believe I did, but I did not
                                                       certain points. I find it useful to write
                                                       things down. It helps in the memory process.
20 keep those notes. Those were -- I followed
   my normal procedure. And by the time we got
                                                        But I did not keep those notes in the final
   to the report, I had not kept those notes.
                                                   22
                                                        drafting of the report.
23
            Did you have those -- did you
                                                   23
                                                                 Why would you -- when you had
   refer to those notes in drafting your report?
                                                       those conversations, did you anticipate that
                                                       you were going to prepare a report?
25
            MR. FEE: Objection. Vague.
                                            Page 98
                                                                                               Page 100
 1
            THE WITNESS: Not that I
                                                     1
                                                            A. I thought that there was a very
 2
                                                       good possibility, yes.
        recall.
 3
   BY MR. BRIDGES:
                                                    3
                                                            Q. Why did you not retain notes of
        Q. In your report --
                                                       conversations to have on hand for the
 4
 5
             Well, I guess I should say, I
                                                       preparation of your report?
   looked back at the notes at some time, and
                                                     6
                                                            A. I followed my normal procedure.
 6
    the report was done over a period of time.
                                                        I don't typically take notes. I'm not a
                                                        great note-taker, and my handwriting leaves
   So I guess in some dimension I did, but as it
    came toward the final stages, I did not.
                                                       much to be desired. So I tend to find my
10
            Well, I'm just curious, because
                                                    10
                                                       notes themselves to be of limited assistance.
11 your report indicates, among a number of the
                                                            Q. And that's your normal
                                                    11
                                                       procedure, is to throw away notes that
12 footnotes, there's citations to conversations
13 with various persons. And I'm trying to
                                                    13
                                                       reflect conversations that you rely on?
14 figure out how -- on what you drew to cite
                                                    14
                                                                 No. My normal procedure is to
15 specifically to various conversations in your
                                                       keep materials that I do rely upon and not
16 report. And I'll give you examples.
                                                       keep materials that I don't need to rely
   Footnotes 193, 194, and 196 through 200.
17
                                                    17
                                                       upon.
18
            On what were you relying in
                                                    18
                                                            Q. And you didn't need to rely
   referring to those conversations?
                                                       upon any of your notes to recall your
20
            MR. FEE: Objection to form.
                                                       conversations, so you went and discussed the
21
            THE WITNESS: Conversations
                                                       conversations with two other persons?
                                                   21
22
        with Mr. Chapman and/or Mr. Hamasaki.
                                                   22
                                                            A.
                                                                 Yes.
23
   BY MR. BRIDGES:
                                                   23
                                                            Q.
                                                                 Did -- I see -- it's my
24
             So you were relying on
                                                       understanding that your report sites
25 conversations with Messrs. Chapman and
                                                       conversations with Stephen Comstock 17 times,
                                            Page 99
                                                                                               Page 101
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1 conversations with Jim Thomas 11 times, 2 conversations with Jim Pauley seven times, 3 conversations with John Pace four times, 4 conversations with Stephanie Reiniche four 5 times, and conversations with Mark Owen three 6 times. 7 Did you make the citations to 8 those conversations in the report based on 9 your memory? 1 Q. Did you rely upon the writing 2 of the language by other people in decidi 3 to include language regarding informatio 4 learned from conversations in your repor 5 MR. FEE: Objection. Vague. 6 THE WITNESS: I can answer t 7 by saying Mr. Hamasaki, Mr. Chapn 8 and I were all involved in this 9 project and the report. It was the 10 case that we all had some input in the	n
3 conversations with John Pace four times, 4 conversations with Stephanie Reiniche four 5 times, and conversations with Mark Owen three 6 times. 7 Did you make the citations to 8 those conversations in the report based on 9 your memory? 10 MR. FEE: Objection. Lack of 3 to include language regarding informatio 4 learned from conversations in your repor 5 MR. FEE: Objection. Vague. 6 THE WITNESS: I can answer t 7 by saying Mr. Hamasaki, Mr. Chapn 8 and I were all involved in this 9 project and the report. It was the 10 case that we all had some input in the	n
4 conversations with Stephanie Reiniche four 5 times, and conversations with Mark Owen three 6 times. 7 Did you make the citations to 8 those conversations in the report based on 9 your memory? 10 MR. FEE: Objection. Lack of 4 learned from conversations in your repor 5 MR. FEE: Objection. Vague. 6 THE WITNESS: I can answer t 7 by saying Mr. Hamasaki, Mr. Chapn 8 and I were all involved in this 9 project and the report. It was the 10 case that we all had some input in the	
5 times, and conversations with Mark Owen three 6 times. 6 times. 7 Did you make the citations to 8 those conversations in the report based on 9 your memory? 10 MR. FEE: Objection. Vague. 6 THE WITNESS: I can answer to by saying Mr. Hamasaki, Mr. Chapner and I were all involved in this 9 project and the report. It was the case that we all had some input in the	t?
6 times. 7 Did you make the citations to 8 those conversations in the report based on 9 your memory? 9 your memory? 10 MR. FEE: Objection. Lack of 6 THE WITNESS: I can answer to by saying Mr. Hamasaki, Mr. Chapner and I were all involved in this 9 project and the report. It was the 10 case that we all had some input in the	
7 Did you make the citations to 8 those conversations in the report based on 9 your memory? 9 your memory? 9 project and the report. It was the 10 MR. FEE: Objection. Lack of 10 case that we all had some input in the	
8 those conversations in the report based on 9 your memory? 10 MR. FEE: Objection. Lack of 8 and I were all involved in this 9 project and the report. It was the 10 case that we all had some input in the	hat
8 those conversations in the report based on 9 your memory? 9 project and the report. It was the 10 MR. FEE: Objection. Lack of 10 case that we all had some input in the	nan,
MR. FEE: Objection. Lack of 10 case that we all had some input in the	
MR. FEE: Objection. Lack of 10 case that we all had some input in the	
	9
11 foundation. 11 writing of the words, though I was	
THE WITNESS: In part, and I 12 responsible for and directly	
think in part the citations were put 13 supervised all of it.	
there based on the memory and 14 BY MR. BRIDGES:	
15 knowledge of Mr. Chapman and 15 Q. And did you rely upon input	
16 Mr. Hamasaki. 16 from Mr. Hamasaki and Mr. Chapman in	the form
17 BY MR. BRIDGES: 17 of written input, such as drafts?	the form
18 Q. Did you get any materials from 18 MR. FEE: Objection.	
19 Mr. Chapman and Mr. Hamasaki other than 19 THE WITNESS: As I	
20 Exhibits 2 and 3 on which you relied in 20 MR. FEE: Hold on a second.	
21 preparing this report? 21 I don't believe that you're	
21 preparing this report: 22 MR. FEE: Objection. Lack of 22 entitled to discovery regarding his	
foundation. Mischaracterizes his 23 drafts, and I'll instruct him not to	
24 testimony. 24 answer that	
THE WITNESS: Actually, as a Page 102 MR. BRIDGES: I	Page 104
1 factual matter, this is the very first 1 MR. FEE: unless you have	
2 time I've seen these notes. I've 2 unless there's something in there	
3 never seen these before. 3 makes this subject to an exception	
4 BY MR. BRIDGES: 4 Rule 26, as limitation on discover	
5 Q. What did you rely upon in 5 from experts, which I'm not awar	
6 making all of the detailed references to 6 MR. BRIDGES: I am entitle	
7 conversations in the report? 7 discovery about materials he reli	ed
8 A. My 8 upon	
9 MR. FEE: Objection. Asked and 9 MR. FEE: Okay. That's fair	
10 answered. 10 MR. BRIDGES: and that	is my
THE WITNESS: My memory of 11 question.	
conversations with those individuals 12 MR. FEE: Okay.	
and conversations that I had with 13 BY MR. BRIDGES:	
14 Mr. Hamasaki and Mr. Chapman. 14 Q. And I'd like to know if you	
15 BY MR. BRIDGES: 15 relied upon drafts prepared by other prepare	
16 Q. Did anyone else prepare the 16 regarding the statements and facts for	
17 language regarding that the information 17 conversations are mentioned in the ci	
18 from those conversations that you relied upon 18 MR. FEE: Objection to form	
19 in creating your report? 19 THE WITNESS: I don't known that the state of the sta	
A. No, not to my knowledge. Now, 20 to answer that besides what I said	d a
21 lawyers did look at draft of the report, 21 moment ago, and let me perhaps	say it
22 although we're not going into the substance 22 a little bit differently and see if	=
23 of it. But that was we could, in part, be 23 that's responsive.	
24 refreshed if we were wrong as to any cite, 24 Mr. Hamasaki, Mr. Chapma	n, and
25 but I don't think we were. 25 I were all involved in this projec	
Page 103	Page 105

```
1
 1
        and in this report. We were all
                                                            go behind him or vice versa.
                                                     2
 2
        involved in writing and rewriting and
                                                                 So I don't know if that answers
        talking and questioning one another.
                                                     3
                                                            your question, but that's the process
 3
   BY MR. BRIDGES:
                                                     4
                                                            that we followed.
 5
            And were you relying, in part,
                                                     5
                                                        BY MR. BRIDGES:
   upon the memories or recorded memories of
 6
                                                     6
                                                                 And did the process include
                                                            Q.
    Mr. Hamasaki and Mr. Chapman?
                                                        their writing the facts that corresponded to
            MR. FEE: Objection. Vague as
                                                        the conversations with plaintiffs' employees
 8
9
        to "relying."
                                                        and your reviewing and revising what they had
10
            And if you're asking him if
                                                    10
                                                        written?
11
        he's relied upon those conversations
                                                    11
                                                                 MR. FEE: Objection.
        as the basis for facts or assumptions,
                                                    12
                                                                 To the extent that question
12
                                                            calls for responsive information that
        you can answer it. If you mean relied
                                                    13
13
                                                            is unrelated to bases that form your
14
        in any other context, you shouldn't
                                                    14
                                                            opinions or conclusions or assumptions
15
        answer it.
                                                    15
                                                            that you made, I would instruct you
16
            THE WITNESS: I certainly
                                                    16
        didn't rely on any recordings of
                                                            not to answer that portion of the
17
                                                    17
18
        conversations. I had not seen any
                                                    18
                                                            question. You can otherwise respond.
19
        notes. This is the first I've seen
                                                    19
                                                                 THE WITNESS: We all reviewed
                                                    20
20
        notes from Mr. Chapman and
                                                            and revised the document. I don't
21
        Mr. Hamasaki.
                                                    21
                                                            think that there were any facts that
22
                                                    22
                                                            came only from one of them that I
            We talked about virtually all
23
        of these topics. I don't know if you
                                                    23
                                                            wasn't aware of.
24
        would call that "relying" or not. But
                                                    24
                                                        BY MR. BRIDGES:
25
        we worked together on this project.
                                                    25
                                                            Q. Were there recollections that
                                           Page 106
                                                                                                Page 108
 1 BY MR. BRIDGES:
                                                        came from them that you relied upon in
 2
        Q. Did they prepare draft language
                                                        creating your report?
   referring to information from those
                                                                 MR. FEE: Same objection and
                                                     3
   conversations with citations to those
                                                     4
                                                            same instruction.
   conversations that you relied upon in
                                                     5
                                                                 THE WITNESS: There may have
    completing the report?
                                                     6
                                                            been confirmations of things that I
 6
 7
            MR. FEE: Objection. Vague as
                                                     7
                                                            recalled or knew, but I don't think
                                                     8
 8
        to "relied."
                                                            that they brought to my attention
                                                     9
 9
            To the extent that should be
                                                            things that I didn't previously know.
10
                                                    10
        interpreted as meaning relied upon for
                                                        BY MR. BRIDGES:
        reaching any conclusions in your
                                                            Q. And what types of confirmations
11
                                                    11
        report or relied upon for assumptions,
                                                        were there things that you relied upon in
12
        you can answer it. You shouldn't
                                                        approving this report?
13
                                                    13
14
        answer it otherwise.
                                                    14
                                                                 MR. FEE: Same objection and
15
            THE WITNESS: I just don't know
                                                    15
                                                            instruction.
                                                                 THE WITNESS: Virtually
        how to answer that question besides
                                                    16
16
17
        saying, at various points in time, one
                                                    17
                                                            everything you see in the report, all
        or the other -- others of us were
                                                            three of us were involved in it, and
18
                                                    18
19
        involved in the Word document that we
                                                    19
                                                            all three of us were confirming and
20
        created. So it was almost never the
                                                    20
                                                            denying things or evaluating things
21
        case that the three of us were in the
                                                    21
                                                            along the way.
                                                    22
                                                                 MR. BRIDGES: I think we have
22
        Word document at the same time.
23
            So there were times that, for
                                                    23
                                                            to pause for a change of media, so why
24
                                                    24
        instance, Mr. Hamasaki was doing some
                                                            don't we take a break.
25
        work in the document and then I would
                                                    25
                                                                 THE VIDEOGRAPHER: Off the
                                                                                                Page 109
                                            Page 107
```

```
1
        record at 12:17. This is the end of
                                                       you interview?
                                                    2
 2
        media unit number 1.
                                                            A. I don't think I interviewed any
                                                     3
 3
                                                       members of the public either.
 4
            (Recess from 12:17 p.m. to
                                                            Q. What steps did you do to
 5
                                                       ascertain the views of the members of the
        12:32 p.m.)
                                                       organizations, other than the employees?
 6
 7
            THE VIDEOGRAPHER: On the
                                                     7
                                                            A. I read the materials that were
 8
        record at 12:32. This is the
                                                       produced here. I read the deposition
 9
        beginning of media unit 2 in the
                                                     9
                                                        testimony of the various individuals. I read
10
        deposition of John Jarosz.
                                                        the articles published by Ms. Bremer. And I
11 BY MR. BRIDGES:
                                                       read the other academic literature and
             Mr. Jarosz, your report, as I
                                                       practical literature that I had.
12
                                                    12
13 referred to earlier, cites a number of
                                                                Which of those sources stated
                                                    13
14 conversations with employees of the
                                                       the views of the non-employee members of the
   plaintiffs. For what purpose did you have
                                                    15
                                                       various organizations?
   conversations with the plaintiffs' employees?
                                                            A. I don't know that views of --
                                                    16
             To learn more about the
                                                       that their views were explicitly addressed in
17
                                                       my report or represented. I understood what
18 organization and their view as to the impact
   of continued copyright protection --
                                                        the impacts of the lack of honoring the
    continued copyright infringement and
                                                        copyrights and trademarks would have, but I
                                                   20
    trademark infringement.
                                                        don't know that I saw non-employee member
21
                                                   21
22
                                                   22
                                                        views explicitly summarized.
             What view did you learn from
        O.
23
   them?
                                                   23
                                                                 So what steps did you do to
24
            MR. FEE: Objection to form.
                                                       ascertain the views of the members of the
25
            THE WITNESS: Well, I solicited
                                                       organizations --
                                           Page 110
                                                                                               Page 112
 1
        and learned many facts about the
                                                     1
                                                                MR. FEE: Objection.
 2
        organizations. I also learned that
                                                    2
                                                        BY MR. BRIDGES:
 3
        each one of them viewed continued
                                                    3
                                                            Q. -- other than their employees?
                                                                MR. FEE: Asked and answered.
 4
        copyright infringement and trademark
                                                     4
 5
        infringement as quite detrimental to
                                                     5
                                                                THE WITNESS: Well, I talked to
 6
        their organizations, detrimental to
                                                     6
                                                            the employees, and they interact with
 7
        the members, detrimental to the
                                                    7
                                                            the members on a very regular basis,
                                                     8
                                                            so they gave me some sense of what the
 8
        public.
                                                    9
                                                            views of the members were.
 9
            They viewed continued IP
10
                                                    10
        infringement as potentially
                                                                It also could be that some of
        devastating to their organizations.
                                                    11
                                                            the perspectives of the members are
11
                                                            reflected in some of the documents I
12
   BY MR. BRIDGES:
                                                    12
13
        O.
             These were their views?
                                                    13
                                                            identified in tab 2.
14
        A.
             Yes. I'm just paraphrasing, of
                                                    14
                                                       BY MR. BRIDGES:
15 course.
                                                    15
                                                            Q. Well, I'm just trying to find
             What members did you interview?
                                                       out where -- it sounds as though -- strike
16
        Q.
17
             None, other than the employees.
                                                    17
                                                       that.
18 I don't know if you call those "members" or
                                                    18
                                                                It sounds as though a minute
   not. But the volunteer membership, I didn't
                                                       ago you said you couldn't recall anything
                                                       specifically calling out views of
20
   go to.
21
            THE VIDEOGRAPHER: Excuse me.
                                                   21
                                                       non-employee members, correct?
22
        Counsel, could you move your
                                                   22
                                                                Correct. I think that's right.
23
        microphone to your lapel? Thank you.
                                                   23
                                                                 What did you do to verify the
24
                                                       statements that employees of the plaintiffs
   BY MR. BRIDGES:
        Q. What members of the public did
                                                       made about the views of the non-employee
25
                                           Page 111
                                                                                               Page 113
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Case 1:13-cv-01215-TSC Document 204-44 Filed 11/13/19 Page 31 of 102

1 States other than law review articles by 2 A. I did what I normally do in an assignment like this and look at the produced 4 materials. 5 Q. And the produced materials did 6 not call out specifically any views of 7 non-employee members of the plaintiff 8 organizations, correct? 9 A. I don't recall any specific 10 views being summarized. My memory may not be 11 perfect on that, though. 12 Q. What research, if any, did you 13 do among members of the public about whether 14 lack of copyright protection for the 15 plaintiff's standards would be detrimental to 16 the — to the public? 1 A. The information that I reviewed 18 is in tab 2. I didn't have material beyond 19 what is identified in tab 2. 2 Q. So what in tab 2 reflects your 21 steps to ascertain the views of members of 22 the public; 23 MR. FFE: Objection to form. 2 THE WITNESS: I think the 25 Bremer articles, in part, address Page 114 1 that. I think some of the federal 2 government's circulars that I 1 identify, in part, reflect the 4 reviews, in particular the NTTAA of 5 1995 and OMB Circular A-119. I think 6 they, in part, reflect the 1 reviews, in particular the NTTAA of 5 1995 and OMB Circular A-119. I think 6 they, in part, reflect the 1 Page 116 1 that. I think some of the federal 2 government's circulars that I 2 don't recall that sitting here now. 2 Q. Do you know whether 5 Ms. Bremer's articles - strike that. 4 Do you know whether 5 Ms. Bremer's articles - strike that. 5 Do you know whether 6 SMs. Bremer's articles - strike that. 7 Do you know whether 6 SMs. Bremer's articles - strike that. 9 Do you know whether 1 deliberations of the Administrative 1 deliberations of deliberati				
3 assignment like this and look at the produced 4 materials. 5 Q. And the produced materials did 6 not call out specifically any views of 7 non-employee members of the plaintiff 8 organizations, correct? 9 A. I don't recall any specific 10 views being summarized. My memory may not be 11 perfect on that, though. 12 Q. What research, if any, did you 13 do among members of the public about whether 14 lack of copyright protection for the 15 plaintiff's standards would be detrimental to 16 the — to the public? 17 A. The information that I reviewed 18 is in tab 2. I didn't have material beyond 19 what is identified in tab 2. 20 Q. So what in tab 2 reflects your 21 steps to ascertain the views of members of 22 the public? 23 MR, FEE: Objection to form. 24 THE WITNESS: I think the 25 Bremer articles, in part, address 26 Page 114 1 that. I think some of the federal 27 government's circulars that I 28 government's circulars that I 39 don't recall that sitting here now. 40 There are probably other things. 41 The with the they in part, reflect the 42 reviews, in particular the NTTAA of 53 1995 and OMB Circular A-119. I think 44 they in part, reflect public views. 54 There are probably other things. 55 BY MR. BRIDGES: 56 (D. Do you know whether there was a consensus in any relevant committee of the United States? 57 There are probably other things. 58 BY MR. BRIDGES: 50 (D. Do you know why persons get appointed to the Administrative Conference of the United States - 57 There are probably other things. 58 BY MR. BRIDGES: 50 (D. Did you review OMB Circular A-119 error and probably of the plant of the deliberations of the Administrative Conference of the United States - 57 There are probably other things. 58 BY MR. BRIDGES: 50 (D. Do you know whether 51 Do you know whether 51 Do you know whether 52 Do you know whether 53 Ms. Bremer's law review articles reflect a to view of the Administrative Conference of the United States - 50 (D. Open that is the first probable of the Administrative Conference of the United States - 51 Do	1		1	States other than law review articles by
4 materials. Q. And the produced materials did 6 not call out specifically any views of 7 non-employee members of the plaintiff 8 organizations, correct? 9 A. I don't recall any specific 10 views being summarized. My memory may not be 10 perfect on that, though. 12 Q. What research, if any, did you 12 do among members of the public about whether 14 lack of copyright protection for the 15 plaintiff's standards would be detrimental to 16 the to the public? 17 A. The information that I reviewed 18 is in tab 2. I didn't have material beyond 18 what is identified in tab 2. 1 didn't have material beyond 19 what is identified in tab 2. 1 steps to ascertain the views of members of 22 the public? 18 THE WITNESS: I think the 25 Bremer articles, in part, address Page 114 1 that. I think some of the federal 2 government's circulars that I 1 identify, in part, reflect the 4 reviews, in particular the NTTAA of 5 1995 and OMB Circular A-119. I think 6 they, in part, reflect public views. 7 There are probably other things. 8 BY MR. BRIDGES: 9 Q. Did you review OMB Circular A-119. I think 6 they, in part, reflect public views. 7 There are probably other things. 8 BY MR. BRIDGES: 9 Q. Did you review OMB Circular 6 A-119 personally? 10 A-119 personally? 11 Q. Did you review oMB Circular 13 pertaining to the discussions or 4 deliberations of the Administrative Conference of the United States in connection 6 with your research or analysis? 10 Q. Any. 20 A. I don't recall that iting an official representation 19 BY MR. BRIDGES: 20 Q. Does tab 2 refer you to any 20 doowunets that would provide you information 24 about the discussions or deliberations of the Administrative Conference of the United States in connection 4 about the discussions or deliberations of the Administrative Conference of the United States in connection 19 SY MR. BRIDGES: 20 Q. Does tab 2 refer you to any 20 Q. Any. 21 Q. Are you 21 Are you ware of the fact that 25 Administrative Conference of the United States in connection 19 SY MR. BRIDGES: 21 A	2	A. I did what I normally do in an	2	Emily Bremer?
5 Q. And the produced materials did 6 not call out specifically any views of 7 non-employee members of the plaintiff 8 organizations, correct? 9 A. I don't recall any specific 10 views being summarized. My memory may not be 11 perfect on that, though. 12 Q. What research, if any, did you 13 do among members of the public about whether 14 lack of copyright protection for the 15 plaintiff's standards would be detrimental to 16 the — to the public? 17 A. The information that I reviewed 18 is in tab 2. I didn't have material beyond 18 is in tab 2. I didn't have material beyond 19 what is identified in tab 2. 20 Q. So what in tab 2 reflects your 21 steps to ascertain the views of members of 22 the public? 23 MR. FEE: Objection to form. 24 THE WTINESS: I think the 25 Bremer articles, in part, address 25 MR. FEE: Objection to form. 26 THE WTINESS: I think the 27 THE WTINESS: I think the 28 THE WTINESS: I think the 39 Q. Did you review OMB Circular 40 Annual of the province of the United States? 41 A. I don't. 42 Q. Do you know whether there was an organizative Conference of the United States? 42 Do you know why persons get 43 Day you know whether 44 THE WTINESS: I think the 45 THE WTINESS: I think the 46 THE WTINESS: I think the 47 THE WTINESS: I think the 48 THE WTINESS: I think the 49 THE WTINESS: I think the 40 THE WTINESS: I think the 40 THE WTINESS: I think the 41 THE WTINESS: I think the 42 THE WTINESS: I think the 43 THE WTINESS: I think the 44 THE WTINESS: I think the 45 THE WTINESS: I think the 46 THE WTINESS: I think the 47 THE WTINESS: I think the 48 THE WTINESS: I think the 49 THE WTINESS: I think the 40 THE WTINESS: I think the 41 THE WTINESS: I think the 42 THE WTINESS: I think the 43 THE WTINESS: I think the 44 THE WTINESS: I think the 45 THE WTINESS: I think the 46 THE WTINESS: I think the 47 THE WTINESS: I think the 48 THE WTINESS: I think the 49 THE WTINESS: I think the 40 THE WTINESS: I think the 40 THE WTINESS: I think the 41 THE WTINESS: I think the 42 THE WTINESS: I think the 43 THE WTINESS: I th	3	assignment like this and look at the produced	3	A. As I sit here right now, I'm
6 not call out specifically any views of 7 non-employee members of the plaintiff 8 organizations, correct? 9 A. I don't recall any specific 10 views being summarized. My memory may not be 11 perfect on that, though. 11 Q. What research, if any, did you 12 do among members of the public about whether 14 lack of copyright protection for the 15 plaintiffs' standards would be detrimental to 16 the to the public? 17 A. The information that I reviewed 18 is in tab 2. I didn't have material beyond what is identified in tab 2. 10 Q. So what in tab 2 reflects your 21 steps to ascertain the views of members of 22 the public? 19 MR. FEE: Objection to form. 21 that. I think some of the federal 2 government's circulars that I 2 government's circulars that I 1 identify, in part, reflect the 4 reviews, in part, reflect the 5 1995 and OMB Circular 4. 19 personally? 10 A-119 personally? 11 A. Yes. As I recall, I did. 12 Q. Did you review OMB Circular 19 Q. Did you review any materials pertaining to the discussions or 4 deliberations of the Administrative Conference of the United States in any relevant committee of the 8 Administrative Conference of the United States regarding the conclusions that 10 Ms. Bremer states in her law review articles? 11 A. I don't. 20 Do you know whether there was 12 any dissent in any relevant committee of the 3 Ms. Bremer states in her law review articles? 14 Q. Do you know whether there was 15 any dissent in any relevant committee of the 3 daministrative Conference of the United States regarding the conclusions that 18 Ms. Bremer states in her law review articles? 14 Q. Do you know whether there was 15 any dissent in any relevant committee of the 4 Administrative Conference of the United States regarding the conclusions that 18 Ms. Bremer states in her law review articles? 14 Q. Do you know whether there was 15 any dissent in any relevant committee of the 4 Administrative Conference of the United States regarding the conclusions that 18 Ms. Bremer states in her law review articles? 14 Ms. Breme	4	materials.	4	not aware of any documents that discuss the
7 non-employee members of the plaintiff 8 organizations, correct? 9 A. I don't recall any specific 10 views being summarized. My memory may not be 11 perfect on that, though. 11 Q. What research, if any, did you 12 Q. What research if any, did you 13 do among members of the public about whether 14 lack of copyright protection for the 15 plaintiffs' standards would be detrimental to 16 the — to the public? 17 A. The information that I reviewed 18 is in tab 2. I didn't have material beyond 19 what is identified in tab 2. 10 Q. So what in tab 2 reflects your 21 steps to ascertain the views of members of 22 the public? 18 mr. FEE: Objection to form. 24 THE WITNESS: I think the 25 Bremer articles, in part, address 25 Bremer articles, in part, reflect the 4 reviews, in particular the NTTAA of 5 1995 and OMB Circulars All-19. I think they, in part, reflect public views. 7 There are probably other things. 8 BY MR. BRIDGES: 9 Q. Did you review OMB Circular 119. I think they, in part, reflect public views. 7 There are probably other things. 8 BY MR. BRIDGES: 9 Q. Did you review OMB Circular 19 Conference of the United States — Was any and the deliberations of the Administrative Conference of the United States — Was any and the United States — Was any and the United States? 2 Do you know whether 19 MR. FEE: Objection to form. 19 MR. FEE: Objection to form. 20 Do you know whether 20 Do you know whether 3 MR. Bremer's articles — strike that. 4 Do you know whether 2 MR. FEE: Objection to form. 3 MR. FEE: Objection to form. 4 Mr. FEE: Objection to form. 5 MR. FEE: Objection to form. 5 MR. FEE: Objection to form. 6 MR. FEE: Objection to form. 6 MR. FEE: Objection to form. 7 MR. FEE: Objection to form. 7 MR. FEE: Objection to form. 9	5	Q. And the produced materials did	5	deliberations, but my memory is not perfect.
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17 A. What particular materials or 18 meetings are you referring to? 19 Q. Any. 19 BY MR. BRIDGES: 20 A. I don't recall, but it's 21 possible. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 United 17 think that's that either article is 27 an official representation 28 Q. Are you 29 Q. Are you 20 Q. Are you aware of the fact that 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or	2 3 4 5 6 7 8 9 10 11 12 13	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I
18 meetings are you referring to? 19 Q. Any. 20 A. I don't recall, but it's 20 Q. Are you 21 possible. 21 Q. Does tab 2 refer you to any 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 18 an official representation 19 BY MR. BRIDGES: 20 Q. Are you 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative	2 3 4 5 6 7 8 9 10 11 12 13	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and
19 Q. Any. 20 A. I don't recall, but it's 20 Q. Are you 21 possible. 21 A of that body. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 Q. Are you 27 Q. Are you aware of the fact that 28 Are articles her law review articles 29 Specifically disclaim her articles as the 29 YMR. BRIDGES: 20 Q. Are you 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13 14 15	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views
20 A. I don't recall, but it's 21 possible. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 20 Q. Are you 21 A of that body. 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't
21 possible. 22 Q. Does tab 2 refer you to any 23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 A of that body. 27 Q. Are you aware of the fact that 28 her articles her law review articles 29 specifically disclaim her articles as the 29 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is
Q. Does tab 2 refer you to any documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 22 Q. Are you aware of the fact that 23 her articles her law review articles 24 specifically disclaim her articles as the 25 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or meetings are you referring to?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation
23 documents that would provide you information 24 about the discussions or deliberations of the 25 Administrative Conference of the United 26 documents that would provide you information 27 specifically disclaim her articles as the 28 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or meetings are you referring to? Q. Any.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation BY MR. BRIDGES:
24 about the discussions or deliberations of the 25 Administrative Conference of the United 24 specifically disclaim her articles as the 25 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or meetings are you referring to? Q. Any. A. I don't recall, but it's	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation BY MR. BRIDGES: Q. Are you
25 Administrative Conference of the United 25 views of any government entity and indicate	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or meetings are you referring to? Q. Any. A. I don't recall, but it's possible.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation BY MR. BRIDGES: Q. Are you A of that body.
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or meetings are you referring to? Q. Any. A. I don't recall, but it's possible. Q. Does tab 2 refer you to any documents that would provide you information	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. Do you know whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation BY MR. BRIDGES: Q. Are you A of that body. Q. Are you aware of the fact that
Page 115 Page 117	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or meetings are you referring to? Q. Any. A. I don't recall, but it's possible. Q. Does tab 2 refer you to any documents that would provide you information about the discussions or deliberations of the	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 whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation BY MR. BRIDGES: Q. Are you A of that body. Q. Are you aware of the fact that her articles her law review articles specifically disclaim her articles as the
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	government's circulars that I identify, in part, reflect the reviews, in particular the NTTAA of 1995 and OMB Circular A-119. I think they, in part, reflect public views. There are probably other things. BY MR. BRIDGES: Q. Did you review OMB Circular A-119 personally? A. Yes. As I recall, I did. Q. Did you review any materials pertaining to the discussions or deliberations of the Administrative Conference of the United States in connection with your research or analysis? A. What particular materials or meetings are you referring to? Q. Any. A. I don't recall, but it's possible. Q. Does tab 2 refer you to any documents that would provide you information about the discussions or deliberations of the Administrative Conference of the United	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 whether Ms. Bremer's articles strike that. Do you know whether Ms. Bremer's law review articles reflect a view of the Administrative Conference of the United States MR. FEE: Objection to form. BY MR. BRIDGES: Q or of any of its committees? MR. FEE: Objection to form. THE WITNESS: I'm not aware that they officially reflect that. I believe she gathered information, and they may, in fact, represent the views of some or all members, but I don't think that's that either article is an official representation BY MR. BRIDGES: Q. Are you A of that body. Q. Are you aware of the fact that her articles her law review articles specifically disclaim her articles as the views of any government entity and indicate

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1
 1 that they are her personal views?
                                                                 I believe counsel did not
 2
        A. I wouldn't be surprised and
                                                        provide the Web site screenshots, but I might
 3 may -- I may have read that, but I would
                                                     3
                                                        be wrong on that.
   expect that that would be in the first
                                                     4
                                                             Q. And did you do anything --
   footnote of one or both articles.
                                                        what, if anything, did you do to test the
                                                        validity of the factual assertions that the
 6
            What did you do to examine the
                                                        plaintiffs made to you in your conversations
   alleged facts that the representatives of
   plaintiffs stated to you in their
                                                     8
                                                        with their employees?
                                                     9
    conversations with you?
                                                                 MR. FEE: Objection to form.
10
            MR. FEE: Objection to form.
                                                    10
                                                             Asked and answered.
11
             THE WITNESS: I looked at --
                                                    11
                                                                 THE WITNESS: Well, we looked
12
                                                    12
                                                             at materials. If we found things that
             MR. FEE: Asked and answered.
13
             THE WITNESS: I'm sorry. I
                                                    13
                                                             conflicted with what we learned, that
14
        looked at the document production and
                                                    14
                                                             would prompt us to investigate
                                                             further. But I don't recall seeing
15
        the other materials shown in tab 2.
                                                    15
16 BY MR. BRIDGES:
                                                             any documentary evidence that
                                                    16
             You looked at the document
                                                    17
                                                             conflicted with facts that were
17
18 production that the plaintiffs' counsel
                                                    18
                                                             provided by plaintiff personnel, but I
19
   furnished you?
                                                    19
                                                             might be wrong.
                                                    20
                                                        BY MR. BRIDGES:
20
        A. In part. There were other
                                                             Q. Did you investigate
   things in tab 2 that were not provided to me
21
                                                    21
22
                                                    22
   by plaintiffs' counsel.
                                                        independently whether documents existed that
23
        Q. What other materials in
                                                    23
                                                        contradicted plaintiffs' statements of facts?
   tab 2 -- strike that.
                                                    24
                                                                  Not with that in mind. We
25
                                                    25
            Please identify for me in tab 2
                                                        looked at the documents and were mindful of
                                            Page 118
                                                                                                Page 120
                                                        whether there were conflicts within documents
 1 the materials that plaintiffs' counsel
   furnished you.
                                                        or conflicts between documents and other
3
                                                        information, but I don't recall that we saw
            I don't know with absolute
 4 certainty, but let me give you my best guess.
                                                        anything that gave us substantial pause.
 5 I believe all the depositions that are shown
                                                     5
                                                                 There were probably some things
   on page 1. I believe the Bates ranges at the
                                                        where there were some uncertainties whether
    very top of the page were provided by
                                                        there was a conflict or not and some where
 8
   counsel.
                                                        there were insignificant conflicts, but I
 9
             The deposition transcripts and
                                                        think mostly the information we saw did not
10 exhibits were provided by counsel. I believe
                                                        conflict with the information we learned from
11 the financial statements and plans were
                                                        plaintiff personnel.
   provided by counsel. I believe the legal
                                                    12
                                                                  Did you investigate
    documents were provided by counsel. I
                                                        independently whether other documents, apart
14 believe the miscellaneous items were provided
                                                        from the documents plaintiffs furnished you,
15 by counsel.
                                                        existed that contradicted plaintiffs'
            I don't know about the cases
                                                        statements of facts --
    and laws. I just don't remember if we
                                                    17
                                                                 MR. FEE: Objection to form.
   separately gathered those or were provided
                                                    18
                                                       BY MR. BRIDGES:
19 those.
                                                    19
                                                             Q. -- in conversations with you?
20
                                                    20
                                                                  Yes, in the sense that we
             The analyst reports, articles,
   books, and presentations, I think we gathered
                                                        gathered some information that we did not
   all of those, with the possible exception of
                                                        receive from plaintiffs' counsel, but all of
23 the two Bremer articles. I don't recall if
                                                        that is identified in tab 2.
24 counsel provided that or we obtained those
                                                    24
                                                                  Which part of tab 2?
                                                    25
                                                                  Well, as I said, I think the
25 separately.
                                            Page 119
                                                                                                Page 121
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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		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		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	
25		25	A. I'm familiar with an opinion in
23	Page 122	23	Page 124
			<u> </u>
1	Q. Uh-huh.	1	the Veeck case.
2	A. Perhaps you would have	2	Q. What do you know about that
2 3	A. Perhaps you would have something that would refresh my memory. I	2 3	Q. What do you know about that opinion?
2 3 4	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but	2 3 4	Q. What do you know about that opinion? MR. FEE: Objection.
2 3 4 5	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible.	2 3 4 5	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to
2 3 4	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about	2 3 4 5 6	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that
2 3 4 5	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about historical historically no harm, or are	2 3 4 5 6 7	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that opinion that was a result of
2 3 4 5	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about historical historically no harm, or are you talking about prospectively?	2 3 4 5 6 7 8	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that
2 3 4 5 6 7 8 9	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about historical historically no harm, or are you talking about prospectively? Q. Either one. Did you do you	2 3 4 5 6 7 8 9	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the
2 3 4 5 6 7 8 9	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about historical historically no harm, or are you talking about prospectively?	2 3 4 5 6 7 8 9	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that
2 3 4 5 6 7 8 9 10	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about historical historically no harm, or are you talking about prospectively? Q. Either one. Did you do you	2 3 4 5 6 7 8 9	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that opinion that was a result of communications with counsel and that did not form the basis of any of the
2 3 4 5 6 7 8 9 10 11	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about historical historically no harm, or are you talking about prospectively? Q. Either one. Did you do you recall seeing any internal NFPA documents	2 3 4 5 6 7 8 9	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that opinion that was a result of 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.
2 3 4 5 6 7 8 9 10 11	A. Perhaps you would have something that would refresh my memory. I don't recall, sitting here right now, but it's possible. Are you talking about historical historically no harm, or are you talking about prospectively? Q. Either one. Did you do you recall seeing any internal NFPA documents that call into question where NF whether	2 3 4 5 6 7 8 9 10	Q. What do you know about that opinion? MR. FEE: Objection. I would instruct you not to disclose anything you know about that opinion that was a result of 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
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Page 127 Page 129	19 20 21 22 23	different than the facts here, including what the organization was. Q. Are the facts what what case studies are you familiar of are you	20 21 22 23	BY MR. BRIDGES: Q. What steps did you take to ascertain what economic harms flowed from the
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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.
25	I don't know that there is one standards	25	BY MR. BRIDGES:
	Page 130		Page 132
1	1 1 , T.1.1.1	1	0 1171 1 1 111 10
1	development process. I think there are a	l	Q. What what would be required?
	variety of processes pursued by a number of	2	Q. What what would be required?A. To understand basically the
	variety of processes pursued by a number of SSOs or SDOs. I'm sure that there have been	l	A. To understand basically the out-of-pocket expenses incurred and the
2 3 4	variety of processes pursued by a number of SSOs or SDOs. I'm sure that there have been changes on the margin. There may have been	2	A. To understand basically the out-of-pocket expenses incurred and the opportunity costs incurred. So among other
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2 3 4 5 6 7	variety of processes pursued by a number of SSOs or SDOs. I'm sure that there have been changes on the margin. There may have been larger changes. I just don't know. I have not studied the trend in the standard development process over time.	2 3 4 5	A. To understand basically the out-of-pocket expenses incurred and the opportunity costs incurred. So among other things, one would want to look at time records, have an understanding of compensation, have an understanding of the
2 3 4 5 6	variety of processes pursued by a number of SSOs or SDOs. I'm sure that there have been changes on the margin. There may have been larger changes. I just don't know. I have not studied the trend in the standard	2 3 4 5 6	A. To understand basically the out-of-pocket expenses incurred and the opportunity costs incurred. So among other things, one would want to look at time records, have an understanding of
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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
23	Page 134	23	Page 136
1	RV MR_RRIDGES:	1	there's a direct or indirect effect
1	BY MR. BRIDGES: And those source documents	1	there's a direct or indirect effect.
2	Q. And those source documents	2	There might be, but I haven't seen
2 3	Q. And those source documents would be within the Bates ranges identified	2 3	There might be, but I haven't seen evidence of that.
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:
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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. 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. Q. What do you know about what you said strike that. You said earlier that some standards are distributed for free with some limitations; is that correct? A. Yes, that's my understanding. Q. What do you know about that? MR. FEE: Objection. Vague. THE WITNESS: I've written about that in my report. I believe that each one of the plaintiffs has provided what is sometimes called a "reading room" so that people can look	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	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 not responsive to my question. The you said you did not know what effect, if any, the presence of those free materials on the plaintiffs' Web sites has had on the plaintiffs' revenues. And my question is, have you investigated that? MR. FEE: Same objection. THE WITNESS: No, I've not undertaken a separate investigation. I've been alert to that topic, but I haven't assigned myself that investigation.
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19 BY MR. BRIDGES: 20 Q. Which SDOs you do you recall 21 treating intellectual property protection as 22 very important? 23 A. Well, again, I've I've dealt 24 with standards setting organizations. I 25 don't know if any of those are technically 19 Q. Did you look for any others? 20 A. Not that I recall. 21 Q. Why not? 22 A. I don't know how to answer 23 that. I was aware of the Blu-ray Disc 24 Association's policy in this regard, so I 25 wrote about it here.	17		17	A. I don't think I've identified
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22 very important? 23 A. Well, again, I've I've dealt 24 with standards setting organizations. I 25 don't know if any of those are technically 22 A. I don't know how to answer 23 that. I was aware of the Blu-ray Disc 24 Association's policy in this regard, so I 25 wrote about it here.	21		21	Q. Why not?
23 A. Well, again, I've I've dealt 24 with standards setting organizations. I 25 don't know if any of those are technically 23 that. I was aware of the Blu-ray Disc 24 Association's policy in this regard, so I 25 wrote about it here.	22		22	
24 with standards setting organizations. I 25 don't know if any of those are technically 26 Association's policy in this regard, so I 27 Expression organizations in the segurity of the sequence of the seque	23		23	that. I was aware of the Blu-ray Disc
25 don't know if any of those are technically 25 wrote about it here.	1	=		_
	24	with standards setting organizations. I	2 1	rissociations point, in this regard, so r

1	Q. Why did you not consider the	1	perspective.
2	economic effects of free distribution of	2	BY MR. BRIDGES:
3	standards with respect to other	3	Q. And what is the relevance of
4	organizations?	4	economic analysis to that question, as you
5	A. I didn't quite see the	5	understand it?
6	relevance to this matter.	6	MR. FEE: Objection to form.
7	Q. Why?	7	Vague. Might also be construed to
8	A. I don't know how to prove a	8	require a legal conclusion.
9	negative.	9	THE WITNESS: Economists have a
10	Q. What's the negative you were	10	view and perspective at looking at
11	thinking of that would need to be proved or	11	issues that some courts have found to
12	disproved?	12	be useful.
13	A. That something is not relevant.	13	BY MR. BRIDGES:
14	Q. You just didn't see the	14	Q. Well, I'm asking, with specific
15	relevance?	15	relevance to this case, what do you
16	A. I don't understand how that	16	understand the importance of economic
17	would be helpful in the assignment that I had	17	analysis to be in this case
18 19	here.	18 19	MR. FEE: Objection. Calls BY MR. BRIDGES:
20	Q. And what was the assignment you had here?	20	
21	A. Well, I've laid it out	21	Q as you have purported to practice it?
22	Q. I can read the report. I'm not	22	MR. FEE: Calls for a legal
23	asking you to read read the report. I'd	23	conclusion.
24	like your own words now, sitting here.	24	Also, to the extent that
25	MR. FEE: Objection.	25	responding to that would require you
	Page 142		Page 144
1	BY MR. BRIDGES:	1	to disclose communications with
2	Q. How do you how do you	2	counsel that did not form the basis
3	view	3	for any of your opinions or
4	A. I'd like to answer it by	4	conclusions and did not provide any
5	looking at my report.	5	assumptions that were the basis for
6	Q. No, I'd like for you to give me	6	your opinions or conclusions, you
7	a straight answer, because if you're just	7	should not answer that portion of the
8	going to refer to the report, the report will	8	question.
9	speak for itself, and I don't need you to	9	THE WITNESS: I understand
10		10	that, generally, economists like me
11	I'd like for you to tell me	11	are quite helpful in determining
12	what you understand, sitting here, to have	12	questions of harm, particularly harm
13	been your assignment in this case.	13	as it relates to infringement of IP
14	MR. FEE: Objection.	14	rights.
15	You can answer the question	15	BY MR. BRIDGES:
16	however you deem appropriate.	16	Q. How do you distinguish between
17 18	THE WITNESS: I've aptly laid	17	harms that are caused by an infringement by
18	it out in my report, so I defer to the	18	the defendant versus harms that might be
17	words in my report. But I've, in essence, looked at	19 20	caused by a court decision that plaintiffs lack copyrights?
20	DID I VE THENSEHEE HOOKED AL		
20		21	
21	the topic of the impact of copyright	21	MR. FEE: Objection to the
21 22	the topic of the impact of copyright and trademark infringement here, and	22	extent it calls for a legal
21 22 23	the topic of the impact of copyright and trademark infringement here, and asked myself the question whether a	22 23	extent it calls for a legal conclusion.
21 22 23 24	the topic of the impact of copyright and trademark infringement here, and asked myself the question whether a permanent injunction would be	22 23 24	extent it calls for a legal conclusion. THE WITNESS: I don't know how
21 22 23	the topic of the impact of copyright and trademark infringement here, and asked myself the question whether a	22 23	extent it calls for a legal conclusion.

1	myself the question of ownership or	1	under the assumption that the
2	impact of ownership. I asked myself	2	activities violate the law.
3	the question here of impact of	3	BY MR. BRIDGES:
4	infringement.	4	Q. If the activities do you
5	BY MR. BRIDGES:	5	believe do you understand that your
6	Q. If it turns out that the Court	6	analysis is relevant to a determination of
7	rules that the plaintiff sorry. Strike	7	whether the defendant has violated the law?
8	that.	8	MR. FEE: Objection. Calls for
9	If it turns out the Court rules	9	a legal conclusion.
10	here that the defendant has engaged in fair	10	To the extent that your
11	use, is it your understanding that none of	11	understanding is based upon
12	your harms analysis is relevant	12	communications with counsel, you
13	MR. FEE: Objection.	13	shouldn't disclose them, unless they
14	BY MR. BRIDGES:	14	formed the basis for your opinions or
15		15	
	Q because of a finding of	l	conclusions or provided assumptions
16	non-infringement?	16	that you relied upon in reaching your
17	MR. FEE: Calls for a legal	17	conclusions.
18	conclusion.	18	THE WITNESS: I don't know.
19	To the extent answering that	19	BY MR. BRIDGES:
20	question would require you to disclose	20	Q. Do you have any view as to
21	communications you had with counsel	21	whether the defendant has violated copyright
22	that don't form the basis for any of	22	law?
23	your opinions or conclusions and don't	23	MR. FEE: Objection. Calls for
24	provide any assumptions that you	24	a legal conclusion.
25	relied upon, you shouldn't disclose	25	THE WITNESS: No, I've not
	Page 146		Page 148
1	those communications.	1	taken on that assignment.
2	THE WITNESS: You're asking for	2	BY MR. BRIDGES:
3	a legal conclusion. I'm not an expert	3	Q. Do you have any view as to
4	on that.	4	whether the defendant's activities constitute
5	DV MD DDIDCEC.	_	
	BY MR. BRIDGES:	5	fair use?
1			
6	Q. I'm understanding your	5 6 7	MR. FEE: Objection. Calls for
6 7	Q. I'm understanding your understanding I'm asking for your	6 7	MR. FEE: Objection. Calls for a legal conclusion.
6 7 8	Q. I'm understanding your understanding I'm asking for your understanding of the relevance of your	6 7 8	MR. FEE: Objection. Calls for a legal conclusion. THE WITNESS: No, I've not
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6 7 8 9 10 11	Q. I'm understanding your understanding I'm asking for your understanding of the relevance of your contributions to this case. MR. FEE: Objection. Asked and answered. Plus all the prior	6 7 8 9 10 11	MR. FEE: Objection. Calls for a legal conclusion. THE WITNESS: No, I've not taken on that assignment. BY MR. BRIDGES: Q. If a court determines that the
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. I'm understanding your understanding I'm asking for your understanding of the relevance of your contributions to this case. MR. FEE: Objection. Asked and answered. Plus all the prior objections and instructions. THE WITNESS: I believe my testimony and report are relevant to the issue of harm and potential harm. BY MR. BRIDGES: Q. From what? A. From continuing the continuing activities and possible expanded activities of the defendant here. Q. From activities or from violations of law? MR. FEE: Objection. Vague.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	MR. FEE: Objection. Calls for a legal conclusion. THE WITNESS: No, I've not taken on that assignment. BY MR. BRIDGES: Q. If a court determines that the defendant has not infringed upon plaintiffs' copyrights, do you understand that the decision would result in economic harm to the plaintiffs? MR. FEE: Objection to the extent it calls for a legal conclusion. THE WITNESS: I'm not following your question. Could you ask it a little bit differently, please? BY MR. BRIDGES: Q. No, I'll restate it if you just

1 If you could recast it, please. 2 Q. No. Then please answer my 3 question. 4 MR. FEE: Objection. 5 BY MR. BRIDGES: 6 Q. I get to ask the questions. 7 MR. FEE: He just said he couldn't answer it. 8 couldn't answer it. 9 THE WITNESS: I don't 10 understand the question. 11 BY MR. BRIDGES: 11 MR. FEE: Objection to the plaintiffs' copyrights, do you believe that decision would result in economic harm to the plaintiffs' 20 MR. FEE: Objection to the page 150 11 sure how to answer that question. 21 Would a decision by the Court that the defendant has not infringed upon the plaintiffs' opyrights, do you believe that the conclusion. Plus asked and answered. 21 MR. FEE: Objection to the exactly the same words, so I'm not page 150 21 sure how to answer that question. 22 BY MR. BRIDGES: 3 Q. Would a decision that the defendant has not infringed upon plaintiffs' opyrights result in economic harm to the opprights result in economic harm to the opprights result in economic harm to the plaintiffs' opyrights result in economic harm to the opprights result
3 question. 4 MR. FEE: Objection. 5 BY MR. BRIDGES: 6 Q. I get to ask the questions. 7 MR. FEE: He just said he 8 couldn't answer it. 10 understand the question. 11 BY MR. BRIDGES: 11 BY MR. BRIDGES: 12 Q. What is it you don't 13 understand? 14 A. I do not understand the 16 yestion. 17 Would a decision by the Court 18 that the defendant has not infringed upon the 19 plaintiffs' copyrights result in economic 10 understand? 11 MR. FEE: Objection. Calls for 12 Q. What is it you don't 13 understand? 14 A. I understand the question. 15 how you put them together. 16 Q. If a court determines that the 17 defendant has not infringed upon the 18 plaintiffs' copyrights, do you believe that 19 that decision would result in economic harm 20 to the plaintiffs' 21 MR. FEE: Objection to the 22 extent it calls for a legal 22 conclusion. Plus asked and answered. 23 conclusion. Plus asked and answered. 24 THE WITNESS: It sounds like 25 exactly the same words, so I'm not 26 Page 150 1 sure how to answer that question. 2 BY MR. BRIDGES: 3 Q. Would a decision by the Court 4 that the defendant has not infringed upon the 10 plaintiffs' copyrights result in economic 11 MR. FEE: Objection. Calls for 12 that the defendant has not infringed upon the 13 answered. 14 THE WITNESS: I cannot answer 15 MR. FEE: Objection to the 20 extent it calls for a legal 21 MR. FEE: Objection to the 22 extent it calls for a legal 22 conclusion. Plus asked and answered. 23 THE VIDEOGRAPHER: Off the 24 record at 1:17. 25 (Recess from 1:17 p.m. to 26 Page 152 1 sure how to answer that question. 2 BY MR. BRIDGES: 3 Q. Would a decision that the 4 defendant has not infringed upon plaintiffs' 5 copyrights result in economic harm to the 6 plaintiffs' 6 Q. Good afternoon, Mr. Jarosz. 7 MR. FEE: Objection. Calls for 8 a legal conclusion. 9 THE WITNESS: I'm just not 9 please, what steps you took in your
4 MR. FEE: Objection. 5 BY MR. BRIDGES: 6 Q. I get to ask the questions. 7 MR. FEE: He just said he 8 couldn't answer it. 9 THE WITNESS: I don't 10 understand the question. 11 BY MR. BRIDGES: 12 Q. What is it you don't 13 understand? 14 A. I understand each word but not 15 how you put them together. 16 Q. If a court determines that the 17 defendant has not infringed upon the 18 plaintiffs' copyrights, do you believe that 19 that decision would result in economic harm 19 to the plaintiffs' copyrights, do you believe that 19 that decision would result in economic harm 10 to the plaintiffs' copyrights, do you believe that 11 that decision would result in economic harm 12 to the plaintiffs' copyrights, do you believe that 13 this a good time for a 14 brack, or do you want to keep going? 15 MR. BRIDGES: Sure. We can 16 CR. I'll say it again. 16 Q. I'll say it again. 17 Would a decision by the Court 18 plaintiffs' copyrights result in economic 10 harm to the plaintiffs' 11 MR. FEE: Objection to the 12 a legal conclusion. Asked and 13 answered. 14 THE WITNESS: I cannot answer 15 MR. FEE: Vague. 16 THE WITNESS: I cannot answer 17 it any differently. I'm sorry. 18 Is this a good time for a 19 break, or do you want to keep going? 20 MR. BRIDGES: Sure. We can 21 take one if you want. 22 THE VIDEOGRAPHER: Off the 23 record at 1:17. 24 *** 25 (Recess from 1:17 p.m. to 26 Page 152 1 sure how to answer that question. 29 Would a decision that the 4 defendant has not infringed upon plaintiffs' 5 copyrights result in economic harm to the 6 plaintiffs? 7 MR. FEE: Objection. Calls for 8 a legal conclusion. 9 THE WITNESS: I'm just not 4 A. I do not understand the 9 plaintiffs' copyrights decision by the Court 10 harm to the plaintiffs' 10 harm to the plaintiffs' copyrights result in economic 11 harm to the plaintiffs' copyrights result in economic 14 THE WITNESS: I - 15 MR. FEE: Objection. Calls for 16 Q. I'll again. 17 Would a decision by the Court 18 plaintiffs' copyrights decision has defendant has not infringed upon plaintiff
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8 a legal conclusion. 8 Q. Could you outline for me, 9 THE WITNESS: I'm just not 9 please, what steps you took in your
9 THE WITNESS: I'm just not 9 please, what steps you took in your
following. I under I'm worked 10 engagement in this case? What are the
11 I'm working under the assumption that 11 different activities you engaged in?
the activity here represents a 12 A. Generally, I had a discussion
13 copyright infringement. I'm and 13 with counsel about the matter. Then we
14 I'm being asked and answering the 14 examined documents that would were
15 question of the impact of that and 15 provided to us to give us background. We
whether there would be harm and what kind of harm and whether that's 16 then proceeded to gather our own information 17 from third-party sources, primarily through
1
22 BY MR. BRIDGES: 23 Q. That's non-responsive. I'll 22 plaintiff organizations. 23 We outlined the report and
24 ask you to answer my question. And if you 24 summarized some of the information that you
25 just don't want to answer the question, 25 see in the tabs. We had discussions with
Page 153

1	counsel. And then we finalized the report,	1	Q. Have you analyzed any
2	submitting it to counsel on June 5th, 2015.	2	differences in sales trends between those of
3	Q. Do you know how many standards	3	plaintiffs' standards that have been
4	of each plaintiff are at issue in this case?	4	incorporated into law and those of
5	A. How many I'm sorry	5	plaintiffs' standards that have not been
6	standards are at issue?	6	incorporated into law?
7	Q. Yes.	7	A. I don't think so. I don't
8	A. I have that number written	8	think I have those data, and I'm not sure
9	down. It's in the hundreds, and I forget, as	9	that each plaintiff knows precisely how many
10	I sit here right now, precisely the number.	10	have been incorporated into law.
11	I will look it up. And I was giving you an	11	Q. Did you ask for any data
12	answer that was a cumulation across the three	12	regarding the distinction between standards
13	plaintiffs.	13	incorporated by reference and standards not
14	I am not seeing that number	14	incorporated by reference in the law?
15	right now. I'll keep looking.	15	A. I don't
16	Q. Do you know what	16	MR. FEE: Objection to form.
17	A. You may be able to point me	17	THE WITNESS: I'm sorry. I
18	quicker than I recall where it was.	18	don't recall.
19	Q. Do you do you know what	19	BY MR. BRIDGES:
20	proportion of plaintiffs of each	20	Q. You made observations about
21	plaintiffs' standards is at issue in this	21	sales trends earlier in your deposition. I
22	case?	22	think you said that there's been a reduction
23	A. Are you asking me the ratio of	23	in sales of certain of plaintiffs' standards;
24	the standards at issue versus the total	24	is that correct?
25	standards developed by the organizations?	25	A. I'm not quite sure what the
	Page 154		Page 156
1	Q. Yes.	1	earlier testimony was, but I think I was
1 2	Q. Yes. A. I think it's less than a	1 2	earlier testimony was, but I think I was pointing you to paragraph 133 with regard to
	A. I think it's less than a	1 2 3	earlier testimony was, but I think I was pointing you to paragraph 133 with regard to downloads of and other measures of
2	A. I think it's less than a majority for each organization. I'm fairly	2	pointing you to paragraph 133 with regard to downloads of and other measures of
2 3	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think	2 3	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal.
2 3 4	A. I think it's less than a majority for each organization. I'm fairly	2 3 4	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal. Q. Well, I'm trying to find out
2 3 4 5	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE.	2 3 4 5	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal. Q. Well, I'm trying to find out what changes you have studied in plaintiffs'
2 3 4 5 6	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE.	2 3 4 5 6	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal. Q. Well, I'm trying to find out
2 3 4 5 6 7	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE. Q. Do you have any better	2 3 4 5 6 7	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal. Q. Well, I'm trying to find out what changes you have studied in plaintiffs' economics that you attribute to defendant's
2 3 4 5 6 7 8	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE. Q. Do you have any better information than less than a majority	2 3 4 5 6 7 8	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal. Q. Well, I'm trying to find out what changes you have studied in plaintiffs' economics that you attribute to defendant's activities. A. I'm not quite sure what your
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2 3 4 5 6 7 8 9 10	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE. Q. Do you have any better information than less than a majority A. Well, I Q for each of them?	2 3 4 5 6 7 8 9 10	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal. Q. Well, I'm trying to find out what changes you have studied in plaintiffs' economics that you attribute to defendant's activities. A. I'm not quite sure what your question is. Q. Well, I'm trying to find out
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2 3 4 5 6 7 8 9 10 11 12 13 14	A. I think it's less than a majority for each organization. I'm fairly certain of that with regard to ASTM. I think that's true with regard to NFPA. I think it's true with regard to ASHRAE. Q. Do you have any better information than less than a majority A. Well, I Q for each of them? A. The precise numbers are in the report. Let's see here. One can figure that out. You may remember where I summarized the number of standards. I just don't remember. It's easy to determine because the data are	2 3 4 5 6 7 8 9 10 11 12 13 14 15	pointing you to paragraph 133 with regard to downloads of and other measures of activity, as I had at my disposal. Q. Well, I'm trying to find out what changes you have studied in plaintiffs' economics that you attribute to defendant's activities. A. I'm not quite sure what your question is. Q. Well, I'm trying to find out what information you have studied to determine what changes in the finances of each of the plaintiffs have occurred as a consequence of the defendant's activities.
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1
   plaintiffs?
                                                             of certain of the standards. I've
                                                     2
 2
             MR. FEE: Same objection.
                                                             presented that.
            THE WITNESS: It's reflected in
                                                     3
                                                                 I don't have direct evidence of
 3
 4
        paragraph 133 and in the tabs,
                                                     4
                                                             the precise impact historically of
 5
                                                     5
                                                             defendant's activities on plaintiffs'
        particularly 3, 4, and 5. But the
        tabs are not at the granular level
                                                     6
 6
                                                             financials.
        that I think are of interest to you.
                                                     7
                                                        BY MR. BRIDGES:
 7
 8
   BY MR. BRIDGES:
                                                     8
                                                             Q. What evidence of any kind do
 9
        Q. What do you mean by the
                                                        you have of any kind of impact historically
   "granular level" that would be of interest to
                                                        of the defendant's activities on plaintiffs'
10
11 me?
                                                    11
                                                        financials?
                                                    12
12
             I don't think it breaks out
                                                                 MR. FEE: Objection to form.
13 publications by standard, for instance.
                                                    13
                                                                 THE WITNESS: That which is
             Does it break out publications
                                                    14
                                                             reported in paragraph 133, that of
                                                             which is contained in deposition
15 by whether a standard has been incorporated
                                                    15
   by reference or not?
                                                             testimony, and that of which I
                                                    16
                                                    17
                                                             summarized in other parts of the
17
             I don't think so.
18
                                                    18
             Does it break out by whether a
                                                             report.
   standard has been publicly made available by
                                                    19
                                                        BY MR. BRIDGES:
    defendant or not?
                                                    20
                                                             Q. So when you're referring to
                                                        deposition testimony, you're referring to the
21
        A. I don't think so. Not in
22 tabs 3, 4, and 5.
                                                        citations to the footnotes in paragraph 133?
                                                    22
23
             How do you establish causation
                                                    23
                                                                  No, I don't think it's just
24 between defendant's activities and any of the
                                                        limited to that. I think there's some other
   data that you provide in section -- in
                                                        deposition transcripts that talk about the
                                            Page 158
                                                                                                Page 160
    paragraph 133?
                                                        impact or potential impact of defendant's
 2
             MR. FEE: Objection. Calls for
                                                        activities on each one of the plaintiffs.
        a legal conclusion. Form.
 3
                                                     3
                                                             Q. Did you make any independent
                                                        assessment of causation of any financial
 4
             THE WITNESS: One can and
 5
                                                        effects on plaintiffs by the defendant's
        should look at all evidence available,
 6
        including circumstantial evidence. I
                                                     6
                                                        activities?
                                                     7
 7
        don't have direct information about
                                                                 MR. FEE: Objection to form.
                                                             Calls for a legal conclusion.
                                                     8
 8
        the precise impact of defendant's
                                                                 THE WITNESS: What do you mean
 9
        activities, but I have important
                                                     9
10
        information that bears on that issue,
                                                    10
                                                             by the term of "independent assessment
        including information that's in
                                                             of causation"?
11
                                                    11
        deposition transcripts.
                                                    12
                                                        BY MR. BRIDGES:
12
13
   BY MR. BRIDGES:
                                                    13
                                                             Q. You, as an expert, not relying
14
           So my question is, how do
                                                        just on what other people have said or
15
   you -- do you -- strike that.
                                                    15
                                                        speculated or thought.
            Are your conclusion -- are you
                                                    16
                                                                 MR. FEE: Same objections.
   making conclusions in paragraph 133 about the
                                                    17
                                                             Plus compound.
                                                                 THE WITNESS: We experts rely
   cause of changes in sales of the plaintiffs'
                                                    18
   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
                                                             observations shouldn't be in a vacuum.
22
        I have observations about the
                                                    22
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,
        have some information on the downloads
                                                    25 correct?
25
                                            Page 159
                                                                                                Page 161
```

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 Page 162	25	MR. FEE: Objection to form.
	rage 102		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
2 3 4 5 6 7 8 9	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 information on what their preferences are.	2 3 4 5 6 7 8 9	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 change your conclusions?
2 3 4 5 6 7 8 9 10	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 information on what their preferences are. Q. And so the fact that plaintiffs	2 3 4 5 6 7 8 9	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 change your conclusions? A. Not based on what I know right
2 3 4 5 6 7 8 9 10	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that	2 3 4 5 6 7 8 9 10 11	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the
2 3 4 5 6 7 8 9 10 11 12	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct?	2 3 4 5 6 7 8 9 10 11 12	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit	2 3 4 5 6 7 8 9 10 11 12 13 14 15	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that. What are the data you're	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code? A. Same answer to the question
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code? A. Same answer to the question that you had with regard to the 2008 code.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're referring to in paragraph 133 that you took	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code? A. Same answer to the question that you had with regard to the 2008 code. Q. Can you look at the data in
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're referring to in paragraph 133 that you took into account in discussing or analyzing	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code? A. Same answer to the question that you had with regard to the 2008 code. Q. Can you look at the data in your the tables attached to your report
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're referring to in paragraph 133 that you took into account in discussing or analyzing effects of defendant's activities on	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code? A. Same answer to the question that you had with regard to the 2008 code. Q. Can you look at the data in your the tables attached to your report and see if that helps refresh your memory as
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	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 information on what their preferences are. Q. And so the fact that plaintiffs brought this lawsuit has revealed to you that they prefer to bring the lawsuit, correct? MR. FEE: Objection. Vague. THE WITNESS: Given the cost, they prefer to bring the lawsuit rather than not bring it, yes. BY MR. BRIDGES: Q. What else strike that. What are the data you're referring to in page strike that. What are the data you're referring to in paragraph 133 that you took into account in discussing or analyzing	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	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 change your conclusions? A. Not based on what I know right now. My understanding is that much of the activity occurred in 2012, the later half of 2012, and I still have the whole body of evidence that I have considered. So I'm not sure if the precise timing would change, but I certainly would consider that. Q. Do you know in what year Public.Resource.Org posted the 2011 version of the National Electrical Code? A. Same answer to the question that you had with regard to the 2008 code. Q. Can you look at the data in your the tables attached to your report

1	NEC NEC 2011?	1	appropriateness of a permanent
2	A. I can look, and I will.	2	injunction here.
3	No, it doesn't answer that	3	BY MR. BRIDGES:
4	question, I don't think.	4	Q. Is the appropriate of is the
5	Q. Can you make a prediction as to	5	appropriateness of a permanent injunction an
6	when the defendant posted NEC 2008 and	6	economic question?
7	NEC 2011, based on the data attached to your	7	A. I think, in part, economic
8	report in Exhibit 1?	8	considerations can be and often are taken
9	MR. FEE: Objection to form.	9	into account in answering that question.
10	THE WITNESS: No, I don't	10	Q. Is it an economic question?
11	think, based on just those data.	11	MR. FEE: Objection.
12	BY MR. BRIDGES:	12	BY MR. BRIDGES:
13	Q. Can you make give an	13	Q. That was my question.
14	estimate as to when the defendant posted	14	MR. FEE: Asked and answered.
15	NEC 2008 and NEC 2011, based on the data	15	THE WITNESS: Again, in part.
16	attached to your report as Exhibit 1?	16	BY MR. BRIDGES:
17	MR. FEE: Same objection.	17	Q. The propriety of
18	THE WITNESS: No, I don't	18	a preliminary of a strike that.
19	think, based on just that information.	19	It's your testimony that the
20	BY MR. BRIDGES:	20	propriety of a permanent injunction is, in
21	Q. Well, just looking at your	21	part, an economic question?
22	report, can you tell when defendant posted	22	MR. FEE: Objection. Asked and
23	NEC 2008 and NEC 2011?	23	answered. Form. Calls for a legal
24	A. My answer hasn't changed. I	24	conclusion.
25	1 2	25	THE WITNESS: Yes. As I
	Page 166		Page 168
1	posted.	1	understand it, one factor to consider
1 2	Q. But that doesn't make a	2	is the reparability or irreparability
	Q. But that doesn't make a difference to your economic analysis of the	2 3	is the reparability or irreparability of harm. I believe, at its core,
2 3 4	Q. But that doesn't make a difference to your economic analysis of the effects of defendant's activities on the	2 3 4	is the reparability or irreparability of harm. I believe, at its core, that's an economic question.
2 3 4 5	Q. But that doesn't make a difference to your economic analysis of the effects of defendant's activities on the plaintiffs?	2 3 4 5	is the reparability or irreparability of harm. I believe, at its core, that's an economic question. BY MR. BRIDGES:
2 3 4 5 6	Q. But that doesn't make a difference to your economic analysis of the effects of defendant's activities on the plaintiffs? A. Well, I would be curious	2 3 4 5 6	is the reparability or irreparability of harm. I believe, at its core, that's an economic question. BY MR. BRIDGES: Q. And what economic theories did
2 3 4 5 6 7	Q. But that doesn't make a difference to your economic analysis of the effects of defendant's activities on the plaintiffs? A. Well, I would be curious MR. FEE: Objection to form.	2 3 4 5 6 7	is the reparability or irreparability of harm. I believe, at its core, that's an economic question. BY MR. BRIDGES: Q. And what economic theories did you rely upon to conclude that, as an
2 3 4 5 6 7 8	Q. But that doesn't make a difference to your economic analysis of the effects of defendant's activities on the plaintiffs? A. Well, I would be curious MR. FEE: Objection to form. THE WITNESS: curious about	2 3 4 5 6 7 8	is the reparability or irreparability of harm. I believe, at its core, that's an economic question. BY MR. BRIDGES: Q. And what economic theories did you rely upon to conclude that, as an economic matter, a preliminary strike
2 3 4 5 6 7 8 9	Q. But that doesn't make a difference to your economic analysis of the effects of defendant's activities on the plaintiffs? A. Well, I would be curious MR. FEE: Objection to form. THE WITNESS: curious about that information, but I don't have any	2 3 4 5 6 7 8 9	is the reparability or irreparability of harm. I believe, at its core, that's an economic question. BY MR. BRIDGES: Q. And what economic theories did you rely upon to conclude that, as an economic matter, a preliminary strike that.
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1			
1	BY MR. BRIDGES:	1	THE WITNESS: We learn about
2	Q. And are there any particular	2	price theory. We learn about consumer
3	aspects of training that you have beyond what	3	behavior. We talk we learn about
4	a first-year college student would have	4	manufacturer and supplier actions. We
5	gotten in a first-year economics course that	5	learn about game theory. We learn
6	you have brought to bear by applying	6	about econometrics. We learn more
7	particular economic theories to this case?	7	broadly about quantitative methods.
8	A. I think my training makes me	8	We learn about a variety of aspects of
9	who I am and has helped me in assignments	9	industrial organization. There are
10	like this. I have beyond a first-year-in-	10	many things that we learn beyond the
11	college understanding of basic economics, but	11	first year of economics training.
1	they're very important concepts that are	12	BY MR. BRIDGES:
12		13	
13	taught and learned in first-year economics.		Q. No, I'm asking what you brought
14	Q. Well, I want to know if there	14	to bear in your analysis in this case.
15	are any economic concepts beyond first-year	15	A. All those.
16	economics that you have brought to bear in	16	Q. Okay. What aspect of price
17	rendering your conclusions in this case.	17	theory did you bring to bear in this case?
18	MR. FEE: Objection to form.	18	A. I don't know how to answer that
19	Asked and answered.	19	question besides I understand basic price
20	THE WITNESS: Generally, there	20	theory and have researched it much and
21	are, yes.	21	applied that to the facts here.
22	BY MR. BRIDGES:	22	Q. What was the specific
23	Q. What economic concepts have you	23	application of price theory that you brought
24	brought to bear in your report and analysis	24	to bear in this case?
25	in this case?	25	A. I can't be any more specific
	Page 170		Page 172
1	A. I'm sorry, because I don't know	1	than that. I don't understand your question.
	what you mean by "economic concepts." We get	2	Q. What aspect of training about
3	trained in things like quantitative methods	3	consumer behavior did you bring to bear in
4	and intermediate microeconomics, in price	4	this case?
5	theory in econometrics in consumer	5	
5	theory, in econometrics, in consumer	5	A. I can't be any more specific
5 6 7	behavior. All those things are beyond the	6	A. I can't be any more specific than saying that.
6 7	behavior. All those things are beyond the first year. I don't know if you're calling	6 7	A. I can't be any more specific than saying that. Q. What aspects of your training
6 7 8	behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your	6 7 8	A. I can't be any more specific than saying that. Q. What aspects of your training about game theory have you brought to bear in
6 7 8 9	behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me.	6 7 8 9	A. I can't be any more specific than saying that. Q. What aspects of your training about game theory have you brought to bear in your work on this case?
6 7 8 9 10	behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me. Q. Well, you referred to the	6 7 8 9 10	A. I can't be any more specific than saying that. Q. What aspects of your training about game theory have you brought to bear in your work on this case? A. I can't be any more specific
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6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me. Q. Well, you referred to the important concepts in response to my question to you about particular aspects of training that you have beyond what a first-year college student would have gotten in a first-year economics course that you brought to bear by applying economic theories to this case, and your answer refers to very important concepts that are taught and learned. And so I'm asking you, what very important economic concepts have you brought to bear in your analysis of this	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. I can't be any more specific than saying that. Q. What aspects of your training about game theory have you brought to bear in your work on this case? A. I can't be any more specific than that. Q. What aspects of econometrics in your training have you brought to bear on this case? A. I can't be any more specific than that. Q. What inform what aspects of training in qualitative methods have you brought to bear on this case? A. I didn't say "qualitative methods," and so it may have been mis-keyed in. I said "quantitative methods."
6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	behavior. All those things are beyond the first year. I don't know if you're calling those economic theories. Your your questioning confuses me. Q. Well, you referred to the important concepts in response to my question to you about particular aspects of training that you have beyond what a first-year college student would have gotten in a first-year economics course that you brought to bear by applying economic theories to this case, and your answer refers to very important concepts that are taught and learned. And so I'm asking you, what very important economic concepts have you brought to bear in your analysis of this case?	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. I can't be any more specific than saying that. Q. What aspects of your training about game theory have you brought to bear in your work on this case? A. I can't be any more specific than that. Q. What aspects of econometrics in your training have you brought to bear on this case? A. I can't be any more specific than that. Q. What inform what aspects of training in qualitative methods have you brought to bear on this case? A. I didn't say "qualitative methods," and so it may have been mis-keyed in. I said "quantitative methods." Q. All right. What aspects of

1			
	A. I can't be any more specific	1	just on this information.
2	than that.	2	Q. What else would you need?
3	Q. What aspect of your training	3	A. I don't know, because I think
4	regarding aspects of industrial organization	4	
5	have you brought to bear on this case?	5	8
6	A. I can't be any more specific	6	occurred, so I don't know why one would need
7	than that.	7	to back into it.
8	Q. But you did bring the theory of	8	Q. Well, when would one be able
9	reveal revealed preferences to bear on	9	to use sales trends as a way of identifying
10	this case, correct?	10	likely effects of a posting of each standard
11	A. Yes.	11	by the defendant?
12	Q. What other economic theories do	12	MR. FEE: Objection. Vague.
13	you recall bringing to bear on this case?	13	Compound.
14	MR. FEE: Objection. Asked and	14	THE WITNESS: Maybe; maybe not.
15	answered.	15	BY MR. BRIDGES:
16	THE WITNESS: Everything that	16	Q. Why do you say "maybe; maybe
17	I've	17	
18	MR. FEE: And vague.	18	A. I just wouldn't think to do it
19	Go ahead.	19	that way, so I don't know what you exactly
20	THE WITNESS: I've learned	20	have in mind.
21	in my training, both educational	21	Q. Do you associate the posting of
22	training and career training.	22	standards by defendant with changes in sales
23	BY MR. BRIDGES:	23	volume of the standards that the defendant
24	Q. Can you be more specific than	24	has posted?
25	that?	25	MR. FEE: Objection to form.
	Page 174		Page 176
1	A. No.	1	THE WITNESS: I don't know what
		_	
2	* * *	2	you mean by that question.
2 3	(Jarosz Exhibit 4 marked for	2 3	you mean by that question. BY MR. BRIDGES:
2 3 4	(Jarosz Exhibit 4 marked for identification.)	2 3 4	you mean by that question. BY MR. BRIDGES: Q. You don't understand the
2 3 4 5	(Jarosz Exhibit 4 marked for identification.) * * *	2 3 4 5	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question?
2 3 4 5 6	(Jarosz Exhibit 4 marked for identification.) * * * BY MR. BRIDGES:	2 3 4 5 6	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not.
2 3 4 5 6 7	(Jarosz Exhibit 4 marked for identification.) * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize	2 3 4 5 6 7	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting
2 3 4 5 6 7 8	(Jarosz Exhibit 4 marked for identification.) * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in	2 3 4 5 6 7 8	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in
2 3 4 5 6 7 8 9	(Jarosz Exhibit 4 marked for identification.) * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case?	2 3 4 5 6 7 8 9	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the
2 3 4 5 6 7 8 9 10	(Jarosz Exhibit 4 marked for identification.) * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes.	2 3 4 5 6 7 8 9	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted?
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2 3 4 5 6 7 8 9 10 11 12	(Jarosz Exhibit 4 marked for identification.) * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over	2 3 4 5 6 7 8 9 10 11 12	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think
2 3 4 5 6 7 8 9 10 11 12 13	(Jarosz Exhibit 4 marked for identification.) * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and	2 3 4 5 6 7 8 9 10 11 12 13	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the
2 3 4 5 6 7 8 9 10 11 12 13 14	(Jarosz Exhibit 4 marked for identification.) * * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in	2 3 4 5 6 7 8 9 10 11 12 13 14	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here
2 3 4 5 6 7 8 9 10 11 12 13 14 15	(Jarosz Exhibit 4 marked for identification.) *** BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in the marketplace.	2 3 4 5 6 7 8 9 10 11 12 13 14 15	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	(Jarosz Exhibit 4 marked for identification.) *** BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in the marketplace. Q. Based upon the trends that you	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES:
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	(Jarosz Exhibit 4 marked for identification.) *** BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in the marketplace. Q. Based upon the trends that you see in this exhibit, can you estimate when	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific
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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	(Jarosz Exhibit 4 marked for identification.) * * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in the marketplace. Q. Based upon the trends that you see in this exhibit, can you estimate when you believe it is most likely that the 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific correlation coefficient. I'm just asking, generally, can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that defendants has that the defendant has
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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	(Jarosz Exhibit 4 marked for identification.) * * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in the marketplace. Q. Based upon the trends that you see in this exhibit, can you estimate when you believe it is most likely that the 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 identified here?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific correlation coefficient. I'm just asking, generally, can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that defendants has that the defendant has posted with reference to Exhibit 4? A. I don't know
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	(Jarosz Exhibit 4 marked for identification.) * * * * BY MR. BRIDGES: Q. Mr. Jarosz, do you recognize Exhibit 4 as a document that you produced in response to a subpoena in this case? A. Yes. Q. What is this document? A. It appears to be a summary over the years 2009 through 2013 of dollars and quantity of NFPA standards that were sold in the marketplace. Q. Based upon the trends that you see in this exhibit, can you estimate when you believe it is most likely that the 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	you mean by that question. BY MR. BRIDGES: Q. You don't understand the question? A. I do not. Q. Can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that the defendant has posted? MR. FEE: Objection to form. THE WITNESS: I don't think I've attempted to compute the correlation coefficient here associated with postings. BY MR. BRIDGES: Q. I'm not asking for a specific correlation coefficient. I'm just asking, generally, can you correlate the posting of standards by defendant with any changes in sales volumes of the standards that defendants has that the defendant has posted with reference to Exhibit 4?

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	
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		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		15	recall.
16	occurred in late 2012, and I only have one	16	
17	period after that.	17	
18	1	18	regarding those dates from conversations with counsel?
1	Q. If it turns out that	19	
19	defendant's postings were well before 2012,		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		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.
1 2	consider that information in conjunction with these data if you	1 2	anywhere in my report. BY MR. BRIDGES:
			• •
2	conjunction with these data if you	2	BY MR. BRIDGES:
2 3	conjunction with these data if you wanted me to.	2 3	BY MR. BRIDGES: Q. Do you recall taking specific
2 3 4	conjunction with these data if you wanted me to. BY MR. BRIDGES:	2 3 4	BY MR. BRIDGES: Q. Do you recall taking specific dates into account in analyzing the effect of
2 3 4 5	conjunction with these data if you wanted me to. BY MR. BRIDGES: Q. How what what would	2 3 4 5	BY MR. BRIDGES: Q. Do you recall taking specific dates into account in analyzing the effect of defendant's actions?
2 3 4 5 6	conjunction with these data if you wanted me to. BY MR. BRIDGES: Q. How what what would change? A. I don't know. I haven't done	2 3 4 5 6	BY MR. BRIDGES: Q. Do you recall taking specific dates into account in analyzing the effect of defendant's actions? MR. FEE: Objection to form.
2 3 4 5 6 7	conjunction with these data if you wanted me to. BY MR. BRIDGES: Q. How what what would change? A. I don't know. I haven't done that analysis.	2 3 4 5 6 7	BY MR. BRIDGES: Q. Do you recall taking specific dates into account in analyzing the effect of defendant's actions? MR. FEE: Objection to form. Vague.
2 3 4 5 6 7 8 9	conjunction with these data if you wanted me to. BY MR. BRIDGES: Q. How what what would change? A. I don't know. I haven't done that analysis.	2 3 4 5 6 7 8	BY MR. BRIDGES: Q. Do you recall taking specific dates into account in analyzing the effect of defendant's actions? MR. FEE: Objection to form. Vague. THE WITNESS: I don't recall
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Case 1:13-cv-01215-TSC Document 204-44 Filed 11/13/19 Page 48 of 102

1	1	1	something just north of 50 percent for
2	e ;	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.
1 2	THE WITNESS: I don't believe so.	1 2	with people at ASHRAE. Q. How did you learn about the
		1 2 3	1 1
2	so.		Q. How did you learn about the
2 3	so. BY MR. BRIDGES:	3	Q. How did you learn about the price difference?
2 3 4	so. BY MR. BRIDGES: Q. Do you know strike that.	3 4	Q. How did you learn about the price difference? A. I don't recall how I learned
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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	so. BY MR. BRIDGES: Q. Do you know strike that. Are you aware of any difference in profitability to plaintiffs between those standards that defendant has posted to the Internet and those standards that defendant 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	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. How did you learn about the price difference? A. I don't recall how I learned it, but I report it in my report based on certain documents I've seen. Perhaps I learned it from their Web site. 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 not an assumption?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	so. BY MR. BRIDGES: Q. Do you know strike that. Are you aware of any difference in profitability to plaintiffs between those standards that defendant has posted to the Internet and those standards that defendant 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	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. How did you learn about the price difference? A. I don't recall how I learned it, but I report it in my report based on certain documents I've seen. Perhaps I learned it from their Web site. 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

1	Q. Did that understanding make a	1	are to copyrighted publications, correct?
2	difference to your analysis?	2	A. With the exception of number 3,
3	A. It was a factual underpinning.	3	
4	Q. An underpinning, but not an	4	memberships.
5	assumption?	5	Q. Okay. So my question wasn't
6	A. It was not an explicit	6	about copyrighted publications. My question
7	assumption.	7	is, what percentage do you understand of
8	Q. But it was an underpinning, not	8	plaintiffs' revenues comes from the sale of
9	an assumption, is your testimony?	9	standards at issue in this case?
10	MR. FEE: Objection. Asked and	10	A. Thank you for that reminder of
11	answered.	11	
12	THE WITNESS: Yes. I don't	12	I don't think I know that
13	know what or why you're arguing with	13	precise percentage.
14	me on this.	14	Q. What percentage of plaintiffs'
	BY MR. BRIDGES:	I	revenues, to your knowledge, comes from the
16	Q. I'm not arguing.		sale of standards incorporated into law?
17	A. I don't understand.	17	A. I don't know that number.
18	Q. I'm just trying to understand	18	Q. What percentage of plaintiffs'
19	your testimony. That's all. So I'm asking	I	revenues, to your understanding, comes from
20	some follow-up questions.	20	the sale of all standards?
21	You stated earlier some	21	A. I'm sorry. I thought you asked
22	percentages of revenue from the sale of	I	that question. I thought the immediate one
23	standards. Did you mean to be identifying	23	before that was standards.
	what you thought were the percentages of	24	Q. No. It was standards at issue
	revenue from the sale of standards or from		in this case. Then
23	Page 186	23	Page 188
1	the sale of all publications?	1	A T11
		$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	A. The one before that.
2	A. Let me let me double-check	2	Q standards incorporated into
3	A. Let me let me double-check that.	2 3	Q standards incorporated into law. And now it's all standards.
2 3 4	A. Let me let me double-check that. Well, in the case of ASTM, for	2 3 4	Q standards incorporated intolaw. And now it's all standards.A. Right. Thank you.
2 3 4 5	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted	2 3 4 5	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number
2 3 4 5 6	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications.	2 3 4 5 6	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either.
2 3 4 5 6 7	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to	2 3 4 5 6 7	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of
2 3 4 5 6 7 8	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report?	2 3 4 5 6 7 8	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that.
2 3 4 5 6 7 8 9	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at	2 3 4 5 6 7 8 9	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you
2 3 4 5 6 7 8 9 10	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other	2 3 4 5 6 7 8 9 10	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each
2 3 4 5 6 7 8 9 10	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas.	2 3 4 5 6 7 8 9 10	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the
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2 3 4 5 6 7 8 9 10 11 12 13	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph?	2 3 4 5 6 7 8 9 10 11 12 13	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph? A. Well, right now I was Q. 83?	2 3 4 5 6 7 8 9 10 11 12 13 14 15	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a dollar amount to that precise activity, because I don't know that amount.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph? A. Well, right now I was Q. 83? A I was looking at 83, but I'm turning back to, for more reliable information, to paragraph 15, for instance,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a dollar amount to that precise activity, because I don't know that amount. Q. What percentage of plaintiffs' operating expenses do you associate with the plaintiffs' development of the standards at
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph? A. Well, right now I was Q. 83? A I was looking at 83, but I'm turning back to, for more reliable information, to paragraph 15, for instance, which says in 2014, 67.1 percent of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a dollar amount to that precise activity, because I don't know that amount. Q. What percentage of plaintiffs' operating expenses do you associate with the plaintiffs' development of the standards at issue in this case?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph? A. Well, right now I was Q. 83? A I was looking at 83, but I'm turning back to, for more reliable information, to paragraph 15, for instance, which says in 2014, 67.1 percent of the revenue was generated by the sale of	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a dollar amount to that precise activity, because I don't know that amount. Q. What percentage of plaintiffs' operating expenses do you associate with the plaintiffs' development of the standards at issue in this case? A. I don't think I know that
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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	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph? A. Well, right now I was Q. 83? A I was looking at 83, but I'm turning back to, for more reliable information, to paragraph 15, for instance, which says in 2014, 67.1 percent of the revenue was generated by the sale of copyrighted publications. For NFPA, that information is shown in paragraph 18. And for ASHRAE, that information is shown in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a dollar amount to that precise activity, because I don't know that amount. Q. What percentage of plaintiffs' operating expenses do you associate with the plaintiffs' development of the standards at issue in this case? A. I don't think I know that number. Q. What percentage of plaintiffs' operating expenses do you associate with the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph? A. Well, right now I was Q. 83? A I was looking at 83, but I'm turning back to, for more reliable information, to paragraph 15, for instance, which says in 2014, 67.1 percent of the revenue was generated by the sale of copyrighted publications. For NFPA, that information is shown in paragraph 18. And for ASHRAE, that information is shown in paragraph 22.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a dollar amount to that precise activity, because I don't know that amount. Q. What percentage of plaintiffs' operating expenses do you associate with the plaintiffs' development of the standards at issue in this case? A. I don't think I know that number. Q. What percentage of plaintiffs' operating expenses do you associate with the plaintiffs' development of standards
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Let me let me double-check that. Well, in the case of ASTM, for instance, I believe it's copyrighted publications. Q. What page are you referring to in your report? A. Right now I'm looking at page 36, but I think I talk about it at other areas. Q. So page 36, you're talking about which paragraph? A. Well, right now I was Q. 83? A I was looking at 83, but I'm turning back to, for more reliable information, to paragraph 15, for instance, which says in 2014, 67.1 percent of the revenue was generated by the sale of copyrighted publications. For NFPA, that information is shown in paragraph 18. And for ASHRAE, that information is shown in	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q standards incorporated into law. And now it's all standards. A. Right. Thank you. I don't know that number either. Q. What percentage of plaintiffs' strike that. What dollar value do you associate with the investments that each plaintiff has made in the development of the standards at issue in this case? A. I don't think I attributed a dollar amount to that precise activity, because I don't know that amount. Q. What percentage of plaintiffs' operating expenses do you associate with the plaintiffs' development of the standards at issue in this case? A. I don't think I know that number. Q. What percentage of plaintiffs' operating expenses do you associate with the

1	A. I don't think I know that	1	Q. Have you ever had access to any
2	number.	2	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
	DV MP DDIDCEG.	1	MD FFF O1: 4: 4 C
1 1	BY MR. BRIDGES:	I I	MR. FEE: Objection to form.
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	BY MR. BRIDGES: O. Do you know what percentage	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	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 percentage do 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?	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
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 5	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 6	Q. Do you know what percentage do you have an estimate? A. No. MR. FEE: Objection to form.	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:
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 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: Q. Did you ask any of the
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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 worked on the development of standards	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
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1	Q. I guess my question didn't have	1	the plaintiffs told you in this case?
2	anything to do with incorporated by	2	MR. FEE: Objection to form.
3	reference. My question is, did you ask any	3	THE WITNESS: Well, I kept an
4	of the plaintiffs about the revenues or	4	open mind to the facts that I was
5	expenses that they have had that are	5	given over the phone and sought to
6	specifically attributable to the standards	6	determine if I learned things that
7	that the defendant has posted to the	7	conflicted or not with that
8	Internet?	8	information.
9	MR. FEE: Objection to form.	9	BY MR. BRIDGES:
10	THE WITNESS: I think we	10	Q. Where did you
11	generally talked about that topic, and	11	A. But
12	I don't believe they have information	12	Q. I'm sorry. I didn't realize
13	at that level.	13	you were still
14	BY MR. BRIDGES:	14	A. But I didn't separately go out
15	Q. Did you ask the plaintiffs to	15	and write down the facts and attempt to get
16	estimate revenues or expenses specifically	16	separate verification of each fact.
17	attributable to the standards at issue in	17	Q. So you were looking for
18	this case?	18	internal inconsistencies in the
19	MR. FEE: Objection to form.	19	communications that plaintiffs had with you
20	THE WITNESS: Not that I		in order to determine whether to question any
21	recall. We may have asked whether	21	of the facts that the plaintiffs' employees
22		1	related to you?
	they are collected, but we didn't ask		
23	for the plaintiffs to separately	23	MR. FEE: Objection to form. BY MR. BRIDGES:
24	estimate those numbers, as I recall.		
25	BY MR. BRIDGES: Page 194	25	Q. Is that your testimony? Page 196
	1 agc 174		1 agc 170
1	Q. In paragraph 49, you state that	1	MR. FEE: Mischaracterizes the
2	ASHRAE standard 90.1 was first published in	2	testimony.
2 3	ASHRAE standard 90.1 was first published in 1974. What's your basis for that statement?	2 3	testimony. THE WITNESS: I'm not sure if
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1	documents, but they provided them as	1	A. I looked at some parts of it.
2	part of the discovery process.	2	I don't recall that I looked at all aspects
3	BY MR. BRIDGES:	3	
4	Q. Did you ask them for any	4	Q. Did you verify how many
5	documents that they had not provided?	5	standards were incorporated by reference
6	A. I think we generally described	6	according to that database?
7	the kinds of information that we find useful	7	A. No, I did not.
8	or typically find useful in matters like	8	Q. What do you mean by, "This
9	this.	9	database reports nearly 13,000 instances of
10	Q. After you received documents	10	incorporation by reference"?
11	from plaintiffs' counsel, did you ask them	11	A. I don't know what you're asking
12	for any more?	12	
13	A. That that's possible. I	13	Q. I'm not asking you to define
14	don't recall that.	14	anything. I'm asking you to explain what you
15	Q. You don't recall. Did you	15	meant by that clause, "This database
16	do you have any understanding as to the	16	reports"
17	dollar value of staff time and expenses that	17	A. I'm sorry. I'm just I'm
18	the plaintiffs have incurred in promoting	18	going to be just rearranging words a little
19	incorporation of their standards into law?	19	bit. There were 13,000 times that there was
20	MR. FEE: Objection to form.	20	incorporation by reference of a standard.
21	Lack of foundation.	21	I I don't I'm sorry. I
22	THE WITNESS: I don't think I	22	5
23	have that number, no.	23	Q. I'm not confused. I'm just
24	BY MR. BRIDGES:	24	asking you questions. Okay? So please don't
25	Q. Do you have an estimate?	25	understand please don't assume that I'm
	Page 198		Page 200
		_	
1	MR. FEE: Same objections.	1	confused. I'm trying to understand what you
1 2	MR. FEE: Same objections. THE WITNESS: Not as I sit here		confused. I'm trying to understand what you meant by that.
2 3 4	THE WITNESS: Not as I sit here	2 3	meant by that. You mean separate instances? You mean separate laws? What do you mean?
2 3	THE WITNESS: Not as I sit here now, no. BY MR. BRIDGES: Q. Did you discuss that issue with	2 3	meant by that. You mean separate instances?
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1	mentions of standard. You're absolutely	1	Q. What are the governmental
2	right.	2	functions with respect to driving that you
3	Q. And the same thing is true of	3	have in mind?
4	the NFPA standards and ASHRAE standards?	4	A. I don't have any particular
5	A. You're absolutely right, yes.	5	ones in mind.
6	Q. Do you know how many standards	6	Q. In paragraph 59, you say, "At
7	that database shows as having been	7	least 44 states and territories have adopted
8	incorporated by reference?	8	ASHRAE 90.1 as part of the commercial
9	A. Not sitting here right now.	9	building energy code."
10	One could perhaps look at what I cited to	10	Do you see that?
11	answer that question, but I don't know right	11	A. Yes, I do.
12	now.	12	Q. And that also has footnote 95
13	Q. Do you know whether anyone	13	associated with that as well, correct?
14	working for you ever did that work to make	14	A. Yes, that's correct.
	that determination?		· ·
15		15	Q. How do you explain the fact
16	A. I don't recall that being done.	16	that that reference in footnote 95 shows that
17	Q. Paragraph 59, you say, "At the	17	those 44 states, in fact, adopted the
18	state level, privately-developed standards	18	International Energy Conservation Code that
19	are incorporated by reference as part of the	19	merely has a reference to an option to use
20	exercise of a range of governmental	20	ASHRAE 90.1?
21	functions."	21	MR. FEE: Objection. Lack of
22	Do you see that?	22	foundation.
23	A. Yes.	23	THE WITNESS: I don't have any
24	Q. What do you mean by	24	explanation for that.
25	"governmental functions" in that statement?	25	BY MR. BRIDGES:
	Page 202		Page 204
١.	A (TT) 1 1 1		
1	A. Things that government agencies	1	O. Did you verify that?
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	A. Things that government agencies do.	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	Q. Did you verify that? A. I did not, no.
2	do.	2	A. I did not, no.
2 3	do. Q. And you give a couple of	2 3	A. I did not, no. Q. Who did?
2 3 4	do. Q. And you give a couple of examples, but speaking broadly, what are	2 3 4	A. I did not, no.Q. Who did?A. I'm sorry. Who verified what?
2 3 4 5	do. Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve	2 3 4 5	A. I did not, no.Q. Who did?A. I'm sorry. Who verified what?Q. On what on what did you rely
2 3 4 5 6	do. Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately	2 3 4 5 6	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote?
2 3 4 5 6 7	do. Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level?	2 3 4 5 6 7	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your
2 3 4 5 6 7 8	do. Q. And you give a couple of examples, but speaking broadly, what are governmental functions that involve incorporation by reference of privately developed standards at the state level? MR. FEE: Objection to form.	2 3 4 5 6 7 8	A. I did not, no. Q. Who did? A. I'm sorry. Who verified what? Q. On what on what did you rely to make that statement with that footnote? A. I may not understand your question. I relied on what's identified in
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		_	
1	foundation.	1	
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? Page 206	25	plaintiffs of the incorporation into law of
	rage 200		Page 208
1	MR. FEE: Objection to form.	1	their standards?
1 2	THE WITNESS: I generally	2	MR. FEE: Same objection.
	THE WITNESS: I generally understand that there were many	2 3	MR. FEE: Same objection. THE WITNESS: I'm aware that
2	THE WITNESS: I generally understand that there were many members who participated in that. I	2 3 4	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by
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2 3 4 5 6 7 8	THE WITNESS: I generally understand that there were many members who participated in that. I think I reported earlier in the report the number of hours and other indications of activity undertaken by members.	2 3 4 5 6 7 8	MR. FEE: Same objection. THE WITNESS: I'm aware that the plaintiffs benefit greatly by incorporation by reference, but I don't know that I've seen a quantitative study of that topic. BY MR. BRIDGES:
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			3
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		10	
	Q. If you want. Sure.	I	Q. Why not?
11	A. Thanks.	11	A. I'm not sure if I can at this
12	THE VIDEOGRAPHER: Off the	12	2
13	record at 3:12. This is the end of	13	downloads times the well, actually, no,
14	media unit number 2.	14	3
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, out with reasonable
24		24	
25	(Jarosz Exhibit 5 marked for	25	number of these instances, it's likely the case that the that the
23	identification.)	23	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:
5	in your report, correct?	5	Q. Would that in those
6	A. Yes, I believe so.	6	instances where you say that the information
7	Q. Do you recall how this article	7	would have been obtained from ASTM through
8	came to your attention?	8	legal means, can you put a dollar value on
9	A. I do not.	9	or even an estimate of the increased revenue
10	Q. Is this an article that you	1	that ASTM would have gotten from those
11	understand to have been published by	11	instances where people obtained the
12	plaintiff ASHRAE in its journal?	12	information from ASHRAE sorry from
13	A. Yes, that's my understanding.	13	AST
14	Q. And this is an article you	14	MR. FEE: Object
15	relied upon with respect to the development	15	BY MR. BRIDGES:
16	of standard 90, which became standard 90.1,	16	Q from ASTM?
17	correct?	17	MR. FEE: Objection to form.
18	A. Yes.	18	THE WITNESS: No, not based on
19	Q. In paragraph 133 of your	19	the information I have. I don't think
20	report, you talk about a number of	20	I have any indication of who was doing
21	downloads strike that you talk about a	21	the downloading and why.
<i>Z</i> 1		1	· ·
		22	BY MR. BRIDGES:
22	number of documents accessed through Public	22 23	
		I	BY MR. BRIDGES: Q. And do you know what alternatives persons who were doing the

Page 213

25 downloading may have had for obtaining the

Page 211

25 documents that are -- that were accessed over

1 information? 2 A. Not with certainty, because I don't know who those persons were, but I would expect one alternative would be to obtain it properly, directly from ASTM. 6 Q. Would that have resulted in more revenue to ASTM? 8 A. It may have. If they're materials that were taken improperly that would allow you to establish any connection between the number of accesses or downloads that Public Resource made possible and any financial harms to the plaintiffs? 11 persons who obtained this information from 14 defendant would have paid for the information from 15 from ASTM? 14 A. No, not with certainty, because or the reasons for their downloading. Q. Moreover, those persons might 1 lator know the identity of the downloaders or the reasons for their downloading. Q. Moreover, those persons might 1 have accessed the standards from ASTM's 1 reading room for free and with no revenue to 2 ASTM, correct? 23 A. You mean in a but-for world? 24 Had they not done what they actually did, alternatively they could have gone to the Page 214 Provides less flexibility, yes. 4 Q. Do you have an understanding as 5 to why persons wool dward to download a file of a standard instead of viewing it at one of the plaintiffs reading rooms? 3 Tille WITNESS: I'm sorry. Paragraph - strike 6 the plaintiffs reading rooms? 4 Q. What did what do you understand to be the difference in 18 flexibility between possession of a download and and access to a standard through a reading 10 room? 2 Q. What did what do you understand to be the difference in 18 flexibility between possession of a download and and access to a standard through a reading 10 room? 2 Q. What did what do you understand to be the difference in 18 flexibility between possession of a download and access to a standard through a reading 10 room? 3 form. Copies can made be made of that and 3 distribution of plaintiffs action of page 15 and the top of page 46. 13 is it your opinion that the volume 1 understand to be the difference in 18 flexibility between possession of a dow				
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4 would expect one alternative would be to obtain it properly, directly from ASTM. 6 Q. Would that have resulted in 7 more revenue to ASTM? 8 A. It may have. If they're 9 materials that were taken improperly that 10 would have been paid for, then that would 11 represent a loss of revenue to ASTM. 12 Q. Do you know whether any of the 3 persons who obtained this information from 14 defendant would have paid for the information 15 from ASTM? 16 A. No, not with certainty, because 17 I don't know the identity of the downloaders 18 or other casons for their downloading. 19 Q. Moreover, those persons might 20 have accessed the standards from ASTM's 21 reading room for free and with no revenue to 22 ASTM, correct? 23 A. You mean in a but-for world? 24 Had they not done what they actually did, 25 alternatively they could have gone to the Page 214 1 free reading room? 1 free reading rooms? 1 free reading rooms? 1 free reading rooms? 1 free reading rooms? 1 more flexibility in referring to the standard and using it and sharing that information 10 Q. What did — what do you understand to be the difference in 11 free rooms? 1 more flexibility between possession of a download and and caces to a standard through a rand and and caces to a standard through a rand and caces to a standard through a rand and caces to a standard through a rand and and caces to a standard through a r	2	A. Not with certainty, because I	2	Q. Do you have any evidence about
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6 Q. Would that have resulted in 7 more revenue to ASTM? 8 A. It may have. If they're 9 materials that were taken improperly that 10 would have been paid for, then that would 110 materials that were taken improperly that 12 Q. Do you know whether any of the 13 persons who obtained this information from 14 defendant would have paid for the information 15 from ASTM? 16 A. No, not with certainty, because 17 I don't know the identity of the downloaders 18 or the reasons for their downloading. 19 Q. Moreover, those persons might 10 have accessed the standards from ASTM's 11 reading room for free and with no revenue to 22 ASTM, correct? 23 A. You mean in a but-for world? 24 Had they not done what they actually did, 25 alternatively they could have gone to the 26 Page 214 27 I free reading room? 28 A. That's a possibility, yes. 39 A. That's a possibility, yes. 40 Q. Do you have an understanding as 51 to why persons would want to download a file 6 of a standard instead of viewing it at one of 7 the plaintiffs' reading rooms? 8 A. Not with absolute certainty, 9 but I would imagine downloading would allow 9 more flexibility in referring to the standard 11 and using it and sharing that information 12 with others, whereas reading it in — through 13 an Internet site is somewhat less flexible, 14 provides less flexibility for the use of that 15 information. 16 Q. What did — what do you 17 understand to be the difference in 18 flexibility between possession of a download 29 and accessed the number of accesses or 20 downloads that Public Resource made possible 21 that would have allowed you to establish any 22 O. Have you conducted any studies 23 I rive seen any study on that, no. 24 that would have allowed you to establish any 25 O. Have you conducted any studies 26 O. Have you conducted any studies 26 O. Have you conducted any studies 27 the worl financial harms to the plaintiffs? 28 that would allow ad langacial harms to the plaintiffs? 29 MR. FEE: Objection to form. 21 THE WITNESS: I don't think 21 THE WITNESS: I masorry.	4	would expect one alternative would be to		
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A. It may have. If they're materials that were taken improperly that would have been paid for, then that would represent a loss of revenue to ASTM. Q. Do you know whether any of the defendant would have paid for the information from ASTM? A. No, not with certainty, because for the reasons for their downloading. Q. Moreover, those persons might have accessed the standards from ASTM's reading room for free and with no revenue to ASTM, correct? A. You mean in a but-for world? ASTM, correct? A. You mean in a but-for world? ASTM, correct? A. You mean in a but-for world? A. That's a possibility, yes. 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, but I would imagine downloading would allow more flexibility to referring to the standard and using it and sharing that information with others, whereas reading it in through and largine downloads free reading room? Umore flexibility in referring to the standard and using it and sharing that information with others, whereas reading it in through and and reference in flexibility between possession of a download and access to a standard through a reading room? MR. FEE: Objection to form. THE WITNESS: I don't think that would have allowed you to establish any connection between the number of accesses or downloads that Public Resource made possible that would have allowed you to establish any connection between the number of accesses or downloads that Public Resource made possible that would have allowed you to establish any connection between the number of accesses or downloads that Public Resource made possible that would have allowed you to establish any connection between the number of accesses or downloads that Public Resource made possible that would have allowed you to establish any connection between the number of accesses or downloads that Public Resource made possible that would have allowed y	6		6	Q. Have you reviewed any studies
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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		17	5
	of strike that that copyright on		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?
24	generally paraphrased it accurately,	24	MR. FEE: Same objection.
25	yes.	25	THE WITNESS: It would make
	Page 218		Page 220
1	BY MR. BRIDGES:	1	some sense to me, yes.
1 2	BY MR. BRIDGES: Q. And that plaintiffs' copyright	1 2	some sense to me, yes. BY MR. BRIDGES:
1			
2	Q. And that plaintiffs' copyright	2	BY MR. BRIDGES:
2 3	Q. And that plaintiffs' copyright protection this is the top of strike	2 3	BY MR. BRIDGES: Q. Are you aware that, in some
2 3 4	Q. And that plaintiffs' copyright protection this is the top of strike that. And turning to the top of	2 3 4	BY MR. BRIDGES: Q. Are you aware that, in some instances, at least one plaintiff uses the
2 3 4 5	Q. And that plaintiffs' copyright protection this is the top of strike that.	2 3 4 5	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	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	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 7 8	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	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
2 3 4 5 6 7	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 you call value-added publications, correct?	2 3 4 5 6 7 8	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 way or the other. I don't have reason
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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	
16	others to sell those publications unless they	16	
17	are unwilling [sic] to compensate the	17	standards provide a competitive advantage
18	Plaintiffs for such use."		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
			1
125	read "willing" to read "linwilling" for some	125	have in mind in naragraph 1097
25	read "willing" to read "unwilling" for some Page 222	25	have in mind in paragraph 109? Page 224
	Page 222		Page 224
1	Page 222 reason.	1	A. I don't know particular names,
1 2	reason. Q. Oh, I'm sorry. Thank you.	1 2	A. I don't know particular names, but at least I don't recall any sitting
1 2 3	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence.	1 2 3	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I
1 2 3 4	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs'	1 2 3 4	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these
1 2 3 4 5	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their	1 2 3 4 5	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products.
1 2 3 4 5 6	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a	1 2 3 4 5 6	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of
1 2 3 4 5 6 7	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale	1 2 3 4 5 6 7	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and
1 2 3 4 5 6 7 8	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the	1 2 3 4 5 6 7 8	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products."
1 2 3 4 5 6 7 8 9	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of	1 2 3 4 5 6 7 8 9	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training,
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1 2 3 4 5 6 7 8 9 10 11 12	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use."	1 2 3 4 5 6 7 8 9 10 11 12	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? A. That's what comes to mind right
1 2 3 4 5 6 7 8 9 10 11 12 13	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use." Do you see that statement?	1 2 3 4 5 6 7 8 9 10 11 12 13	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? A. That's what comes to mind right now.
1 2 3 4 5 6 7 8 9 10 11 12 13 14	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use." Do you see that statement? A. I do, yes.	1 2 3 4 5 6 7 8 9 10 11 12 13 14	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? A. That's what comes to mind right now. Q. Turning to paragraph 110, you
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use." Do you see that statement? A. I do, yes. Q. And the competitive advantage	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? A. That's what comes to mind right now. Q. Turning to paragraph 110, you state, "I understand that the ability to
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for such use." Do you see that statement? A. I do, yes. Q. And the competitive advantage you've identified there, whom do you	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? 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
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for 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?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? 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
1 2 3 4 4 5 6 6 7 8 9 10 11 12 13 14 15 16 17 18	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for 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	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? 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
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for 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.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? 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,
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for 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	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? 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
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	reason. Q. Oh, I'm sorry. Thank you. I'll restate the sentence. "In particular, the Plaintiffs' copyright protection on their privately-developed standards provides a competitive advantage with regard to the sale of these value-added publications as the copyright protection limits the ability of others to sell those publications unless they are willing to compensate the Plaintiffs for 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.	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. I don't know particular names, but at least I don't recall any sitting right now sitting here right now, but I think there are other providers of these downstream services and products. Q. And please give me examples of what you're calling "downstream services and products." A. Again, seminars and training, for instance. Q. Anything else? 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,

Page 225

23 for unauthorized instructors to read a

standard and become (or think that they havebecome) qualified to provide training or

Page 223

23 into that category, as you use the term.

25 that provide commentary on the standards.

Examples would be handbooks

1	guidance on that standard."	1	Q. You're just parroting what
2	Do you see that?	2	Mr. Comstock said, or did you have an
3	A. I do, yes.	3	independent view?
4	Q. What do you understand what	4	A. No, I heard what he said, and
5	did you mean by "unauthorized instructors"?	5	it made sense to me.
6	A. People that have provided or	6	Q. So you put it in your report?
7	trying to provide services to the marketplace	7	A. Yes.
8	that have not been explicitly approved by,	8	Q. What independent thought or
9	for instance, ASHRAE.	9	investigation did you do before you put that
10	Q. What do you understand the	10	in your report?
11	the nature of strike that.	11	MR. FEE: Objection. Vague.
12	You called them "instructors,"	12	Compound.
13	correct?	13	THE WITNESS: I can't point to
14	A. Yes.	14	anything in particular.
15		15	BY MR. BRIDGES:
1	•		
16	envision that these persons are providing	16	Q. Would a law-school course on
17	some kind of instruction?	17	the law and regulation of building
18	A. Yes.	18	construction provide instruction to law
19	Q. What instruction do you	19	students?
	understand what instruction did you have	20	MR. FEE: Objection. Vague.
21	•	21	Calls for speculation.
	instructors"?	22	THE WITNESS: I guess it could.
23	A. Generally, how best to	23	I have a hard time imagining there
24		24	would be much demand for such a
25	standards.	25	course, but I'm in general agreement
	Page 226		Page 228
l .	0 11/1 / 1 0	1	4 4 4 4 4 4 4 4 11
1	O. What else?	1	that that, in concept, could occur.
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$		2	that that, in concept, could occur. BY MR. BRIDGES:
2	A. Nothing else comes to mind	2	BY MR. BRIDGES:
2 3	A. Nothing else comes to mind right now.	2 3	BY MR. BRIDGES: Q. Would it be possible to
2 3 4	A. Nothing else comes to mind right now. Q. Would your understanding of	2 3 4	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such
2 3 4 5	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons	2 3 4 5	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some
2 3 4 5 6	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what	2 3 4 5 6	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been
2 3 4 5 6 7	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require?	2 3 4 5 6 7	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as
2 3 4 5 6 7 8	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require? MR. FEE: Objection to form.	2 3 4 5 6 7 8	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation?
2 3 4 5 6 7 8 9	A. Nothing else comes to mind right now. Q. Would your understanding of "unauthorized instructors" include persons who were instructing the public as to what the standards require? MR. FEE: Objection to form. Vague.	2 3 4 5 6 7 8 9	BY MR. BRIDGES: Q. Would it be possible to envision that, in the course of such teaching, a teacher may wish to analyze some of plaintiffs' standards that have been incorporated into law as law and as regulation? MR. FEE: Objection. Calls for
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1
   students?
                                                       professor was an unauthorized instructor?
                                                    2
 2
            MR. FEE: Objection. Compound.
                                                                MR. FEE: Objection. Form.
                                                    3
        Form. Vague.
                                                            Compound. Calls for a legal
 3
 4
            THE WITNESS: I guess, in -- in
                                                    4
                                                            conclusion. Vague.
 5
        concept. I'm having a hard time
                                                    5
                                                                THE WITNESS: That seems to be
        imagining that that would, in fact,
                                                    6
 6
                                                            a legal question. Just as an economic
        occur at any law school, but it might.
                                                    7
                                                            proposition or just as a matter of the
 7
        I somehow doubt that the law professor
 8
                                                    8
                                                            English language, I would think that
                                                            they might be an unauthorized user but
 9
        would be talking about the substance
                                                    9
                                                            not an improper user.
10
        of the standard as opposed to the
                                                    10
11
        process or implications of a standard.
                                                   11
                                                                I don't think they've gotten
12 BY MR. BRIDGES:
                                                   12
                                                            explicit authorization; therefore,
13
             You're not familiar with
                                                    13
                                                            they're unauthorized. But I'm not
        O.
   courses in construction law?
                                                   14
                                                            sure if it's illegal for them to refer
15
             I'm generally aware that there
                                                   15
                                                            to a standard.
16 are courses in construction law.
                                                    16
                                                       BY MR. BRIDGES:
             Is it your view that, for a law
17
                                                   17
                                                                What about making copies of the
18 professor to provide a copy of, let's say,
                                                       standard and furnishing it to students?
                                                   18
   the National Electrical Code to students for
                                                   19
                                                                MR. FEE: Same objections.
    their study would require permission of the
                                                   20
                                                                THE WITNESS: Same answer.
   National Fire Protection Association?
                                                   21
                                                       BY MR. BRIDGES:
22
            MR. FEE: Objection. Calls for
                                                   22
                                                            Q. Do you have any opinion about
23
        a legal conclusion.
                                                   23
                                                       the economic harms that plaintiffs would
24
            THE WITNESS: I don't know.
                                                       suffer if a law professor were to provide
25
                                                       an -- a copy of the National Electrical Code
        That seems to be a legal question. I
                                                                                               Page 232
                                           Page 230
 1
        do not know.
                                                       to each student in a construction law class
   BY MR. BRIDGES:
                                                       without having purchased those copies?
3
                                                    3
                                                                MR. FEE: Objection.
        Q. Is it your view that a law
                                                    4
                                                            Incomplete hypothetical. Form.
   professor who does not get any permission
   from NFPA or who does not purchase a copy of
                                                    5
                                                                You can answer, if you know.
   the National Electrical Code would be an
                                                    6
                                                                THE WITNESS: I don't know. I
                                                    7
                                                            have not investigated or even thought
    unauthorized instructor --
                                                    8
 8
            MR. FEE: Objection.
                                                            about that issue.
 9
   BY MR. BRIDGES:
                                                    9
                                                       BY MR. BRIDGES:
10
                                                    10
        Q. -- by using that code with his
                                                            Q. In paragraphs 117 through 119,
   or her students as part of a law-school
                                                       I see no footnotes referencing sources of
11
                                                    11
                                                       your conclusions or referencing facts on
12
   course?
                                                       which your conclusions are based.
13
            MR. FEE: Objection to form.
                                                    13
14
        Compound. Calls for a legal
                                                    14
                                                                What studies, if any, did you
15
        conclusion.
                                                    15
                                                       rely on for your assertions in paragraphs 117
16
            THE WITNESS: Again, that seems
                                                   16
                                                       to 119?
        to be a legal question. I'm not sure
17
                                                   17
                                                                MR. FEE: Objection to form.
18
        it would be authorized, but I'm also
                                                    18
                                                            Lack of foundation.
19
        not sure that it would be improper.
                                                    19
                                                                THE WITNESS: The study that's
20 BY MR. BRIDGES:
                                                   20
                                                            summarized in Exhibit 1.
21
             Well, you've used the term
                                                   21
                                                       BY MR. BRIDGES:
   "unauthorized" in your report, so I'm asking
                                                   22
                                                            Q. I'm referring specifically to
   you, given the term "unauthorized" as used --
                                                   23
                                                       paragraphs 117 to 119.
24 you have used it in the report, would the
                                                   24
                                                            A. I thought you were. I was
25 scenario I have described mean that the law
                                                       answering that question.
                                           Page 231
                                                                                               Page 233
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1 Q. You can't point to any paragraphs 117 to 119? 2 particular investigation or fact that you're relying on in paragraphs 117 to 119? 3 MR. FEE: Objection to form. 5 Asked and answered. 6 THE WITNESS: Everything that's embedded in Exhibit 1 is, in part, a basis for the observations that I draw in those paragraphs. 9 In those paragraphs. 10 BY MR. BRIDGES: 11 Q. What probability do you assign to your prediction in the first sentence of paragraph 119? 12 MR. FEE: Objection. Form. 13 Lack of foundation. 14 THE WITNESS: I'm not sure that I reveal the term "prediction," but I wouldn't assign a particular quantitative probability. 19 BY MR. BRIDGES: 21 Q. Can you give an estimate? 22 A. No. 23 Q. Why not? 24 A. I don't have a basis for that estimate. I have reasoning underlying it, estimate. I have reasoning underlying it the sestimate. I have reasoning underlying it, correct? 10 but I don't have a basis to provide a quantitative estimate of my level of correct? 11 but I don't have a basis to provide a quantitative estimate of my level of correct? 12 MR. FEE: Objection. Form. 13 Lack of foundation. 14 THE WITNESS: I don't have a particular quantitative measure of that. And are you referring to my use of the term "likely"? 15 BY MR. BRIDGES: 16 Correct? 17 Inthing the paragraph 126, you assign to the likelihood that you refer to with the word "likely" in the first sentence of paragraph 119, correct? 10 Lack of foundation. 11 Presentation. 12 Q. What probability do you assign to the likelihood that you refer to with the word "likely" in the first sentence of paragraph 126, you belief that, if the plaintiffs lose this case, they will shut down their creation of rews standards? 11 Lack of foundation. 12 Q. What probability do you assign to that? 13 Lack of foundation. 14 THE WITNESS: I don't have a particular quantitative measure of probability for that. 15 Unit don't have a basis to provide a quantitative estimate. 16 THE WITNESS: I don't have a quantitative estimate. 17 Q. What probability do you assign to the likelih				
3 relying on in paragraphs 117 to 119? 4 MR. FEE: Objection to form.	1	Q. You can't point to any	1	Q. What probability do you assign
MR. FEE: Objection to form. Saked and answered. THE WITNESS: Everything that's embedded in Exhibit 1 is, in part, a basis for the observations that 1 draw in those paragraphs. 10 BY MR. BRIDGES: 10 Q. What probability do you assign 12 to your prediction in the first sentence of a paragraph 119? 14 MR. FEE: Objection. Form. 15 Lack of foundation. 15 Teffer to an "option available to Plaintiffs 16 Teffer to an "option available to Plaintiffs 17 Teffer to an "option available to Plaintiffs 18 WMR. BRIDGES: 18 BY MR. BRIDGES: 19 Q. Can you give an estimate? 17 Teffer to an "option available to Plaintiffs 18 Wouldn't assign a particular 18 wouldn't assign a particular 18 quantitative probability. 19 plaintiffs lose this case, they will shut down their creation of new standards? 18 Is it your belief that, if the plaintiffs lose this case, they will shut down their creation of new standards? 22 A. No. 22 Q. What probability do you assign to the likelihood that you refer to with the word "likely" in the first sentence of a confidence. 2 Q. What probability do you assign to the likelihood that you refer to with the word "likely" in the first sentence of 1 paragraph 120? 1 THE WITNESS: I don't have a particular quantitative measure of of probability for that. 2 Q. What probability do you assign to the likelihood that you refer to with the town of "likely" in the first sentence of 1 paragraph 120? 1 THE WITNESS: I don't have a particular quantitative measure of of probability for that. 2 Q. What probability do you assign to the likelihood that you refer to with the town of "likely" in the first sentence of 1 paragraph 120? 1 THE WITNESS: I don't have a quantitative best estimate. 1 THE WITNESS: I don't have a particular quantitative measure of that. And are you referring to my use of that. And are you referring to my use of that the term "likely"? 18 BY MR. BRIDGES: 18 W. M. PRIDGES:	2	particular investigation or fact that you're	2	to the likelihood that you refer to in the
S	3	relying on in paragraphs 117 to 119?	3	first sentence of paragraph 121?
S	4	MR. FEE: Objection to form.	4	MR. FEE: Objection to form.
## particular quantitative likelihood measure. Page 234	5	Asked and answered.	5	
The method of the Exhibit I is, in part, a basis for the observations that I draw in those paragraphs. Shape in those paragraphs.	6	THE WITNESS: Everything that's	6	THE WITNESS: I don't have a
basis for the observations that I draw in those paragraphs. BYMR. BRIDGES: 10 Q. What probability do you assign 12 to your prediction in the first sentence of 13 paragraph 119? 14 MR. FEE: Objection. Form. 15 Lack of foundation. 16 THE WITNESS: Pin not sure that 17 I've used the term "prediction," but 1 wouldn't assign a particular 18 wouldn't assign a particular 19 quantitative probability. 20 BYMR. BRIDGES: 21 Q. Can you give an estimate? 22 A. No. 23 Q. Why not? 24 A. I don't have a basis for that 25 estimate. I have reasoning underlying it, 26 correct? 25 A. I don't have a basis to provide a 2 quantitative estimate of my level of 3 confidence. 26 Q. What probability do you assign 4 to the likelihood that you refer to with the 26 word "likely" in the first sentence of 27 paragraph 120? 28 MR. FEE: Objection. Form. 29 D. What probability do you assign 20 to the likelihood that you refer to with the 26 word "likely" in the first sentence of 27 paragraph 120? 21 MR. FEE: Objection to form. 22 D. What probability do you assign 3 to the likelihood that you refer to with the 3 word "likely" in the first sentence of 3 paragraph 120? 21 MR. FEE: Objection Form. 22 MR. FEE: Objection to form. 23 Confidence. 3 Q. What probability do you assign 3 to the likelihood that you refer to with the 3 word "likely" in the first sentence of 3 paragraph 120? 3 Lack of foundation. 4 THE WITNESS: I don't have a particular quantitative best estimate. 4 Q. You refer to with the 4 paragraph 19, 6 correct? 5 Q. What probability do you assign 4 to the likelihood that you refer to with the 5 word "likely" in the first sentence of 6 paragraph 126, you form 19 paragraph 19, 6 correct? 2 MR. FEE: Same objections. 3 Lack of foundation. 4 THE WITNESS: I don't have a particular quantitative estimate. 5 Q. Wata probability do you assign 5 paragraph 126, you assign 6 paragraph 19, 7 paragraph 19, 10 paragra	7		7	particular quantitative likelihood
10 BY MR. BRİDĞES: 10 Q. Can you give an estimate? 11	8		8	
10 BY MR. BRİDĞES: 10 Q. Can you give an estimate? 11	9	in those paragraphs.	9	BY MR. BRIDGES:
11 Q. What probability do you assign 12 to your prediction in the first sentence of 13 paragraph 119? 14 MR. FEE: Objection. Form. 15 Lack of foundation. 16 THE WITNESS: I'm not sure that 17 I've used the term "prediction," but I 18 wouldn't assign a particular 19 quantitative probability. 20 BY MR. BRIDGES: 21 Q. Can you give an estimate? 22 A. No. 23 Q. Why not? 24 A. I don't have a basis for that 25 estimate. I have reasoning underlying it, 26 valuantitative restimate of my level of 27 cornect? 28 Q. You refer to "uncertainties" in 29 to the likelihood that you refer to with the 20 word "likely" in the first sentence of 21 paragraph 120? 22 Q. What probability do you assign 23 to that? 24 A. I do, yes. 25 Q. What probability do you assign 26 to the likelihood that you refer to with the 27 word "likely" in the first sentence of 28 paragraph 120? 31 THE WITNESS: I don't have a particular quantitative measure of paragraph 120? 4 A. I do, yes. 4 Q. You refer to with the 4 word "likely" in the first sentence of 5 particular quantitative measure of paragraph 120? 4 MR. FEE: Objection. Form. 5 to the likelihood that you refer to with the 6 word "likely" in the first sentence of 7 A. I do, yes. 8 Q. What probability do you assign 8 Q. What probability do you assign 9 Q. Yes. 10 Q. Yes. 11 EWITNESS: I don't have a quantitative best estimate. 12 Q. What probability do you defer to with the word "likely" in the first sentence of paragraph 120? 13 PARR. BRIDGES: 14 Q. Turning to paragraph 126, you refer to an "option available to Plaintiffs 16 to the like scape, they will shut down their creation of new standards." 18 Is it your belief that, if the population incorporated standards." 18 Is it your belief that, if the populations case, they will shut down their creation of new standards? 21 A. I think that's a possibility. 22 Q. What probability do you assign to that? 23 I a. I think that's a possibility. 24 MR. FEE: Objection to form. 25 Lack of foundation. 26 Q. What probability do you assign to that? 27 Q. What probab			10	O. Can you give an estimate?
to your prediction in the first sentence of a paragraph 119? MR. FEE: Objection. Form. Lack of foundation. THE WITNESS: I'm not sure that I've used the term "prediction," but I wouldn't assign a particular quantitative probability. BYMR. BRIDGES: O. Can you give an estimate? A. I don't have a basis for that estimate. I have reasoning underlying it, estimate. I have reasoning underlying it, estimate of my level of cornect? A. I don't have a basis to provide a quantitative estimate of my level of correct? A. I do, yes. Q. What probability do you assign to the likelihood that you refer to with the word "likely" in the first sentence of paragraph 120? MR. FEE: Objection. Form. Lack of foundation. THE WITNESS: No. BYMR. BRIDGES: I incorporated standards." Is it your belief that, if the plaintiffs lose this case, they will shut down their creation of new standards? A. I think that's a possibility. A. I don't have a basis for that estimate of my level of confidence. Q. Why the probability do you assign to that? THE WITNESS: I don't have a particular quantitative measure of probability for that. BYMR. BRIDGES: Q. What probability do you assign to the likelihood that you refer to with the word "likely" in the first sentence of paragraph 120? MR. FEE: Objection. Form. Lack of foundation. THE WITNESS: I don't have a quantitative est estimate. BYMR. BRIDGES: WMR. FEE: Same objections. THE WITNESS: I still don't have a quantitative estimate. WMR. FEE: Same objections. THE WITNESS: Still don't have a quantitative estimate. WMR. FEE: Same objections. THE WITNESS: Still don't have a quantitative estimate. WMR. FEE: Same objections. THE WITNESS: Still don't have a quantitative estimate. WMR. FEE: Same objections. THE WITNESS: Still don't have a quantitative estimate. WMR. FEE: Same objections. THE WITNESS: Still don't have a quantitative estimate. WMR. FEE: Same objections. THE WITNESS: Still don't have a quantitative estimate. WMR. FEE: Same objections. THE WITNESS: Still don't have a q		O. What probability do you assign	11	
13 paragraph 119?	12			· ·
14				
15				
THE WITNESS: I'm not sure that I've used the term "prediction," but I wouldn't assign a particular wouldn't assign a particular quantitative probability.				
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1	a quantitative estimate. I think that	1	to see what alternatives there are among
2	there with reasonable probability I		standards development organizations currently
3	can draw this conclusion, but I can't		in existence to carry forward the work of
4	· ·		plaintiffs if plaintiffs chose to stop
5	BY MR. BRIDGES:	5	standards development as a result of the loss
6	Q. What do you mean, "with	6	of this case?
7	reasonable probability"?	7	MR. FEE: Same objection.
8	A. Based on the information that I	8	THE WITNESS: Not that I
9	have and the training and logic I bring to	9	recall, but I am of the understanding
10	it, I think there is a I say with some	10	that each SDO has a different charter,
11	confidence what I have said here.	11	so I don't know that any SDO has an
12	Q. And when you say "likely," do	12	identical charter to that of any of
13	you mean more than 50 percent likely?	13	the three plaintiffs.
14	A. Not necessarily, no.	14	BY MR. BRIDGES:
15	Q. Are you aware of other	15	Q. Are you aware that these
16	•	16	plaintiffs compete with other SDOs in the
17	standards development organizations active in	17	-
18	the same field as the plaintiffs?	18	creation of standards in particular fields? MR. FEE: Objection to form.
	MR. FEE: Objection. Vague.	I	•
19	Form.	19	Vague.
20	THE WITNESS: Perhaps you could	20	THE WITNESS: What do you mean
21	tell me what you have in mind with	21	by the term "compete with" in this
22	your use of the term "fields."	22	context?
23	BY MR. BRIDGES:	23	BY MR. BRIDGES:
24	Q. Well, are you familiar with	24	Q. That they consider others
25	AHRI?	25	rivals for the same market, in part.
	Page 238		Page 240
1	A. I have perhaps seen reference	1	MR. FEE: Objection to form.
1 2	A. I have perhaps seen reference to that.	2	MR. FEE: Objection to form. Vague.
		1	
2	to that. Q. Do you know with which of these plaintiffs it do you do you know what	2 3 4	Vague. THE WITNESS: I don't recall seeing reference to that, but my
2 3	to that. Q. Do you know with which of these	2 3	Vague. THE WITNESS: I don't recall
2 3 4	to that. Q. Do you know with which of these plaintiffs it do you do you know what	2 3 4	Vague. THE WITNESS: I don't recall seeing reference to that, but my
2 3 4 5	to that. Q. Do you know with which of these plaintiffs it do you do you know what field it's in?	2 3 4 5	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect.
2 3 4 5 6	to that. Q. Do you know with which of these plaintiffs it do you do you know what field it's in? A. I don't recall, sitting here	2 3 4 5 6	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES:
2 3 4 5 6 7	to that. Q. Do you know with which of these plaintiffs it do you do you know what field it's in? A. I don't recall, sitting here right now, no.	2 3 4 5 6 7	Vague. THE WITNESS: I don't recall seeing reference to that, but my memory is not perfect. BY MR. BRIDGES: Q. The in paragraph 131, you
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Page 245

25 being referenced in 139, so there's nothing

Page 243

25 BY MR. BRIDGES:

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		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	1 1	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
	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
1	business.	20	from the company personnel.
21	Q. It's hard to imagine, but are	21	BY MR. BRIDGES:
22		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
١ .			
1	THE WITNESS: I'm sorry.	1	Q. Did you look at the financial
2	THE WITNESS: I'm sorry. BY MR. BRIDGES:	1 2	information of any entities other than the
2 3	BY MR. BRIDGES: Q. Have you conducted any studies	2 3	information of any entities other than the plaintiffs?
2 3 4	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory?	2 3 4	information of any entities other than the plaintiffs? A. I looked at Public Resource
2 3 4 5	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection.	2 3	information of any entities other than the plaintiffs? A. I looked at Public Resource financial information.
2 3 4 5 6	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection. THE WITNESS: Not other than	2 3 4	information of any entities other than the plaintiffs? A. I looked at Public Resource financial information. Q. Apart from Public Resource and
2 3 4 5 6 7	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection. THE WITNESS: Not other than what's reflected here in Exhibit 1.	2 3 4 5 6 7	information of any entities other than the plaintiffs? A. I looked at Public Resource financial information. Q. Apart from Public Resource and the plaintiffs, did you look at the financial
2 3 4 5 6 7 8	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection. THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES:	2 3 4 5 6 7 8	information of any entities other than the plaintiffs? A. I looked at Public Resource financial information. Q. Apart from Public Resource and the plaintiffs, did you look at the financial information of any other entities in making
2 3 4 5 6 7 8 9	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection. THE WITNESS: Not other than what's reflected here in Exhibit 1. BY MR. BRIDGES: Q. What academic literature have	2 3 4 5 6 7 8 9	information of any entities other than the plaintiffs? A. I looked at Public Resource financial information. 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
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2 3 4 5 6 7 8 9 10 11 12 13	BY MR. BRIDGES: Q. Have you conducted any studies to disprove Mr. Malamud's theory? MR. FEE: Same objection. 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	2 3 4 5 6 7 8 9 10 11 12 13	information of any entities other than the plaintiffs? A. I looked at Public Resource financial information. 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
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1	1	1	unable to quantify that with great
2	organizations that make their standards	2	accuracy.
3	freely available to the public?	3	BY MR. BRIDGES:
4	A. Not that I recall.	4	Q. Have you considered any
5	Q. Would that have been relevant	5	comparable circumstances apart from this case
6	, , , , , , , , , , , , , , , , , , ,		that would provide guidance for your
7	A. It wasn't necessary to do my	7	prediction in the last sentence of
8	analysis, but I would be curious if I had	8	paragraph 146?
9	that information. If I if I had the	9	MR. FEE: Objection to form.
10	ability to examine that information, I would	10	Vague.
11		11	THE WITNESS: I kept my mind
12	Q. In paragraph 146, you state,	12	and eyes open to that, but I didn't
13	"The loss of publications here will likely	13	see information of a good comparator.
14	reduce the Plaintiffs' sales of those	14	BY MR. BRIDGES:
15	downstream products and services."	15	Q. Did you research whether there
16	Do you see that?	16	might be good comparators?
17	MR. FEE: That's in 146?	17	A. I
18	THE WITNESS: Is that the last	18	MR. FEE: Same objection.
19	sentence you were reading from?	19	THE WITNESS: I did in the
20	BY MR. BRIDGES:	20	sense of reading through the
21	Q. Yes.	21	literature and information to see if I
22	A. Yeah.	22	could learn of something that would be
23	Q. Paragraph 146.	23	a good comparator, but I didn't learn
24	A. Yes, I do see that.	24	of such comparator.
25	Q. Did you mean the loss of	25	BY MR. BRIDGES:
	Page 250		Page 252
		4	0 77 1 1 1 1 1 1
1	copyright in the publications here?	1	Q. You looked only at the
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	copyright in the publications here? A. Certainly the loss of	2	Q. You looked only at the information shown in tab 2 to Exhibit 1?
2	A. Certainly the loss of	2	information shown in tab 2 to Exhibit 1?
2 3	A. Certainly the loss of publications, but I believe it would probably	2 3	information shown in tab 2 to Exhibit 1? A. Yes, I think that's right.
2 3 4	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the	2 3 4	information shown in tab 2 to Exhibit 1? A. Yes, I think that's right. Q. What economic effect are you
2 3 4 5	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the	2 3 4 5	information shown in tab 2 to Exhibit 1? A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from
2 3 4 5 6	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here.	2 3 4 5 6	information shown in tab 2 to Exhibit 1? A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its
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2 3 4 5 6 7 8	A. Certainly the loss of publications, but I believe it would probably be better to put the loss of copyright in the publications as more reflective of the assignment that I undertook here. Q. What probability do you assign to the likelihood that you refer to in that	2 3 4 5 6 7 8	information shown in tab 2 to Exhibit 1? A. Yes, I think that's right. Q. What economic effect are you aware of to the Blu-ray Disc Association from its providing unrestricted access to its standard publications for free? A. I don't know. I thought you
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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	
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		the marketplace?
20	Page 254	20	Page 256
1	would be obtaining it free rather than	1	A. Potential confusion in the
2		_	
		2	marketplace and notentially providing yes
	through the legal routes established	2 3	marketplace and potentially providing yes,
3	by the plaintiffs.	3	that that would be one form of it.
3 4	by the plaintiffs. BY MR. BRIDGES:	3 4	that that would be one form of it. Q. What other harms do would
3 4 5	by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to	3 4 5	that that would be one form of it. Q. What other harms do would you identify from the defendants posting a
3 4 5 6	by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to determine what confusion may be likely in the	3 4 5 6	that that would be one form of it. Q. What other harms do would you identify from the defendants posting a standard that is out of print?
3 4 5 6 7	by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to determine what confusion may be likely in the marketplace in that regard?	3 4 5 6 7	that that would be one form of it. Q. What other harms do would you identify from the defendants posting a standard that is out of print? A. Nothing else comes to mind this
3 4 5 6 7 8	by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to determine what confusion may be likely in the marketplace in that regard? MR. FEE: Objection to form.	3 4 5 6 7 8	that that would be one form of it. Q. What other harms do would you identify from the defendants posting a standard that is out of print? A. Nothing else comes to mind this moment, but there could be other things
3 4 5 6 7 8 9	by the plaintiffs. BY MR. BRIDGES: Q. Have you done any studies to determine what confusion may be likely in the marketplace in that regard? MR. FEE: Objection to form. THE WITNESS: I have not done a	3 4 5 6 7 8 9	that that would be one form of it. Q. What other harms do would you identify from the defendants posting a standard that is out of print? A. Nothing else comes to mind this moment, but there could be other things that that I'm not thinking of right now.
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Case 1:13-cv-01215-TSC Document 204-44 Filed 11/13/19 Page 67 of 102

7		ř
1	not thought about that particular	1 CERTIFICATE 2
2	topic.	I do hereby certify that I am a Notary
3	MR. BRIDGES: Okay. I think	3 Public in good standing, that the aforesaid
4	we'll pause here and reserve the rest	testimony was taken before me, pursuant to 4 notice, at the time and place indicated; that
5	of the time for a later visit with	said deponent was by me duly sworn to tell
6	you, Mr. Jarosz.	5 the truth, the whole truth, and nothing but
7	Kevin, this is in reliance on	the truth; that the testimony of said 6 deponent was correctly recorded in machine
8	an exchange of correspondence between	shorthand by me and thereafter transcribed
9	Matt and you, I believe. If, for some	7 under my supervision with computer-aided transcription; that the deposition is a true
10	reason well, no. I think that's	8 and correct record of the testimony given by
11	all.	the witness, and that I am neither of counsel
12	Anything else?	9 nor kin to any party in said action, nor interested in the outcome thereof
13	MR. FEE: Well, I don't have	10
		WITNESS my hand and official seal this
14	any questions.	11 11th day of September, 2015 12
15	Do you guys have any questions?	13
16	MR. REHN: Not at this time.	14
17	MR. CUNNINGHAM: No.	<%signature%> 15 Lecour Leconary, ADR, CRR
18	MR. BRIDGES: Great. Thank	Notary Public
19	you.	16 17
20	THE WITNESS: Thank you.	18
21	THE VIDEOGRAPHER: All right.	19
22	Off the record at 4:31. This ends	20 21
23	media unit number 3 and ends testimony	22
24	for August 27th, 2015.	23
25	* * *	24 25
	Page 258	Page 260
1	(Witness excused.)	
2	* * *	
100		
3	(Off the record at 4:31 p.m.)	
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	Page 259	

66 (Pages 258 - 260)

[& - 6]

&	12th 3:4	114:20 115:22	318-1200 2:5
& 2:2,8,14 3:2,7	13,000 200:9,19	118:15,21,24,25	33 89:3
7:13,19,23	201:13	121:23,24 135:4,6	34 92:17
	131 241:7	197:17 210:14	35 71:3
0	133 63:1 67:1 157:2	253:2	36 187:10,12
01215 1:4	157:21 158:4 159:1	2,400 201:23	3:12 210:13,16
0215 7:6	159:17 160:14,22	20 134:8,11 209:15	3:41 210:17,20
1	162:19 163:22	200 99:17	3c 26:12
1 1:25 4:12 6:2 13:3	164:10 211:19	20004 2:15	4
27:18,21 64:15 89:9	212:8,18	2008 164:14,21	4 4:16 134:13,19
110:2 119:6 166:8	134 164:10	165:21,25 166:6,15	158:5,22 175:3,8,21
166:16 233:20	139 244:18 245:1,4	166:23	177:23 178:11
234:7 235:25 247:7	245:17,25	2009 4:17 175:13	248:25
253:2	140 245:1,23	2011 165:18 166:1,7	415 2:5,11 3:5
1,200 90:18	144 245:1 246:8	166:15,23	44 204:7,17 205:23
10 91:24 96:4 242:6	247:11	2012 164:18 165:12	206:11,11
100 130:22 131:10	145 245:2 247:13	165:13 178:16,19	45 216:24 217:8,12
133:12,19,22	249:10,17	208:6,8	218:3
100,000 244:1	146 245:2 250:12,17	2013 4:17 175:13	46 217:8,12 218:3
101 2:3	250:23 252:8	2014 89:8 187:19	219:6 222:10
107 216:25 217:8	15 187:18	2015 1:21 4:13 6:20	48 68:8
108 216:25 217:1,3	150 13:11	154:2 258:24	49 195:1
109 224:13,25	151 13:11	260:11	4:31 258:22 259:3
10:09 1:20 6:21	155 65:5 16 5:13	202 2:16	5
11 102:1	16 3:13 17 101:25	210 4:18 22 187:24	5 4:13,18 134:14,19
110 225:14	17 101:23 175 4:16	22 187:24 2300 2:4	158:5,22 208:6
1111 2:15	18 187:22	26 105:4 209:13	210:24 211:4
112 65:5 68:16	19 209:13	260 1:25	237:23 241:25
69:13,21 70:23	19 209.13 1915 134:2	27 1:21	242:4 248:25
117 233:10,15,23	1913 134.2 193 99:17	27th 2:10 6:20	50 184:1 237:11
234:3	194 99:17	258:24	238:13 241:21
119 115:5,10 233:10	196 99:17	29 41:4	50,000 244:11
233:16,23 234:3,13	1974 195:3	2:12 153:1,4	512-4000 2:11
235:5 11:12 61:17,19	1975 195:11	3	555 3:3
11:12 61:17,19 11:23 61:20,23	1995 115:5	_	560 2:9
11:25 01:20,23 11th 260:11	1:13 1:4 7:6	3 4:15 89:23,25 90:2	57 199:12,15
120 235:11	1:17 152:23,25	97:23 98:3,7,13	58 199:21,25
120 233.11 121 236:3	2	102:20 134:13,19	59 202:17 204:6
121 230.3 1250 1:19 6:23	2 4:14 15:17,20 17:8	158:5,22 188:2	5th 154:2
126 236:14		210:21 248:25 258:23	6
12:17 110:1,4	93:21,21,22 94:14 97:23 98:3,7,10	3,600 90:18	6 4:12 17:24 18:8
12:32 110:5,8	102:20 110:9	30 14:6 25:20	98:5
	113:13 114:18,19	JU 17.0 23.20	
	113.13 117.10,17		
		•	

[62 - allowing]

62 140:25	250:10	active 82:4 238:16	adjusts 40:13
64 51:3	able 63:3 154:17	activities 10:12	administrative
650 3:9	176:8 242:14	12:16,20 21:21 60:7	115:14,25 116:8,16
66 183:24	abridges 3:5	62:3 63:5 66:5	116:23 117:6
67.1 187:19	absence 68:23	75:24 85:9,10,14	adopt 192:24
68 51:6	absolute 25:4 27:9	87:7 122:23 123:13	adopted 204:7,17
6c 26:11	119:3 164:16	123:16,17 126:3	205:23 206:12
7	212:21 215:8	133:8 147:19,20,21	advantage 219:8
	220:19	148:2,4 149:4	222:13 223:7,15
7 18:5,8	absolutely 14:18	153:11 157:8,15	224:17
70 41:5	202:1,5	158:24 159:9 160:5	adverse 241:16
73 51:8 195:15	academic 112:11	160:10 161:2,6	242:21 243:19
739-3000 2:16	247:9	163:24 164:18	244:2,11
74 195:15	acceptable 45:13,18	167:4 193:18	adversely 241:11
76 89:3,4 90:7	access 75:18 141:2	249:22,25	advertising 88:6
8	141:10,15 192:1	activity 60:22 74:23	advisable 55:19
8 4:4	215:19 253:6,19,24	76:21 151:12 157:4	56:3
80 237:17	accessed 211:22,25	157:20 162:25	affect 178:20
801 3:8	214:20	165:12 189:14	aforesaid 260:3
83 187:15,16	accesses 212:7,17	207:7 245:13	afternoon 153:6,7
86,400 90:17	216:8,17	actual 62:8	agencies 203:1
875-2300 3:5	accomplishing	add 18:23 23:13	ago 30:16 41:23
88 199:16	56:24 57:10,24	183:25 184:4,9	46:2 105:21 113:19
9	58:13	added 97:12 219:9	133:19,23 134:11
9 5:13	account 73:12	219:20 220:2	208:4
90 211:16	163:23 164:5 168:9	222:14 223:8,19,21	agree 6:16
90-75 195:11	181:4	224:10	agreement 228:25
90.1 89:15 90:4,8,21	accrue 209:10,17	addition 224:14	ahead 17:12 54:10
91:16 92:7 131:15	accuracy 248:11	additional 246:11	73:17 81:8 174:19
131:19 132:4 195:2	252:2	address 15:12 17:25	ahri 238:25
204:8,20 206:25	accurate 206:18	42:12 45:25 48:19	aided 260:7
207:14 211:16	accurately 54:8	49:18 50:25 51:14	air 1:12 2:17 8:1
94041 3:9	218:24	52:1,19,24 53:14	akin 128:7
94104 3:4	achieve 49:5,7,19,21	55:5,21 56:4 82:15	al 7:2
94105 2:4,10	52:14 209:24	85:3 86:23 89:19	alert 32:14 39:13
95 204:12,16 205:9	achieving 50:12	114:25	137:22
205:11,22 206:10	52:16	addressed 14:6	alleged 11:21,24
97 4:14,15	acquainted 92:22	51:21 54:12,16	19:13 118:7 164:17
988-8500 3:9	acronym 239:10	77:17 112:17 140:9	allow 46:22 63:11
a	acting 42:24	addresses 42:21	86:22 209:24 215:9
	action 56:17 260:9	addressing 45:11	215:25 216:7
a.m. 1:20 6:21 61:19	actions 18:16 71:5	50:18 51:18 52:4,15	allowed 68:13 73:19
61:20	123:18 172:4 181:5	54:19 68:2 69:1,6,7	216:16
ability 32:12 222:15	216:4 257:24	74:10	allowing 54:5
223:9 225:15			

[allows - aspects]

70 12 200 10	107 14 16 100 17		105 1 0 16 105 22
allows 50:13 209:19	107:14,16 108:17	appointed 116:23	185:1,9,16 187:23
209:22	125:21 128:24	appreciating 80:21	195:2,10 201:19
alter 11:20	129:1,2 137:9,11	appropriate 83:17	202:4 204:8,20
alternative 214:4	141:22 143:4,7,15	143:16,25 167:13	206:24 207:13,13
224:11	145:7,25 150:2,8	167:17 168:4	207:18,24 208:1,5
alternatively 214:25	151:1,24,25 152:16	169:12	211:12 213:2,12
alternatives 213:24	154:12 165:20	appropriateness	225:22 226:9
240:1	166:3,24 171:17	168:1,5	ashrae's 89:14 91:8
american 1:3,9 2:6	172:18 197:4	approval 76:20	91:11
2:17 7:1,24	202:11 203:9	approved 226:8	aside 38:6
amount 10:16 91:18	232:20 233:5 244:8	approving 109:13	asked 14:13 16:21
91:19 93:15 184:14	244:14 246:2	approximately 6:21	24:16 65:2 103:9
189:14,15 193:17	253:11	90:1 96:10 97:2	113:4 118:12
242:9,16 243:17,24	answered 14:14	aptly 143:17	120:10 129:25
244:11	24:17 65:3 103:10	archive 164:23	143:23 146:2
amounts 87:6 243:9	113:4 118:12	179:13 180:4,10	147:10 150:23
243:14	120:10 130:1	area 86:25 93:13	151:14 152:12
amusement 54:14	147:11 150:23	areas 80:24 187:11	167:24 168:14,22
analyses 11:9 26:20	152:13 168:14,23	arguing 186:13,16	170:19 174:14
analysis 77:24 79:24	170:19 174:15	arising 19:2,12	186:10 188:21
115:16 127:12,16	186:11 234:5	arranging 85:20	192:2 194:21 234:5
130:3 144:4,17	243:22	array 31:21 32:2	243:22 253:9
146:12 148:6 162:4	answering 146:19	arrived 40:15	asking 8:21 13:17
162:12 164:20	151:14 168:9	arriving 180:19,21	14:20 22:3 29:6,14
167:3 170:24	233:25	article 4:18 70:5	29:18 37:3,6 41:9
171:22 172:14	answers 77:21 108:2	117:17 195:14,16	41:15 50:6 69:4
178:20 179:8 180:6	anticipate 100:24	199:15 211:4,7,10	77:5,20 87:5,6
186:2 250:6,8	anybody 23:4	211:14	95:16 106:10
analyst 119:20	195:25 201:11	articles 69:23 93:3	142:23 144:14
analyze 81:19 229:5	apart 121:13 197:18	94:5,9,10,13 112:10	147:2,7 154:23
analyzed 155:17	249:6 252:5	114:25 116:1,10,18	171:20 172:13
156:1	apologize 54:21	117:3,5,23,23,24	177:17,18 179:18
analyzing 163:23	253:9	118:5 119:20,23	180:20 181:25
181:4	appear 246:14	122:2,3 138:17	182:2 184:7,8
ancillary 72:7	254:3	197:19,20	186:19 200:11,13
224:19	appearances 2:1 3:1	articulate 57:23	200:14,24 206:8
andrew 3:3 7:12	appears 90:21	ascertain 112:5,24	209:16 231:22
answer 5:2 13:18,24	175:12	114:21 129:23	242:18
14:3 16:22 17:12	application 172:23	130:7	aspect 172:16 173:2
18:4 30:6 37:15	applied 8:22 169:23	ashrae 4:19 51:9	174:3
49:10 53:5 54:1,9	172:21	54:18,20 89:8,22	aspects 170:3
55:23,25 56:7 69:15	apply 8:25 57:16	90:16,21,24 91:6,16	171:12 172:8 173:7
78:20 95:1,4,23	applying 170:6	92:4,7 96:25 97:20	173:12,17,23 174:4
104:6,24 105:20	171:16	131:15,18 132:3	200:2 229:15
106:13,15 107:13		155:6 184:2,18	
100.13,10 107.13	<u> </u>	122.0 101.2,10	

[assert - best]

assert 217:14	assumptions 106:12	avenue 2:15	148:14 195:3 234:8
asserted 126:20	107:12 108:15	avenues 46:5,7	234:24 235:1
assertions 120:6	125:11 145:5	aware 35:25 93:14	bates 119:6 122:6,10
233:15 249:9	146:24 148:15	105:5 108:23 116:4	122:16 135:3,5,9
assessing 40:9 44:6	ast 213:13	117:12,22 131:8,13	beunningham 2:5
assessment 9:24	astm 1:5 2:7 7:17	133:10 134:7	bear 54:25 170:6,16
161:4,10 241:23	51:4 52:3 54:12	138:23 139:4 141:9	170:24 171:16,22
assessments 9:3	96:23 97:18 135:7	141:23 182:20	172:14,17,24 173:3
assign 234:11,18	155:4 183:24 187:4	183:5 192:18,21	173:8,13,19,25
235:8 236:1,22	201:17,23 211:24	197:6 207:25	174:5,9,13
251:7	212:6,19 213:2,7,10	208:23 209:3 221:3	bearing 78:12 79:1
assigned 10:15 19:9	213:16 214:5,7,11	230:15 238:15	bears 159:10
137:23 251:13	214:15,22	240:15 245:21	becker 3:8 7:15
assignment 79:8,22	astm's 214:20	246:6,22 253:5	beginning 70:4
114:3 138:21	attached 27:18	awareness 139:9	110:9 210:20
142:17,19 143:13	165:23 166:7,16	b	behalf 7:17,19,24
149:1,9 249:12	attempt 10:2 195:7	b 1:5 2:6	behavior 171:6
251:6 257:20	196:15 201:12	back 21:25 27:15	172:3 173:3
assignments 28:18	attempted 177:13	28:3 55:24 78:22	belief 185:16 236:18
31:2 139:4,11 170:9	attempting 178:2	92:16 99:6 134:11	254:3
assistance 101:10	attention 40:5 51:21	134:15 137:9 176:7	believe 12:3,8 15:18
associate 176:21	71:2 92:25 94:4	187:17 208:5	20:9 33:16 35:1
189:10,17,23 190:4	109:8 209:22 211:8	212:14 221:23	50:18 54:24 62:16
associated 10:19	attorney 47:19	background 28:13	62:19 73:23 98:19
18:15 28:25 52:4	attributable 193:10	153:15	104:21 117:14
54:13,16 75:15	194:6,17	balancing 58:9	119:5,6,10,12,14
80:13,25 88:4	attribute 157:7	barriers 225:18	120:1 122:16
127:17 177:15	attributed 189:13	base 64:10	129:13 135:21
204:13 224:16	audio 6:14	based 53:8 58:3	140:24 147:13
association 1:8 2:12	audit 243:4,10	72:5 102:8,14	148:5 150:18 169:3
7:21 26:10 140:15	audited 135:7,7	148:11 165:10	175:18,22 178:15
140:19,22 141:1,10	auditors 243:8	166:7,11,15,19	182:17 183:1,11
230:21 253:5,13,23	august 1:21 6:20	175:16,20,25 185:5	187:5 192:5 194:12
association's 141:24	258:24	197:19 206:8	205:20 211:6
associations 33:3	author 197:25	213:18 233:13	227:23,24 245:10
assortments 42:14	authorization	238:8 250:1	251:3 253:21
assume 77:24 78:1,4	232:12	bases 79:18 108:14	254:10,14 258:9
89:21 140:14	authorized 231:18	basic 170:11 172:19	believed 245:7
185:20,21 200:25	automatically 89:18	basically 68:1 133:2	believes 129:11
assuming 78:5	availability 72:5	basis 43:3 63:18,25	benefit 209:4 221:16
assumption 12:8	138:25	64:16,25 67:13	222:3
17:15 72:19 78:3,7	available 46:18	78:18 95:3 106:12	benefits 88:25
148:1 151:11 185:9	126:14,19 158:19	113:7 125:9,15,19	209:10,14,17 210:1
185:11,15,24 186:5	159:5 236:15 250:3	145:2,5 146:22	best 28:11 32:11
186:7,9	257:14		40:10 42:11 55:19

[best - california]

56:2 57:9 91:20,22	bridges 3:3 4:4 7:12	136:4,19 137:4,10	243:25 244:9,15
97:8,15,20 98:9	7:13 8:13,15 9:16	137:25 138:9,22	247:2,8 248:6,21
119:4 210:7 226:23	10:1,9 11:15 13:19	139:8,19 143:1	250:20 251:15,19
237:5,8	14:11,21 16:2,10,20	144:2,13,19 145:15	252:3,14,25 254:5,9
better 155:7 245:7	16:24 17:18 20:2	146:5,14 147:5,16	255:4,11,22 256:7
245:11 251:4	21:2,17 22:5,11	148:3,19 149:2,10	256:23 258:3,18
beyond 12:25 24:1	24:13,23 26:2,23	149:22 150:5,11	bring 161:21 163:12
27:23 71:4,22 78:9	28:21 29:7,10,20	151:2,22 152:20	163:15,16 172:17
114:18 130:3,11	33:20 34:3,10,20	153:5 156:19	173:3,25 174:8
131:23 132:15	35:3,24 36:8,17	157:22 158:8	238:9
170:3,10,15 171:6	37:9,16 38:4,11,23	159:13 160:7,19	bringing 174:13
171:13 172:10	39:15 40:22 41:8	161:12,23 162:11	245:12
207:22,24	42:2 44:3,23 45:20	163:3,17 164:7	broad 32:7 75:1
bills 92:5	47:14 49:1 51:11,24	165:6 166:12,20	broaden 72:21
bit 15:16 58:23 59:5	52:12 53:4,20 54:23	167:14 168:3,12,16	broader 31:21 32:24
62:7 105:22 132:24	56:16 57:3,8,15,21	169:5,18 170:1,22	33:9 224:9
149:21 200:19	58:11,22 59:6,16,23	172:12 174:23	broadly 172:7 203:4
blake 2:3 7:22	60:24 61:4,13,24	175:6 176:15 177:3	brought 40:5 51:20
blanche 75:17	62:13 63:23 65:6,25	177:16 178:6 179:4	92:25 94:3 109:8
blu 26:10 140:12,15	66:7,12,20 67:17	179:23 180:21	162:23 163:11
140:19,20,22 141:1	68:5 69:14,19 70:20	181:2,10 182:10,19	170:6,16,24 171:15
141:9,23 253:5,13	71:1 72:22 73:8,25	183:3,16 184:3	171:22 172:13,23
253:22	74:13 76:23 77:7,15	186:15 190:15	173:8,13,19 174:5
bockius 2:14	78:23 79:9,23 80:7	191:1,8,16 192:7,17	building 46:23
body 117:21 165:13	80:15 81:1,11,17	193:7,22 194:14,25	127:9,14 128:14
books 119:21	82:6,23 83:20 84:5	196:9,24 197:13	204:9 228:17
bottom 93:22	85:12 86:2,13,19	198:3,24 199:4,11	buildings 46:21
140:25 217:12	87:8 88:10,19 91:7	203:15 204:25	54:17
218:3	92:3,14,18 93:17	205:15 206:5,20	bulk 26:20 92:12
breach 27:1	94:6 95:7 97:9 98:1	207:9,19 208:22	business 33:4 39:9
break 14:25 58:19	98:16 99:3,23 100:4	209:8 211:2 213:4	128:7 229:17,18
59:14,15,19 61:14	102:17 103:4,15	213:15,22 216:14	246:20 249:13,20
109:24 152:19	104:14,25 105:6,10	216:23 217:4 218:1	253:14,16
158:14,18 210:9	105:13 106:4 107:1	218:13 219:1,17	buy 184:18 185:17
breaks 158:12	108:5,24 109:10,22	220:9,21 221:2,14	buying 184:21
breathing 35:6,7,8	110:11 111:12,24	221:24 222:9,21	185:13
bremer 68:16,21	113:2,14 115:8	227:13,20 228:15	c
92:19 94:4,5,8,18	116:13,21 117:9,19	229:2,19,23 230:12	c 1:17 4:3,12 7:8 8:7
112:10 114:25	118:16 120:20	231:2,9,20 232:16	124:24 260:1,1
116:2,10,18 119:23	121:18 122:19	232:21 233:9,21	calculate 212:5
122:3 138:17	124:22 125:17	234:10,20 235:18	calculated 208:14
199:15	126:17 127:11	236:9,13 237:4,9,15	212:9
bremer's 94:9 117:3	128:10,18 129:5,21	237:21 238:5,23	california 2:4,10 3:3
117:5 197:20	130:5,20 132:16,25	239:24 240:14,23	3:4,8,9
	134:6,16 135:1	241:6 242:17 243:2	

JA07510

[call - comes]

n 44.11.06.5	100 10 10 15 16 01	041707010616	2.7.7.00.14
call 44:11 86:5	129:4,9,12,15,16,24	84:15 85:9 106:16	cite 25:7 99:14
96:19,21 106:24	130:3,4,8,9,10,16	133:18 165:16	103:24 195:14
111:18 114:6	132:10,20 138:13	251:2	cited 22:15,17,22
123:11 219:9	143:13 144:15,17	certainty 25:5 27:9	24:25 82:1 199:16
called 124:24	147:9 153:10 154:4	63:8 65:24 119:4	202:10 205:22
135:23 209:14	154:22 155:19	164:17 212:22,23	206:10 211:4
223:19 226:12	162:15 169:13,24	214:2,16 215:8	cites 110:13
calling 113:20 171:7	170:7,17,25 171:17	220:19	claimed 10:4 126:5
225:7	171:23 172:14,17	certified 1:23	class 233:1
calls 47:2 77:2 78:14	172:24 173:4,9,14	certify 260:2	classify 38:25
79:4,14 96:23	173:19,25 174:5,10	change 11:23 95:8	clause 200:15
108:13 129:17	174:13 175:9	109:23 165:4,9,15	clear 16:8 35:5
144:18,22 145:22	181:14 187:4 188:9	167:10 179:6 208:1	clearinghouse 86:1
146:17 147:24	188:25 189:12,19	220:7	clearinghouses
148:8,23 149:6,17	190:22 194:18	changed 130:22	86:21
150:22 151:7	196:1 208:12	134:5 166:24	close 63:13 64:2,20
152:11 159:2 161:8	212:25 236:19	changes 131:4,5,8	closer 59:9
167:20 168:23	239:21 240:6 252:5	131:13 133:10	code 127:13 164:15
228:21 229:9	cases 27:18,20 28:8	134:7 157:6,13,20	164:19,22 165:19
230:22 231:14	32:14 119:16	157:25 159:18	165:21 204:9,18
232:3 257:18	categories 34:1	176:22 177:8,20	205:24 206:13
campaigns 88:7	category 223:23	chapman 98:11	221:5 229:21
candidates 140:2	causation 158:23	99:22,25 102:15,19	230:19 231:6,10
169:16	161:4,11	103:14 104:7,16	232:25
capabilities 133:25	cause 12:18,21	105:24 106:7,20	codes 127:9,14,25
caption 6:25	67:21 75:5,12 76:3	characterization	128:1,14
capture 218:16	159:18 254:21	222:23	coefficient 177:14
career 26:1 174:22	caused 21:22 66:1	characterize 47:12	177:18
careful 31:17	73:13 80:17 145:17	charter 49:16	collected 194:22
carl 3:13	145:19	240:10,12	collection 209:23
carry 240:3	cell 6:11	chartered 40:8	college 170:4,11
carte 75:17	certain 18:15 47:7	charters 48:18 49:3	171:14
case 6:25 7:4,5 9:7	48:19 49:18 50:8,18	55:4	columbia 1:2 7:5
10:5 12:11 15:14	55:5 57:24 58:12,13	check 187:2	combinations 96:17
27:7,25 28:10 29:11	60:19 64:22 74:2,8	choose 184:20	96:22
33:13 43:21 44:20	82:15 92:9 100:19	chose 94:14 240:4	come 26:9,13 62:22
68:24 69:3 73:1,13	126:3,25,25 127:2	circular 115:5,9	131:18 203:13
75:22 76:5 77:1,16	140:25 155:4	circulars 115:2	comes 28:23 29:1
78:8,19,25 79:11,13	156:23 160:1 165:8	circumstances	36:4 40:11 66:8
81:3,6,19 85:16	180:13 185:6	128:13 252:5	84:14,21 188:8,15
92:20 95:4 96:9	212:16 226:24	circumstantial	188:19 221:11
104:10 107:21	243:14,14,16	159:6	224:2 225:12 227:2
124:23 125:1,14,14	certainly 28:24 36:4	citations 99:12	245:18 247:12
125:18,23 126:1	39:13 40:3 47:11	102:7,13 105:17	249:18 257:7
127:17,23 128:5,8	60:10 62:9,21 70:6	107:4 160:22	

[coming - containing]

coming 45:12 58:8	completing 107:6	146:23 148:15,17	consequence 62:2
commencing 1:20	completing 107.0 comply 32:16 34:15	159:17 161:20	63:5 127:14 130:15
commentaries	35:22 46:11	165:4,9 167:11	157:15 216:4
		-	
219:21	compound 37:13	169:24 170:17	consequences
commentary 218:5	53:1 161:17 167:21	208:11 220:7	128:16,20 130:14
218:20 223:25	176:13 178:24	233:12,13	conservation 204:18
commerce 52:11	228:12 230:2	condition 257:11	205:24 206:12
commercial 204:8	231:14 232:3	conditioning 1:12	consider 38:3 39:6
committee 116:7,15	243:21 244:5	2:18 8:1	72:14 142:1 162:8
committees 88:15	254:19 257:17	conduct 64:18,19	165:1,16 169:1
117:10	compute 177:13	66:22	179:1 240:24
communications	computer 260:7	conducted 216:15	242:21 244:1
78:17 79:17 95:2	computing 87:18	247:3	249:13
125:8 145:1 146:21	comstock 101:25	conference 115:15	consideration 46:9
147:1 148:12	225:22 227:22	115:25 116:8,16,23	considerations
196:19	228:2	117:6	39:14 140:9 168:8
companies 32:2,4	concept 32:24 33:9	confidence 96:17	considered 82:5
33:1 34:13 35:19	69:7,10,24 70:16	235:3 238:11	164:11 165:14
39:9 42:10 43:11,16	229:1 230:5 243:13	confident 14:25	243:24 244:7,10
243:15	256:4	15:6	252:4
company 34:9 42:15	concepts 170:12,15	confine 77:21	consolidated 135:8
42:17 248:20	170:23 171:2,11,18	confirm 90:11	constituency 39:7
comparable 128:13	171:21	confirmation 23:24	constituent 37:23
128:22 252:5	concern 45:12	confirmations 109:6	39:1
comparator 252:13	conclude 58:24	109:11	constituents 31:15
252:23,24	169:7,11	confirming 109:19	33:7,12,22 34:2,4
comparators 252:16	conclusion 12:6	conflict 121:7,10	36:1 37:7 82:10,14
compatibility 82:16	19:15,22 20:4 47:3	conflicted 120:13,17	83:5,6 84:12,13
compensate 222:17	79:5,15 129:18	196:7 197:11	85:5 86:23,24
223:11	144:8,23 145:23	248:19	131:21
compensation 133:7	146:18 147:3,24	conflicts 121:1,2,8	constitute 149:4
compete 240:16,21	148:9,24 149:7,18	confused 200:23	construction 228:18
competition 223:17	150:23 151:8	201:1	230:14,16 233:1
competitive 219:8	152:12 159:3,16	confuses 171:9	construed 144:7
222:13 223:7,15	161:8 167:21	confusion 12:18,21	consulting 8:22 26:1
224:17	168:24 217:23	19:1 34:25 200:22	28:18 31:1
competitors 224:24	230:23 231:15	254:21 255:6,10	consumer 171:5
compilations 72:6	232:4 238:3	256:24 257:1	172:2 173:3
complaint 179:22	conclusions 11:11	conjunction 179:2	consumers 32:15
180:14	11:13 13:7 15:25	connection 28:10	50:16 76:15
complementary	16:5 17:2 18:12,20	115:15 216:8,17	contained 10:21
224:19	18:25 19:4,6,11	consensus 32:6,7,8	11:12,14 160:15
complete 13:25	107:11 108:15	40:15 45:16 58:3	180:13 216:22
completed 48:5	116:9,17 125:12,16	85:2 116:7	containing 71:9
10.0	125:20 145:4,6	35.2 110.7	71.7
	123.20 113.1,0		

[contest - curious]

contest 53:19,21	copied 20:11	43:12,16 47:16,21	course 24:20 25:15
context 9:3 26:3	copies 19:18 71:7	48:3,4 64:23 65:9	25:25 27:10 56:17
28:17 37:2 42:8	87:25 88:1,2 215:23	65:17 66:13 67:22	111:15 170:5
55:14 70:10,21	232:17 233:2	68:17 69:21 70:11	171:15 228:16,25
106:14 240:22	сору 136:1 215:22	70:23 71:19 72:8,12	229:4 231:12
contexts 9:4	230:18 231:5	72:12 77:25 86:8,12	courses 25:17
continue 6:15 67:9	232:25	90:22 94:10 113:21	230:14,16
68:14 151:20	copying 15:18 20:6	113:22 114:8	court 1:1 7:4 8:3
162:25 239:18	133:25	130:16,19 135:16	12:6 63:14 64:4,21
continued 2:19 3:1	copyright 18:2,12	156:24 161:25	65:15 66:2,6,10
110:19,20 111:3,9	18:14,20 27:4,12,25	162:5 163:12	67:19 71:12 74:1,15
continues 72:20	28:8 63:15 64:4	174:10 188:1	76:5,25 77:10 81:4
continuing 66:4	65:8 67:21 68:7	197:22 204:13,14	128:1,13 129:3,8
74:23 147:18,19	69:8,10,25 70:5,7,9	208:8 211:5,17	145:19 146:6,9
continuous 89:16	70:11,15,17 72:18	212:3 214:22 219:9	149:11 150:16
contract 27:1	72:20 73:18 77:5,20	219:13,24 226:13	152:7
contractors 229:21	78:1 79:13 80:1,9	227:23 235:6	court's 67:13 128:20
contradicted 120:23	80:14,25 81:5	247:22 260:8	129:24 130:8
121:15	110:19,20 111:4	correctly 217:11	167:23
contribute 88:9	114:14 123:21	219:13 260:6	courts 144:11
contributed 206:23	124:12,17 126:13	correlate 177:7,19	cover 15:1 89:9,23
207:12	126:18 128:2,15	correlation 177:14	covered 13:10,11,15
contributions 132:8	138:25 140:5,9,13	177:18	92:11
147:9	143:21 148:21	corresponded 108:7	covers 210:4,6
control 225:16	151:13 217:14	correspondence	create 31:5 85:23
convened 131:22	218:4,17 219:2,6	94:17 258:8	86:3,6 87:25
conversation 95:19	220:1 222:11,15	cost 163:14	created 107:20
100:17	223:5,9 245:8	costs 65:7 89:9,23	creates 82:19 83:1
conversations 6:10	246:14,16,19 251:1	133:4	creating 33:4 85:15
23:15 24:12 94:21	251:4	counsel 7:9 14:23	103:19 109:2
95:6,11,25 96:6,11	copyrightable 78:13	23:3,9,10,18 78:18	creation 28:14
97:3,13 98:11,14,18	79:2	79:18 94:17 95:2	236:20 240:17
99:12,15,19,21,25	copyrighted 126:4,5	111:22 118:18,22	criticize 247:10
100:6,8,24 101:4,13	187:5,21 188:1,3,6	119:1,8,10,12,13,15	criticizing 249:16
101:20,21,25 102:1	224:14	119:24 120:1	crr 260:15
102:2,3,4,5,8 103:7	copyrights 11:18,21	121:22 125:8,14	cumulation 154:12
103:12,13,18 104:4	11:24,25 12:5 65:16	145:2 146:21	cumulative 97:10
105:17 106:11,18	77:1,11,12,25 78:5 80:18 112:20	148:12 153:13	cumulatively 97:6 97:11
107:4,5 108:8 110:14,16 118:9	126:20 145:20	154:1,2 180:12,18 197:21 198:11	cunningham 2:3
120:7 121:19	149:13 150:18	260:8	7:22,23 258:17
153:21 180:11,17	151:5 152:9 219:19	count 201:7	curious 99:10 167:6
195:6 197:12	core 169:3	counterpart 18:6	167:8 220:5,8 250:8
248:13	correct 23:12 24:4,5	couple 59:12,21	250:11
210.13	24:7 36:20 42:23,25	203:3	250.11
			1

[current - differently]

current 17:13	defendant 1:16 3:6	84:12 228:24	develop 32:5 39:19
currently 240:2	3:10 7:14 12:9,21	denying 109:20	42:5,12 127:25
cursory 14:17	21:9,12,21 23:20	denying 109:20 depending 67:12	131:18
cv 1:4 7:6	65:17 66:5 68:12	depends 39:3	developed 40:17 126:6 154:25
cycle 89:14,22	73:1,4,11 145:18	deponent 260:4,6	
d	146:10 147:20	deposition 1:17 5:1	202:18 203:7
d 1:5 2:6	148:7,21 149:12	6:14 23:11 27:21	222:12 223:6
d.c. 6:24	150:17 151:4,21	110:10 112:8 119:9	224:16
damages 9:3	152:8 158:20	123:15 156:21	developers 127:13
dar 1:5 7:6	164:14,21 165:8,25	159:12 160:15,21	developing 30:8
data 64:10 134:10	166:6,14,22 175:19	160:25 210:22	33:4 41:7 84:24
155:15,22,24 156:8	175:23 176:11,22	260:7	89:9,24
156:11 158:25	176:23 177:8,10,20	depositions 119:5	development 25:12
162:18 163:19,21	177:22 178:12,13	depth 30:24 62:25	25:16 27:13 28:1,9
164:1,5,8 165:22	179:12 180:2,8	derive 131:22	28:15 29:3,24 31:5
166:7,11,15 178:21	183:7,8 193:11	derives 181:13,21	32:19 44:11,15 45:4
179:2 208:3,23	194:7 214:14	182:3,4,12	45:8 70:2 81:21
database 199:24	249:15 254:11,15	described 198:6	82:2 85:14 87:3
200:3,6,9,15 202:7	defendant's 19:2,13	231:25	93:7 130:22 131:1,7
date 6:20 62:2,9	21:4 62:3 63:5	description 4:10	131:9,14 132:4
64:18,20 66:23	66:22 67:5 122:23	deserve 79:12 80:1	138:11 189:11,18
179:20	123:13 149:4 157:7	desired 101:9	189:24 190:5,21
dates 134:18 179:9	157:15 158:24	detail 40:3	191:11,21 206:24
179:11 180:2,8,17	159:8,24 160:5,10	detailed 103:6	207:14 211:15
180:25 181:4	161:1,5 163:24	detectors 39:10	238:16 239:20
day 24:21 260:11	167:4 178:19 181:5	determination	240:2,5 250:1
dc 1:20 2:15	216:4	21:20 148:6 202:15	developments
deal 13:22 127:8	defendants 67:7	determine 12:20	239:17
dealt 139:23	177:22 255:24	93:12 155:15	devoted 90:17
debbie 1:21 8:3	256:17 257:5	157:13,24 167:15	diagrams 71:9
260:15	defer 143:18	176:5 179:19	dictate 60:23
decided 45:24	define 56:14 58:4	190:17 196:6,20	differ 40:23 41:13
deciding 104:2	184:7 200:12,13	201:12 206:22	difference 67:5
decision 65:15 66:2	defines 58:5	207:11 247:25	167:3 182:20 183:5
66:10 74:2 126:8	definition 55:18	248:18 255:6	184:25 185:3 186:2
127:15 128:20	56:2,20 57:13 242:4	determined 10:19	215:17
	definitively 159:21	180:1 253:23	differences 41:2,20
129:24 130:8,16	degree 47:16,17,21	determines 149:11	41:24 155:17 156:2
145:19 149:14 150:19 151:3 152:7	47:23,24 65:24	150:16	different 33:7 40:19
	deliberations	determining 46:10	47:22 53:3 58:4
167:23	115:14,24 116:5	145:11	67:12 127:20
declined 62:20	demand 33:19 34:21	detrimental 111:5,6	153:11 229:17
deem 143:16	35:12,18 36:22 37:4	111:7 114:15	240:10 254:1
defective 24:4	38:2,7,16,21 39:7	devastating 111:11	differently 29:19
	39:14 82:14 83:13		105:22 149:21
	3312132113		1333 133

[differently - economics]

152:17	dispose 100:14	120:22,25 121:1,2	drawing 15:25
difficult 20:12 21:8	disprove 246:7,7,22	121:13,14 122:6,6	drawn 11:11 19:4,7
74:21	247:4	122:10,16,17,18,21	19:11,15 217:23
dimension 30:21	disproved 142:12	122:24 123:10,14	drew 99:14 165:5
37:24 99:8	245:4,16,21	134:18,22,25 135:2	167:11 169:24
din 249:20	dispute 221:10	135:11 153:14	drive 218:4
diplomate 1:22	disputing 12:9	180:14 185:6 197:9	drives 217:15,23
direct 25:6 71:2	disseminate 75:24	197:14,15 198:1,5	218:18 220:11,14
137:1 159:7 160:3	88:2 136:2	198:10 211:22,25	driving 203:12
224:14	disseminated 20:11	212:3	204:2 217:20
directly 104:12	20:14 23:21 75:21	doing 16:19 107:24	duly 8:8 260:4
214:5	75:25 76:12,18	162:4 179:25 180:5	e
disasters 46:4	disseminating 21:12	213:20,24	
disastrous 46:12	127:2	dollar 10:15 19:7,9	e 87:23 98:4 124:24
disbursements	dissemination 20:7	87:6 132:17 189:9	124:24 244:25
91:13	48:24 55:9 60:2,5	189:14 198:17	260:1,1
disc 141:1,9,23	61:1,10 62:18 75:1	212:6 213:8 221:15	e.g. 141:1
253:5,13,22	75:15,20 133:25	222:2	earlier 10:11 28:8
disclaim 117:24	209:23	dollars 132:14	55:2 84:11 110:13
disclose 78:17 125:6	dissent 116:15	175:13	134:18,23 135:14
145:1 146:20,25	distinction 31:10	double 187:2	140:3 156:21 157:1 186:21 207:5 253:9
148:13	32:20,23 156:12	doubt 227:25 230:8	254:25 255:15
disclosing 124:9	distinguish 145:16	download 215:5,18	eastern 98:5
discover 18:19	distinguished 32:17	215:21	easy 155:15 176:4
discovery 104:22	distributed 133:17	downloaders 214:17	225:22 227:14
105:4,7 153:20	133:21 135:15	downloading 176:5	econometrics 171:5
198:2	215:24 241:8	213:21,25 214:18	172:6 173:12
discuss 62:24 116:4	distribution 133:11	215:9	economic 8:21 19:7
199:5,17 229:25	134:4 142:2 215:25	downloads 62:17	128:19 129:23
discussed 18:19,23	216:3	157:3 159:23,25	130:14 141:8 142:2
24:15 101:20	district 1:1,2 7:4,5	211:21 212:7,13,17	143:25 144:4,16
discussing 42:4	diverse 42:20	216:9,18	149:14 150:19
163:23	doctor 47:21	downstream 224:18	151:5 152:9 167:3
discussion 29:15	document 24:1	225:5,7,16,19	167:25 168:6,7,10
62:10 65:11 153:12	107:19,22,25	246:11,17 247:15	168:21 169:4,6,8,10
199:10	108:20 118:14,17	249:22,25 250:15	169:11,17 170:7,15
discussions 22:19,23	175:8,11 195:5	251:22	170:23 171:2,8,16
23:8 85:22 115:13	215:22 216:1 218:9	draft 88:16 103:21	171:21 174:12
115:24 153:25	documentary	107:2	212:19 222:3 232:6
184:25	120:16	drafting 98:24	232:23 253:4
displace 241:14	documents 5:6	100:12,22	economically
disposal 155:22 157:4 162:19	22:15 23:23 24:11	drafts 104:17,23 105:15	221:16 257:23
183:15	24:14,25 25:1 93:19 113:12 115:23	draw 161:19 208:11	economics 25:17
103.13	116:4 119:13	234:8 238:3	48:3 80:23 93:7
	110.7 117.13	237.0 230.3	

[economics - exhibits]

157.7 170.5 11 12	amily 60.16.21	240.2 9 14 254.24	17:3 253:12
157:7 170:5,11,13	emily 68:16,21	249:2,8,14 254:24 257:13	
170:16 171:15	92:19 94:18 116:2		eventually 46:20
172:11	employed 8:21 91:6	entitled 12:4 104:22	evidence 62:8,11,15
economist 8:17,19	employee 44:17	105:6	67:2,3 120:16 137:3
47:4	95:19,20 112:14,21	entity 34:8,12 35:1,5	159:5,6 160:3,8
economist's 10:25	113:21,25 114:7	117:25 130:15	165:14 216:2
economists 144:9	employees 42:18	132:5 254:1	exact 55:1
145:10	44:10,19 46:19,22	entry 225:18	exactly 8:20 9:19
editing 83:23	83:10,22 95:12,12	environment 32:13	20:8 42:7 50:5
education 25:10	108:8 110:14,16	52:7	74:24 150:25
educational 174:21	111:17 112:6 113:3	envision 73:1	164:21 176:19
effect 136:13 137:1	113:6,24 120:8	226:16 229:4	examination 8:11
137:13 181:4	190:20 191:10,20	envisioning 71:22	examine 29:4,25
208:15,24 241:16	196:21	erected 46:22	30:4 118:6 250:10
242:9,19,20,21	employer 92:13	errors 71:9	examined 28:19
243:19 244:2,12	employers 91:9,12	esq 2:3,9,14 3:3,8	29:22 30:20 31:16
253:4	encompass 18:16	essence 40:4 51:4	81:25 153:14
effective 48:20,24	35:1	68:9 75:17 76:10	example 46:17
50:19 51:15 55:5,9	encompasses 18:1	77:4 143:20	52:17 54:12,15,18
60:2,5 61:1,7,8,9	ends 258:22,23	establish 158:23	54:20 56:8 57:2
82:10	energy 4:19 204:9	216:7,16	58:18 225:21
effectively 50:14	204:18 205:24	established 255:2	examples 99:16
51:22	206:12	estimate 91:21,22	203:4 223:22,24
effects 141:8 142:2	enforce 65:16	92:2 97:16 166:14	225:6
161:5 163:24 167:4	engage 247:24	175:17,21 191:3,17	exception 94:2
176:10 208:15	engaged 21:21	191:24 194:16,24	105:3 119:22 122:2
242:15	123:20 146:10	198:25 212:12	188:2
effectuating 48:17	153:11	213:9 222:2 234:21	excerpt 70:13
49:3 55:3	engagement 153:10	234:25 235:2	exchange 87:23
effort 206:21 207:11	engineers 1:13 2:18	236:10 237:5,8,14	258:8
egress 46:18	8:1	237:20 238:1	excuse 95:22 111:21
either 19:19 38:21	english 232:8	251:16,20	excused 259:1
42:9 75:24 112:3	engulfed 46:23	estimates 190:9	exercise 202:20
117:17 123:9	enhance 246:19	et 7:2	exhibit 4:10,12,14
138:25 189:6	enhanced 246:14	etsi 26:10 30:8	4:15,16,18 6:2 13:3
electrical 54:17	enjoin 76:6	140:10	27:18 64:15 97:23
164:15,22 165:19	entail 132:23	evaluate 11:5 12:10	98:10,13 166:8,16
230:19 231:6	enter 72:24 74:15	25:22 162:8	175:3,8,17,21
232:25	entire 16:15	evaluated 9:22	177:23 178:11
elimination 246:18	entirely 201:15	10:18 11:17,20,22	210:24 211:4
embedded 234:7	entirety 209:21	16:16 61:25	233:20 234:7
embodied 27:20	entities 33:19,19	evaluating 10:22	235:25 247:7 253:2
62:6	34:4,17,22 35:12,17	109:20	exhibits 4:9 98:3,7
embody 217:21	36:22,23 74:3	evaluation 9:1 15:2	102:20 119:10
	127:25 243:15	15:14,21,24 16:6	

[exist - fee]

exist 133:19	expound 63:22	factual 25:6 103:1	79:14 80:3,10,19
existed 120:22	expressed 84:16	120:6 176:4 186:3	81:7,14,22 82:20
121:15	extended 216:1	206:17	83:8,25 84:2,25
existence 94:4 240:3	extent 41:15 62:5	fair 89:21 105:9	85:17 86:9,18 87:4
existing 55:21 56:4	107:9 108:12	146:10 149:5	87:11 88:17 91:4,25
exists 74:19	144:24 145:22	229:24	92:17,24 93:3,8,25
expand 75:21	146:19 148:10	fairly 14:16 31:17	94:24 97:5 98:8,25
expanded 147:19	149:17 150:22	42:20 62:18 155:3	99:20 100:2 102:10
expansion 71:4	157:19 192:14	184:12,13 218:15	102:22 103:9 104:5
expect 60:20 92:8	extra 14:24	219:12	104:18,20 105:1,9
118:4 133:24 214:4	eye 197:10	fall 33:25 223:22	105:12,18 106:8
229:12 242:3	eyes 248:17 252:12	familiar 13:20 27:5	107:7 108:11 109:3
expectation 75:19	f	30:9 124:23,25	109:14 110:24
76:14	f 260:1	126:9 127:23,24	113:1,4 114:23
expected 138:3	face 85:5 86:24	230:13 238:24	116:12,19 117:8,11
241:11,15,20,24	195:21	239:8,13 243:4,7	118:10,12 120:9
242:5	facilitate 85:19	far 61:7 125:23	121:17 124:20
expended 206:22	88:22	134:11 208:4	125:4 126:11 127:6
207:12	facilitating 52:10	fares 92:6	128:3,17,21 129:17
expending 245:11	facilitators 44:20	federal 44:2 47:6	129:25 130:17
expenditures 87:10	fact 19:17 20:15	115:1	132:11,21 133:13
expenses 89:1 92:11	23:25 47:15 72:23	fee 2:14 7:16,16 9:8	134:9,20 135:19
132:18 133:3	84:15 86:5 95:21	9:10,18 10:6 11:7	136:17,22 137:7,19
189:17,23 190:4	117:15,22 124:16	13:16 14:2,13 15:22	138:6,14 139:2,13
193:9 194:5,16	141:9 162:22	16:7,12,23 17:5	142:25 143:14
198:17	163:10 196:16	19:23 20:20 21:14	144:6,18,22 145:21
expert 4:12 9:25	204:15,17 212:18	21:24 22:6 24:8,16	146:13,17 147:10
47:11 60:14,14	230:6 234:2 243:8	25:13 26:17 28:16	147:23 148:8,23
80:22 129:20 147:3	factor 169:1	29:5,8,12 33:14,23	149:6,16 150:4,7,21
161:13	factory 46:1	34:6,18,23 35:14	151:7 152:11,15
expertise 8:25 78:9	facts 16:1 20:3	36:2,13 37:8,13,18	156:16 157:16
80:8,12,12,16	23:19 105:16	38:8,17 39:2,21	158:2 159:2,20
experts 105:5	106:12 108:7,21	40:25 41:14 43:23	160:12 161:7,16
161:18	111:1 118:7 120:17	44:13 45:9 47:2	162:6,16 163:13
explain 184:8	120:23 121:16	48:13 51:1,16 52:2	164:2,25 166:9,17
200:14 204:15	125:22,25 127:3,17	52:25 53:16 54:4	167:7,20 168:11,14
explanation 204:24	127:19,20,22	56:12,25 57:6,11,18	168:22 169:14,21
205:21 206:9	169:23 172:21	57:25 58:16 59:1,13	170:18 171:24
explicit 78:3,6 186:6	180:22 195:23,25	59:18 60:8,11 61:3	174:14,18 176:12
232:12	196:4,15,21 206:3	62:4 63:19 65:2,18	176:25 177:11,25
explicitly 18:18	233:12 235:22	65:21 66:3,11,15	178:23 179:15
49:15 68:25 81:9	245:3,15,20 246:4,6	67:14,24 69:12,16	180:19 181:6 182:6
112:17,22 126:6	246:11 247:25	70:12,25 72:16 73:2	182:15,25 183:10
226:8		73:15 74:6 76:7	183:20 186:10
		77:2,14 78:14 79:3	190:12,23 191:5,13

[fee - foundation]

100 111 100 110	161 1000 1701		10615100010
192:4,11 193:1,13	161:4 208:15,24	following 149:19	136:17 139:2,13
194:9,19 196:2,23	216:10,19 248:4,16	151:10	144:6 145:2 146:22
197:1,23 198:20	248:22 249:1,5,7	follows 8:9 30:10	156:16 157:16
199:1,7 203:8	financials 160:6,11	41:7	159:3,20 160:12
204:21 205:12,25	find 64:21 100:16	foot 205:10	161:7 162:6 164:2,3
206:14 207:1,15	100:16,19 101:9	footnote 118:5	164:25 166:9 167:7
208:18 209:2	113:15 157:5,11	199:16 204:12,16	167:21 168:23
212:20 213:14,17	198:7,8	205:6,9,11,22	170:18 171:24
216:11,20 217:1,17	finding 64:22	206:10	176:25 177:11,25
218:8,22 219:14	128:12 146:15	footnotes 99:12,17	178:23 181:6 182:6
220:3,16,24 221:7	finds 63:14 64:4	100:12 160:22	182:15,25 183:10
221:19 222:5,19	fine 152:1	164:9 195:15	183:20 190:12,23
227:8,19 228:11,20	finish 59:11	233:11	191:5,13 192:4
229:9,22 230:2,22	finished 16:14	forbid 257:13	193:1,13 194:9,19
231:8,13 232:2,19	fire 1:7 2:12 7:20	forget 21:25 77:19	196:2,23 197:23
233:3,17 234:4,14	46:1 230:21	127:3 154:9	198:20 203:8 207:1
235:12 236:4,11,24	fires 46:13 54:17	forgetting 210:5	208:18 212:20
237:6,12,18,24	firm 8:22	form 9:8 10:6 11:7	213:17 215:23
238:18 239:22	first 8:8 54:2 68:19	15:22 20:21 21:14	216:11,20 217:17
240:7,18 241:1	70:22 71:10,23 94:2	22:2 25:13 26:17	219:14 220:16
242:13,23 243:21	103:1 106:19 118:4	28:16 32:6 33:14	221:7,20 222:5
244:4,13 246:25	170:4,5,10,13,15	34:18 35:14 36:2,13	227:8 229:10 230:3
247:5 248:2,14	171:7,13,15 172:11	37:8,18 38:8,17	231:13 232:2 233:4
250:17 251:10,17	175:19,23 176:5	39:2,21 40:25 41:14	233:17 234:4,14
251:24 252:9,18	195:2,11 234:12	43:24 44:13 45:9	235:12 236:4,24
254:18 255:8,18	235:10 236:3	47:3 48:13 51:1,16	238:19 239:22
256:1,19 257:16	fiscal 89:8	52:25 55:15 56:25	240:18 241:1
258:13	five 97:7	57:11,25 58:16 60:8	242:13,23 244:4
fees 184:12,16	flames 46:24	62:4 63:19 65:18,22	248:14 251:10
fenwick 3:2,7 7:13	flexibility 215:10,14	69:16 70:12,25 73:2	252:9 254:18 255:8
fenwick.com 3:5,10	215:18	74:6 76:7 77:14	255:18 256:14,19
field 80:9 238:17	flexible 215:13	80:3 81:7,22 82:20	257:3,16
239:5,11	flights 90:19 91:3,15	83:8 84:2,25 85:17	formal 9:21 10:14
fields 238:22 240:17	floor 2:10 3:4	86:9 87:4 88:17	formed 95:3 148:14
fights 12:3	flow 65:14 66:10	91:25 93:8,25 97:5	former 95:12,20
figure 99:14 155:12	flowed 129:23 130:7	98:8 99:20 104:16	forms 64:25
208:7	flowing 18:21	105:18 108:14	forum 86:22
file 215:5	focused 52:19	110:24 114:23	forward 85:11
filed 7:4	focuses 209:22	116:19 117:8,11	239:18 240:3
final 89:7 99:9	focusing 151:19	118:10 120:9	found 67:20 93:23
100:21	follow 40:20 41:22	121:17 122:8,13	120:12 144:11
finalized 154:1	60:19,23 100:17,18	124:20 125:9,15,18	foundation 73:16
finances 157:13,25	186:20 254:4	126:11 128:3,21	88:18 102:11,23
financial 63:4	followed 98:20	130:17 132:11,21	122:13 128:4,23
119:11 135:8,11	101:6 108:4	133:13 134:9	171:25 198:21

[foundation - harm]

204:22 205:13	122:1,3	goals 49:5,20,21,23	86:5 88:15
206:1,15 233:18	general 41:22 53:8	50:12	guess 26:25 37:24
234:15 235:13	126:15,16 134:3,4	goes 134:15 208:4	97:8,21 99:5,8
236:5,25 251:11	191:22 228:25	going 16:14 23:25	119:4 194:1 224:4
256:2	generally 30:9 31:12	27:15 41:10,19	227:11 228:22
four 41:6 95:24	40:20 45:10 47:5	58:20 85:11 92:15	229:11 230:4
102:3,4	48:16 49:7 50:21,22	100:25 103:22	guidance 226:1
francisco 2:4,10 3:4	51:17,25 52:3,22	134:11 143:8	227:17 252:6
frankly 66:8	70:1 85:2 88:13	152:19 200:18	guideline 243:1
free 71:13 133:21	126:2,13 127:8	206:6 218:3	guys 258:15
135:15 136:11,14	131:20 139:15	good 8:14,15 32:9	h
137:14 138:25	145:10 153:12	49:8,8 50:15,15	
141:3,11,16 142:2	170:20 177:19	54:20 90:5 101:2	h 244:25
214:21 215:1 253:7	190:6 193:14	152:18 153:6,7	half 165:12
253:19,24 255:1	194:11 198:6	184:12,13 209:25	halt 245:13
freedom 73:22,24	203:10 207:2	210:8 252:13,16,23	halted 66:6
freely 241:8 250:3	209:19 210:4	260:3	hamasaki 98:13
257:15	218:24 219:16	gotten 17:8 170:5	99:22 100:1 102:16
frequently 83:14	226:23 230:15	171:14 213:10	102:19 103:14
89:20	243:6 256:10	232:11	104:7,16 105:24 106:7,21 107:24
front 22:4 88:23,24	generated 187:20	government 36:24	hand 101:4 260:10
249:20	german 124:5	43:20 44:8 117:25	handbooks 218:5,19
fulfill 51:23	germany 124:5	203:1	219:21 221:6
fully 54:7 80:21	give 14:23 40:3	government's 115:2	223:24
functions 88:14	52:17 59:20 90:25	governmental	handed 211:3
202:21,25 203:5,17	99:16 119:4 143:6	202:20,25 203:5,16	handing 98:2
203:22 204:2	153:15 166:13	203:21 204:1	handwriting 101:8
fund 85:10	203:3 223:21 225:6	governments 43:22	handwritten 4:14
furnish 94:17	234:21 236:10	192:24	4:15
furnished 98:4	given 37:10,20 46:9	grant 193:2,5	happen 53:22 68:10
118:19 119:2	61:11 135:25	granted 70:17	74:25 195:12
121:14 197:21	163:14 196:5	grants 192:23 193:4	hard 215:22 228:23
furnishing 232:18	231:23 257:21	granular 158:6,10	230:5 246:18,21
further 9:11 17:10	260:8	great 13:22 59:22	harm 10:19,20
58:24 59:5 75:23	gives 40:14	63:8 101:8 252:1	17:25 18:1 19:12,16
76:2 120:15 239:19	giving 154:11	258:18	62:8,10 67:2 68:3
future 46:4 63:14	go 6:16 9:10 17:12	greater 134:1	72:14,25 74:20,22
64:3,21 68:13 138:4	28:3 54:10 58:23	greatly 209:4	75:4,8,11 76:2
g	68:15 73:17 81:8	gross 183:18	80:13,17,24 122:22
gain 210:2	108:1 111:20 174:19 179:19	ground 229:24	123:7,12 145:12,12
game 172:5 173:8	193:3 196:14 206:7	group 40:6,8,11 42:3,6 44:6 126:5	147:15,15 149:14
gather 153:16	247:20 253:13	131:21 132:5	150:19 151:5,16,17
gathered 117:14	goal 49:4,14 56:24		151:18 152:10
119:18,21 121:21	guai 49.4,14 30:24	groups 42:13,21,23 43:10 44:12 45:7	169:3 178:5,8 212:6
	I.	I	I

Case 1:13-cv-01215-TSC Document 204-44 Filed 11/13/19 Page 82 of 102

[harm - index]

212:9 253:17	hour 58:21	immediate 188:22	included 36:6 38:22
254:15 255:23	hours 90:17 91:2,14	immediately 68:15	includes 15:24
256:15,21	97:7,19,19,20	68:19	199:20
harmed 254:11	132:13 207:6	impact 11:1 63:12	including 85:21
harms 21:22 62:1	house 39:5	63:13 64:2,3,17,19	127:20 159:6,11
65:13 66:1,10,21	huh 123:1	64:20 75:2 110:18	201:22
67:5,8,9,11,19	human 203:10,17	143:21 146:2,3	incomplete 233:4
70:10 73:13 74:3,16	hundred 46:2	151:15 159:8 160:4	257:17
76:24 77:8,9 81:3	hundreds 154:9	160:9 161:1,1 178:4	inconsistencies
127:13,24 129:23	hypothetical 233:4	178:7,12 241:12	196:18
130:7 145:17,18	257:17	impacting 19:18	incorporate 72:7
146:12 216:10,19		impacting 19.18	incorporated 7:3
	i	162:20	46:21 47:1 48:12,21
232:23 257:4,10	icc 239:13		1
heading 68:8 health 52:5 203:10	idea 20:17	impair 12:16	48:22 55:6,8 59:25
	identical 18:8	implement 226:24	60:1 71:15 72:6
203:17	240:12	implementation 41:25	156:4,6,10,13,14
hear 124:1	identification 6:3		158:15 181:22,24
heard 36:14 123:22	97:24 175:4 210:25	implication 229:16	182:1,13,22,24
124:4 137:11 228:4	identified 30:15	implications 17:20	188:16 189:2,25
hearing 157:18	40:7 41:5,23 45:24	17:22 47:10 130:11	191:12 193:21
heart 64:7	46:3 49:24 50:1	229:14,21 230:11	194:2 199:24 200:5
heating 1:10 2:17	64:11 70:22 77:9	implicitly 69:2	202:8,19 229:7
7:25	96:3 113:13 114:19	81:13	236:17 241:10,13
help 44:22 45:25	121:23 128:12	importance 144:16	254:12 257:12
49:20 51:22 55:25	131:21,24 135:3,6	important 12:15	incorporation 60:4
82:17 87:18 88:21	140:3 141:15,17	139:17,22 140:6	60:15,25 67:20 70:3
256:6	164:9 175:24 205:8	159:9 162:21 163:2	198:19 200:10,20
helped 170:9	223:16 242:10	170:12 171:11,18	201:14 203:6
helpful 142:17	243:18	171:21 217:20	208:16,25 209:5,11
145:11	identify 18:9 32:20	219:25 225:17	209:15,18 210:2
helping 88:22,23	52:22 64:24 65:14	245:5	220:11,13 221:17
helps 49:19 100:20	71:23 86:23 94:13	improper 231:19	222:4
165:24	98:6 115:3 118:25	232:10	incorrect 247:17
hesitate 47:12	257:5	improperly 214:9	increased 213:9
hired 167:17	identifying 16:15	impunity 71:14	incurred 133:3,4
historical 75:15	66:9 176:9 186:23	inaccurate 19:17,17	198:18 206:23
123:7 178:3,7,11	identity 214:17	20:6	207:12
historically 123:7	ieee 26:10	incentives 81:19	independent 93:5
160:4,9	illegal 232:14	82:5,8 84:10,17,18	93:10 161:3,10
hold 104:20	illustrations 50:11	84:22	162:4,12 228:3,8
holding 130:12	imagine 91:18 92:11	include 31:24 32:1	independently
holds 71:13	215:9 246:18,21	33:17 35:7 36:7	120:22 121:13
honoring 112:19	imagining 228:23	72:4,10 94:14 95:15	195:8,18 208:20
hotel 90:18 91:2,14	230:6	104:3 108:6 227:5	index 4:1,9 5:1
92:5	250.0		
	1	1	1

[indicate - issue]

indicate 117:25	255:14	instruction 5:2 79:4	interoperable 32:13
indicated 54:6 260:4	infringed 149:12	109:4,15 226:17,19	interpreted 107:10
indicates 99:11	150:17 151:4 152:8	226:20 228:18	interview 111:16
indication 213:20	infringement 17:23	instructions 147:12	112:1
indications 207:7	18:3,13,15,17 63:16	instructor 231:7	interviewed 112:2
indirect 137:1	64:5 72:19,20 77:6	232:1	introduce 7:10
individual 34:7 35:2	78:2,4 80:14 110:20	instructors 225:23	invalidation 80:17
42:14 49:20 51:19	110:21 111:4,5,10	226:5,12,22 227:5	investigate 46:5
184:19 185:18	143:22 145:13,17	intellectual 9:1,7,23	120:14,21 121:12
individuals 34:13,17	146:4,16 151:13	10:3,13,16,23 11:5	investigated 25:25
34:22 35:13,17,20	ingress 46:18	11:16 26:19 139:16	30:24 133:15
42:9,23 43:10,14,19	injunction 68:4,11	139:21	136:21 137:6,18
45:6 75:18 100:8	68:23 69:5,6 73:21	intend 90:6	141:12 233:7
103:12 112:9 133:8	74:11,15 75:6,7,8	intended 55:20 56:4	investigating 206:19
industrial 8:23	75:13 76:9,22	intending 85:8,10	investigation 31:4
172:9 174:4	143:24 167:12,16	interact 113:6	130:13 137:21,24
industry 45:2 49:9	168:2,5,20 169:12	interest 33:8 38:20	138:19 139:6
83:11 130:15	input 31:14,18	38:25 39:4 42:10,24	162:10 207:23
209:21,25	40:14 44:21,25	158:7,10 253:25	228:9 234:2 239:25
inform 173:17	83:19 104:10,15,17	interested 32:11	249:22,25
information 20:9,18	inputs 31:21 133:9	37:25 45:11 48:17	investments 87:1
21:18,19 24:2 40:1	inquiring 124:15	50:18 55:3 60:21	189:10
87:24 103:17 104:3	inquiry 243:4	82:10,14 85:3	involve 26:16 203:5
107:3 108:13	insignificant 121:8	254:24 260:9	involved 8:22 26:5
114:17 115:23	instance 20:10	interests 38:2,6,10	27:9,22 31:1 44:18
117:14 121:3,9,10	22:17 30:7 39:5,11	38:15,16 48:7,10	87:15 88:3,12 104:8
121:21 134:12,14	41:4 46:1,14 94:2	58:10	105:25 106:2
134:17,23 153:16	107:24 134:13	interface 136:8	107:19 109:18
153:19,24 155:8	135:6 138:17	interfaces 136:9	140:16
157:12,19,24 159:7	158:13 179:22	interfere 6:13	involves 123:24
159:10,11,25	187:5,18 201:8	intermediate 171:4	involving 27:4,13,25
161:19 162:22	221:11 224:6	internal 123:10	28:8 123:23 124:2
163:1,9 164:12	225:10 226:9	196:18	124:10 201:23
165:2 166:19 167:9	249:21	international 1:6	ip 9:22 11:1,2 80:23
176:1 179:1 180:13	instances 32:3 83:22	2:7 52:10 204:18	111:9 145:13
180:16 183:14	84:4 92:9 200:9	205:24 206:12	irreparability 169:2
187:18,22,23 192:2	201:3,5,13,23	internet 133:18	irreparable 10:20
194:12 195:8,19	212:24 213:6,11	153:18 164:23	74:21
196:8 197:6 198:7	221:4	179:13 180:3,9	issue 9:7 10:17 11:3
208:5 213:1,6,12,19	instruct 78:16 94:25	183:8,9 193:12	11:18,21,22 12:14
214:1,13,14 215:11	104:23 108:16	194:8 215:13	31:21 40:12 44:16
215:15 238:8 245:6	125:5	interoperability	69:1,7 74:10 76:4
248:4,16,17,22	instructed 17:10	49:6,14,19,24 50:7	77:11,16,18 78:8
249:2,5,8 250:9,10	instructing 227:6	50:9,12	81:6 85:4,16 126:23
252:13,21 253:2			132:10 133:15

[issue - lawsuit]

141:13 147:15	kevin 2:14 7:16	181:15,17,20 182:2	246:14 251:11
154:4,6,21,24	92:24 258:7	182:7,9,11 183:4	256:1
155:19 159:10	keyed 173:21	186:13 188:12,17	lacked 81:5
181:14 188:9,24	kin 260:9	189:5,15,20 190:1,7	lacks 122:13
189:12,19 190:22	kind 127:4 151:17	190:11,19,25 191:2	laid 22:7 33:15
194:17 199:5	160:8,9 226:17	191:9,19 192:8,14	48:15 51:2,4,6,8
206:19 233:8	kinds 198:7	192:22 193:3,17,19	60:19 64:6 71:24
245:14	king 2:2 7:23	195:10,12 200:11	142:21 143:17
issues 10:19 15:25	knew 109:7	202:6,11,13 206:8	209:12 210:5
24:15 77:19 82:16	know 12:1,5 13:13	206:16 209:6	language 103:17
86:24 144:11	16:4,25 21:11,16	212:14 213:23	104:2,3 107:2
items 93:23 119:14	32:22 33:1,8 38:13	214:3,12,17 217:22	217:11 232:8
i	38:18,22 39:22 41:1	218:14 219:22,23	lapel 111:23
j 2:3,14	41:11 43:25 44:5,9	219:24,25 220:5,8	large 31:25 42:15
j 2:3,14 jarosz 1:18 4:3,12	47:25 53:22,22	220:10,12,18 221:8	43:11 242:20
6:2 7:8 8:7,14 61:25	56:13 58:1 59:4	225:1 230:24 231:1	largely 178:15
97:23,23 98:2	61:8 63:25 68:18	233:5,6 239:3,4,11	larger 131:5
110:10,12 153:6	73:10 74:9,20,24	239:16,23 240:11	late 164:18 178:16
175:3,7 210:22,24	78:2,7 79:6,20	242:7,16,24 243:17	latest 254:16,22
211:3 258:6	82:18,25 83:21	244:8 253:8,20	law 1:18 27:4 46:21
jarosz02443 4:17	86:14 91:8,11,17,19	256:8 257:19,25	47:1,9,15,17,22,24
jd 48:1	92:4 95:21 105:14	knowing 253:10	48:12,23 55:8 60:1
jim 102:1,2	105:19 106:23	knowledge 30:23	60:5,16,25 71:15
jkfee 2:16	107:15 108:2 109:9	45:2,3 53:9 76:19	80:9,9 94:9 116:1
job 167:15	111:18 112:16,21	81:10,16 94:20	116:10,18 117:5,23
john 1:17 4:3,12 7:8	116:6,14,22 117:2,4	98:10 102:15	126:7 147:22 148:2
8:7 102:3 110:10	119:3,16 122:5,9,14	103:20 130:23	148:7,22 156:4,6,10
210:22	123:16,25 125:2,6	184:24 188:15	156:14 181:22
join 9:13	125:21 128:8,25	253:18	182:2,14,23,24
joint 192:9	129:2,19 130:24,25	known 116:25	188:16 189:3,25
jonathan 3:15 6:18	131:5,11,16,23,24	140:15	191:12 197:20
jordana 23:14 92:25	132:3 133:22 134:2	knows 156:9	198:19 201:9
journal 211:12	134:3 135:12,18	kslaw.com 2:5	208:16,25 220:11
june 4:13 154:2	136:13 137:13	l	220:13 222:4
juris 47:20	139:25 140:11	l.a. 26:11	228:16,17,18 229:7
k	141:13,22 142:8	lack 73:15 75:8	229:7,12,25,25
	145:24 148:18	88:18 102:10,22	230:7,8,14,16,17
k 124:24	154:3,16,19 164:13	112:19 114:14	231:3,11,25 232:24
keep 16:18 59:9	164:16,17,19	128:4,22 145:20	233:1 257:12,14
98:20 100:21	165:10,17 166:25	171:25 198:21	lawful 60:22
101:15,16 152:19	169:15 170:14	204:21 205:12,25	laws 47:7 119:17
154:15	171:1,7 172:18	206:14 233:18	201:4,6
kept 98:22 196:3	176:3,6,19 177:1,24	234:15 235:13	lawsuit 162:4,23
197:9 248:16	178:14 179:7	236:5,25 245:8	163:11,12,15
252:11	180:23 181:11,12		

[lawyer - materials]

lawyer 95:11,18	liaisons 88:15	154:11 159:5	247:14 249:16
lawyers 94:3 95:15	life 52:7	165:22 166:2	man 90:17 91:2,14
95:21 103:21	likelihood 19:1	202:10 206:7	mandate 209:20
lays 60:18	235:9 236:2,7 251:8	248:23 249:1,7	manuals 225:20
learn 110:17,22	255:10	looked 10:24 14:16	manufacturer 172:4
172:1,2,3,5,5,6,8,10	limitation 105:4	28:24 30:7 40:2	manufacturers
180:7 184:23 185:2	limitations 133:21	99:6 118:11,14,17	31:25 32:1,12 46:11
252:22,23	135:16	120:11,25 143:20	50:15
learned 20:18 104:4	limited 101:10	200:1,2 248:3,15	manufacturing
111:1,2 120:13	132:14 160:24	249:4 253:1	39:10 82:11
121:10 124:6	162:9	looking 15:16 27:16	margin 131:4
136:25 170:13	limiting 90:3	53:24 54:10 80:13	mark 102:5
171:19 174:20	limits 222:15 223:9	143:5 144:10	marked 4:10 5:15
185:4,7 196:6	line 5:3,7,12,16	154:15 166:21	6:2 13:3 97:24
248:19	58:24 59:17 70:22	178:11 187:9,16	175:3 210:24
learning 36:5	193:5	196:17 197:8	market 240:25
123:19 136:24	listed 27:17	looks 67:18	241:12 255:15,17
197:10	literature 93:12,18	lose 67:21 236:19	marketplace 12:18
leave 46:23	112:11,12 247:9	239:21	12:22 19:2,20 72:25
leaves 101:8	252:21	losing 65:8 68:7	76:11 82:13 175:15
led 27:21	litigation 9:5 26:14	70:9,14	225:19 226:7
legal 1:19 35:8 47:3	26:19 123:20,23	loss 17:21 18:1	254:22 255:7
47:10 60:14 79:5,15	124:2,10,18,18	70:11 212:19	256:25 257:2
80:12 119:12	243:5 245:13	214:11 236:16	marks 12:14 15:18
129:18,20 144:8,22	litigations 26:5	240:5 250:13,25	19:3,14
145:22 146:17	little 15:16 58:20,23	251:2,4	material 114:18
147:3,24 148:9,24	59:5 62:7 105:22	losses 63:4	126:5 241:16
149:7,17 150:22	132:23 149:21	lots 14:24	242:11,21 243:10
151:8 152:12 159:3	200:18	low 225:21	243:14,18 244:2,11
161:8 167:21	living 8:16	m	253:17
168:23 213:3,8	llp 2:8,14 3:2,7	machine 260:6	materials 1:4 2:6
221:5 229:13,20	loaded 249:20	magnitude 159:23	7:2 19:16,19 20:7
230:23,25 231:14	local 44:2 47:6	251:21	20:10,12,13,25 21:1
231:17 232:3,6	located 6:23	mail 87:23 98:4	21:4,8,12 22:4,13
255:2	logic 238:9	maintenance 89:17	22:16,18,21 23:20
legally 60:18	logistics 85:20 88:23	239:19	24:4 43:6,7 52:8
leonard 1:22 8:3	logos 12:14 15:19	majority 155:3,8	54:6 75:20 81:25
260:15	long 14:3 92:14	making 54:4 103:6	94:8 101:15,16
letters 243:4,9	96:10 97:2	159:17 232:17	102:18 105:7 112:7
level 14:17 44:7	longer 70:17 256:13	249:8,15 257:14	114:4,5 115:12,17
157:20 158:6,10	look 25:21 28:4	malamud 3:13	118:15,23 119:1
194:13 202:18	41:16 53:18 54:21	malamud's 244:19	120:12 126:6 127:1
203:7 235:2	103:21 114:3 133:5	244:23 245:16,22	136:11,14 137:14
lewis 2:14 7:17 94:3	134:24 135:10,24 136:3 141:19	246:7,23 247:4,10	139:1 214:9 224:15 224:15
	130.3 141.19		224.13

[matt - never]

matt 258:9	meeting 87:21	microphone 111:23	months 23:16
matter 11:2 27:13	meetings 115:18	microphones 6:8,13	morgan 2:14 7:16
50:4 103:1 126:21	member 86:7	middle 59:17	94:3
126:23 139:7	112:21 184:18	million 89:9,23,25	morganlewis.com
140:16 142:6	members 42:22 49:9	90:2 91:24	2:16
153:13 164:20	88:14 90:17,25 91:3	mind 26:9,13 28:23	morning 8:14,15
169:8,12 232:7	91:9,12 92:6 111:7	29:1 34:8 36:4	motivations 84:7
matters 26:4 27:1,3	111:16,18,25 112:3	62:23 73:11 84:14	mountain 3:9
27:10,23 165:8	112:5,14,24 113:7,9	84:21 120:24	move 111:22
198:8	113:11,21 114:1,7	169:16 176:20	mpeg 26:11,11
matthew 3:8 7:14	114:13,21 117:16	196:4 203:14,18,20	mto.com 2:11
mbecker 3:10	184:20 185:9 207:4	203:23,25 204:3,5	munger 2:8 7:19
mean 9:20 10:7,10	207:8,13,18,24	221:11 224:2,23,25	municipalities 126:3
10:22 34:11,16,21	membership 111:19	225:12 226:21	126:25
35:12 38:9,13 42:6	184:12 185:12,17	227:2,11 238:21	n
44:24 45:21 46:7,15	208:1,5,7	243:1 245:18	name 6:18 7:7 27:12
46:25 49:2 55:13,22	memberships	247:12 248:17	names 0.18 /./ 27.12
56:6,10 59:4 68:6	183:25 184:5,10	249:19 252:11	names 223:1 narrow 31:15 32:8
68:18 74:9 79:24	188:4	257:7	national 1:7 2:12
83:1 97:11 106:13	memories 106:6,6	mindful 120:25	7:20 52:11 164:15
128:9 158:9 161:9	memorized 22:10	minimize 46:5,8	164:22 165:19
163:4,6 171:2 177:2	memory 24:21	minute 113:18	230:19,21 231:6
184:4,10 186:23	28:11 41:19 44:14	minutes 58:25 59:8	230:19,21 231.0
200:8 201:3,4,4	53:19,21 54:5 100:7	59:10,21 92:17	nature 226:11
202:24 214:23	100:20 102:9,14	mis 173:21	nearly 200:9
226:5,15 231:25	103:11 114:10	miscellaneous	nec 50:13 165:25
238:6,13 240:20	116:5 123:3 126:16	119:14	166:1,1,6,7,15,15,23
241:20,23,25	140:23 141:7	mischaracterizes	166:23
250:25 256:12	165:24 183:22	24:9 60:11 66:15	necessarily 34:9
meaning 97:12	210:7 221:13 241:5	102:23 197:1 218:9	61:6 178:3 238:14
107:10 207:23	mention 201:9	222:20	241:22
means 162:2 213:3,8	mentioned 43:18	misleading 17:6	necessary 250:7
meant 66:19 200:15	105:17	misread 66:17	need 14:3,12 40:4,6
201:2	mentions 202:1	missed 244:21	40:9,10 41:10 44:6
measure 235:15	merely 204:19	mission 2:9 51:5,7,9	45:23,25 50:11
236:8 237:2	merits 50:6	51:18,23 52:15,21	101:16,18 131:20
measurements	message 76:10	missions 52:16	131:25 134:24
127:24	messrs 99:25	model 245:9	142:11 143:9
measures 157:3	method 56:23	models 249:14,20	149:24,25 176:2,6
mechanism 87:23	methods 134:3,4	moment 105:21	needs 32:15 54:7
mechanisms 30:8	171:3 172:7 173:18	224:4 257:8	negative 142:9,10
media 109:23 110:2	173:21,22,24	moments 30:16	neither 260:8
110:9 210:14,21	microeconomics	41:23	never 96:18 103:3
258:23	8:23 171:4	monies 193:3	107:20

[new - offerings]

new 16:10 46:2	198:23 201:12,17	106:8 107:7 108:11	231:8,13 232:2
236:20 246:1	201:18,19,21,25	109:3,14 110:24	231:8,13 232:2 233:3,17 234:4,14
newer 255:16	201:18,19,21,23	113:1 114:23	235:12 236:4,11,24
nf 123:11	211:20,22,24	116:12,19 117:8,11	237:6 238:18
nfp 54:15	212:12,24 216:8,17	118:10 120:9	239:22 240:7,18
nfpa 4:16 41:6 51:7	242:8 258:23	121:17 124:20	241:1 242:13,23
96:24 97:19 122:6,7	numbers 18:9	125:4 126:11 127:6	243:21 244:4
122:18,20,21	155:11 190:10,17	128:3,17,21 129:17	246:25 247:5 248:2
123:10,12,20,24	194:24 201:18	129:25 130:17	248:14 251:10
124:10,16 131:9	nw 1:19 2:15	132:11,21 133:13	252:9,18 254:18
155:5 175:14	0	134:9,20 135:19	255:8,18 256:1,19
183:24 187:21	o 244:25	136:17,22 137:7,19	257:16
193:3 201:18 202:4	object 41:14 122:8	138:6,14 139:2,13	objections 61:3
212:3 231:5	122:12 213:14	142:25 143:14	147:12 161:16
nfrc 239:8	objected 65:21	144:6,18 145:21	169:14,21 199:1,7
night 98:4	objection 9:8,13	146:13 147:10,23	232:19 237:12,18
nights 90:18 91:2,14	10:6 11:7 13:16	148:8,23 149:6,16	237:24 244:13
non 35:6,8 85:6	14:13 15:22 17:5	150:4,21 151:7	251:17,24
95:11 112:14,21	19:23 20:20 21:14	152:11 156:16	objective 161:24
113:21,25 114:7	22:2 24:8,16 25:13	157:16 158:2 159:2	observation 25:7
146:16 151:23	26:17 28:16 29:5	159:20 160:12	observations 16:5
normal 98:21 101:6	33:14,23 34:6,18,23	161:7 162:6,16	17:2 125:16,19
101:11,14	35:14 36:2,13 37:8	163:13 164:2,3,25	156:20 159:22
normally 114:2	37:13,18 38:8,17	166:9,17 167:7,20	161:22 234:8
north 184:1	39:2,21 40:25 43:23	168:11,22 170:18	obtain 214:5
northwest 6:24	44:13 45:9 47:2	171:24 174:14	obtained 93:2
notary 260:2,15	48:13 51:1,16 52:2	176:12,25 177:11	119:24 153:19
note 6:7 101:8	52:25 53:16 54:4	177:25 178:23	213:1,7,11 214:13
notes 4:14,15 98:10	56:12,25 57:6,11,18	179:15 181:6 182:6	obtaining 213:25
98:13,17,20,22,24	57:25 58:16 60:8	182:15,25 183:10	254:25 255:1
99:6 100:10,13,18	62:4 63:19 65:2,18	183:20 186:10	occasion 25:21
100:21 101:3,7,10	66:3,11 67:14,24	190:12,23 191:5,13	occasions 96:24,25
101:12,19 103:2	69:12,16 70:12,25	192:4,11 193:1,13	97:1
106:19,20	72:16 73:2,15 74:6	194:9,19 196:2,23	occur 46:4,13 63:13
notice 260:4	76:7 77:2,14 78:14	197:23 198:20	64:3,21 192:16
noticeable 91:18	79:3,4,14,16 80:3	203:8 204:21	229:1 230:7
nttaa 115:4	80:10,19 81:7,14,22	205:12,25 206:14	occurred 66:21
number 7:6 18:11	82:20 83:8,25 84:25	207:1,15 208:18	96:23 157:14
40:7 62:16 76:15	85:17 86:9,18 87:4	209:2 212:20	164:18 165:12
83:4,18 99:11 110:2	87:11 88:17 91:4,25	213:17 216:11,20	176:6 178:16
110:13 131:2 154:8	93:8,25 94:24 97:5	217:17 218:8,22	192:21 257:25
154:10,14 155:14	98:8,25 99:20 100:2	219:14 220:3,16,24	occurs 192:15
164:17 181:16,18	102:10,22 103:9	221:7,19 222:5,19	offer 136:10
182:8,9 188:2,17	102:10,22 103:9	227:8,19 228:11,20	offerings 71:6
189:5,21 190:2,8,25	107.5,10 105.10	229:9,22 230:2,22	

[offices - particular]

offices 1:18 6:22	optimal 57:9,23	outside 9:4	236:3,14 241:7
official 117:18	58:6 254:4	overall 49:21 52:7	244:18 245:1,4,17
260:10	optimum 58:4	overlooking 14:10	245:23 246:8
officially 117:13	option 204:19	overseas 123:23	247:11,13,22 248:1
oh 15:7 21:25	236:15	124:2	249:10,17 250:12
185:23 223:2 254:8	options 44:1	owen 102:5	250:23 252:8
okay 9:18 15:15	oral 22:23 197:11	ownership 78:3,5,7	paragraphs 13:11
16:12,23 22:6 29:8	order 46:12 128:15	146:1,2	15:1 18:7,11 65:5
29:12 35:15 47:20	183:23 196:20		199:19 233:10,15
54:3,24 59:1,3	organization 8:23	p	233:23 234:3,9
61:13 64:12 72:11	27:14 28:1 31:13	p 3:3	paraphrased 218:24
90:12,15 105:9,12	32:9 49:22 51:23	p.m. 98:5 110:4,5	219:12
172:16 188:5	110:18 127:21	152:25 153:1	paraphrasing
200:24 217:9	140:12 155:3 172:9	210:16,17 259:3	111:14
244:24 258:3	174:4	pace 102:3	parroting 228:1
olson 2:8 7:19	organizations 19:19	page 4:3,10 5:3,7,12	part 13:10 14:5
omb 115:5,9	25:12,22,23 26:6,7	5:16 41:4 51:3 68:8	15:18 17:20,22
ones 24:20 26:12	26:8,12,16 27:6	89:3,3 93:21 119:6	18:16 25:17 35:22
31:16 96:15 140:2	28:9,15 29:3,16,25	119:7 140:25	39:6 41:3 47:9
169:19 203:20,25	30:12,14,19,22,25	163:20 187:7,10,12	49:16 72:25 74:20
204:5	31:5,9,20,23,24	209:15 216:24,25	90:19 91:15 100:3
online 136:3,11	32:5,18,19 40:16,20	217:1,3,12,12 219:6	102:12,13 103:23
215:24	40:24 44:11,16 50:8	222:10 244:16	106:5 114:25 115:3
open 36:5 84:15	75:18 85:7,15 86:7	pages 1:25 21:4	115:6 118:20
136:24 196:4 197:9	111:2,6,11 112:6,15	209:13 217:8	121:24 153:20
248:17 252:12	112:25 114:1,8	paid 184:14 214:10	168:7,15,21 178:7
opening 136:24	132:9 138:11	214:14	198:2 202:19 204:8
operating 189:17,23	139:24 140:1 142:4	paper 71:7	218:16 219:10
190:4	153:22 154:25	paragraph 14:6	231:11 234:7
opinion 80:5 124:25	192:10 193:6	15:17,20 17:8,24	240:25
125:3,7 126:9,16	238:16 239:17	18:5 41:5 51:6,8	participants 81:20
130:10 217:13	240:2 250:2	62:25 63:1 67:1	82:3 83:12 84:7
232:22	oriented 31:2 50:9	68:8,16,19 69:13,21	participate 43:10,15
opinions 58:10	193:19	70:23 71:3 89:4	43:15,19 45:7 85:21
78:19,25 79:11,19	original 207:17	90:7 96:4 157:2,21	88:6
79:25 95:4 108:15	outcome 260:9	158:4 159:1,17	participated 207:4
125:10 145:3,6	outcomes 46:13	160:14,22 163:22	participation 44:10
146:23 148:14	58:14 209:24	164:10 187:13,18	particular 24:19
180:20	outdated 256:21	187:22,24 195:1	43:7 44:1 45:1,2
opportunities	outline 153:8	199:12,15,21,25 202:17 204:6	60:17 67:13 84:3
128:11	outlined 153:23	202:17 204:6	85:4 86:25 93:21
opportunity 133:4	output 25:23 28:24	216:25 217:3,5,8	96:20 115:4,17
247:17	88:7	224:13,25 225:14	130:4 133:15 170:2
opposed 83:23 91:6	outputs 26:7 27:5	234:13 235:5,11,23	170:7 171:12 201:9
181:23 230:10		454.15 455.5,11,45	203:19,24 204:4
	I.	I.	1

[particular - plaintiffs]

206:19 209:14	238:13 241:21,25	phenomenon 22:19	84:23 86:20 87:2
212:1 221:11 223:4	242:4,6	22:25	94:18,22 95:13 96:1
225:1 228:14 234:2	percentage 182:11	philips 26:11,11	97:11,14 98:18
234:18 235:15,20	183:18 188:7,13,14	phone 196:5	108:8 110:15,16
235:22 236:7 237:2	188:18 189:7,16,22	phones 6:11	113:24 114:15
240:17 242:25	190:3,19 191:2,9,19	phrase 35:16 74:8	118:8,18,22 119:1
243:24 249:18	percentages 186:22	184:9	120:7,23 121:14,15
257:21 258:1	186:24	pick 6:8	121:22 133:12
particularly 145:12	perfect 114:11	place 6:12 260:4	135:22 136:6,10,15
158:5 225:17	116:5 241:5	placed 13:4	136:16 137:15,16
246:12	period 97:16 99:7	places 15:6 40:7	138:12 141:3
parties 6:16 37:25	178:17 212:1	63:1	145:19 149:12,15
58:8 71:13 73:6,13	permanent 68:4,10	placing 70:10	150:18,20 151:4,6
73:22 74:16 85:3	68:23 69:5 73:20	plaintiff 2:6,12,17	152:9,10 154:13,20
162:3,9,14 206:23	74:11,15 75:6,7,8	13:8 20:7 40:24	154:21 155:19
207:12	75:13 76:9,22	49:4,17 94:12,16	156:3,5,23 157:6,14
parts 160:17 200:1	143:24 167:12,16	95:20 96:18,20,21	158:1 159:18 160:5
party 45:14 58:3,5	168:1,5,20 169:12	97:4,17 98:14 114:7	160:10 161:2,5
153:17 260:9	permanently 76:6	120:18 121:11	162:23,24 163:10
passage 68:22	permission 230:20	146:7 153:22 154:4	163:25 167:5
patent 26:21	231:4	156:9 181:13,21	178:13,21 179:10
path 254:4	permitted 41:17	182:4,12 183:17	182:3,9,17,21 183:6
pauley 102:2	perry 3:15 6:18	189:11 190:20	183:13 188:8,14,18
pause 109:23 121:4	person 23:14 34:12	191:10,20 193:16	189:8,16,18,22,24
254:6 258:4	35:6 130:15	211:12 219:7 221:4	190:3,5 192:8,22
pay 88:12,24,25	personal 118:1	plaintiff's 41:25	193:9,17 194:4,15
92:4	personally 21:6 96:6	plaintiffs 1:13 9:14	194:23 196:1,19,21
paying 87:15	115:10 205:19	10:4 11:6,17 12:4	197:21 198:11,18
pending 15:5 17:16	personnel 98:15,18	12:15,17 13:9 17:4	199:6 208:16,25
35:11 45:18,21	120:18 121:11	19:8,10,12,14 21:23	209:4,10,17 210:2
59:19 138:2	122:21 248:20	33:2,12,21 34:2,5	215:7 216:3,10,19
pennsylvania 2:15	persons 35:7,8 74:3	36:1 37:7,23 39:1	217:14 218:4,18
people 45:1 60:21	99:13 101:21	39:17,19 40:3 42:5	219:2,6,18 220:1,13
60:23 83:13,13,14	105:15 116:22	48:8,11,16 49:3,11	220:14 221:16
83:18 87:14,16	136:10 213:24	49:13,25 50:4,17,23	222:3,11,18 223:4
88:12,21 93:11	214:3,13,19 215:5	51:14 52:18,23	223:11 224:15
95:25 96:20 98:12	226:16 227:5,15	53:13 55:3 57:5,17	225:18 229:6
104:2 135:24	perspective 10:25	57:22 60:6 62:1,20	232:23 236:15,19
153:21 161:14	144:1,10	62:21 63:4 65:15	238:17 239:4,20,21
163:8 184:20 185:1 185:16,17 213:11	perspectives 113:11 pertained 124:11	67:8,9,12,21 68:3 71:11,14 72:15	240:4,4,13,16 241:9 241:12,15,16
226:6 248:5,7	pertained 124:11 pertaining 115:13	73:23 74:4,16 75:5	241:12,13,16
percent 183:24	123:21	75:12 76:3,24,25	243:20 244:2,12
184:1 187:19	ph.d. 48:2,4,6	77:9,10,12,25 78:12	245:7 246:13,15
237:11,17,23	pii.u. 10.2,7,0	79:1,12 80:1 81:3	247:17 248:5,8,12
			= = 10.0,0,12

[plaintiffs - products]

248:24 249:3,7,15	possibly 12:18	preferences 163:9	87:17,20,22 91:5,23
250:14 251:22	post 255:24	174:9	115:7 121:5 176:4
254:11,14 255:3,24	posted 164:14,21	preliminary 168:18	251:3
256:16 257:11,13	165:8,18,25 166:6	169:8	problem 45:19,22
plane 92:5	166:14,22 167:1	preparation 101:5	85:4
plans 119:11	175:23 176:24	prepare 100:25	problems 48:19
please 6:7,11 7:9 8:4	177:10,23 179:12	103:16 107:2 192:9	50:19,24 51:13,20
15:8,10 52:17 64:9	180:2,8 183:7,9	prepared 105:15	52:1,4,13,15,18,20
64:12,24 78:22 98:6	193:11 194:7	preparing 102:21	52:22 53:13 54:12
118:25 149:21	256:17	presence 68:23	54:16 55:5,21 56:5
150:1,2 153:9	posting 176:10,21	95:18 136:14	82:16
200:24,25 201:20	177:7,19 178:12	137:14	procedure 98:21
216:24 221:23	254:15 257:5	present 3:12 7:9	101:6,12,14
223:21 225:6	postings 177:15	95:22 125:22	procedures 57:10
243:20	178:15,19	presentation 56:21	57:23 58:13
plus 79:4 147:11	posts 254:12	presentations	proceed 15:3 17:11
150:23 161:17	potential 35:21	119:21	proceeded 153:16
pocket 92:10 133:3	55:21 56:4 73:3,4,6	presented 160:2	process 30:23 31:13
point 24:19 43:7	74:19,25 147:15	preservation 239:19	33:17 39:19 42:4
58:19 84:1 92:20	161:1 223:18 257:1	presumably 13:19	44:18,22 45:4,8
100:11 129:7	potentially 111:10	previous 16:8 25:9	81:21 82:3,4 84:8
140:24 154:17	224:5,11 254:20	90:15 183:12	85:19 87:3,15 90:19
190:16 210:8	256:20 257:2	previously 93:14	90:20 91:15 100:20
228:13 234:1	power 50:14	109:9	108:3,6 130:21
pointing 157:2	practical 45:17	price 171:4 172:2,16	131:1,7,9,14 197:8
points 100:19	112:12	172:19,23 184:25	198:2 230:11
107:17	practice 55:19,20,20	185:3	processes 28:19,25
policies 138:24	56:2,3,3,6 144:21	primarily 31:24	29:2,16,22,24 30:3
139:10 140:11	practices 55:23	39:12 91:1 153:17	30:10,20,25 31:4
policy 141:24	138:10,19,23	print 88:1 255:25	40:18,23 41:12,21
portion 108:17	139:10 140:12	256:5,9,14,18 257:6	131:2
145:7	practicing 47:18	prior 17:9 29:6	produce 87:18
positing 206:4	precise 155:11	60:12 123:17	produced 21:8
position 239:18	159:8 160:4 165:15	147:11	112:8 114:3,5
possession 215:18	181:16 188:13	private 6:9 199:13	153:20 175:8 195:5
possibility 57:14	189:14 238:4	privately 202:18	product 52:8 71:6
101:2 215:3 227:12	precisely 154:10	203:6 222:12 223:6	production 5:6 24:1
236:21	156:9 166:25	224:16	118:14,18
possible 23:6 92:9	prediction 166:5	probability 234:11	products 32:15
96:8 115:21 119:22	234:12,17 252:7	234:19 235:8 236:1	34:14 35:21 72:1,3
123:5 124:13	preexisting 83:15	236:22 237:3 238:2	72:7,10,24 82:11,15
134:21 147:19	prefer 163:12,15	238:7 251:7,13	159:19 217:24
198:13 199:8 216:9	preference 163:1,7	probably 25:16	224:20 225:5,8,16
216:18 229:3,12	245:6 253:22	26:20 27:1,8 30:21	225:19 246:12,17
		31:8,9 43:5,21	247:15 250:15

[products - questions]

251:22	115:23 120:2 141:1	publications 62:19	quantitative 171:3
profession 25:19	141:15 145:4	141:3,11 158:13,14	172:7 173:22,24
professor 229:13,25	146:24 158:25	178:22 184:15,19	209:7 234:19 235:2
230:8,18 231:4	199:18 218:5,19	185:18 187:1,6,21	235:15 236:7 237:2
230.8,18 231.4	221:15 222:1	188:1,3,6 217:15,21	237:8,14,20 238:1
profit 85:6,8	223:25 224:17	219:9,20 220:2	241:23 242:25
profit 83.0,8 profitability 182:21	225:25 226:7	222:14,16 223:8,10	251:13
183:6	227:17 228:18	223:19,21 224:10	quantity 175:14
program 48:5	230:18 232:24	250:13 251:1,3,5	question 15:5 16:9
project 104:9	235:1 252:6	253:7,19,24	16:11,21,22 17:9,11
105:25 106:25	provided 22:9 23:24	publicly 158:19	17:13,16,17 29:23
promote 221:5	93:4 118:21 119:7	published 40:17	30:2,6 35:8,10,11
promoting 198:18	119:10,12,13,14,18	72:5 112:10 175:19	36:11,16,19,25
prompt 120:14	119:10,12,13,14,18	195:2,11 211:11	37:12,19,22 51:12
	135:23 148:15	1	54:8 55:25 57:20
property 214:5 property 9:2,7,23	153:25 148:15	purchase 62:19 185:12 231:5	59:18 67:16 69:18
10:4,13,16,23 11:5	226:6 256:13	purchased 233:2	75:10,11 77:23
11:16 26:19 139:16	providers 223:18	purely 88:22	80:22 90:5 95:8
139:21	224:7,11 225:4	purported 144:20	105:11 107:16
proportion 154:20	provides 141:10	purpose 49:8 110:15	108:3,12,18 123:11
proposal 40:13	163:8 215:14 219:7	purposes 77:24	125:22 129:3 137:5
proposals 40:12	222:12 223:6	138:12,20 139:7	137:12,17 143:15
proposed 83:22	providing 87:14	243:10,16 254:2	143:23 144:4 145:8
85:23 86:4	88:11 209:20	pursuant 260:3	145:25 146:1,3,20
proposition 232:7	226:16 253:6 257:2	pursued 131:2	149:20 150:3,10
propriety 168:17,20	provisions 226:24	245:9	151:1,15,24,25
prospectively 123:8	public 3:13 12:15	pursuing 245:12	152:5 157:10,18,23
protection 1:7 2:12	38:15,20 52:5 62:17	put 10:3 102:13	159:14 165:20
7:20 11:1,2 18:2,20	71:5,6 73:21 74:23	126:6 132:17	166:4 168:6,9,10,13
52:6 65:8,12 67:22	75:23 76:18 111:8	150:15 213:8 222:2	168:21 169:4
68:7 69:8,11,25	111:25 112:3	228:6,9 241:8 251:4	171:11 172:19
70:6,7,9,11,15,17	114:13,16,22 115:6	q	173:1 176:4 177:2,5
73:19 79:13 80:1,23	123:17,23 124:2,16	qualified 225:25	183:13 188:5,6,11
80:25 110:19	129:11 130:7	227:17	188:22 194:1,3
114:14 126:13,18	211:22 216:9,18	qualitative 173:18	195:23,25 196:20
139:16,21 140:5,13	227:6 249:4,6 250:3	173:20	202:11 205:8
219:3,6 222:11,15	257:15 260:3,15	quality 46:10,16	207:10,17,21
223:5,9 230:21	public.resource.org	52:7 82:16	230:25 231:17
236:16 245:8	1:14 7:3 74:4 75:5	quantification	232:6 233:25 244:7
246:15,16,19	75:12 76:3,6 165:18	235:21 242:19	253:11 257:22
prove 142:8	public.resource.org.	quantified 132:7	questioning 52:19
proved 142:11	74:17	242:2,8	58:24 59:17 106:3
provide 23:24 34:14	publication 4:16	quantify 63:3 74:21	171:9
55:18 56:1 87:17,20	134:12 184:15,21	81:3 242:15 252:1	questions 5:15
87:22 88:25 89:1	185:13		77:22 95:1,5 145:12

[questions - refresh]

150:6 186:20 192:3	realize 196:12	recalled 109:7	53:6 60:16 67:20
200:24 258:14,15	207:16	recalling 23:6	70:3 71:15 138:16
quicker 154:18	really 64:7	recast 150:1	138:24 156:13,14
quite 29:9,13,17	realtime 1:23	receive 50:14	158:16 177:23
41:24 80:20 111:5	rearranging 200:18	121:22 122:10,15	192:13,24 193:21
142:5 145:11	reason 165:3 167:10	192:23 221:16	194:3 199:24 200:5
156:25 157:9 163:2	195:23,24 221:9	222:3	200:10,20 201:14
184:6 257:24	223:1 227:25	received 25:11	202:8,19 203:6
quote 29:21 64:1	258:10	82:13 122:17,24	204:16,19 209:5,11
quoted 69:9,20	reasonable 65:24	197:7 198:10	209:18 210:3
quoting 70:8	212:22 238:2,7	recess 61:19 110:4	221:18 239:1,9,14
r	242:4	152:25 210:16	241:4,11,13 254:13
_	reasoning 234:25	recite 28:4	referenced 245:25
r 244:25 260:1	reasons 214:18	recognize 175:7	246:10
range 31:14,15 122:6 202:20	recall 20:8,19,22,25	recollect 184:13	references 103:6
ranges 119:6 135:3	21:5,10,19 22:3,14	recollection 140:8	187:25 244:19,22
135:5	23:25 24:3 25:14	recollections 108:25	referencing 233:11
rarely 92:8	26:24 27:14,25 31:3	recommending	233:12
ratio 154:23	41:19 42:7 50:19,21	58:12	referred 10:11
rationale 21:11	53:12 55:11 93:2	record 6:6,17 16:7	13:23 22:24 23:19
ray 26:10 140:12,15	96:7,16 99:2 101:19	17:7 35:5 61:17,23	36:21,22 68:22
140:19,20,22 141:1	113:19 114:9	110:1,8 152:23	84:11 110:13
141:9,23 253:5,13	115:11,20 117:1	153:4 210:13,20	171:10 201:14
253:22	119:23 120:15	248:18 258:22	212:17 226:21
rdr 260:15	121:3 122:20 123:4	259:3 260:8	referring 13:3 23:9
reaching 107:11	123:10,14,19 124:7	recorded 106:6	49:11 50:23 68:22
125:12 148:16	124:9,14,15 125:24	260:6	69:3,13 99:19 107:3
read 13:17,21 14:17	125:25 126:2,8,22	recording 6:15	115:18 160:20,21
20:13 21:8,24 55:24	127:4 134:24	recordings 106:17	163:20,22 187:7
72:9 78:21 112:7,8	138:16 139:14,20	records 27:16,20	215:10 218:6,20
112:9,11 118:3	140:4,7,18,21 141:5	28:4 63:10 133:6	233:22 235:16
129:3,8 130:2 137:9	141:20 154:18	redrawing 71:8	refers 22:13 140:19
142:22,23,23	155:25 156:18	reduce 46:12 250:14	171:17 188:3
143:10 201:15	174:13 178:1	reduction 156:22	201:21
218:7,10,14 219:10	179:16,25 180:5,15	251:21	reflect 101:13 115:3
221:23 222:24,25	180:24 181:3,8	refer 11:24 90:7,21	115:6 117:5,13
222:25 225:23	185:4 190:18	91:1 98:24 115:22	reflected 17:23
227:15	194:21,24 195:4,6,9	140:20,21 143:8	19:25 62:11 93:19
reading 72:11 130:9	195:20 198:14,15	199:13,25 212:7	113:12 158:3 247:7
135:24 136:5	199:9 200:2 202:16	218:12 232:14	reflection 184:13
214:21 215:1,7,12	206:18 207:22	235:4,9 236:2,15	reflective 251:5
215:19,24 250:19	211:7 225:2 239:6	244:25 245:22	reflects 15:13,20
252:20	239:15 240:9 241:3	246:8 251:8	114:20
	249:21 250:4	reference 18:11	refresh 123:3
	253:10 255:19	22:16 47:7,8 48:23	140:23 165:24

[refresh - resource]

221:13	relevance 142:6,15	repeating 66:24	reports 119:20
refreshed 24:21	144:3,15 147:8	repercussions 18:2	122:2 200:9,16
103:24	relevant 79:12	70:19	represent 7:11
refreshing 141:7	116:7,15 142:13	report 4:12 9:25	71:10 98:3 117:15
refrigerating 7:25	146:12 147:14	10:21 11:9,12,14	214:11
refrigeration 1:11	148:6 250:5	12:13,24 13:2,7,17	representation
2:17	reliability 52:8	13:23 14:18 15:16	117:18 206:17
regard 18:4,12 19:5	reliable 187:17	16:4,4,15 17:1,1	representations
26:21 30:11 49:17	reliance 258:7	18:7 20:1 22:8,9,12	20:24 44:7
67:1,2 71:4 78:3,7	relied 21:20 24:6,10	25:1 29:6 33:16	representatives
82:5 141:24 155:4,5	24:24 43:8 102:20	39:25 41:3,11,16	42:16,17 43:11,16
155:6 157:2 165:21	103:18 105:7,15	48:15 50:2 51:3	43:20 94:22 97:4
222:13 223:7	106:11,13 107:5,8	53:6,18,25 54:10,22	118:7
224:18 255:7	107:10,12 109:1,12	62:6,12 63:2 64:7	represented 112:18
regarding 13:7	125:11 146:25	64:11,13 66:9,16	179:21
69:24 93:6 95:1	148:16 169:19	67:3 71:3 79:19	representing 2:6,12
103:17 104:3,22	205:8 211:15	89:5 96:4 98:22,24	2:17 3:6,10 6:19
105:16 116:9,17	247:10	99:4,7,11,16 100:15	42:9 45:15 199:6
124:17 127:24	reluctant 76:16	100:22,25 101:5,24	represents 151:12
156:12 174:4	rely 19:21 20:3	102:8,21 103:7,19	247:16
180:17 208:24	100:9 101:13,15,16	103:21 104:4,9	reproduce 136:1
243:4	101:18 103:5 104:1	106:1 107:6,12	reputation 19:18
regardless 35:19	104:15 106:17	109:2,13,17 110:12	21:23
regional 52:10	161:18 169:7,11	112:18 125:10	request 5:6
registered 1:22	180:16 205:5	135:4,21 138:3	require 13:21 144:8
regular 113:7	233:15	140:18 141:18	144:25 146:20
regulation 203:12	relying 99:18,24	142:22,23 143:5,8,8	227:7 230:20
228:17 229:8	100:5 106:5,9,24	143:18,19 147:14	required 133:1
regulator 37:4	161:13 162:3 234:3	153:23 154:1	requirement 46:19
regulators 36:9,12	235:23	155:12 160:18	requirements 48:6
36:24 37:6	remainder 254:7	165:23 166:8,16,22	research 93:6,10
regulatory 38:5,10	remained 138:2	170:24 181:1	94:13 114:12
rehear 149:24,25	remedies 242:22	183:22 184:12	115:16 162:5,13
rehn 2:9 7:18,18 9:9	remember 70:3	185:5,5 187:8	252:15 255:12,20
122:8,12 258:16	119:17 140:17	195:15 199:12	researched 172:20
reiniche 102:4	155:13,14	207:5 209:13 210:6	reserve 254:7 258:4
rekeying 71:8	remembering 96:9	211:5,20 216:22	resolution 45:13
related 196:22	reminded 192:16	228:6,10 231:22,24	resolve 82:17
203:11,17	reminder 188:10	reported 160:14	resource 3:13 12:16
relates 145:13	rendering 170:17	164:6 183:22 207:5	62:17 71:5,6 73:21
relating 26:15	reparability 169:2	235:25	74:24 75:23 76:18
203:22	reparable 151:18	reporter 1:22,23 8:3	123:17,24 124:3
relatively 13:20	repealed 163:5	122:11	129:11 205:22
225:21,22 227:14	repeat 30:17	reporting 180:25	206:10 216:9,18
			249:4,6
	ı	1	1

[resource's - sections]

resource's 211:23	193:5,9 194:4,16	11:5,17,22 12:7,9	224:14 241:14
resources 86:1,21	241:17 242:10	12:11,16 13:8,14	250:14 251:22
87:18,21 197:19	243:19 244:3,12	15:2,14 16:6 17:3	san 2:4,10 3:4
206:22 207:11	review 28:7 54:6,7	26:22 81:5 145:14	satisfy 209:20
245:12	94:10,19 115:9,12	220:2	saw 24:11 41:6
respect 17:11 25:11	116:1,10,18 117:5	risen 62:22 208:8,10	112:21 121:3,9
55:17 60:6 76:4	117:23 134:17	risk 66:24	138:16
79:16 80:17 95:5	195:16 197:20	risks 46:6,8	saying 11:20 30:7
132:19 140:13	199:23 205:10	rivals 240:25	30:18 36:23 68:1
142:3 204:2 208:12	reviewed 108:19	room 135:24 214:21	104:7 107:17 173:6
211:15 219:8 246:3	114:17 136:8,9	215:1,20	197:16
respond 40:10,12	162:17,20 205:16	rooms 136:5 215:7	says 71:3 89:7
54:8 108:18 236:16	216:6	rough 132:17	187:19 201:22
responding 17:9	reviewing 108:9	round 90:18 91:3,14	scans 71:7
52:20 144:25	162:13	route 40:21	scenario 231:25
response 171:11	reviews 115:4	routes 255:2	scheme 41:22 42:1
175:9 243:11	revised 108:20	rubel 23:14 92:25	scholarship 93:15
responsible 104:12	revising 83:16 108:9	93:3	school 128:7 228:16
responsive 105:23	revision 89:14	rudimentary 71:10	230:7 231:11
108:13 137:12	rewriting 106:2	71:22	scope 95:23
151:23 197:5	rides 54:14	rule 81:4 105:4	screenshot 90:10
rest 247:21 248:1,18	right 14:2,7,10 16:3	rules 76:25 77:10	screenshots 120:2
258:4	17:14 20:23 21:10	128:1 146:7,9	sdo 31:7,11 32:25
restate 149:23	28:4 31:8 54:20	203:12	33:9 42:18 45:24
221:25 223:3	64:22 68:21 69:10	ruling 67:13 128:14	83:10,22 88:7
result 57:10 58:7	69:24 72:9,23 76:14	S	240:10,11
125:7 149:14	90:1 95:16 97:8,15		sdos 28:20 29:22
150:19 151:5 152:9	97:21 113:22 116:3	safe 39:5	31:20 33:2 42:19
184:20 240:5	123:4 124:14 132:1	safely 50:13	51:20 70:18 75:2,9
resulted 212:18	132:23 136:1 140:7	safety 38:25 49:6	131:3 138:16,20,24
214:6	154:10,15 165:10	52:5 54:13 203:12	139:10,20 140:1,4
results 10:20 57:24	173:23 187:9,14	203:22	140:25 141:14
93:20	189:4 190:14	salaries 87:16 88:12	240:16 254:2
retain 101:3	191:15,18,23,25	88:25 91:13 sale 183:19 186:22	seal 260:10
reveal 174:9	192:20 197:25		search 93:12,18
revealed 163:1,7,11	201:24 202:2,5,9,11	186:25 187:1,20	searches 153:18
174:9 245:6 253:22	205:11 206:4,7	188:8,16,20 217:24	second 2:3 54:25
reveals 16:4 17:1	210:7 215:2 218:14	221:5 222:14 223:7	104:20 235:5 254:8
revenue 181:12,21	221:12 225:3,3,12	224:18 247:14	section 18:18 65:11
182:3,12 183:19	227:3 239:7,12	sales 4:16 134:8,13	68:20 158:25
186:22,25 187:20	245:18 253:3	155:18 156:2,21,23	199:19 201:16
192:23 208:5 213:9	256:15 257:9	159:18 176:9,22	209:14
214:7,11,21	258:21	177:9,21 178:21	sections 13:12,14
revenues 136:16	rights 9:2,23 10:4	208:1 217:15,20	14:8
137:16 188:8,15,19	10:13,17,18,23,25	218:5,16,18 220:14	

[sector - specific]

sector 199:13	ector 199:13 sentence 63:24,25		sold 175:14
see 9:24 10:20 12:23	71:25 89:7 90:7,16	shut 236:19 sic 7:6 54:15 67:8	sole 199:14
14:5,8 18:25 19:25	218:2,11,12,15	222:17	solicit 31:14
24:15 41:4 62:7	219:10,11 223:3	side 33:18,19 34:12	solicited 110:25
71:16 89:11 101:23	234:12 235:5,10	34:17,21 35:12,18	solution 45:18 48:25
105:22 109:17	236:3 250:19 251:9	36:21,22 37:4,5	55:10,16 60:3,6
142:5,14 153:25	252:7	38:1,2,6,7,16,21	solutions 1:19 48:20
155:12 162:18	sentences 72:2	39:7,12,14 82:9,14	55:6,14 59:24
165:24 175:17,21	separate 23:22	83:12,13 84:11,12	somebody 38:24
179:20 193:5 197:4	137:21 138:18	signature 260:14	56:9,11,18
199:17 202:22	139:6 180:5 196:16	significance 129:12	somewhat 29:19
204:10 211:23	201:3,4,5,6 219:19	129:15 220:6	215:13
218:11 219:11	separately 23:25	similar 83:15	sophisticated 71:12
223:13 224:21	93:2 119:18,25	256:21 257:24	72:4
226:2 233:11	179:19 194:23	similarly 30:10	sorry 11:19 17:21
235:24 240:1	196:14 208:21	simply 87:14 241:8	24:18 36:10 56:15
241:18 247:18	september 260:11	sit 84:4,19 116:3	57:19 65:20 84:9
250:16,24 252:13	seriatim 9:15	154:10 191:6,14,18	89:3 92:14 118:13
252:21	serve 85:25 86:20	191:23,25 192:19	122:12 138:7 146:7
seeing 21:5 24:3	services 32:16 34:14	192:20 199:2	152:17 154:5
120:15 122:20	35:22 52:9 82:12,15	site 90:11 120:2	156:17 163:5
123:10 154:14	203:10,18 209:20	164:15,22 179:13	164:10 171:1
241:4	224:19 225:5,7,17	180:3,9 185:7	185:10 188:21
seek 31:21	226:7 246:12,17	205:17 206:7	196:12 200:17,21
seeking 31:18	247:15 250:15	211:23 215:13	205:4 213:12 217:2
seen 20:24 21:3,7	251:23	sites 40:1 101:24	217:5 223:2 244:16
23:23 29:14 43:5	set 42:8,20 49:5	122:1 136:15	244:21 247:1
58:2 103:2,3 106:18	92:10 135:10	137:15 159:24	sought 196:5
106:19 137:2	setting 26:6,16 27:6	sitting 20:23 27:24	sounds 30:1,5
180:12 185:6	30:11,13 31:9,24	41:11 53:23 117:1	113:16,18 150:24
192:13 209:6	32:5,9,18 139:24	123:4 124:14 132:1	source 25:7 134:22
216:13 239:1,9,14	140:1	132:22 140:17	134:25 135:2 193:4
sell 222:16 223:10	seven 102:2	142:24 143:12	sources 22:8 112:13
selling 82:11	shared 87:24	190:13 195:12	153:17 233:11
seminars 224:6,8,12	sharing 215:11	202:9 225:2,3 239:6	spalding 2:2 7:23
225:9	shirt 46:1	239:12,15	speak 92:19 143:9
send 243:9	shorthand 260:6	six 95:25	speaking 50:22
sense 81:25 93:10	show 64:12 122:22	slash 93:3 201:5	51:25 52:23 88:14
113:8 121:20	shown 93:20 118:15	slightly 40:18 95:9	203:4
132:13,14 184:17	119:5 134:18	208:9	specific 50:10 64:25
217:25 220:20	187:22,23 253:2	small 42:16 43:16	71:4 114:9 125:23
221:1 228:5 252:20	shows 202:7 204:16	smoke 39:10	139:18 144:14
sensitive 6:8	205:23 206:11	socially 49:8	164:19 172:22,25
sent 76:10	250:11	society 1:3,9 2:6,17	173:5,10,15 174:1,6
		7:1,24	174:24 177:17

[specific - strike]

180:25 181:3	195:2,10 200:20	156:13,23 160:1	195:3 199:15
242:15,19 247:12	201:10 202:1	175:14,23 176:22	202:25 205:6
255:20	206:24 207:14	176:23 177:8,9,20	222:20,23 223:13
specifically 30:3	211:16,16 215:6,10	177:21 178:13	statements 23:18
49:11 70:14 99:15	215:19 225:24	179:12 180:3,9	105:16 113:24
113:20 114:6	226:1 227:16,18	181:13,21 182:1,4	119:11 120:23
117:24 193:10	229:15 230:10,11	182:13,22,23 183:7	121:16 124:16
194:6,16 233:22	232:15,18 253:7,19	183:8,19 186:23,25	135:8 162:14
specifics 130:24	253:24 254:12,15	188:9,16,20,23,24	247:21 249:16
131:23	254:17,23,25	189:2,3,12,18,24	states 1:1 115:15
specify 243:8	255:25 256:5,17	190:5,21 191:11,21	116:1,9,10,17,18,24
speculated 161:15	257:6,12	192:9,25 193:11,19	117:7 124:11,19
speculating 61:12	standards 20:15	193:20 194:6,17	204:7,17 205:23
speculation 77:3	21:13 25:11,22 27:6	198:19 199:14,24	206:11
78:15 228:21	27:13 28:1,9,14	200:5 201:13,17,18	stating 67:19
229:10 257:18	29:3,24 30:9 31:2,5	201:19,21,23,25	statistics 91:1,1
spend 13:22 41:10	31:6,9,23 32:4,9,16	202:4,4,6,18 203:7	status 124:7,8 221:5
96:11 97:3	32:18 33:5 34:15	208:17 209:1,24	statute 60:17
spent 89:8,22 91:12	35:23 39:20 41:7	210:3 214:20 216:3	step 71:10,23 239:18
97:16	42:5,6 44:10 45:4,7	217:15,16,22 218:4	stephanie 102:4
spills 216:25	46:11,16 47:8 48:12	218:6,18,20 219:7	stephen 101:25
sponsorship 192:9	48:21,22 50:8 55:7	220:14,15 221:17	steps 31:18 39:23,24
spreadsheet 4:16	55:7,15 56:1 57:5	222:4,12 223:6,25	41:6 71:21 112:4,23
sso 31:10,12 32:24	57:17,22 59:25,25	224:17 226:24,25	114:21 129:22
33:9	60:20 69:11 70:2	227:7 229:6 236:17	130:6 153:9
ssos 32:10,14 33:6	71:7,11,14 72:6,8	236:20 238:16	stipends 192:23
131:3	75:2,16,25 76:1,4	239:17,20 240:2,5	stipulate 9:16
staff 86:6 88:14,21	76:11,16,17 78:12	240:17 241:10,12	stipulation 9:12
91:6 190:20 191:10	79:1 80:2 81:5,20	241:14 250:1,2	stipulations 5:11
191:20 198:17	82:19 83:7,15,16	255:16 256:22	stop 129:6 240:4
stage 212:12	84:8,24 85:14,15,24	standing 260:3	story 178:5,8
stages 99:9	86:4 87:3,19 88:1,1	start 12:2 184:16	straight 143:7
stamped 122:16	88:2,5,16 89:10,24	starting 244:16,18	street 1:19 2:3,9 3:3
135:9	90:4,8,10 93:7	starts 72:10 209:15	3:8 6:23
stand 52:16	114:15 123:21	state 7:10 13:6 44:2	strike 25:9 39:17
standard 4:19 25:15	124:11,17 127:1,2,5	47:6 195:1 202:18	48:8 64:18 67:6,6
26:6,15 28:14 30:11	130:22,25 131:9,14	203:7 206:11	67:10 91:10 94:8
30:13 32:18 40:5,17	132:10,20 133:11	225:15 247:13	113:16 117:3
42:12 44:6,15 45:25	133:17,20 135:15	250:12	118:24 129:7
46:20 61:2,10 82:2	135:25 136:2	stated 10:11 17:7,24	135:13 146:7
89:15 90:22 91:16	138:11 139:24	112:13 118:8	159:15 163:5,18,20
92:7 131:6,15,19,22	140:6,21 141:16	122:22 186:21	168:18 169:8
132:4 140:1 141:2	142:3 154:3,6,21,24	247:25	175:19 179:10
141:11 158:13,15	154:25 155:14,18	statement 63:17,21	181:11 183:4 189:8
158:19 176:10	155:20 156:3,5,12	64:10,17 65:1 71:18	211:21 217:5
	I	1	1

[strike - testimony]

218:17 219:3 su	iit 124:5,7,8	surveys 185:8	talking 68:16 70:2
	iitable 56:23	sustainability 52:6	82:21 88:13 106:3
	ite 2:4	swear 8:4	123:6,8 128:6
/ /	ımmarize 27:19	sworn 8:8 260:4	140:14 187:12
	64:9	systematically	229:13 230:9
	ımmarized 12:12	193:25	talks 70:6,15 201:16
	12:24,25 39:23 41:3	systems 52:9	tangible 62:8,10
	66:25 112:22	-	67:1
	114:10 153:24	t	taught 170:13
	155:13 157:21	t 244:25 260:1,1	171:18
	160:17 162:18	tab 27:21 93:21,22	taxes 88:25
1	208:6 233:20	94:14 113:13	teacher 229:5
	248:25	114:18,19,20	teaching 88:3 229:5
1	ımmary 11:10	115:22 118:15,21	team 93:24 135:7
	33:16 175:12	118:24,25 121:23	team's 94:13
/	pervised 104:13	121:24 135:4,6	technical 229:14
,	ipervision 260:7	197:17 208:6 253:2	technically 139:25
	ipplemented 89:18	table 23:10	telephone 197:7
	ipplier 172:4	tables 165:23	tell 53:11 95:17
	ipply 32:13 33:18	tabs 134:13,19	143:11 163:4,6
	34 :12,17 36 :21 37 :4	153:25 158:4,6,22	166:22 201:20
9	38:1,6,16,21 39:12	248:25	238:21 260:4
	82:9 83:12 84:11	take 13:13 14:3,22	ten 58:25 59:7,7,10
	1pport 5:1 25:6	15:7,15 56:18 59:13	208:2,4
_	45:17 52:5 199:14	59:14,19 61:14	tend 101:9
_	199:18	73:12 79:21 98:17	tends 35:5 42:19
_	ire 8:20 9:20 13:25	100:13 101:7	
	14:19,19 15:4 21:15	109:24 129:22	term 31:8 38:12,14 128:9 161:10
	22:14,17 29:14,17	130:6 152:21 206:6	
	32:23 33:8 35:9,16	212:14	223:23 231:21,23 234:17 235:17
	41:24 50:5 57:13	taken 1:18 25:18	238:22 240:21
	63:12 64:1,19 73:10	79:7 149:1,9 168:8	256:8
	74:20 80:21 122:15	214:9 260:3	
	124:6 126:14 131:3	taker 101:8	terms 57:4 246:1 territories 204:7
	151:1 152:20 156:8	takes 4:19	test 54:5 120:5
	156:25 157:9,18	talk 70:14 82:2	testified 8:8 54:25
	165:15 182:8 184:6	125:13 160:25	testimen 8.8 34.23
		172:3 187:10	24:9 27:22 55:1,11
	185:14 197:3	211:20,21,24	60:12 61:5 67:11
	210:10 212:11 217:10 220:5	229:16	74:5,18 78:11,25
		talked 35:18 50:6	74:5,18 /8:11,25
88	221:22 222:7	106:22 113:5	
	231:17,19 232:14	184:11 193:15	123:15 147:14
88	234:16 256:4	194:11 248:4,7	157:1 160:16,21
	rprised 118:2		168:19 186:9,19
	192:15		196:25 197:2

[testimony - trend]

258:23 260:3,5,8	50:10 56:20 57:7	258:3,10	told 196:1
testing 1:4 2:6 7:1	58:2,7 62:24 63:20	thinking 54:19	tolles 2:8 7:19
text 71:8 82:19 83:1	66:14,18 67:25 68:1	142:11 222:8 257:9	top 119:7 217:12
83:23,23	68:9,25 69:2,5 70:1	third 71:13 153:17	219:3,5 222:10
thane 2:9 7:18	71:24 72:13 83:4,9	thomas 102:1	topic 14:9 19:5
thane.rehn 2:11	83:10,18 84:6,19	thought 20:14 22:15	42:10,12 45:3,12
thank 61:15 111:23	85:1 86:11 87:17,20	37:11,20 40:14 53:2	60:15 62:24 80:6
141:6 188:10 189:4	87:22,25 89:17 90:9	61:12 69:4 77:17	93:1 131:12 137:22
223:2 258:18,20	90:14 92:24 94:15	80:6 84:16 101:1	143:21 180:12
thanks 210:11	98:5 102:13 103:25	161:15 186:24	193:15 194:11
theories 169:6,10,17	108:21 109:7,22	188:21,22 228:8	209:7 255:21 258:2
170:7 171:8,16	112:2 113:22	233:7,24 253:8	topics 25:24 42:21
174:12	114:24 115:1,5	257:22 258:1	49:18,20 106:23
theorized 245:2	117:17 119:21	thoughts 42:11	total 97:3 154:24
theory 171:5 172:2	121:9,25 122:1	thousands 199:13	touch 14:8
172:5,17,20,23	123:22 124:4	three 15:11 40:24	track 193:25
173:8 174:8 244:20	126:12,24 130:18	89:19,20 96:24 97:7	trademark 11:22
244:23 245:2,2,4,17	131:1,20 135:8	97:13,19 102:5	12:11 13:8,14 15:2
245:22,24 246:1,7,9	136:12 140:20	107:21 109:18,19	15:14 16:6 17:3,23
246:23 247:4,11	141:17 155:2,4,5,21	154:12 187:25	18:3,16 63:15 64:5
249:16 253:22	156:7,8,22 157:1	240:13 243:20	65:12 77:19 110:21
thereabouts 98:5	158:7,12,17,21	248:24	111:4 143:22
thereof 260:9	160:23,24 162:7	throw 101:12	trademarks 12:17
thing 62:25 202:3	165:3 166:4,11,19	thursday 1:21	16:17 19:8,10
things 8:24 33:3	167:10,22 168:7	time 6:20 13:13,22	112:20
34:15 59:12 62:22	170:8 175:25 176:3	14:12,23,24 15:7,16	trained 171:3
63:21 65:5 85:21	176:18 177:12	41:10 92:5,12 97:16	training 25:10 88:4
88:8 89:2 100:20	178:3 181:15,19	98:21 99:6,7 103:2	161:21 169:23
109:6,9,12,20,20	182:7,16 183:13	107:17,22 131:7	170:3,8 171:12
115:7 118:21	187:10 188:12	132:18 133:5 138:2	172:11 173:2,7,13
120:12 121:5 133:5	189:13,20 190:1,7	152:18 198:17	173:18,24 174:3,21
171:3,6 172:10	190:11,24 192:12	206:7 228:23 230:5	174:22,22 224:6,7
196:6 197:10 203:1	192:21 193:16,25	254:7 258:5,16	224:11 225:9,20,25
203:11,13 210:5	194:10 195:22	260:4	227:17 238:9
215:24 218:19	197:24 198:6,22	times 42:4 83:11	transcribed 260:6
223:22 248:11	207:5 208:3,13,19	101:25 102:1,2,3,5	transcription 260:7
254:6 257:8	208:20 210:4	102:6 107:23	transcripts 119:9
think 13:10 14:15	213:19 215:21	200:19 212:13	159:12 160:25
15:9,17 17:6 18:8	216:12 217:19	timing 165:7,15	travel 89:1
18:17,22 22:12,18	218:23 219:15	title 65:10	treating 139:21
23:5,22 30:15 32:22	220:6 222:24 224:5	today 8:2 23:10	140:5
32:23 33:24 34:19	225:4,24 227:16	41:12 133:17 134:1	tremendous 245:12
38:20 39:8,11 41:16	229:15 232:8,11	140:3	tremendously 75:3
42:8 43:5,18 48:14	236:21 238:1,10	today's 6:19	trend 131:6 159:23
49:15,16,16,17	253:3,15 254:5,6		208:12

Case 1:13-cv-01215-TSC Document 204-44 Filed 11/13/19 Page 99 of 102

[trends - value]

twomdg 124.0 155.10	227.5 15 221.7 22	211.12.215.4	wasful 100.17 10
trends 134:8 155:18	227:5,15 231:7,22	211:13 215:4	useful 100:17,19
156:2,21 175:16,20 176:9 178:20	231:23 232:1,9,13 uncertainties 121:6	219:19 220:22	144:12 198:7,8 user 225:20 232:9
		221:22 227:4,21	
trial 27:22 trip 90:18 91:3,14	235:4	240:9 understood 112:18	232:10
	underlying 11:9 234:25		users 32:15 35:20,21
true 133:22 155:5,6		undertake 75:23	42:15
202:3 260:7	underpinning 186:3	138:18 139:6	uses 221:4
truth 248:11 260:5,5 260:5	186:4,8 understand 18:14	193:18 249:24	V
		undertaken 26:21	v 124:24
try 30:6 33:17 53:3 197:4	20:5 33:11 35:4	28:19 29:2,22,24	vacuum 161:22
	36:15,18,25 38:12	137:21 139:5,11 207:7 257:20	vague 19:23 20:20
trying 32:4,5 50:24	39:16,18,24 41:12		24:8 34:6 43:23
51:14 52:1,14,18,24	41:21 47:5 48:8,11	undertaking 207:23	56:12 67:14,24
53:13 99:13 113:15	50:24 51:5,7,10,13	249:11,21 253:11	72:16 80:10 81:23
157:5,11 186:18	52:23 62:14 67:16	255:20	86:10 91:4 98:25
201:1 226:7 tsc 1:4 7:6	69:18 78:11,24	undertook 30:8	100:2 104:5 106:8
	79:10 82:7 84:23	251:6	107:7 116:12 127:6
turn 6:11 89:4	85:13,22 87:2,13	undeveloped 247:16	128:4,22 134:20
216:24 217:7	88:20 129:10	unfair 222:22	135:19 138:6,14
turning 187:17	130:11 133:2,16	unique 31:13	140:8 144:7 147:23
219:5 225:14	142:16 143:12	unit 110:2,9 210:14	152:15 162:16
236:14	144:5,16 145:9	210:21 258:23	163:13 174:18
turns 78:10 146:6,9	148:5 149:13	united 1:1 115:15	176:12 178:24
178:18	150:10,13,14 152:4	115:25 116:8,16,24	179:15 181:7
two 32:21 34:1	169:1 172:19 173:1	117:7 124:11,19	192:11 217:18
69:22 72:2 93:3	177:4 183:18	unknowing 76:17	220:3,17 221:19
96:24,25 97:18,19	184:22 186:17,18	unlawful 60:22	227:9,19 228:11,20
97:20 101:21	188:7 200:22,25	unrelated 108:14	229:10 230:3 232:4
119:23 193:6	201:1 205:7 206:3	unrestricted 141:2	238:18 240:19
type 47:24 87:13	207:3 209:9 211:11	141:10,15 241:9	241:2 246:25 248:2
types 8:18 26:14	215:17 217:11	253:6,18,23	252:10 256:2
43:22 72:24 82:22	223:17 225:15	untapped 247:16	valid 12:7 77:25
83:6 87:7,9,9,13	226:4,10,20 243:13	unwilling 222:17,25	validate 185:9,10
109:11 223:22	249:19 255:23	updated 89:18	validity 120:6
typical 89:14	256:4,11,16 257:10	updating 89:10,24	valuation 9:1,21
typically 45:23 83:5	understanding 12:13 14:1 15:24	90:21 91:16 92:6	10:12,15
101:7 198:8 215:22		upside 20:11 21:3	value 9:20 10:3,8,10
u	43:1,2,4 45:5	22:13,18	19:7,8,10 132:8,18
uh 123:1	101:24 129:14 133:6,7 135:17	use 19:2,13,17 31:8 71:10,13 146:11	189:9 195:21
ultimately 40:15	146:11 147:6,7,8	149:5 176:9 192:24	198:17 212:6 213:8
167:23	148:11 165:11	204:19 215:14	219:9,20 220:2
unable 252:1	170:11 180:22	216:1 222:18	221:15 222:2,14
unauthorized	185:15,22,23 186:1	223:12,23 235:16	223:8,19,21 224:10
225:23 226:5,21	188:19 198:16	238:22	
	100.17 170.10	230.22	
			Dog 22

[valued - witness]

valued 9:6	143:3 144:10	51:15 52:16 54:11	65:4,19,23 66:4,17
variety 48:15 58:8	148:20 149:3	54:15,18 55:5,9	67:15,25 69:17
131:2 172:8	167:25 228:3	56:19 58:15,17 60:2	70:13 72:17 73:3,18
various 29:16 45:6	230:17 231:3	60:5 61:7,8 74:2,8	74:7 76:8 77:4
62:21 86:5,23 88:15	viewed 111:3,9	79:7,21,25 80:5	78:21 79:6,20 80:4
96:1,22 98:12 99:13	viewing 215:6	109:21 176:9,19	80:11,20 81:9,15,24
99:15 107:17 112:9	views 111:13 112:5	180:1 181:9 221:9	82:21 83:9 84:1,3
112:15 132:9	112:14,16,17,22,24	ways 48:16 61:9	85:1,18 86:11 87:5
153:21 179:12	113:9,20,25 114:6	we've 58:20	87:12 91:5 92:1
180:2,8 248:5,8,11	114:10,21 115:6	web 40:1 72:5 90:11	93:9 94:1 97:6 98:9
veeck 124:24 125:1	117:15,25 118:1	120:2 122:1 136:15	99:1,21 100:3
125:18 126:23	162:3,9,14	137:15 164:15,22	102:12,25 103:11
127:15 129:15,24	violate 148:2	179:13 180:3,9	104:6,19 105:19
130:8,16	violated 148:7,21	185:7 197:19	106:16 107:15
vendor 229:18	violations 147:22	205:16 206:7	108:19 109:5,16
verification 23:23	virtually 106:22	211:23	110:25 113:5
196:16	109:16	went 92:16 101:20	114:24 116:20
verified 179:9,11	visit 90:10 258:5	west 3:2,7 7:13	117:12 118:11,13
205:4	volume 176:23	whichever 169:19	120:11 122:9,14
verify 23:17 24:1	volumes 177:9,21	whispering 6:9	124:21 125:13
113:23 195:7,18	volunteer 90:16,25	wide 31:14 42:13,20	126:12 127:7 128:5
200:4 205:1 248:10	91:3,9,12 92:6	215:25 216:3	128:25 129:19
verifying 179:17	111:19	widely 257:14	130:2,18 132:12,22
veritext 1:18 6:19	volunteer's 92:12	wider 32:1	133:14 134:10,21
6:23 8:4	volunteers 132:9,19	willing 14:23 59:20	135:20 136:18,23
versa 108:1	vs 1:14	222:25 223:11	137:8,20 138:7,15
version 164:14	W	wish 229:5	139:3,14 143:17
165:18 254:16	wait 9:10 122:11	wishing 136:10	144:9 145:9,24
255:17	want 9:11,15 13:24	withdrawing 16:8	147:2,13,25 148:18
versions 85:23 86:4	14:17,22,24 16:18	witness 4:3 7:7 8:5	148:25 149:8,19
86:6 241:9 255:16	30:16 35:4 41:11	9:19 10:7 11:8 14:5	150:9,24 151:9
versus 7:2 145:18	46:3 48:18 49:7	14:15 15:23 17:14	152:14,16 156:17
154:24	53:17 55:4 59:14	19:24 20:22 21:15	157:17 158:3 159:4
vi 68:8,20	64:16,16 85:2 133:5	22:7 24:10,18 25:14	159:21 160:13
vice 108:1	151:25 152:2,19,21	26:18 28:17 29:9,13	161:9,18 162:7,17
videographer 3:15	162:24 170:14	33:15,24 34:7,19,24	163:14 164:4 165:1
6:5 8:2 61:16,22	210:10 215:5	35:15 36:3,14 37:14	166:10,18 167:8,22
109:25 110:7	217:10 221:21	37:19 38:9,18 39:3	168:15,25 169:15
111:21 152:22	wanted 179:3	39:22 41:1,18 43:25	169:22 170:20
153:3 210:12,19	wants 59:20	44:14 45:10 47:4	172:1 174:16,20
258:21	washington 1:20	48:14 51:2,17 52:3	176:14 177:1,12
videotaped 1:17	2:15 6:24	53:2,17 54:11 56:13	178:1,25 179:16
view 3:9 74:14	way 31:19 46:17,22	57:1,7,12,19 58:1	180:23 181:8 182:7
110:18,22 117:6	48:20,24 50:19	58:17 59:3 60:9,13	182:16 183:1,11,21
136:11 139:15		61:15 62:5 63:20	186:12 190:13,24

[witness - york]

191:6,14 192:5,12	93:5,11 107:25
193:2,14 194:10,20	138:13 173:9
196:3 197:3,24	185:19 202:14
198:22 199:2,8	240:3
203:9 204:23	worked 28:2 106:25
205:14 206:2,16	151:10 185:21
207:2,16 208:19	190:21 191:11,21
209:3 212:21	working 12:7 17:15
213:18 216:12,21	83:14 147:25
217:2,19 218:10,23	151:11 201:11
219:15 220:4,18,25	202:14
221:8,21 222:6	world 50:14 214:23
227:10 228:13,22	write 100:19 196:15
229:11 230:4,24	writing 84:8 104:1
231:16 232:5,20	104:11 106:2 108:7
233:6,19 234:6,16	writings 92:23 93:6
235:14 236:6,12	93:13 162:20
237:1,7,13,19,25	written 20:25 21:1
238:20 239:23	22:21 24:11,14,25
240:8,20 241:3	25:1 43:6 93:1
242:14,24 243:23	104:17 108:10
244:6,14 247:1,6	135:20 154:8
248:3,15 250:18	wrong 32:25 90:13
251:12,18,25	103:24 120:3,19
252:11,19 254:20	127:9 135:10 140:10 222:24
255:9,19 256:3,20 257:19 258:20	wrote 100:14 138:2
	141:25
259:1 260:8,10 witnesses 4:1	141.23
witnesses 4:1 word 24:6 42:3	y
107:19,22 150:14	y 244:25
235:10 244:22	yeah 22:5 250:22
245:1	year 89:8 164:13
words 36:15 53:3	165:17 170:4,5,10
68:11 73:20 74:1	170:13,15 171:7,13
82:22 83:3,7,19	171:15 172:11
96:19 104:11	208:8,9
142:24 143:19	years 25:18,20
150:25 184:15	27:11 46:2 89:13,19
200:18 256:24	89:20 130:23
work 8:18 9:2,4,5	131:10 133:12,19
11:10 12:19,23	133:23 134:8,11,15
25:19 26:15 27:3,5	175:13 208:2,4
28:7,10 31:17 50:3	york 46:2
1	
50:3 80:24 81:2,18	

Federal Rules of Civil Procedure Rule 30

- (e) Review By the Witness; Changes.
- (1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:
- (A) to review the transcript or recording; and
- (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.
- (2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1,

2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES

OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

Case 1:13-cv-01215-TSC Document 204-46 Filed 11/13/19 Page 1 of 114

EXHIBIT 40

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1
                 UNITED STATES DISTRICT COURT
                 FOR THE DISTRICT OF COLUMBIA
2
       AMERICAN SOCIETY FOR
                                 : Case No.
       TESTING AND MATERIALS d/b/a: 1:13-cv-01215-PSC-DAR
3
       ASTM INTERNATIONAL;
4
       NATIONAL FIRE PROTECTION
5
       ASSOCIATION, INC.; and
6
       AMERICAN SOCIETY OF
       HEATING, REFRIGERATING,
 7
       AND AIR-CONDITIONING
       ENGINEERS, INC.
               Plaintiffs,
 8
 9
              VS.
10
       PUBLIC.RESOURCE.ORG, INC., :
              Defendant.
11
       AND RELATED COUNTERCLAIMS. :
12
13
                      Videotaped 30(b)(6) deposition
14
       of American Society for Testing & Materials,
15
       through DANIEL SMITH, held in the offices of
16
17
       Veritext Philadelphia, 1801 Market Street,
       Ten Penn Center, Suite 1800, Philadelphia,
18
       Pennsylvania 19103, commencing at 10:43 a.m.,
19
       July 24, 2015, before Linda Rossi Rios, a
2.0
       Federally Approved RPR, CCR and Notary
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       Public.
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       PAGES 1 - 292
                                                      Page 1
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Case 1:13-cv-01215-TSC Document 204-46 Filed 11/13/19 Page 3 of 114

On behalf of the Plaintiff MONCRA'N LEWIS & MONCRA'N	1 ADDEADANCEC.	1 Evhibit 1201 Contiferator of Comminds 122	
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On behalf of the Defendant 9 Public Recover Org. Inc 1 Public Recover Org. Inc Public R			
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Eshibit 130 Ambeeship applications, 209			
A LE SO PRESENT: 17		Exhibit 1300 Membership application, 209	
THOMAS B O'BRIEN, JR, Vice President 19			
THOMAS B OFBRIEN, IR, Vice President 9	17		
CARL MALAMUD, Public Resource Org		19 ASTM069058, ASTM080176,	
ASTM06635 Stability Compilation of documents 29 Exhibit 302 Compilation of documents 29 Stability 302 Compilation 302 Compil			
Exhibit 1302 Compilation of documents, 229 22	, ,		
22			
ASTMOG721, ASTMOG7813, AST			
23			
23 24 25 26 27 28 28 29 29 29 20 20 20 21 21 21 21 21 22 22 24 25 25 26 26 27 28 27 28 28 29 29 20 20 21 20 21 21 21 21 22 22 22 22 22 22 22 22 22			
ASTMOSI145 Page 2 Page 2 Page 3 Page 4 Page 5 Page 6 Page 6 Page 7 Page 7 Page 7 Page 8 Page 8 Page 8 Page 9 Page 8 Page 9			
To N D E X		ASTM081145	
1		25	D 4
WITNESS	rage 2		Page 4
WITNESS			
DANIEL SMITH			
By Mr Becker 10 5 5 Exhibit 1305 2011 Membership Renewal 238 1805 2011 Membership Renewal 248 M	3		
By Mr Becker 10 5 Exhibit 330 2011 Membership Renewal 238 1 1 1 1 1 1 1 1 1			
By Mr Fee 288			
Family F			
Facility Facility			
Sample S	7		
MARKED DESCRIPTION PAGE Exhibit 1307 E-mail chain. 243 Exhibit 1284 ASTM International 34 10 Participation and Acknowledgement Form, 11 ASTM003315 11 ASTM103273 12 Exhibit 1285 Intellectual Property 60 Policy of ASTTM 1309 ASTM Collaboration Area, 253 12 Exhibit 1285 Intellectual Property 60 ASTM103272 13 13 ASTM103277 - ASTM103284 14 Application, ASTM103277 - ASTM103290 15 Exhibit 1286 Intellectual Property 61 ASTM103290 15 ASTM103290 15 Exhibit 1281 Intellectual Property 65 ASTM103290 16 ASTM003345 - ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 16 ASTM103290 17 Exhibit 1311 Record Retention Policy, 257 16 ASTM103290 17 Exhibit 1311 International ("Policy"), 18 ASTM10344 18 ASTM10345 - ASTM10344 19 Exhibit 1288 Intellectual Property 68 Policy of ASTM 18 ASTM003445 - ASTM00345 -			
Exhibit 1284 ASTM International 34 10 Exhibit 1284 ASTM International 34 34 34 34 34 34 34 3			
10	9		
Acknowledgement Form,			
12 Exhibit 1285 Intellectual Property 60 Policy of ASTM, 13 ASTM103277 - ASTM103284 Exhibit 1286 Intellectual Property 64 Application, ASTM103276 ASTM003276 ASTM003276 ASTM003276 ASTM003502 ASTM003502 ASTM003502 ASTM003502 ASTM003502 ASTM003502 ASTM003502 ASTM003502 ASTM003502 ASTM003476 ASTM003445 ASTM003445 ASTM003445 ASTM003445 ASTM003445 ASTM003445 ASTM003445 ASTM003447 ASTM003447 ASTM003447 ASTM003447 ASTM003437 - ASTM003441 ASTM003401 - ASTM003801 - ASTM001801 ASTM003801 - ASTM003801 - ASTM003801 - ASTM003801 - ASTM003801 ASTM003801 - AS	Acknowledgement Form,	11 ASTM003314 & ASTM003315	
Policy of ASTM, 13			
Exhibit 1286 Intellectual Property 64 14 Application, ASTM103276 15 International ("Policy"), ASTM103285 - ASTM103290 16 Exhibit 1287 Intellectual Property 65 17 Policy of ASTM International ("Policy"), International ("Polic			
Policy of ASTM	13 ASTM103277 - ASTM103284	Exhibit 1310 ASTM Membership 255	
15			
Exhibit 1311 Record Retention Policy, 257 16			
Exhibit 1287 Intellectual Property 65 17 Exhibit 1312 11/21/08 E-mail with 260 260	ASTM103285 - ASTM103290	Exhibit 1311 Record Retention Policy, 257	
Policy of ASTM			
International ("Policy"), 18	17 Policy of ASTM		
19 Exhibit 1288 Intellectual Property 68 19 Exhibit 1313 Web site screensnots, 261			
Policy of ASTM			
Exhibit 1314 Screenshots, 263 21	Policy of ASTM		
21			
Exhibit 1289 Defendant 88 22 Exhibit 1315 ASTM Member Application 264		21 ASTM001801 - ASTM001813	
Inc 's Amended Notice of 23	Exhibit 1289 Defendant 88		
23 Rule 30(b)(6) Deposition of American Society for 24 Testing and Materials 25 Exhibit 1290 Exhibit A from Complaint 121 ASTM062194, ASTM062195, 24 ASTM062198 & ASTM062199 25 Exhibit 1316 Regulations Governing 266 ASTM Technical Committees			
24 Testing and Materials 25 Exhibit 1316 Regulations Governing 266 25 Exhibit 1290 Exhibit A from Complaint 121 ASTM Technical Committees		ASTM062194, ASTM062195,	
25 Exhibit 1290 Exhibit A from Complaint 121 ASTM Technical Committees			
•			
	<u> </u>		Page 5
	8 -		

1	1	
Exhibit 1317 Participating Membership 277 2 Applications,	2	VIDEOGRAPHER: We are now on is
ASTM064686 - ASTM064692	3	record.
Exhibit 1318 E-mail chain with 277	4	Please note that the microphones
Exhibit 1318 E-mail chain with 277 4 attachment,	5	are sensitive and may pick up
ASTM087493 - ASTM087497	6	whispering and private conversations.
5 Exhibit 1319 2011 ASTM International 278	7	Please turn off all cell phones or
6 Committee Membership	8	place them away from the microphones
Application,	9	as they can interfere with the
7 ASTM061183 8 Exhibit 1320 How To Standards Writing 279	10	deposition audio. Recording will
101 New Standards	11	continue until all parties agree to go
9 Exhibit 1321 How Standards are 280	12	off the record.
10 Developed article	13	My name is Ryan Armstrong
11 Exhibit 1322 8/13/08 E-mail, 281	14	representing Veritext Legal Solutions.
ASTM073852	15	The date today is July 24, 2015,
Exhibit 1323 Bates Numbers of 284	16	and the time is approximately 10:43
13 Assignment Documents 14	17	a.m.
15	18	This deposition is being held at
16	19	Veritext located at 1801 Market
17 18	20	Street, Suite 1800, Philadelphia,
19	21	Pennsylvania, and is being taken by
20	22	counsel for the defense.
21 22	23	The caption of this case is
23	24	American Society for Testing and
24 25	25	Materials International, et al. V
Page		Page 8
1 DEPOSITION SUPPORT INDEX	1	Dublic Description One Incompensed
2	2	Public.Resource.Org, Incorporated. This case is being held in the
3 Direction to Witness Not To Answer	3	United States District Court for the
4 Page Line Page Line	4	District of Columbia, Case Number
5 161 21 286 13	5	1:13-cv-01215-EGS. The name of the
241 7 286 20		witness is Dan Smith.
6 242 12 287 1	6	
243 5 287 10	7	At this time the attorneys
7 286 2 287 22	8	present in the room and everyone
8	9	attending remotely will identify
9 Request For Production of Documents	10	themselves and the parties they
10 Page Line Page Line	11	represent. Our court reporter Linda
11 (None)	12	Rossi, representing Veritext Legal
12	13	Solutions, will swear in the witness
13 Stipulations	14	and we can proceed.
14 Page Line 15 10 3	15	MR. BECKER: This is Matthew
16	16	Becker and Andrew Bridges of Fenwick &
17 Questions Marked	17	West for the defendant
18 Page Line Page Line	18	Public.Resource.Org.
19 (None)	19	MR. FEE: Kevin Fee from Morgan
20	20	Lewis on behalf of ASTM.
21	21	MR. BRIDGES: We also have
22	22	somebody there
23	23	MR. O'BRIEN: Tom O'Brien from
24	24	ASTM.
25	25	MR. BRIDGES: And then on the
Page	/	Page 9

1	phone is Carl Malamud of	1	A. Yes.
2	Public.Resource.Org.	2	Q. If at any point you do not
3	MR. FEE: I'm sorry. I did hear	3	understand a question, will you, please, let
4	the caption had EGS at the end.	4	me know and I'll try to clarify the question?
5	That's the wrong caption now. It's	5	A. Yes.
6	re-assigned ending with PSC-DAR.	6	Q. And if you answer my question,
7	Before we get started, I want to	7	I'll assume that you understood. Does that
8	reserve reading and signing for the	8	make sense?
9	witness.	9	A. Yes.
10		10	VIDEOGRAPHER: The time is now
11	DANIEL SMITH, after having been	11	10:46. We're going off the video
12	duly sworn, was examined and testified	12	record.
13	as follows:	13	record.
	as follows.	14	(A managa yang talan)
14	EVAMINIATIONI		(A recess was taken.)
15	EXAMINATION	15	
16		16	VIDEOGRAPHER: The time is now
17	BY MR. BECKER:	17	10:46. We're back on the video
18	Q. My name is Matthew Becker of	18	record.
19	Fenwick & West for the defendant	19	BY MR. BECKER:
20	Public.Resource.Org, and I'll be taking your	20	Q. Mr. Smith, if you ever need a
21	deposition today.	21	break for any reason, please let me know and
22	Could you, please, state your	22	we'll take a break as long as I'm not in the
23	full name for the record?	23	middle of a line of questioning. If I am in
24	A. Daniel Gerald Smith.	24	the middle of a line of questioning, then
25	Q. Mr. Smith, have you ever had	25	I'll ask that we can finish that line of
	Page 10		Page 12
1	your deposition taken before?	1	questioning and then you can take a break.
1 2	your deposition taken before? A. No.	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	questioning and then you can take a break. Does that sound good?
2	A. No.	2	Does that sound good?
2 3	A. No.Q. Mr. Smith, have you ever been	2 3	Does that sound good? A. Yes.
2 3 4	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before?	2 3 4	Does that sound good? A. Yes. MR. FEE: That's fine. We'll
2 3 4 5	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before? A. No.	2 3 4 5	Does that sound good? A. Yes. MR. FEE: That's fine. We'll let you at least finish your question
2 3 4 5 6	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before? A. No. MR. FEE: Objection. Vague.	2 3 4 5 6	Does that sound good? A. Yes. MR. FEE: That's fine. We'll let you at least finish your question and get an answer.
2 3 4 5 6 7	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before? A. No. MR. FEE: Objection. Vague. Remember give me a second to object	2 3 4 5 6 7	Does that sound good? A. Yes. MR. FEE: That's fine. We'll let you at least finish your question and get an answer. BY MR. BECKER:
2 3 4 5 6 7 8	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before? A. No. MR. FEE: Objection. Vague. Remember give me a second to object first.	2 3 4 5 6 7 8	Does that sound good? A. Yes. MR. FEE: That's fine. We'll let you at least finish your question and get an answer. BY MR. BECKER: Q. And if you come to realize at
2 3 4 5 6 7 8 9	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before? A. No. MR. FEE: Objection. Vague. Remember give me a second to object first. BY MR. BECKER:	2 3 4 5 6 7 8 9	Does that sound good? A. Yes. MR. FEE: That's fine. We'll let you at least finish your question and get an answer. BY MR. BECKER: Q. And if you come to realize at any point that one of your answers is not
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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	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before? A. No. MR. FEE: Objection. Vague. Remember give me a second to object first. BY MR. BECKER: Q. Mr. Smith, let's just go over the rules so that you're familiar with them. In a deposition I'll be asking the questions and you'll be providing answers to those questions. Do you understand that you're giving testimony under oath today as though today as you would in a court of law? A. Yes. Q. And do you understand that the court reporter is taking down everything that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Does that sound good? A. Yes. MR. FEE: That's fine. We'll let you at least finish your question and get an answer. BY MR. BECKER: Q. And if you come to realize at any point that one of your answers is not completely correct, will you, please, let me know and we can address it? A. Yes. Q. And after the deposition, the transcript is prepared, you'll have a chance to review it and make changes to it. However, if you make any changes, I will be able to comment on those changes. Do you understand? A. Yes. Q. Mr. Smith, is there any
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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	A. No. Q. Mr. Smith, have you ever been involved in any lawsuits before? A. No. MR. FEE: Objection. Vague. Remember give me a second to object first. BY MR. BECKER: Q. Mr. Smith, let's just go over the rules so that you're familiar with them. In a deposition I'll be asking the questions and you'll be providing answers to those questions. Do you understand that you're giving testimony under oath today as though today as you would in a court of law? A. Yes. Q. And do you understand that the court reporter is taking down everything that you say? A. Yes. Q. And that means that we need	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Does that sound good? A. Yes. MR. FEE: That's fine. We'll let you at least finish your question and get an answer. BY MR. BECKER: Q. And if you come to realize at any point that one of your answers is not completely correct, will you, please, let me know and we can address it? A. Yes. Q. And after the deposition, the transcript is prepared, you'll have a chance to review it and make changes to it. However, if you make any changes, I will be able to comment on those changes. Do you understand? A. Yes. Q. Mr. Smith, is there any medication or other reason that might prevent you from giving your best testimony today? A. No.
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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	THE WITNESS: I'm the vice	11	BY MR. BECKER:
12	president of technical committee	12	Q. How does a technical committee
13	operations.	13	go about developing standards as you say?
14	BY MR. BECKER:	14	A. They use our consensus process.
15	Q. And what is technical committee	15	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	Q. 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?
1	do you mean by that?	1	one main committee?
2	A. Documents.	2	A. A main committee is a technical
2 3	A. Documents.Q. Any documents?	2 3	A. A main committee is a technical committee.
2 3 4	A. Documents.Q. Any documents?A. Specifications, test methods,	2 3 4	A. A main committee is a technical committee. Q. And are there numerous
2 3 4 5	 A. Documents. Q. Any documents? A. Specifications, test methods, practices, guides, classifications and 	2 3 4 5	A. A main committee is a technical committee. Q. And are there numerous subcommittees?
2 3 4 5 6	A. Documents. Q. Any documents? A. Specifications, test methods, practices, guides, classifications and terminology.	2 3 4 5 6	A. A main committee is a technical committee. Q. And are there numerous subcommittees? A. Yes.
2 3 4 5 6 7	A. Documents. Q. Any documents? A. Specifications, test methods, practices, guides, classifications and terminology. Q. Does the term "standards" have	2 3 4 5 6 7	A. A main committee is a technical committee. Q. And are there numerous subcommittees? A. Yes. Q. And how many subcommittees on
2 3 4 5 6 7 8	A. Documents. Q. Any documents? A. Specifications, test methods, practices, guides, classifications and terminology. Q. Does the term "standards" have any specific meaning to you?	2 3 4 5 6 7 8	A. A main committee is a technical committee. Q. And are there numerous subcommittees? A. Yes. Q. And how many subcommittees on average?
2 3 4 5 6 7 8 9	A. Documents. Q. Any documents? A. Specifications, test methods, practices, guides, classifications and terminology. Q. Does the term "standards" have any specific meaning to you? MR. FEE: Objection. Vague.	2 3 4 5 6 7 8 9	A. A main committee is a technical committee. Q. And are there numerous subcommittees? A. Yes. Q. And how many subcommittees on average? A. It varies.
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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	A. Documents. Q. Any documents? A. Specifications, test methods, practices, guides, classifications and terminology. Q. Does the term "standards" have any specific meaning to you? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure what you mean by that. BY MR. BECKER: Q. Can you define what a standard is? 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. A main committee is a technical committee. Q. And are there numerous subcommittees? A. Yes. Q. And how many subcommittees on average? A. It varies. Q. Could you give me a range by which it might vary? A. The best of my knowledge, maybe from 3 to 40, 50. Q. When you say there is a 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

1	Q. Is that agree or don't agree on	1	average?
2	the content of a draft standard or the	2	A. It varies, but it could be
3	finalized standard?	3	anywhere from 3 to 30 approximately.
4	A. A draft standard.	4	Q. And you said that the task
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	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?	15	A. It's formed by a group of
16	MR. FEE: Objection. Vague.	16	volunteers who want to develop a standard or
17	THE WITNESS: The task group is	17	a revision to a standard.
18	typically made up of volunteers who	18	Q. Do the members and excuse
19	wish to serve on the task group.	19	me.
20	BY MR. BECKER:	20	Do the ASTM members and
21	Q. Are is everyone in a task	21	nonmembers of ASTM who compose task groups
22	group an ASTM member?	22	generally have the same or similar interests?
23	A. No, not necessarily.	23	MR. FEE: Objection. Calls for
24	Q. In what situations would	24	speculation.
25	individuals who are not members of ASTM	25	THE WITNESS: I don't know. I
	Page 18		Page 20
1	compose members of the task group?	1	would think they would have a variety
2	MR. FEE: Objection to form.	2	of different interests.
3	THE WITNESS: I'm not sure what	3	BY MR. BECKER:
4	you mean by that. Could you repeat	4	Q. Are there any characteristics
5	that or say that differently?	5	other than ASTM membership that would
6	BY MR. BECKER:	6	distinguish ASTM members who are members of
7	Q. Let's see. Are let me back	7	task groups and those members of task groups
8	up just a moment.	8	who are not ASTM members?
9	Are any members of the task	9	MR. FEE: Objection to form.
10	group also members of ASTM?	10	THE WITNESS: The members pay
11	A. Yes.	11	the \$75 membership fee. Nonmembers
12	Q. But some members of the task	12	don't pay the membership. That's the
13	groups are not members of ASTM?	13	only thing I can think of.
14	A. Could be. It's mostly members.	14	BY MR. BECKER:
15	Q. And why would individuals who	15	Q. How does a task group go about
16	are not members of ASTM be members of the	16	developing the initial draft of a standard?
17	task group?	17	A. They could do it in a variety
18	MR. FEE: Objection. Calls for	18	of ways.
19	speculation.	19	Q. Could you give me some examples?
20	THE WITNESS: From my	20	A. They could do it through the
21	experience, because they're interested	21	use of our collaboration areas, an online
22	in the standard that's being	22	space that allows them to develop the draft.
23	developed.	23	Q. And in what other ways?
24	BY MR. BECKER:	24	A. They could do it through course
25	Q. How large are task groups on	25	of e-mail.
	Page 19		Page 21
		1	

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.
	The state of the s	17	BY MR. BECKER:
17	use our Web tools or our virtual	1	
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	task groups?	1	membership applications that required
1 2	task groups? A. Guessing, it was sometime	1 2	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 sometime probably 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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2 3 4 5 6	A. Guessing, it was sometime probably in the early 2000s roughly. Q. How long have you been at ASTM for? A. About 23 years.	2 3 4 5 6	members to assign all rights to ASTM. BY MR. BECKER: Q. So the membership, the forms on the membership applications for ASTM that asked individuals to assign all rights to
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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	
12	A. That's correct.	12	MR. FEE: Objection. Vague. THE WITNESS: Yes.
13		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.
	Page 26		Page 28
1	to create the online collaboration area that	1	O So that would be approximately
1 2	to create the online collaboration area that	1 2	Q. So that would be approximately
2	you had described earlier as being a location	2	2003, you're saying?
2 3	you had described earlier as being a location online provided by ASTM where members of a	2 3	2003, you're saying? A. Yes.
2 3 4	you had described earlier as being a location online provided by ASTM where members of a task group could go to help develop the draft	2 3 4	2003, you're saying? A. Yes. Q. Were individuals who were
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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	you had described earlier as being a location online provided by ASTM where members of a task group could go to help develop the draft for a standard? A. Yes. Q. And so the collaboration form was only introduced after the collaboration areas had been provided by ASTM to its members? A. Yes. Q. And when, again, did you say that that was? A. I think it was about 2003. 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 just described a moment ago, do they fill out renewal forms for ASTM? A. No.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Yes. Q. Were individuals who were members of task groups but not themselves members of ASTM required to fill out any forms in order to participate in the drafting of an ASTM standard prior to 2003? A. Not to my knowledge. Q. Is there any means by which ASTM claims that individuals who are who were members of task groups but not themselves members of ASTM have assigned any copyrights that they might have in the drafts of the standards that were created and 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 that subject. If you have an independent knowledge that is responsive, you can answer that.

1	BY MR. BECKER:	1	interest to ASTM.
2	Q. Today when individuals who are	2	Q. And who is given this form?
3	members of ASTM task groups but not members	3	A. A task group or an individual
4	of ASTM fill out collaboration forms, does	4	who might be bringing something forward to
5	ASTM believe that by doing so those	5	contribute to ASTM.
6	individuals are assigning their copyright	6	Q. Were all members of ASTM task
7	interest to ASTM in the draft of the standard	7	groups given this form that you're
8	that they have created?	8	describing?
9	MR. FEE: Objection. Calls for	9	A. No.
10	a legal conclusion. Again, I instruct	10	Q. What members of ASTM task
11	you not to disclose your	11	groups were given this form that you're
12	communications with counsel. But if	12	assigning?
13	you have an understanding otherwise,	13	A. If an individual is bringing a
14	you can answer.	14	significant like a document to ASTM that
15	THE WITNESS: I believe it does.	15	they wanted to convert into an ASTM standard.
16	BY MR. BECKER:	16	Q. When you say "a document," what
17	Q. Does ASTM believe that it does?	17	do you mean by that?
18	MR. FEE: Same objection and	18	A. A piece of paper.
19	instruction.	19	Q. In what instances would
20	THE WITNESS: I would think so,	20	individuals have brought documents such as
21	yes.	21	you're describing to be converted into an
22	BY MR. BECKER:	22	ASTM standard?
23	Q. What are all the forms that	23	A. If an individual wanted to take
24	nonmembers may provide to ASTM in the course	24	a document that they had and make it into an
25	of their activities with the technical	25	ASTM standard, they brought it forward to
	Page 30		Page 32
1	committees?	1	ACTM
1	committees:	1	ASTM.
2	MR. FEE: Objection to form.	2	Q. Could you give me some examples
2	MR. FEE: Objection to form.	2	Q. Could you give me some examples
2 3	MR. FEE: Objection to form. Vague as to time. You may answer.	2 3	Q. Could you give me some examples of why somebody might do that?
2 3 4	MR. FEE: Objection to form. Vague as to time. You may answer. THE WITNESS: The collaboration	2 3 4	Q. Could you give me some examples of why somebody might do that? A. Because they want to make it
2 3 4 5	MR. FEE: Objection to form. Vague as to time. You may answer. THE WITNESS: The collaboration form. No other forms come to mind	2 3 4 5	Q. Could you give me some examples of why somebody might do that? A. Because they want to make it into an ASTM standard.
2 3 4 5 6	MR. FEE: Objection to form. Vague as to time. You may answer. THE WITNESS: The collaboration form. No other forms come to mind that a nonmember would submit to ASTM,	2 3 4 5 6	Q. Could you give me some examples of why somebody might do that? A. Because they want to make it into an ASTM standard. Q. Would this be individuals or
2 3 4 5 6 7	MR. FEE: Objection to form. Vague as to time. You may answer. THE WITNESS: The collaboration form. No other forms come to mind that a nonmember would submit to ASTM, but there could be some.	2 3 4 5 6 7	Q. Could you give me some examples of why somebody might do that? A. Because they want to make it into an ASTM standard. Q. Would this be individuals or companies that had previously drafted
2 3 4 5 6 7 8	MR. FEE: Objection to form. Vague as to time. You may answer. THE WITNESS: The collaboration form. No other forms come to mind that a nonmember would submit to ASTM, but there could be some. BY MR. BECKER:	2 3 4 5 6 7 8	Q. Could you give me some examples of why somebody might do that? A. Because they want to make it into an ASTM standard. Q. Would this be individuals or companies that had previously drafted standards that they would then like to see
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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	MR. FEE: Objection to form. Vague as to time. You may answer. THE WITNESS: The collaboration form. No other forms come to mind that a nonmember would submit to ASTM, but there could be some. BY MR. BECKER: Q. Are there any other means by which nonmembers of ASTM who are themselves members of an ASTM task group may assign their copyright interest to ASTM other than the collaboration form? MR. FEE: Objection. Calls for a legal conclusion. I instruct you not to disclose your communications with counsel. If you have any other responsive information, you can provide that. THE WITNESS: We had a form that we did use for assigning rights to ASTM. BY MR. BECKER: Q. What form is this?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. Could you give me some examples of why somebody might do that? A. Because they want to make it into an ASTM standard. Q. Would this be individuals or companies that had previously drafted standards that they would then like to see turned into ASTM standards? MR. FEE: Objection. Calls for speculation. THE WITNESS: Could be. BY MR. BECKER: Q. What years from between which years were was this form that you're describing used? A. I think it was created in approximately 2002 or somewhere in that area. Q. Is this document still used? A. I'm not aware of any recent use, but it may have. Q. Do you know if this document was produced to Public.Resource? MR. FEE: Objection. Calls for

	1	THE WITNESS: I don't know.	1	A. Yes.
	2	MR. BECKER: Counsel, do you	2	Q. Could you tell me what this
	3	know if this document was produced to	3	document is?
	4	Public.Resource?	4	A. I believe it's a document that
	5	MR. FEE: I'm not here to answer	5	we would give an individual who is interested
	6	your questions. You might want to	6	in bringing forward a document to have it
	7	look at the documents that we sent you	7	become an ASTM standard.
	8	today or yesterday. I think that	8	Q. And is this document the
	9	would be what he's talking about.	9	document that you had described just earlier
	10	THE WITNESS: It was in the	10	being a form for assigning rights to ASTM?
	11	packet.	11	A. Yes.
- 1	12	BY MR. BECKER:	12	Q. And you said that you believe
	13	Q. Do you know what the title of	13	this document was first used in 2002. Is
- 1	14	the document that you're describing is?	14	that correct?
	15	A. No, I'm not sure. It's just	15	A. I believe that's about right.
	16	one page.	16	Q. Is this form required for all
- 1	17	Q. Is it the ASTM International	17	members of a task group to fill out?
	18	Participation and Acknowledgement Form?	18	MR. FEE: Objection. Vague.
	19	A. I'm not sure. If I could see	19	THE WITNESS: No, not to my
	20	it, I could tell you.	20	knowledge, it's not.
	21	ii, i could tell you.	21	BY MR. BECKER:
	22	(Exhibit 1284, ASTM	22	Q. Is this form required for all
	23	International Participation and	23	members of a task group who are contributing
- 1	24	Acknowledgement Form, Bates	24	to the drafting of a standard under ASTM?
	25	ASTM103273, was marked for	25	MR. FEE: Objection. Are you
1	20		23	
		Page 34		Page 36
-	1		1	
-	1 2	Page 34 identification.)	1 2	done? Objection to the extent it
-	2	identification.)	2	done? Objection to the extent it calls for a legal conclusion. Also
	2	identification.) BY MR. BECKER:	2 3	done? Objection to the extent it calls for a legal conclusion. Also vague.
	2 3 4	identification.)	2 3 4	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my
	2	identification.) BY MR. BECKER: Q. I'm handing you what's been	2 3	done? Objection to the extent it calls for a legal conclusion. Also vague.
	2 3 4 5	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes.	2 3 4 5	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER:
	2 3 4 5 6 7	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by	2 3 4 5 6	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM
	2 3 4 5 6	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes.	2 3 4 5 6 7	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form?
	2 3 4 5 6 7 8	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m.,	2 3 4 5 6 7 8	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form? MR. FEE: Objection. Asked and
	2 3 4 5 6 7 8 9	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m., and the document is Bates labeled ASTM103273.	2 3 4 5 6 7 8 9	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form?
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	2 3 4 5 6 7 8 9 10	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m., and the document is Bates labeled ASTM103273. And the document is titled: "ASTM International Participation and	2 3 4 5 6 7 8 9 10	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form? MR. FEE: Objection. Asked and answered. You can answer again. THE WITNESS: We would give this
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	2 3 4 5 6 7 8 9 10 11 12 13 14	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m., and the document is Bates labeled ASTM103273. And the document is titled: "ASTM International Participation and Acknowledgement Form." Is this the document that you were just describing when you said there was a form for assigning rights to	2 3 4 5 6 7 8 9 10 11 12 13 14	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form? MR. FEE: Objection. Asked and answered. You can answer again. THE WITNESS: We would give this form to an individual who is interested in providing a document to ASTM to make it into an ASTM standard.
	2 3 4 5 6 7 8 9 10 11 12 13 14 15	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m., and the document is Bates labeled ASTM103273. And the document is titled: "ASTM International Participation and Acknowledgement Form." Is this the document that you were just describing when you said there was a form for assigning rights to ASTM?	2 3 4 5 6 7 8 9 10 11 12 13 14 15	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form? MR. FEE: Objection. Asked and answered. You can answer again. THE WITNESS: We would give this form to an individual who is interested in providing a document to ASTM to make it into an ASTM standard. BY MR. BECKER: Q. And so on this form where it says number 1, "I am submitting my original
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m., and the document is Bates labeled ASTM103273. And the document is titled: "ASTM International Participation and Acknowledgement Form." Is this the document that you were just describing when you said there was a form for assigning rights to ASTM? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form? MR. FEE: Objection. Asked and answered. You can answer again. THE WITNESS: We would give this form to an individual who is interested in providing a document to ASTM to make it into an ASTM standard. BY MR. BECKER: Q. And so on this form where it
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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	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m., and the document is Bates labeled ASTM103273. And the document is titled: "ASTM International Participation and Acknowledgement Form." Is this the document that you were just describing when you said there was a form for assigning rights to ASTM? A. Yes. MR. FEE: Objection to the extent that your preamble is you're asking him to respond to any of that, you should ask him that separately. If you're asking him to respond to your question is this the document, I don't have an objection. BY MR. BECKER:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form? MR. FEE: Objection. Asked and answered. You can answer again. THE WITNESS: We would give this form to an individual who is interested in providing a document to ASTM to make it into an ASTM standard. BY MR. BECKER: Q. And so on this form where it says number 1, "I am submitting my original material," regardless of that statement, this document is not required if a member of a task group were to be drafting original material for the use in the ASTM standard draft so long as he was doing so directly with the task group itself and not bringing in outside documents?
	2 3 4 5 6 7 8 9 10 11 11 12 13 14 15 16 17 18 19 20 21 22 23	identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1284. A. Yes. Q. This document was produced by ASTM last night at approximately 9:00 p m., and the document is Bates labeled ASTM103273. And the document is titled: "ASTM International Participation and Acknowledgement Form." Is this the document that you were just describing when you said there was a form for assigning rights to ASTM? A. Yes. MR. FEE: Objection to the extent that your preamble is you're asking him to respond to any of that, you should ask him that separately. If you're asking him to respond to your question is this the document, I don't have an objection.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	done? Objection to the extent it calls for a legal conclusion. Also vague. THE WITNESS: No, not to my knowledge. BY MR. BECKER: Q. What individuals does ASTM require to fill out this form? MR. FEE: Objection. Asked and answered. You can answer again. THE WITNESS: We would give this form to an individual who is interested in providing a document to ASTM to make it into an ASTM standard. BY MR. BECKER: Q. And so on this form where it says number 1, "I am submitting my original material," regardless of that statement, this document is not required if a member of a task group were to be drafting original material for the use in the ASTM standard draft so long as he was doing so directly with the task group itself and not bringing

Page 37

Page 35

1	a legal conclusion. Vague.	1	Participation and Acknowledgement Form has
2	Confusing. You can answer if you can.	2	ever been signed and returned to ASTM?
3	THE WITNESS: I think I'll	3	A. I don't know for sure, but I
4	answer it by just saying the purpose	4	would guess it has been.
5	of this form is for when an individual	5	Q. And what's your basis for
6	wants to bring a document into ASTM to	6	guessing that it has been?
7	make it into an ASTM standard.	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	required of every member of a task group who	10	A. I can't remember.
11	contributes original material to an ASTM	11	Q. What other information do you
12	standard draft?	12	recollect in conjunction with those instances
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	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	19	were interested in having become ASTM
20	knowledge, that this form, Exhibit 1284, was	20	standard.
21	used by ASTM?	21	BY MR. BECKER:
22	A. I don't know.	22	Q. Prior to the introduction of
23	Q. Do you have any guess as to	23	the Participation and Acknowledgement Form in
24	what year this form was last used by ASTM?	24	approximately 2002, was there any means by
25	MR. FEE: Objection. Lack of	25	which ASTM had members of task groups who
	Page 38		Page 40
1	foundation. Calls for speculation.	1	contributed original contents to the drafts
2	THE WITNESS: I don't know.	2	of ASTM standards but were not themselves
3	BY MR. BECKER:	3	members of ASTM thereby transferred their
4	Q. Do you know any specific	4	copyrights to ASTM?
5	standards that this form was used in	5	MR. FEE: Objection. Calls for
6	conjunction with?	6	a legal conclusion. To the extent
7	A. I don't know offhand, no. No	7	you shouldn't disclose any
8	specifics.	8	communications you had with counsel
9	Q. Does ASTM retain the signed	9	regarding the subject matter. If you
10	copies that it receives of this Participation	10	have independent information that you
11	and Acknowledgement Form?	11	can share, go ahead and answer with
12	A. I'm not sure.	12	respect to that.
13	Q. Do you know how many of these	13	THE WITNESS: I'm not aware of
14	Participation and Acknowledgement Forms have	14	any formal forms that we used prior to
15	been signed and returned to ASTM?	15	2003.
16	A. No.	16	BY MR. BECKER:
17	Q. Do you have any approximate	17	Q. Are you aware of any informal
18	guess as to how many of these Participation	18	means by which individuals such as those that
19	and Acknowledgement Forms have been signed	19	I just described in my previous question
20	and returned to ASTM?	20	might have transferred their copyright to
21	MR. FEE: Objection. Calls for	21	ASTM?
22	speculation.	22	MR. FEE: Same objection and
23	THE WITNESS: No.	23	instruction.
1	DILLED DEGLED	24	THE WITNESS: I'm not sure what
24	BY MR. BECKER:	24	
24 25	Q. Do you know if this Page 39	25	you mean by "informal." Page 41

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1
    BY MR. BECKER:
                                                                  THE WITNESS: Not at this time.
 1
                                                     2
2
        Q. I'm simply asking because you
                                                         BY MR. BECKER:
    say you're not aware any formal forms that
                                                     3
                                                             Q. The basic understanding that
 3
    are used prior to 2003. So I'm asking if
                                                         you just described, how is that basic
    there were any informal means by which ASTM
                                                     5
                                                         understanding documented?
                                                     6
                                                                 MR. FEE: Objection. Again,
    believes that individuals transferred their
 6
                                                             instruct you not to disclose
    copyright to ASTM prior to 2003?
                                                     7
                                                     8
                                                             communications with counsel on that
            MR. FEE: Objection. Calls for
 8
9
        a legal conclusion. You shouldn't
                                                     9
                                                             subject, but if you have other
                                                    10
                                                             information, you can go ahead and
10
        disclose your communications with
        counsel on this subject, but if you
                                                    11
                                                             disclose that.
11
        have other information, you can answer
                                                    12
                                                                  THE WITNESS: I'm not sure what
12
                                                    13
                                                             you mean by "documented."
13
        about that.
                                                         BY MR. BECKER:
14
            THE WITNESS: I don't believe --
                                                    14
15
                                                    15
                                                             Q. Are there any documents that
        we didn't feel like we needed any
                                                         reflect the basic understanding that you just
        formal, any formal assignment paper.
                                                    16
16
                                                         described concerning the reasons for
17
    BY MR. BECKER:
                                                         individuals contributing in the drafting of
18
        Q. Why didn't ASTM feel like it
                                                    18
19
    needed any formal assignment paper?
                                                    19
                                                         ASTM standards?
            MR. FEE: Objection. Calls for
                                                    20
                                                                  No, we didn't feel like
20
                                                             A.
21
        a legal conclusion. You shouldn't
                                                    21
                                                         documentation was needed.
                                                    22
22
        disclose any communication you had
                                                                  Does ASTM have any documents to
23
        with counsel regarding the subject,
                                                    23
                                                         support its position that there was a basic
        but if you have any other information
                                                         understanding between the members who --
24
        that's responsive, you can answer
                                                         excuse me, let me rephrase that.
25
                                                    25
                                             Page 42
                                                                                                 Page 44
 1
         about that.
                                                     1
                                                                  Does ASTM have any documents to
 2
             THE WITNESS: Because we felt
                                                         support its position that there was a basic
                                                         understanding between the individuals who
3
         that there was a basic understanding,
         there is a basic understanding today
                                                         drafted ASTM standards and ASTM that the
 4
                                                     4
 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?
 7
         that the reason they come to the table
                                                     7
                                                                  MR. FEE: Objection. Instruct
         is for the sole purpose of developing
                                                     8
                                                             you not to disclose communications
 8
                                                     9
 9
         an ASTM standard that will receive a
                                                             with counsel on that subject. If
10
         logo, and that will be copyrighted and
                                                    10
                                                             you're aware of other documents, you
         be distributed. Our members buy the
                                                    11
                                                             can go ahead and respond with respect
11
         resulting standards from ASTM. We've
                                                    12
12
         never, that I can recall, have had a
13
                                                    13
                                                                  THE WITNESS: I'm not aware of
14
         member or a nonmember take issue with
                                                    14
                                                             any documents.
15
         ASTM selling the resulting copyrighted
                                                    15
                                                         BY MR. BECKER:
         standard to them and to others. I
                                                             Q. Just a moment ago you were
16
                                                    16
                                                         describing the reasons why people participate
17
         believe that the reason they come to
                                                    17
                                                         in the drafting of ASTM standards. Could you
18
         the table is because they want --
                                                    18
19
         they're there for the sole purpose of
                                                    19
                                                         describe some of the incentives for
20
         having a standard that will have an
                                                    20
                                                         individuals to participate in the drafting of
         ASTM logo on it.
21
                                                    21
                                                         ASTM standards?
                                                    22
22
    BY MR. BECKER:
                                                                  MR. FEE: Objection. Lack of
23
             Anything else?
                                                    23
                                                             foundation. You can answer.
24
             MR. FEE: Same objections and
                                                    24
                                                                  THE WITNESS: In general, you
25
                                                    25
                                                             can say that an individual would -- or
         instructions.
                                             Page 43
                                                                                                 Page 45
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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		12	
	Q. Does ASTM have any forms by	l	understanding, is that also ASTM's
13	which companies have assigned any copyrights		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
1 2	companies and individuals in the in its	1 2	government join as individuals when they join ASTM?
2	understanding of the granting of copyright	2	ASTM?
2 3	understanding of the granting of copyright rights to ASTM?	2 3	ASTM? MR. FEE: Objection. Calls for
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1	Q. Can you provide any specific	1	relate to?
2	examples?	2	MR. BECKER: This relates to the
3	MR. FEE: Objection. Vague.	3	issue of ownership and copyright.
4	THE WITNESS: I've managed	4	The forms that were provided to
5	probably 20 maybe different committees	5	us include
6	during my time. A specific example	6	MR. FEE: I'll let you answer
7	would be D04 road and paving	7	his question.
8	committee.	8	THE WITNESS: I don't know.
9	BY MR. BECKER:	9	MR. FEE: We've been going about
10	Q. And could you, please, describe	10	an hour, could we take a short break
11	what instances you're referring to?	11	now?
12	MR. FEE: Objection. Vague.	12	MR. BECKER: In just a couple of
13	THE WITNESS: Instances of what?	13	minutes or so.
14	BY MR. BECKER:	14	MR. FEE: I'll give you a couple
15	Q. Instances where you believe	15	more questions. I'm ready to take a
16	that the participation of government, federal	16	break. Go ahead.
17	government employees constituted their	17	BY MR. BECKER:
18	participation in an individual capacity and	18	Q. What communications do you have
19	not in their capacity as employees of the	19	with individuals who were employed by the
20	federal government?	20	federal government and participated in at
21	A. Just like I said, my	21	least one of those 20 different committees
22	experience. I'm not sure how I would be able	22	that you managed that reflected their
23	to characterize a specific example.	23	participation in an individual capacity and
24	Q. Could you refer to particular	24	not as federal government employees?
25	individuals who you who were members, who	25	MR. FEE: Objection. Calls for
	Page 50		Page 52
1	are employed by the federal government that	1	a legal conclusion. Compound.
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	are employed by the federal government that you interacted with in your management of	1 2	a legal conclusion. Compound. THE WITNESS: I'm not sure what
2	you interacted with in your management of	2	THE WITNESS: I'm not sure what
	you interacted with in your management of these 20 different committees that you	l	
2 3 4	you interacted with in your management of these 20 different committees that you believe were participating in their	2 3 4	THE WITNESS: I'm not sure what you're asking. BY MR. BECKER:
2 3 4 5	you interacted with in your management of these 20 different committees that you believe were participating in their individual capacity and not as employees of	2 3 4 5	THE WITNESS: I'm not sure what you're asking. BY MR. BECKER: Q. Do you have any specific
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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
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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
	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	13	A. I believe there was one prior
14	wasn't limited to documents, that's	14	to this.
15	why I said that.	15	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.	18	A. No.
19		19	Q. Do you have any idea?
	A. I'm not aware of any other		
	A. I'm not aware of any other documents.	20	A. I think it was at some point in
20	documents.	20	A. I think it was at some point in the '90s. Maybe mid '90s. but I'm not sure.
20 21	documents. Q. Is there anything else that you	21	the '90s. Maybe mid '90s, but I'm not sure.
20 21 22	documents. Q. Is there anything else that you have to add to your earlier testimony other	21 22	the '90s. Maybe mid '90s, but I'm not sure. Q. Does ASTM have any record of an
20 21 22 23	documents. Q. Is there anything else that you have to add to your earlier testimony other than your mention of the IP Policy?	21 22 23	the '90s. Maybe mid '90s, but I'm not sure. Q. Does ASTM have any record of an Intellectual Property Policy prior to this
20 21 22 23 24	documents. Q. Is there anything else that you have to add to your earlier testimony other than your mention of the IP Policy? A. I can't think of anything at	21 22 23 24	the '90s. Maybe mid '90s, but I'm not sure. Q. Does ASTM have any record of an Intellectual Property Policy prior to this one, Exhibit 1285?
20 21 22 23	documents. Q. Is there anything else that you have to add to your earlier testimony other than your mention of the IP Policy?	21 22 23	the '90s. Maybe mid '90s, but I'm not sure. Q. Does ASTM have any record of an Intellectual Property Policy prior to this

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3 been formally adopted by ASTM over the years? 4 MR. FEE: Objection. Vague. 5 (Eshibit 1286, Intellectual Property Policy? 8 ASTM Intellectual Property Policy? 8 ASTM 103290, was marked for identification.) 7 you're asking about 1285? 10	1			
4				_
5 THE WITNESS: I'm not sure. 6 BY MR. BECKER: 7 Q. Do you know who drafted the 8 ASTM Intellectual Property Policy? 9 MR. FEE: Objection. Vague. 10 You're asking about 1285? 11 BY MR. BECKER: 12 Q. Exhibit 1285. 13 A. I'm not certain. 14 Q. Do you know who might have 15 drafted Exhibit 1285? 16 MR. FEE: Objection. Calls for speculation. 17 ITHE WITNESS: I'm not certain. 18 THE WITNESS: I'm not certain. 19 BY MR. BECKER: 10 Q. When you say you're not certain, you mean you have no idea? 21 certain, you mean you have no idea? 22 A. I would assume it would have been on April 28, 1999? 24 Q. And who would that have been on April 28, 1999? 25 Q. Can you spell that for me, 29 Q. Can you spell that for me, 3 please? 4 A. B. R-O-O-K-E. 5 Q. Do you know approximately what 6 years Moe Brooke was the general counsel of ASTM from? 8 A. Roughly from maybe 1980 to late 9 90s. 10 Q. And who took over as general counsel. Is that correct? 11 Q. And Tom O'Brien is the current 14 general counsel of ASTM from? 12 Q. O you know when Tom O'Brien toke over as general counsel of ASTM from? 15 A. Correct. 16 Q. Do you know when Tom O'Brien toke over as general counsel of ASTM? 17 INTERNATIONAL (POLICY)." 18 THE WITNESS: I'm not certain. 19 BY MR. BECKER: 10 D. You recognize this document? 11 International power document? 12 Q. What is the relationship of this Exhibit 1286 to the document 1285 that we were just discussing? 15 La revision. 16 Trevision. 17 International Board of Directors, October 28, 11 counsel after Moe Brooke? 11 International Board of Directors, October 28, 11 2003 and April 13, 2010." Is that correct? 12 A. It does say that. 13 Q. And Tom O'Brien is the current 14 general counsel of ASTM? 14 A. It think it was in about 2004. 15 A. That's what it appears to be a redline showing the changes to the 15 Intellectual Property Policy of ASTM International ("Policy"), Bates ASTM003445 - ASTM003445 - ASTM003445, was marked for 15 metrication. 16 Property Policy of ASTM International 12 ("Policy"), Bates ASTM003445 - ASTM00344	1			A. I'm not certain.
6 BY MR. BECKER: 7 Q. Do you know who drafted the 8 ASTM Intellectual Property Policy? 9 MR. FEE: Objection. Vague. 10 You're asking about 1285? 11 BY MR. BECKER: 12 Q. Exhibit 1285. 13 A. I'm not certain. 14 Q. Do you know who might have 15 drafted Exhibit 1285? 16 MR. FEE: Objection. Calls for speculation. 17 speculation. 18 THE WITNESS: I'm not certain. 19 BY MR. BECKER: 10 Do you know who might have 11 derived Exhibit 1285? 11 a. I would assume it would have 12 certain, you mean you have no idea? 13 been under general counsel. 14 Q. Do you know approximately what of years Mose Brooke was the general counsel of ASTM from? 15 A. Roughly from maybe 1980 to late 16 yoars Mose Brooke was the general counsel. Is that correct? 17 A. I think it was in about 2004. 18 A. I think it was in about 2004. 19 Q. So was there anybody who was the general counsel of ASTM the was marked for identification.) 19 BY MR. BECKER: 10 Q. Exhibit 1285? 10 Py MR. BECKER: 11 BY MR. BECKER: 12 Q. I'm handing you what's been marked afor identification.) 13 marked as Exhibit 1286. This is the document 1285 that 5 product by ASTM last nights as Bates number identification.) 14 Py MR. BECKER: 15 A. I'm not certain. 16 "INTELLECTUAL PROPERTY POLICY OF ASTM INTERNATIONAL (POLICY)." 18 Do you recognize this document? 18 INTERNATIONAL (POLICY)." 19 A. It's our Intellectual Property Policy Of ASTM international for identification.) 18 THE WITNESS: I'm not certain. 19 BY MR. BECKER: 19 Policy. 20 Q. What is the relationship of the string this Exhibit 1286 to the document 1285 that were just discussing? 21 THE WITNESS: It appears to be a Page 64 22 M. Beneral counsel of ASTM? 23 Page 64 24 A. B.R-O-O-K-E. 25 Q. Do you know approximately what in the top right-hand corner of this document? 24 Say, "As amended by the ASTM international Board of Directors, October 28, it also were just discussing? 24 A. I think it was in about 2004. 25 A. I think it was in about 2004. 26 Property Policy of ASTM International (Policy"), Bates ASTM(03445 and the form ide				
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9 MR. FEE: Objection. Vague. 9 identification.)		· · · · · · · · · · · · · · · · · · ·		
10 You're asking about 1285?		* * *		
11 BY MR. BECKER: 12 Q. Exhibit 1285. 12 Q. I'm handing you what's been 13 marked as Exhibit 1286. This is the document 14 produced by ASTM last night as Bates number 15 drafted Exhibit 1285? 15 ASTM103290, titled: 16 MR. FEE: Objection. Calls for 16 "INTELLECTUAL PROPERTY POLICY OF ASTM 17 NFTERNATIONAL (POLICY)." 18 THE WITNESS: I'm not certain. 18 Do you recognize this document? 19 BY MR. BECKER: 19 A. It's our Intellectual Property 10 policy. 17 NFTERNATIONAL (POLICY)." 18 Do you recognize this document? 19 A. It's our Intellectual Property 19 Policy. 1				identification.)
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A. I'm not certain. 13				
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16				
17			15	
18 THE WITNESS: I'm not certain. 19 BY MR. BECKER: 20 Q. When you say you're not 21 certain, you mean you have no idea? 22 A. I would assume it would have 23 been under general counsel. 24 Q. And who would that have been on 25 April 28, 1999? 26 Page 62 1 A. It would have been Moe Brooke. 2 Q. Can you spell that for me, 3 please? 4 A. B-R-O-O-K-E. 5 Q. Do you know approximately what 6 years Moe Brooke was the general counsel of 7 ASTM from? 8 A. Roughly from maybe 1980 to late 9 '90s. 9 '90s. 10 Q. And who took over as general 11 counsel after Moe Brooke? 12 A. Tom O'Brien is the current 13 Q. And Tom O'Brien is the current 14 general counsel. Is that correct? 15 A. Correct. Q. Do you know when Tom O'Brien 16 Q. So was there anybody who was 20 the general counsel of ASTM between Moe 21 Brooke and Tom O'Brien? 22 this Exhibit 1286 to the document 1285 that 23 we were just discussing? 24 MR. FEE: Objection. Vague. 25 THE WITNESS: It appears to be a 26 this Exhibit 1286 to the document 1285 that 28 we were just discussing? 29 MR. FEE: Objection. Vague. 20 Can you spell that for me, 21 revision. 22 BY MR. BECKER: 3 Q. Can you tell me what the date 23 is that sin the top right-hand corner of 25 this document? 3 have were just discussing? 4 MR. FEE: Objection. Vague. 4 revision. 29 MR. FEE: Objection. Vague. 20 Can you spell me what the date 21 is that's in the top right-hand corner of 22 this Exhibit 1286 to the document 1285 that 23 we were just discussing? 24 MR. FEE: Objection. Vague. 25 THE WITNESS: It appears to be a 26 Page 64 27 I assume. 28 Q. Can you tell me what the date 29 it says, "As amended by the ASTM 20 International Board of Directors, October 28, 20 Does this appear to be a 21 revision. 22 A. It does say that. 3 Q. Does this appear to be a 24 redline showing the changes to the 29 International Property Policy of ASTM that 30 Vere instituted in 2010? 31 A. That's what it appears to be. 31 A. That's what it appears to be. 31 A. That's what it appears to be. 31 A. That's what it appears to be. 31 A.			16	"INTELLECTUAL PROPERTY POLICY OF ASTM
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21 Brooke and Tom O'Brien? 21 ("Policy"), Bates ASTM003445 - 22 A. I don't believe on staff we had 22 ASTM003448, was marked for	1	Q. So was there anybody who was		
22 A. I don't believe on staff we had 22 ASTM003448, was marked for				
	1	Brooke and Tom O'Brien?		• •
23 anybody between Moe Brooke and Tom O'Brien. 23 identification.)		A. I don't believe on staff we had		
	23		23	identification)
24 Q. Was there a gap of some years 24		anybody between Moe Brooke and Tom O'Brien.		racinimeation.)
25 between the time when Moe Brooke was general 25 BY MR. BECKER:	24	* *	24	
Page 63 Page 65		Q. Was there a gap of some years between the time when Moe Brooke was general	24 25	

1	Q. I'm handing you what's been	1	preparation for your deposition today?
2	marked as Exhibit 1287. This is a document	2	A. I believe it was one.
3	produced by ASTM as Bates number ASTM003445	3	Q. Do you know which version that
4	to ASTM003448. Do you recognize this	4	was that you reviewed in preparation for your
5	document?	5	deposition today?
6	A. It appears to be a draft of the	6	A. The current 2013 or 2010
7	Intellectual Property Policy.	7	rather. The one that was adopted in 2010.
8	Q. Why do you say that it is a	8	Q. Is the one adopted in 2010 the
9	draft of the Intellectual Property Policy?	9	most recent version of the ASTM Intellectual
10	A. Or perhaps a version, I should	10	Property Policy?
11	say.	11	A. To my knowledge, yes.
12	Q. Do you know what the date of	12	
13	this version is?	13	(Exhibit 1288, Intellectual
14	A. At the top it says, Originally	14	Property Policy of ASTM International
15	approved April 1999 [as read], and then on	15	("Policy"), Bates ASTM003437 -
16	the back it says, "As Amended by the Board of	16	ASTM003441, was marked for
17	Directors, 2003."	17	identification.)
18	Q. Do you know if this version of	18	
19	the ASTM Intellectual Property Policy went	19	BY MR. BECKER:
20	into effect?	20	Q. I'm handing you what's been
21	A. I don't know for sure, this	21	marked as Exhibit 1288. This is the document
22	particular version.	22	produced by plaintiffs as Bates number
23	Q. Who would know?	23	ASTM003437 to ASTM003441. Do you recognize
24	MR. FEE: Objection. Calls for	24	this document?
25	speculation.	25	A. Yes.
23	Page 66	23	Page 68
	THE WITNESS I I I I I	1	0 777
1	THE WITNESS: I don't know. Our	1	Q. What is this document?
2	general counsel could probably figure	2	A. It's the ASTM Intellectual
2 3	general counsel could probably figure it out, I think. I don't know if this	2 3	A. It's the ASTM Intellectual Property Policy.
2 3 4	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is	2 3 4	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this
2 3 4 5	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved	2 3 4 5	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property
2 3 4 5 6	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved BY MR. BECKER:	2 3 4 5 6	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property Policy?
2 3 4 5 6 7	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved BY MR. BECKER: Q. Did you review the	2 3 4 5 6 7	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property Policy? A. It was originally approved in
2 3 4 5 6 7 8	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved BY MR. BECKER: Q. Did you review the A by the board.	2 3 4 5 6 7 8	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property Policy? A. It was originally approved in April of 1999. This particular version was
2 3 4 5 6 7 8 9	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved BY MR. BECKER: Q. Did you review the A by the board. Q. Excuse me. I'm sorry, go	2 3 4 5 6 7 8 9	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property Policy? A. It was originally approved in April of 1999. This particular version was amended by the ASTM International Board of
2 3 4 5 6 7 8 9 10	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved BY MR. BECKER: Q. Did you review the A by the board. Q. Excuse me. I'm sorry, go ahead.	2 3 4 5 6 7 8 9 10	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property Policy? A. It was originally approved in April of 1999. This particular version was amended by the ASTM International Board of Directors on October 28, 2003, and April 13,
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2 3 4 5 6 7 8 9 10 11 12 13	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved BY MR. BECKER: Q. Did you review the A by the board. Q. Excuse me. I'm sorry, go ahead. A. I don't know if this is the exact version that was adopted by our board in 2003 since the exact date is not at the	2 3 4 5 6 7 8 9 10 11 12 13	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property Policy? A. It was originally approved in April of 1999. This particular version was amended by the ASTM International Board of Directors on October 28, 2003, and April 13, 2010. Q. So this is the most current version of the ASTM Intellectual Property
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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	general counsel could probably figure it out, I think. I don't know if this is the I just don't know if this is the exact version that was approved BY MR. BECKER: Q. Did you review the A by the board. Q. Excuse me. I'm sorry, go ahead. A. I don't know if this is the exact version that was adopted by our board in 2003 since the exact date is not at the end. Q. Did you review this document in preparation for your deposition today? A. I don't know if I reviewed this exact document. Q. Did you review any versions of the ASTM Intellectual Property Policy in preparation for your deposition today? A. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. It's the ASTM Intellectual Property Policy. Q. What is the date of this version of the ASTM Intellectual Property Policy? A. It was originally approved in April of 1999. This particular version was amended by the ASTM International Board of Directors on October 28, 2003, and April 13, 2010. Q. So this is the most current version of the ASTM Intellectual Property Policy then? A. I would think. Q. Is this the version that you reviewed in preparation for the deposition today? A. Yes. Q. And on the final page of Exhibit 1288 it says at the bottom, "As amended by the ASTM International Board of
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```
1
    Approved 28 April 1999."
                                                            a legal conclusion. You shouldn't
 1
                                                    2
 2
             So this document appears to
                                                            disclose any communications you've had
    list three different versions of the ASTM
                                                    3
                                                            with counsel regarding that subject.
 3
    Intellectual Property Policy. Is that
                                                    4
                                                            If you otherwise can respond, go
 5
                                                    5
    correct?
                                                            ahead.
                                                    6
 6
        A.
              Yes.
                                                                 THE WITNESS: I'm not a lawyer,
                                                    7
7
         Q.
              What is your basis for
                                                            but in reading page 4 of the policy
    believing -- excuse me, let me rephrase.
                                                    8
                                                            part D, I believe that that does do
 8
 9
             After reviewing these dates, do
                                                    9
                                                            what you asked.
    you still believe there was a version of the
                                                    10
10
                                                        BY MR. BECKER:
    ASTM Intellectual Property Policy that
                                                    11
                                                                  That is the section V policy
                                                            Q.
    existed prior to April 28, 1999?
12
                                                    12
                                                        part D?
         A. I believe we did.
13
                                                    13
                                                                  Yes.
                                                            A.
                                                                  Would you, please, compare that
              What is your basis for
                                                    14
                                                            Q.
                                                        section V part D for Exhibits 1285 and
15
    believing that there was a prior version of
                                                   15
    the ASTM Intellectual Property Policy?
                                                    16
                                                        Exhibit 1288?
            I just seem to recall, but I
17
                                                   17
                                                                 MR. FEE: Objection. Vague if
    could be wrong. I thought there was.
                                                            that's the question.
18
                                                   18
19
         Q. If there was a prior version of
                                                   19
                                                        BY MR. BECKER:
    the ASTM Intellectual Property Policy prior
20
                                                   20
                                                            Q. Do you see any differences
    to April 28, 1999, that was formally adopted
                                                        between section V part D in the Exhibit 1288
21
                                                   21
22
    by ASTM, who would know that?
                                                   22
                                                        versus Exhibit 1285?
23
             MR. FEE: Objection. Calls for
                                                   23
                                                                 I'd have to go through it word
24
                                                        by word. Is there anything particular
         speculation.
25
                                                   25
             THE WITNESS: I don't know.
                                                        that --
                                            Page 70
                                                                                                Page 72
    BY MR. BECKER:
 1
                                                    1
                                                                 Do you see that in the 2013 --
         Q. Did you discuss the existence
 2
                                                        excuse me, 2010 edition, Exhibit 1288, it
3
    of a version of the ASTM Intellectual
                                                        adds the line, "Each member agrees by such
                                                        participation and enjoyment of his/her annual
    Property Policy that existed prior to
    April 28, 1999, with anyone in preparation
                                                    5
                                                        membership benefits, to have transferred any
 5
    for your deposition today?
                                                    6
                                                        and all ownership interests, including
 6
 7
                                                    7
                                                        copyright, they possess or may possess in the
         A.
              No.
                                                        ASTM IP to ASTM"?
                                                    8
 8
              Do you know why the ASTM
    Intellectual Property Policy was revised on
                                                    9
                                                            A. I do see that.
                                                    10
                                                                  Why did ASTM insert this
10
    at least two occasions?
             MR. FEE: Objection. To the
                                                        sentence into the ASTM Intellectual Property
11
                                                    11
         extent that that calls for you to
                                                    12
12
                                                        Policy?
13
         disclose communications with counsel,
                                                   13
                                                                 MR. FEE: Objection. Calls for
14
         you shouldn't disclose those, but if
                                                    14
                                                            a legal conclusion. I instruct you
15
         you know otherwise, you can answer.
                                                   15
                                                            not to disclose any communications you
             THE WITNESS: No, I don't.
                                                            had with counsel regarding that
16
                                                   16
17
                                                   17
    BY MR. BECKER:
                                                            subject.
18
         Q. Looking at Exhibit 1285, the
                                                    18
                                                                 THE WITNESS: I don't know.
    April 28, 1999, version of the ASTM
                                                    19
                                                        BY MR. BECKER:
    Intellectual Property Policy, does ASTM
20
                                                   20
                                                            Q. Do you have any knowledge about
21
    believe that this Intellectual Property
                                                        the revisions that were made to the ASTM
                                                   21
    Policy grants it any copyrights in the drafts
22
                                                   22
                                                        Intellectual Property Policy subsequent to
23
    of standards created by individuals who are
                                                   23
                                                        the 1999 version?
24
    not employed by ASTM?
                                                   24
                                                                 MR. FEE: Objection. Vague.
             MR. FEE: Objection. Calls for
                                                   25
25
                                                            Compound. You can answer yes or no.
                                            Page 71
                                                                                                Page 73
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1
             THE WITNESS: Maybe.
                                                    1
                                                            question, go ahead and answer.
                                                    2
 2
             MR. FEE: Or maybe.
                                                                THE WITNESS: I would imagine
                                                    3
                                                            our general counsel would know.
 3
    BY MR. BECKER:
        Q. When you say "maybe," what do
                                                    4
                                                        BY MR. BECKER:
 5
                                                    5
                                                            Q. If you look at Exhibit 1285,
    you mean?
                                                        does clause IV C exist in that document?
 6
         A.
              I'm not sure exactly what you
                                                    6
    mean. I know I can see right here there were
                                                    7
                                                            A. I don't see it.
    revisions, I could read these. 1286, like
                                                    8
                                                                MR. FEE: Objection. The
9
    the difference, the differences, but...
                                                    9
                                                            document speaks for itself.
10
            Could you tell me what is the
                                                   10
                                                        BY MR. BECKER:
11
    purpose of the clause at part IV C in
                                                   11
                                                            Q. Do you know why ASTM introduced
    Exhibit 1286?
                                                        that clause at section IV C subsequent to the
12
                                                   12
                                                        April 28, 1999, version of the ASTM
13
             MR. FEE: Objection to the
                                                   13
         extent it calls for a legal
                                                        Intellectual Property Policy?
14
                                                                MR. FEE: Objection. Calls for
15
         conclusion. To the extent your
                                                   15
         understanding of the purpose of any --
                                                            a legal conclusion. You shouldn't
16
                                                   16
             MR. BECKER: Excuse me.
                                                            disclose any communications with
17
                                                   17
18
             MR. FEE: -- changes in clauses
                                                   18
                                                            counsel regarding that subject matter.
                                                            If you otherwise know why that was
19
         is based upon communications with
                                                   19
         counsel, I instruct you not to answer.
                                                   20
                                                            done, you can answer it.
20
             MR. BECKER: Let me say -- let
                                                                THE WITNESS: No.
21
                                                   21
22
                                                   22
         me rephrase.
                                                        BY MR. BECKER:
23
    BY MR. BECKER:
                                                   23
                                                            Q. Is ASTM aware of any ASTM
24
             I meant Exhibit 1288.
                                                        members seeking legal advice to explain any
25
                                                        of the language in the ASTM Intellectual
             MR. FEE: Same objections and
                                                                                               Page 76
                                            Page 74
 1
         instructions.
                                                       Property Policy?
 2
    BY MR. BECKER:
                                                    2
                                                               MR. FEE: Hold on a second. You
3
                                                    3
         Q. Let me restate for the record.
                                                           can answer it yes or no or maybe.
                                                               THE WITNESS: I'm not aware of
 4
    In Exhibit 1288, what is the purpose of the
                                                    4
 5
                                                    5
    clause at part IV C?
                                                           any.
 6
             MR. FEE: Objection. Calls for
                                                    6
                                                       BY MR. BECKER:
         a legal conclusion. To the extent of
 7
                                                    7
                                                           Q. If you don't know what the
 8
         your understanding of the purpose of
                                                       clause at section IV C means, why would you
 9
         that clause is based on communications
                                                       expect an ASTM member to know what that
10
         with counsel, you shouldn't disclose
                                                   10
                                                       clause means?
         that. If you have another basis for
11
                                                   11
                                                               MR. FEE: Objection. Calls for
         understanding the purpose of that
                                                           speculation. Mischaracterizes his
12
                                                   12
         clause, go ahead and answer.
13
                                                   13
                                                           testimony. You can answer.
14
             THE WITNESS: I don't know what
                                                   14
                                                               THE WITNESS: I don't know.
15
         that means. It seems like it's very
                                                   15
                                                       BY MR. BECKER:
         legal speak.
16
                                                   16
                                                           Q. Does ASTM know whether any ASTM
    BY MR. BECKER:
17
                                                       member actually understands this language --
                                                   17
18
         O. Who would know?
                                                   18
                                                               MR. FEE: Objection. Calls
19
             MR. FEE: Objection. Calls for
                                                   19
                                                           for --
20
         speculation. To the extent that your
                                                   20
                                                       BY MR. BECKER:
21
         answering that question would require
                                                   21
                                                           Q. -- in the IP Policy?
         you to disclose communications that
                                                               MR. FEE: Vague. Calls for
22
                                                   22
23
         you've had with counsel, you shouldn't
                                                   23
                                                           speculation.
24
         disclose those. If you otherwise know
                                                   24
                                                               THE WITNESS: I don't know
         who would know the answer to that
25
                                                   25
                                                           either way.
                                            Page 75
                                                                                               Page 77
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3 another whether any members actually 3 a legal conclusion.	
3 another whether any members actually 3 a legal conclusion.	ASTM?
	jection. Calls for
4 understand the language in its Intellectual 4 THE WITNES	
4 understand the language in its interfectual 4 THE WITNES	SS: I'm not sure I
5 Property Policy? 5 understand that que	estion.
6 MR. FEE: Objection. Calls for 6 BY MR. BECKER:	
7 speculation. 7 Q. Just to back to	ip a moment.
8 THE WITNESS: I can't think of 8 When in your previo	us answer when you said
9 any evidence either way. 9 that the only situations	
10 BY MR. BECKER: 10 the ones we talked about	at earlier using that
11 Q. Returning to Exhibit 1288, 11 form, were you referring	g to Exhibit 1284, the
12 section V D, it says, "If requested by ASTM 12 ASTM International Pa	
13 International, such Participants and 13 Acknowledgement For	
14 committee members agree to execute any and 14 A. Yes.	
	my question, let's
16 by ASTM International to transfer and 16 see if I can clarify. Sec	
17 effectuate ownership of all such rights, 17 requested by ASTM In	-
18 including but not limited to copyrights, they 18 Participants and comm	
19 may possibly have in ASTM IP." And the first 19 execute any and all doc	
20 page, first paragraph says, "Standards, 20 necessary, or appropria	
21 Draft Standards, Adjuncts, Certification 21 International to transfer	
22 Programs and related materials, Technical 22 ownership of all such r	ights, including but
23 Papers, Research Reports, Manuals, Software, 23 not limited to copyrigh	
24 Training Course Materials and Logos 24 have in ASTM IP."	, , , , , ,
25 collectively referred to as 'ASTM IP'"? 25 Once a once	an individual
Page 78	Page 80
1 A. Where were you reading that 1 has contributed to the drain	fting of an ASTM
2 first sentence? 2 standard, has ASTM ever	asked an individual
3 Q. That was from the first 3 to assign the copyright in	
3 Q. That was from the first 3 to assign the copyright in 4 paragraph on the front page under 4 that he or she has already	a draft document
	a draft document created to ASTM?
4 paragraph on the front page under 4 that he or she has already	a draft document created to ASTM?
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 5 MR. FEE: Object	a draft document created to ASTM? ction. Calls for
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 6 items that I just listed. 4 that he or she has already 5 MR. FEE: Object 6 a legal conclusion.	a draft document created to ASTM? tion. Calls for I really don't
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 6 items that I just listed. 7 A. Okay. 4 that he or she has already 5 MR. FEE: Object 6 a legal conclusion. 7 THE WITNESS:	a draft document created to ASTM? tion. Calls for I really don't
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 6 items that I just listed. 7 A. Okay. 8 Q. So returning to section V D, 4 that he or she has already 5 MR. FEE: Object 6 a legal conclusion. 7 THE WITNESS: 8 know either way. It's	a draft document created to ASTM? ction. Calls for I really don't possible.
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 6 items that I just listed. 7 A. Okay. 8 Q. So returning to section V D, 9 are you aware of excuse me, is ASTM aware 4 that he or she has already 5 MR. FEE: Object 6 a legal conclusion. 7 THE WITNESS: 8 know either way. It's 9 BY MR. BECKER:	a draft document created to ASTM? ction. Calls for I really don't possible. reference to
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 6 items that I just listed. 7 A. Okay. 8 Q. So returning to section V D, 9 are you aware of excuse me, is ASTM aware 10 of any instances where it has requested 4 that he or she has already 5 MR. FEE: Object 6 a legal conclusion. 7 THE WITNESS: 8 know either way. It's 9 BY MR. BECKER: 10 Q. Other than your	a draft document created to ASTM? ction. Calls for I really don't possible. reference to mer instances in
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 6 items that I just listed. 7 A. Okay. 8 Q. So returning to section V D, 9 are you aware of excuse me, is ASTM aware 10 of any instances where it has requested 11 individuals to agree to execute any documents 4 that he or she has already 5 MR. FEE: Object 6 a legal conclusion. 7 THE WITNESS: 8 know either way. It's 9 BY MR. BECKER: 10 Q. Other than your 11 Exhibit 1284, are there of	a draft document created to ASTM? ction. Calls for I really don't possible. reference to ner instances in n individual to execute
4 paragraph on the front page under 5 "INTRODUCTION," it defines ASTM IP as those 6 items that I just listed. 7 A. Okay. 8 Q. So returning to section V D, 9 are you aware of excuse me, is ASTM aware 10 of any instances where it has requested 11 individuals to agree to execute any documents 12 necessary to transfer copyright ownership to 4 that he or she has already 5 MR. FEE: Object 6 a legal conclusion. 7 THE WITNESS: 8 know either way. It's 9 BY MR. BECKER: 10 Q. Other than your 11 Exhibit 1284, are there of 12 which ASTM has asked a	a draft document created to ASTM? ction. Calls for I really don't possible. reference to ner instances in n individual to execute
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1	first been instituted in anneximately 2002	1	DV MD DECVED.
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	first been instituted in approximately 2003. Correct?	1 2	BY MR. BECKER: O. Yes.
		3	
3	A. Correct.	4	A. No.
4	Q. Who would know if ASTM has ever	5	Q. Did you speak with any ASTM staff members about documents that ASTM
5	asked an individual to assign the copyright in a draft document that that individual has	_	
6		6	believes generally assign copyright to
7	already previously created to ASTM?	7	ASTM
8	MR. FEE: Objection. Assumes facts not in evidence. You can	8 9	MR. FEE: Objection. Vague. BY MR. BECKER:
9		_	
10	answer.	10	Q in preparation for your
11	THE WITNESS: Yeah, I don't know	11	deposition today?
12	who it would be because it would	12	A. In general, yes. And then
13	depend on which committee it involved.	13	there were also a few specific forms, forms
14	BY MR. BECKER:	14	that had actual members renewing or applying
15	Q. Would a staff member be	15	for membership.
16	involved in that or would it simply be a	16	Q. And who did you speak with,
17	volunteer committee member?	17	excluding counsel, regarding the subjects of
18	MR. FEE: Objection. Vague.	18	copyright assignments to ASTM in preparation
19	THE WITNESS: Involved in what	19	for your deposition today?
20	exactly?	20	A. Specific examples of?
21	BY MR. BECKER:	21	Q. Both specific and general
22	Q. In the request for an	22	examples.
23	assignment of copyright for a work that had	23	A. In general I talked to Marge
24	already previously been created by an	24	Cassidy, our treasurer.
25	individual to ASTM?	25	Q. Anybody else?
	Page 82		Page 84
1	A. And that they would bring it in	1	A. Jim Thomas, our president.
2	to ASTM for the develop as developing as	2	Q. Anybody else?
3	an ASTM standard?	3	A. John Pace, our vice president
4	Q. They or that they had	4	of our vice president of publications.
5	developed as part of an ASTM committee but	5	Q. Anybody else?
6	had not executed any assignments to ASTM for	6	A. Phil Lively, our vice president
7	that document.	7	of technology.
8	A. I'm sorry, is your question who	8	Q. Anybody else?
9	would know that?	9	A. Kathie Morgan, our executive
10	Q. Yeah, who would know that?	10	vice president.
11	A. The staff person, whoever the	11	Q. Anybody else?
12	staff manager for that particular committee	12	A. I believe that's everybody.
13	would be would have knowledge of that.	13	Q. What did you speak with Marge
14	Q. Would the ASTM general counsel	14	Cassidy about in preparation for your
15	have knowledge of whether an assignment was	15	deposition today?
16	made concerning a particular work to ASTM	16	A. Just any information that she
17	subsequent to the creation of that work?	17	would have relative to assignment of
18	A. Maybe.	18	copyright by our members.
19	Q. Did you speak with any ASTM	19	Q. And what did you learn from
20	staff members about any assignments of	20	Marge Cassidy?
21	copyright to ASTM in preparation for your	21	A. Nothing.
22	deposition today?	22	Q. What did Marge Cassidy say
23	MR. FEE: Objection. Vague.	23	about assignment of copyright from ASTM
24	THE WITNESS: Particular	24	members?
25	assignments?	25	A. She really didn't have any
	Page 83		Page 85
	-	1	

1	knowledge.	1	(A recess was taken.)
2	Q. Did you approach Marge Cassidy	2	
3	or did she approach you in preparation for	3	VIDEOGRAPHER: The time is now
4	your deposition today?	4	1:58. We're back on the video record.
5	MR. FEE: Objection. Lack of	5	This begins disc two.
6	foundation.	6	
7	THE WITNESS: I didn't initiate	7	(Exhibit 1289, Defendant
8	it and she didn't initiate it. We	8	Public.Resource.Org, Inc.'s Amended
9	called a meeting. Our general counsel	9	Notice of Rule 30(b)(6) Deposition of
10	called a meeting.	10	American Society for Testing and
11	BY MR. BECKER:	11	Materials, was marked for
12	Q. Who was in attendance at that	12	,
13	meeting?		identification.)
14	A. Our legal team and Marge.	13	DVAM DEGVED
15		14	BY MR. BECKER:
	Q. Do you know the date of that	15	Q. Mr. Smith, I'm handing you
16	meeting?	16	what's been marked as Exhibit 1289. This is
17	A. It was yesterday.	17	the "PUBLIC.RESOURCE.ORG AMENDED NOTICE OF
18	Q. How long did you meet for?	18	RULE 30(B)(6) DEPOSITION OF AMERICAN SOCIETY
19	A. Maybe 10, 15 minutes.	19	FOR TESTING AND MATERIALS." Do you recognize
20	Q. What did you speak with Marge	20	this document?
21	about at that meeting?	21	A. I do.
22	A. Just wanted to get her	22	Q. Have you seen this document
23	perspective on anything that has to do with	23	before?
24	assigning copyright.	24	A. I believe I have.
25	Q. And what was Marge's	25	Q. And do you understand that you
	Page 86		Page 88
1	perspective?	1	are testifying on behalf of ASTM today?
2	A. She didn't have much of a	2	A. I do.
3	perspective as someone who works in	3	MR. FEE: Just so the record is
4	accounting. But she's a senior staff person	4	clear, he's testifying on behalf of
5	who has been at ASTM for a long time, so I	5	ASTM with respects to Topics 2, 3 and
6	was interested in that.	6	24 only.
7	Q. How long has Marge Cassidy been	7	MR. BECKER: And for the record,
8	at ASTM for?	8	Public.Resource.Org had requested that
9	A. 50 years.	9	ASTM provide a witness on additional
10	Q. Did you ask Marge about the	10	topics beyond 2, 3 and 24, and ASTM
11	assignment of copyright at ASTM prior to your		has refused to provide that additional
12	tenure at ASTM?	12	witness that was requested.
13	A. Yes.	13	MR. FEE: That's not correct.
13			
	Q. And what did she say about	14	You've had a witness on every other
15	that?	15	topic. Jeff Grove. Jeff Grove,
16	A. She didn't really remember	16	G-R-O-V-E.
17	anything of significance that I can share.	17	MR. BECKER: And as we've
18	Q. Do you recall any details about	18	discussed, Public.Resource.Org does
19	your conversation with Marge Cassidy about	19	not believe that Jeff Grove was a
20	the assignment of copyright?	20	sufficient witness on many of those
21	A. No.	21	topics and, therefore, has requested a
22	VIDEOGRAPHER: The time is now	22	witness on the topics on which
23	12:54. We're going off the video	23	Mr. Grove was deficient.
24	record. This concludes disc one.	24	MR. FEE: Suffice to say we
25		25	disagree with that.
	Page 87		Page 89

1	BY MR. BECKER:	1	A. I reviewed our current ASTM
2	Q. Mr. Smith, you understand that	2	Intellectual Property Policy.
3	you are responsible for preparing to answer	3	Q. Did you do anything else to
4	questions on the topics on which you've been	4	prepare for the deposition today?
5	noticed and which you are appearing on behalf	5	A. I met with the people that I
6	of ASTM. Correct?	6	mentioned previously.
7	A. Yes, I believe it's 2, 3 and	7	Q. Did you review any other
8	24.	8	documents other than the ones that you've
9	Q. And have you prepared to answer	9	just listed a moment ago?
10	questions on Topics 2, 3 and 24?	10	A. I reviewed documents that had
11	A. Yes.	11	the Bates numbers associated with them.
12	Q. And you understand that you are	12	Q. Do you know which documents
13	answering these questions on those topics on	13	that have Bates numbers associated with them
14	behalf of ASTM?	14	that you reviewed?
15	A. Yes.	15	THE WITNESS: Do we have them
16	Q. Mr. Smith, when did you prepare	16	somewhere, the ones that we produced?
17	to answer topics at deposition today?	17	MR. FEE: You have to answer his
18	MR. FEE: Objection. Vague.	18	questions, I can't give you the
19	THE WITNESS: Yesterday and on	19	answers.
20	Tuesday.	20	THE WITNESS: I'm sorry.
21	BY MR. BECKER:	21	BY MR. BECKER:
22	Q. Tuesday of this week?	22	Q. Do you recall the titles of any
23	A. Correct.	23	of the documents that you reviewed that had
24	Q. And when were you first	24	Bates numbers on them?
25	notified that you would be appearing as the	25	A. There were specific examples of
	Page 90		Page 92
1	witness for the deposition today?		memberships that were filled out by a member.
$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	witness for the deposition today? A. I think we found out, exactly	1 2	memberships that were filled out by a member. I think it was a renewal that may have been
2	A. I think we found out, exactly	2	I think it was a renewal that may have been
2 3	A. I think we found out, exactly the date was sometime in maybe the first week	2 3	I think it was a renewal that may have been completed by a member. Screens that I had
2 3 4	A. I think we found out, exactly the date was sometime in maybe the first week in July.	2 3 4	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm
2 3 4 5	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation	2 3 4 5	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes.
2 3 4 5 6	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first	2 3 4 5 6	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you
2 3 4 5 6 7	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation	2 3 4 5 6 7	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on
2 3 4 5 6 7 8	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes.	2 3 4 5 6 7 8	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you
2 3 4 5 6 7 8 9	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare	2 3 4 5 6 7 8 9	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes.
2 3 4 5 6 7 8 9	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare during that time period?	2 3 4 5 6 7 8 9	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes. Q. So were there any other
2 3 4 5 6 7 8 9 10	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare during that time period? A. I reviewed the membership	2 3 4 5 6 7 8 9 10 11	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes. Q. So were there any other documents other than the ones that you
2 3 4 5 6 7 8 9 10 11 12	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare during that time period? A. I reviewed the membership screens, the renewal screens, the work item	2 3 4 5 6 7 8 9 10 11 12	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes. Q. So were there any other documents other than the ones that you described just a moment ago specifically that
2 3 4 5 6 7 8 9 10 11 12 13	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare during that time period? A. I reviewed the membership screens, the renewal screens, the work item registration pages and	2 3 4 5 6 7 8 9 10 11 12 13	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes. Q. So were there any other documents other than the ones that you described just a moment ago specifically that you reviewed in preparation for your
2 3 4 5 6 7 8 9 10 11 12 13 14	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare during that time period? A. I reviewed the membership screens, the renewal screens, the work item registration pages and Q. Did you do I'm sorry.	2 3 4 5 6 7 8 9 10 11 12 13 14	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes. Q. So were there any other documents other than the ones that you described just a moment ago specifically that you reviewed in preparation for your deposition today that did not have Bates
2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare during that time period? A. I reviewed the membership screens, the renewal screens, the work item registration pages and Q. Did you do I'm sorry. A any ASTM intellectual	2 3 4 5 6 7 8 9 10 11 12 13 14 15	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes. Q. So were there any other documents other than the ones that you described just a moment ago specifically that you reviewed in preparation for your deposition today that did not have Bates numbers on them?
2 3 4 5 6 7 8 9 10 11 12 13 14	A. I think we found out, exactly the date was sometime in maybe the first week in July. Q. Have you done any preparation for your deposition today between the first week of July and Tuesday of this week? A. Yes. Q. What did you do to prepare during that time period? A. I reviewed the membership screens, the renewal screens, the work item registration pages and Q. Did you do I'm sorry. A any ASTM intellectual property files.	2 3 4 5 6 7 8 9 10 11 12 13 14	I think it was a renewal that may have been completed by a member. Screens that I had mentioned. There were other documents I'm not thinking of right now, but yes. Q. The other documents that you reviewed, did they all have Bates numbers on them? A. Yes. Q. So were there any other documents other than the ones that you described just a moment ago specifically that you reviewed in preparation for your deposition today that did not have Bates numbers on them? MR. FEE: Objection. Asked and
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Case 1:13-cv-01215-TSC Document 204-46 Filed 11/13/19 Page 26 of 114

1	Q. What did you discuss with Jim	1	Q. Did Jim Thomas say all of that
2	Thomas when you met with him then?	2	to you? When I say "all of that," I'm
3	A. I asked Jim about any memory	3	referring to your previous statement that you
4	that he has relative to assignments of	4	attributed to Jim Thomas, were all of those
5	copyright.	5	statements from Jim Thomas?
6	Q. And what did he say?	6	MR. FEE: Objection. Compound.
7	A. Pretty much what I've explained	7	THE WITNESS: Jim has told me
8	to you relative to formally getting	8	and I have seen Jim do these
9	documentation from our members on assignment	9	presentations.
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
12	collaboration area. And then prior to that,	12	on Tuesday, did he say that a member has
13	Jim's recollection and feelings were that	13	never challenged the copyright assertions by
14	copyright assignment from our members was a	14	ASTM?
15	very basic understanding that our members had	15	A. Yes.
16	and our staff have had, the sole purpose they	16	Q. And when you met with Jim
17	come to an ASTM meeting is to develop a	17	Thomas on Tuesday, did he say that the fact
18	standard that's going to result in an ASTM	18	that ASTM sells standards to its members is a
19	approved standard with a logo on it that's	19	basis for why there may be an understanding
20	copyrighted.	20	that by ASTM members, that their
21	Q. Did Mr. Thomas identify any	21	contributions would be copyrighted by ASTM?
22	basis for his belief that copyright	22	A. He had indicated that the fact
23	assignment from ASTM members was a very basic	23	that we sell the standards back to our
24	understanding, as you described it, that ASTM	24	members is probably a real good indication
25	members had with the purpose of developing an	25	that there's a basic understanding from our
	Page 94		Page 96
1	ASTM standard?	1	members that we are copyrighting the material
2	A. Can you explain?	2	that they contribute.
3	Q. Let me rephrase that. Did	3	Q. Did Jim Thomas say anything
4	Mr. Thomas identify any basis for his belief	4	else to you when you met with him on Tuesday?
5	that ASTM members had an understanding that	l	MR. FEE: Objection. Vague.
6	their drafts would be that the copyright	6	THE WITNESS: I can't think of
7	for their drafts would be held by ASTM?	7	anything else specific that he said.
8	A. I think his basis was on the	8	BY MR. BECKER:
9	fact that we've never had a member that has	9	Q. Did you ask Jim Thomas any
10	really questioned, that we can recall, or	10	questions when you met with him on Tuesday?
11	challenged ASTM copyrighting something.	11	A. No, I don't think I asked him
12	Another basis being that we sell our	12	any questions. I think the meeting was
13		13	basically to discuss copyright assignment.
	standards and our members are some of our	1 4	4 17 1 1/1 1/2 1/2
14	biggest customers, so they're buying the	14	And I don't know if it was more of a
14 15	biggest customers, so they're buying the standards from us. Jim Thomas has provided	15	discussion, I don't think we had I had
14 15 16	biggest customers, so they're buying the standards from us. Jim Thomas has provided numerous presentations at different committee	15 16	discussion, I don't think we had I had questions. I mean, I didn't need to ask
14 15 16 17	biggest customers, so they're buying the standards from us. Jim Thomas has provided numerous presentations at different committee meetings announcing about this lawsuit and	15 16 17	discussion, I don't think we had I had questions. I mean, I didn't need to ask questions. It was a discussion.
14 15 16 17 18	biggest customers, so they're buying the standards from us. Jim Thomas has provided numerous presentations at different committee meetings announcing about this lawsuit and what the ramifications potentially could be.	15 16 17 18	discussion, I don't think we had I had questions. I mean, I didn't need to ask questions. It was a discussion. Q. A moment ago you referred to
14 15 16 17 18 19	biggest customers, so they're buying the standards from us. Jim Thomas has provided numerous presentations at different committee meetings announcing about this lawsuit and what the ramifications potentially could be. How it could affect our business model and	15 16 17 18 19	discussion, I don't think we had I had questions. I mean, I didn't need to ask questions. It was a discussion. Q. A moment ago you referred to the \$75 fee. Do ASTM members excuse me,
14 15 16 17 18 19 20	biggest customers, so they're buying the standards from us. Jim Thomas has provided numerous presentations at different committee meetings announcing about this lawsuit and what the ramifications potentially could be. How it could affect our business model and how we want to maintain our low entry for	15 16 17 18 19 20	discussion, I don't think we had I had questions. I mean, I didn't need to ask questions. It was a discussion. Q. A moment ago you referred to the \$75 fee. Do ASTM members excuse me, let me rephrase.
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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.
1 2	Q. Have you had any other communications with Jim Thomas about your	1 2	January, April, May and June of every year. I've heard Jim Thomas talk about what I said
2	communications with Jim Thomas about your	2	I've heard Jim Thomas talk about what I said
2 3	communications with Jim Thomas about your deposition today other than the meeting you	2 3	I've heard Jim Thomas talk about what I said at those breakfast meetings.
2 3 4	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday?	2 3 4	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates
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2 3 4 5 6 7	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in	2 3 4 5 6 7	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year?
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh. Q. What did you discuss with Mr. Pace?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year? A. I can't say for sure. Q. Are these breakfast meetings
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh. Q. What did you discuss with Mr. Pace? A. Any knowledge that he would	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year? A. I can't say for sure. Q. Are these breakfast meetings recorded in any way?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh. Q. What did you discuss with Mr. Pace? A. Any knowledge that he would have relative to the assignment of copyright	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year? A. I can't say for sure. Q. Are these breakfast meetings recorded in any way? A. No.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh. Q. What did you discuss with Mr. Pace? A. Any knowledge that he would have relative to the assignment of copyright from our members. Q. What did Mr. Pace say? A. He didn't provide any input.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year? A. I can't say for sure. Q. Are these breakfast meetings recorded in any way? A. No. Q. Are there any minutes kept of the breakfast meetings? A. No, but we have annual our
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh. Q. What did you discuss with Mr. Pace? A. Any knowledge that he would have relative to the assignment of copyright from our members. Q. What did Mr. Pace say? A. He didn't provide any input. He didn't have any knowledge.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year? A. I can't say for sure. Q. Are these breakfast meetings recorded in any way? A. No. Q. Are there any minutes kept of the breakfast meetings?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh. Q. What did you discuss with Mr. Pace? A. Any knowledge that he would have relative to the assignment of copyright from our members. Q. What did Mr. Pace say? A. He didn't provide any input. He didn't have any knowledge. Q. Did you discuss any other	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year? A. I can't say for sure. Q. Are these breakfast meetings recorded in any way? A. No. Q. Are there any minutes kept of the breakfast meetings? A. No, but we have annual our annual meeting we may have minutes from our annual meeting, but I'm not sure. I
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	communications with Jim Thomas about your deposition today other than the meeting you had with him on Tuesday? A. No. Q. And have you had any communications with Marge Cassidy in preparation for your deposition today other than the meeting that you had with her? A. No. Q. You said you met with John Pace, the vice president of publications, as well in preparation for your deposition today. Correct? A. Uh-huh. Q. What did you discuss with Mr. Pace? A. Any knowledge that he would have relative to the assignment of copyright from our members. Q. What did Mr. Pace say? A. He didn't provide any input. He didn't have any knowledge.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	I've heard Jim Thomas talk about what I said at those breakfast meetings. Q. Do you recall on what dates Mr. Thomas spoke about those issues at breakfast meetings? A. I can't provide specific dates. Q. Do you have general dates as in this year, last year or the year prior? A. I believe it was this year was mentioned. And it was probably last year as well. Q. Do you recall Mr. Thomas mentioning anything on this subject prior to last year? A. I can't say for sure. Q. Are these breakfast meetings recorded in any way? A. No. Q. Are there any minutes kept of the breakfast meetings? A. No, but we have annual our annual meeting we may have minutes from

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presentation slides that are available for
                                                        helped create the electronic version of the
    our annual meetings.
                                                    2
                                                        forms that appear on the ASTM Web site. Is
            You said you also meet with
                                                     3
                                                        that what you're saying?
 3
    Phil Lively, the vice president of
                                                                 MR. FEE: Objection. Compound.
 5
    technology. Is that correct?
                                                     5
                                                                 THE WITNESS: I'm not sure what
                                                     6
 6
         A.
             Yes.
                                                            exactly you mean by that, but
 7
         O.
              When did you meet with him?
                                                    7
                                                            essentially he was able to accomplish
 8
              I met with Phil yesterday.
                                                    8
                                                            getting the language up onto the
         A.
 9
         O.
              What did you speak with Phil
                                                    9
                                                            screens so that the members can
10
    Lively about yesterday?
                                                    10
                                                            acknowledge the statement during the
11
              About copyright assignments for
                                                    11
                                                            process.
    members to ASTM.
                                                    12
12
                                                        BY MR. BECKER:
              And what did Phil Lively tell
                                                    13
13
         Q.
                                                            Q. Did Mr. Lively draft any of the
    you?
14
                                                        language on the membership application or
15
              About his involvement and help
                                                    15
                                                        renewal forms or any of the other forms that
    with having the language that we talked about
                                                        you're describing?
                                                                 MR. FEE: Objection. Compound.
    earlier on the membership application screens
                                                    17
                                                                 THE WITNESS: I don't believe
    and the membership renewal screens and the
                                                    18
    collaboration area screen and the work item
                                                    19
                                                            so.
    registration screens.
                                                   20
20
                                                        BY MR. BECKER:
21
              When you say, "the language
                                                   21
                                                                  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?
    assigns copyright from individuals to ASTM?
                                                                  Just that he could remember
                                                   24
25
             MR. FEE: Objection. Calls for
                                                   25
                                                        helping with putting the information up on
                                           Page 102
                                                                                               Page 104
 1
         a legal conclusion.
                                                        the Web screens, and he could remember when
             THE WITNESS: The language that
 2
                                                        he was a staff manager back in the very
 3
         we talked about that is on the
                                                        beginning time, I think it was early '80s
         membership applications, yes. That
                                                        when he was a staff manager, and kind of
 4
 5
         the members acknowledge when they're
                                                        reiterating what I had previously said about
 6
         either registering a work item or
                                                        there being an understanding that our members
 7
         joining as a new member or renewing
                                                    7
                                                        understand that their contributions to ASTM,
                                                    8
 8
         their membership or opening up a
                                                        is well understood that we're going to
                                                    9
 9
         collaboration area that assigns all of
                                                        copyright that material.
10
                                                    10
         their past, present and future
                                                            Q. Did Mr. Lively provide any
         contributions to ASTM standards --
                                                    11
                                                        basis for his statement that there was an
11
         into ASTM standards to ASTM.
                                                    12
                                                        understanding in the early '80s that ASTM
12
13
    BY MR. BECKER:
                                                        would copyright the material provided by
                                                    13
14
              What was Mr. Lively's
                                                    14
                                                        individuals that was incorporated into the
15
    involvement in the language that you are
                                                    15
                                                        standard drafts?
    referring to?
                                                                  Can you repeat that question?
16
                                                   16
                                                            A.
17
                                                    17
                                                                  Yes. Did Mr. Lively provide
             MR. FEE: Objection. Vague.
             THE WITNESS: He helped us with,
18
                                                    18
                                                        any basis for his statement that there was an
19
         from a technology standpoint, getting
                                                        understanding in the early '80s that ASTM
20
         that language up onto our Web site,
                                                        would copyright the material provided by
                                                   20
21
         onto the screens.
                                                   21
                                                        individuals that was incorporated into the
22
                                                   22
    BY MR. BECKER:
                                                        standard drafts?
23
              So you're saying that
                                                   23
                                                            A. No. I think it was just his
    Mr. Lively was involved in the -- Mr. Lively
                                                   24
                                                        belief just as it was my belief.
    did not draft the language, but Mr. Lively
                                                                  Did you discuss anything else
                                                   25
                                           Page 103
                                                                                               Page 105
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1 with Mr. Lively at that meeting? 2 A. Not that I can recall. 3 Q. Did you have any other 4 communications with Mr. Lively in preparation 5 for your deposition today other than that 6 meeting yesterday? 7 A. No. 8 Q. And did you have any other 9 communications with John Pace in preparation 10 for your deposition today other than your 11 meeting with him yesterday? 12 A. No. 13 Q. You said that you also met with 14 Kathie Morgan, the executive vice president, 15 in preparation for your deposition today. Is 16 that true? 17 A. Yes. 18 Q. And when did you meet with 18 Kathie: 19 Q. What did you discuss with 21 Compound. 22 A. Yesterday. 23 A. We discussed the form that we had here, 1284, and her recollection of what that form was used for. 24 Q. What did Kathie Morgan say 25 about Exhibit 1284? 26 A. She thought that that form was 27 bringing forward a full document into ASTM. 28 phase for the ASTM who site were first set up: 29 A. Yesterday. 20 Q. That's Exhibit 1284 you were referencing? 30 A. Yes. 31 Q. That's Exhibit 1284 you were referencing? 41 Q. That's Exhibit 1284 you were referencing? 42 Q. What did Kathie Morgan say 43 about Exhibit 1284? 44 Q. What did Kathie Morgan say 45 about Exhibit 1284? 46 A. She thought that that form was 47 D. What did Kathie Morgan say 48 bringing forward a full document into ASTM. 49 Q. What did Kathie Morgan tell you when this with was anything else about Exhibit 1284? 40 Q. Did Kathie Morgan tell you when the full information to ASTM. 40 Q. Did Kathie Morgan tell you when the went of the copyright of that in information to ASTM. 40 Q. Did Kathie Morgan tell you when the went of the copyright of that information to ASTM. 41 A. Not that I can recall. 42 Q. Did Kathie Morgan tell you when the went of the copyright of that in information to ASTM. 43 A. No. 44 Q. What did Kathie Morgan tell you when the went of the copyright and the property bolicy from 2010, please turn to section VI B, "Intellectual Property Policy from 2010, please, review subsections I and b from this docum	2 3 4 5	A. Not that I can recall.		· ·
Q. Did you have any other communications with Mr. Lively in preparation for your deposition today other than that meeting yesterday? A. No. Q. And did you have any other communications with John Pace in preparation of ro your deposition today other than your meeting with him yesterday? A. No. Q. You said that you also met with tathic morgan, the executive vice president, in preparation for your deposition today. Is that true? A. Yes. Q. And when did you meet with tathic true? A. Yes. Q. What did you discuss with 22 Kathie at your meeting yesterday? A. We discussed the form that we had here, 1284, and her recollection of what that form was used for. Page 106 Q. Taking a step back, when you seposition today, did you ask him when the Web forms were first set op up that included language concerning copyright assignments on the ASTM Web site? MR. FEE: Objection to form. Compound. The WITNESS: I don't believe I asked him. The WITNESS: I don't believe I	3 4 5		2	sure. I think it it was I think
4 communications with Mr. Lively in preparation 5 for your deposition today other than that 6 meeting yesterday? 7 A. No. 8 Q. And did you have any other 9 communications with John Pace in preparation 10 for your deposition today other than your 11 meeting with him yesterday? 12 A. No. 13 Q. You said that you also met with 14 Kathie Morgan, the executive vice president, 15 in preparation for your deposition today. Is 16 that true? 16 that true? 17 A. Yes. 18 Q. And when did you meet with 18 Kathie? 19 A. Yesterday. 20 A. Yesterday. 21 Q. What did you discuss with 21 Kathie at your meeting yesterday? 22 A. We discussed the form that we 24 had here, 1284, and her recollection of what 24 that form was used for. 10 Q. That's Exhibit 1284 you were 25 referencing? 21 A. Yes. 22 Q. What did Kathie Morgan say 25 about Exhibit 1284? 23 A. Yes. 4 Q. What did Kathie Morgan say 25 boring forward a full document into ASTM, 26 that would want to have that form filled out which would assign the copyright of that information to ASTM. 24 Q. Did Kathie Morgan tell you when 26 that would want to have that form filled out which would assign the copyright of that information to ASTM. 25 Lathie at your meet into ASTM. 26 Q. Did Kathie Morgan tell you when 27 used by ASTM whenever an individual who was bringing forward a full document into ASTM. 26 Q. Did Kathie Morgan tell you when 27 used by ASTM. 27 A. Not that I can recall. 28 Surface and the copyright of that information to ASTM. 29 D. Did Kathie Morgan tell you when 29 maybe prior to 2003. 20 When you say "prior to 2003," 21 Q. When you say "prior to 2003," 22 approximately what year do you believe that 40 you believe that 50 your deposition today. The ASTM Chapter of your deposition today. The ASTM Chapter of your deposition today. The ASTM Chapter of your deposition today. The ASTM Chapter of your deposition today. The ASTM Chapter of your deposition today? 26 A. Pesc. Open As Page 108 27 A. Pesc. Open As Page 108 28 A. Pesc. Open As Page 108 29 A. Pesc. Open As Page 10	4 5	Q. Did you have any other		
5 for your deposition today other than that 6 meeting yesterday? 7 A. No. 8 Q. And did you have any other 9 communications with John Pace in preparation 10 for your deposition today other than your 11 meeting with him yesterday? 12 A. No. 13 Q. You said that you also met with 14 Kathie Morgan, the executive vice president, 15 in preparation for your deposition today. Is 16 that true? 17 A. Yes. 18 Q. And when did you meet with 19 Kathie? 20 A. Yesterday. 21 Q. What did you discuss with 22 Kathie at your meeting yesterday? 22 A. We discussed the form that we 23 A. We discussed the form that we 24 had her, 1284, and her recollection of what that form was used for. Page 106 1 Q. That's Exhibit 1284 you were 2 referencing? 3 A. Yes. 4 Q. What did Kathie Morgan say 4 bout Exhibit 1284? 5 A. She thought that that form was 8 bringing forward a full document into ASTM, 9 that we would want to have that form filled out which would assign the copyright to stay 10 Q. Did Kathie Morgan tell you wen 11 meeting with him yesterday? 12 Q. What did Kathie Morgan tell you wen 13 Q. You said that you also met with 14 Kathie Morgan, televent with true? 15 Q. Did Kathie Morgan tell you wen 16 Exhibit 1284 was first used by ASTM? 17 A. Not that I can recall. 18 Q. Did Kathie Morgan tell you wen 19 Say which would assign the copyright of that information to ASTM. 19 Lively westerday; 20 Q. Did Kathie Morgan tell you wen 21 Compound. 22 The WITNESS: I don't believe I asked him. 23 With in preparation for your deposition to don't believe I asked him. 24 By MR. BECKER: 25 Opication to form. 26 Compound. 27 The WITNESS: I don't believe I asked him. 28 Inanuage concerning copyright assignments on the ASTM Web site? 29 MR. FEE: Objection to form. 20 Opid Kathie Morgan tell you wene we referst set up? 21 Compound. 22 The WITNESS: I don't believe I asked him. 23 With in preparation for your deposition to day? 24 The WITNESS: I don't believe I asked him. 25 Did Kathie Morgan tell you wene we referst set up? 26 A. Yes. 27 A. No. 28 Did Kathi	5		3	it was in the early 2000s.
6 meeting yesterday? 7 A. No. 8 Q. And did you have any other communications with John Pace in preparation for your deposition today, did you ask him when the Web forms were first set up that included language concerning copyright assignments on the ASTM Web site? 12 A. No. 13 Q. You said that you also met with that that the Web forms were first set up that included language concerning copyright assignments on the ASTM Web site? 14 Kathie Morgan, the executive vice president, in preparation for your deposition today. Is that true? 15 in preparation for your deposition today. Is that true? 16 that true? 17 A. Yes. 18 Q. And when did you meet with that true? 18 A. Yesterday. 20 A. Yesterday. 21 Q. What did you discuss with that form was used for. 22 Kathie at your meeting yesterday? 23 A. We discussed the form that we had here, 1284, and her recollection of what that form was used for. 24 Page 106 25 The Web site were first set up? 26 A. Se thought that that form was used by ASTM whenever an individual who was bringing forward a full document into ASTM, that we would want to have that form filled out which would assign the copyright of that in information to ASTM. 26 Q. Did Kathie Morgan tell you when that I can recall. 27 Q. Did Kathie Morgan tell you when that I can recall. 28 A. Not that I can recall. 39 A. Not that I can recall. 40 Q. Did Kathie Morgan tell you when that in information to ASTM. 41 A. Not that I can recall. 42 A. Not that I can recall. 43 A. Not that I can recall. 44 A. Not that I can recall. 45 A. Not that I can recall. 46 A. Maybe 15 hours. 47 A. No. 48 A. When that I can recall. 49 A. Not that I can recall. 40 D. Did Kathie Morgan tell you when that it was about, you know, as mine carlier, that it was about, you know, as mine carlier, that it was about, you know, as mine carlier, that it was about, you know, as mine carlier, that it was about, you know, as mine carlier, that it was about, you know, as mine carlier, that it was about, you know, as mine carlier, that it was about, you know, a		communications with Mr. Lively in preparation	4	
7 A. No. Q. And did you have any other 9 communications with John Pace in preparation for your deposition today other than your 11 meeting with him yesterday? 11 meeting with him yesterday? 11 meeting with him yesterday? 12 A. No. Q. You said that you also met with 13 Q. You said that you also met with 14 Kathie Morgan, the executive vice president, 15 in preparation for your deposition today. Is 16 that true? 18 Q. And when did you meet with 19 Kathie? 19 What did you discuss with 19 Kathie We sterday. 20 A. Yesterday. 21 Q. What did you discuss with 22 Kathie at your meeting yesterday? 21 A. We discussed the form that we 24 had here, 1284, and her recollection of what that form was used for. Page 106 Page 106 1 Q. That's Exhibit 1284 you were referencing? 3 A. Yes. 4 Q. What did Kathie Morgan say about Exhibit 1284? 4 Q. What did would wastign the copyright of that information to ASTM. 4 A. Not that I can recall. 4 A. Not that I can recall. 4 A. Not that I can recall. 5 Q. Did Kathie Morgan tell you wene 16 Exhibit 1284 was first used by ASTM? A. I think — I don't know for 20 as mine earlier, that it was about, you know, 20 maybe prior to 2003. 21 Q. When you say "prior to 2003," 22 approximately what year do you believe that 22 up that included language concerning copyright assignments on the ASTM (20 Did Kathie Morgan tell you know, 21 more page 108 and the ASTM. 22 concerning copyright assignments on the ASTM. 24 public with the With The WITNESS: I don't believe I asked him. 3 THE WITNESS: I don't believe I asked him. 3 THE WITNESS: I don't believe I asked him. 3 THE WITNESS: I don't believe I asked him. 3 THE WITNESS: I don't believe I asked him. 3 THE WITNESS: I don't believe I asked him. 4 The WITNESS: I don't believe I asked him. 4 The WITNESS: I don't believe I asked him. 4 The WITNESS: I don't believe I asked him. 4 The WITNESS: I don't believe I asked him. 4 The WITNESS: I don't believe I asked him. 4 The WITNESS: I don't believe I asked him. 4 The WITNESS: I don't believe I asked him. 4 The WITNES	6	for your deposition today other than that	5	Q. Taking a step back, when you
8 Q. And did you have any other of communications with John Pace in preparation of for your deposition today other than your meeting with him yesterday? 12 A. No. 13 Q. You said that you also met with 14 Kathie Morgan, the executive vice president, 15 in preparation for your deposition today. Is 6 that rue? 16 that rue? 17 A. Yes. 18 Q. And when did you meet with 18 Kathie? 18 Q. And when did you meet with 19 Kathie? 20 A. Yesterday. 21 Q. What did you discuss with 22 Kathie at your meeting yesterday? 22 A. We discussed the form that we 24 had here, 1284, and her recollection of what 25 that form was used for. 19 Q. That's Exhibit 1284 you were refrencing? 21 Q. What did Kathie Morgan say 3 A. Yes. 22 referencing? 33 A. Yes. 44 Q. What did Kathie Morgan say 3 about Exhibit 1284? 45 about Exhibit 1284? 46 A. She thought that that form was used by ASTM whenever an individual who was bringing forward a full document into ASTM, 11 information to ASTM. 21 Information to ASTM. 22 Q. Did Kathie Morgan tell you when 24 A. Not that I can recall. 25 Q. Did Kathie Morgan tell you when 26 Exhibit 1284 was first used by ASTM? 4 A. Not that I can recall. 4 A. Not that I can recall. 5 Q. Did Kathie Morgan tell you when 3 as mine earlier, that it was about, you know, 20 maybe prior to 2003. 4 Q. When you say "prior to 2003," 21 mmbered ASTM003440. Can you, please, review approximately what year do you believe that 22 subsections Ia and b from this document. For		meeting yesterday?	6	
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Page 106 1 Q. That's Exhibit 1284 you were referencing? 2 referencing? 3 A. Yes. 4 Q. What did Kathie Morgan say 5 about Exhibit 1284? 6 A. She thought that that form was 7 used by ASTM whenever an individual who was 8 bringing forward a full document into ASTM, 9 that we would want to have that form filled 10 out which would assign the copyright of that information to ASTM. 11 deposition today? 12 Q. Did Kathie Morgan tell you 13 anything else about Exhibit 1284? 14 A. Not that I can recall. 15 Q. Did Kathie Morgan tell you when 16 Exhibit 1284 was first used by ASTM? 16 Exhibit 1284 was first used by ASTM? 17 A. I think — I don't know for 18 sure. I think our recollection was the same 19 as mine earlier, that it was about, you know, 20 maybe prior to 2003. 21 Page 108 21 Dhomas, John Pace, Phil Lively and Kathie 22 dapproximately what year do you believe that 2 Morgan, was there anybody else that you met today? 2 A. No. 3 with in preparation for your deposition 4 today? 4 today? 5 A. Besides our legal team? 6 Q. Yes. 7 A. No. 8 Q. And other than those 9 individuals, was there anybody else that you communicated with in preparation for your deposition today? 10 individuals, was there anybody else that you communicated with in preparation for your deposition today? 11 deposition today? 12 A. No. 13 Q. Collectively about how much time would you say that you spent in preparation for your deposition today? 14 A. Maybe 15 hours. 15 Q. Returning to Exhibit 1288, the 16 ASTM Intellectual Property Policy from 2010, please turn to section VI B, "Intellectual Property Other Than Standards." That's Bates 16 Property Other Than Standards. That's Bates 17 Q. When you say "prior to 2003," 28 Property Other Than Standards. That's Bates 18 numbered ASTM003440. Can you, please, review subsections 1 a and b from this document. For				
1 Thomas, John Pace, Phil Lively and Kathie referencing? 2 Norgan, was there anybody else that you met with in preparation for your deposition today? 5 A. She thought that that form was a bringing forward a full document into ASTM, that we would want to have that form filled out which would assign the copyright of that information to ASTM. 12 Q. Did Kathie Morgan tell you anything else about Exhibit 1284? 13 A. No that I can recall. 14 A. Not that I can recall. 15 Q. Did Kathie Morgan tell you when Exhibit 1284 was first used by ASTM? 16 Exhibit 1284 was first used by ASTM? 17 A. I think I don't know for as mine earlier, that it was about, you know, maybe prior to 2003. 20 When you say "prior to 2003," approximately what year do you believe that with in preparation for your deposition today? 21 Thomas, John Pace, Phil Lively and Kathie with in preparation for your deposition today? 22 Thomas, John Pace, Phil Lively and Kathie with in preparation for your deposition today? 24 Morgan, was there anybody else that you met with in preparation for your deposition today? 25 A. Besides our legal team? 26 Q. Yes. 27 A. No. 28 Q. And other than those individuals, was there anybody else that you communicated with in preparation for your deposition today? 26 A. No. 27 A. No. 28 Q. And other than those individuals, was there anybody else that you communicated with in preparation for your deposition today? 29 A. No. 20 Collectively about how much time would you say that you spent in preparation for your deposition today? 29 A. No. 20 Returning to Exhibit 1288, the ASTM Intellectual Property Policy from 2010, please turn to section VI B, "Intellectual Property Other Than Standards." That's Bates numbered ASTM003440. Can you, please, review subsections 1a and b from this document. For	25		25	
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A. Yes. Q. What did Kathie Morgan say built in preparation for your deposition 4 today? A. She thought that that form was used by ASTM whenever an individual who was bringing forward a full document into ASTM, that we would want to have that form filled out which would assign the copyright of that information to ASTM. Q. Did Kathie Morgan tell you anything else about Exhibit 1284? A. Not that I can recall. Q. Did Kathie Morgan tell you when Exhibit 1284 was first used by ASTM? A. I think I don't know for sa mine earlier, that it was about, you know, maybe prior to 2003. Q. With in preparation for your deposition today? A. Besides our legal team? A. No. Q. Yes. A. No. Q. And other than those individuals, was there anybody else that you communicated with in preparation for your deposition today? A. No. Q. Collectively about how much time would you say that you spent in preparation for your deposition today? A. Maybe 15 hours. A. Maybe 15 hours. Q. Returning to Exhibit 1288, the ASTM Intellectual Property Policy from 2010, please turn to section VI B, "Intellectual property Other Than Standards." That's Bates numbered ASTM003440. Can you, please, review subsections 1a and b from this document. For	1	Q. That's Exhibit 1284 you were	1	Thomas, John Pace, Phil Lively and Kathie
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15 Q. Did Kathie Morgan tell you when 16 Exhibit 1284 was first used by ASTM? 17 A. I think I don't know for 18 sure. I think our recollection was the same 19 as mine earlier, that it was about, you know, 19 maybe prior to 2003. 20 When you say "prior to 2003," 21 Q. When you say "prior to 2003," 22 approximately what year do you believe that 25 preparation for your deposition today? A. Maybe 15 hours. 16 A. Maybe 15 hours. 18 ASTM Intellectual Property Policy from 2010, 19 please turn to section VI B, "Intellectual 20 Property Other Than Standards." That's Bates 21 numbered ASTM003440. Can you, please, review 22 subsections 1a and b from this document. For	13		13	Q. Collectively about how much
16 Exhibit 1284 was first used by ASTM? 17 A. I think I don't know for 18 sure. I think our recollection was the same 19 as mine earlier, that it was about, you know, 20 maybe prior to 2003. 21 Q. When you say "prior to 2003," 22 approximately what year do you believe that 26 A. Maybe 15 hours. 27 Q. Returning to Exhibit 1288, the 28 ASTM Intellectual Property Policy from 2010, 29 please turn to section VI B, "Intellectual 20 Property Other Than Standards." That's Bates 21 numbered ASTM003440. Can you, please, review 22 subsections 1a and b from this document. For	14		14	* * *
17 A. I think I don't know for 18 sure. I think our recollection was the same 19 as mine earlier, that it was about, you know, 20 maybe prior to 2003. 21 Q. When you say "prior to 2003," 22 approximately what year do you believe that 22 Subsections 1a and b from this document. For	15		15	
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21 Q. When you say "prior to 2003," 21 numbered ASTM003440. Can you, please, review 22 approximately what year do you believe that 22 subsections 1a and b from this document. For				-
22 approximately what year do you believe that 22 subsections 1a and b from this document. For		* ^		÷ •
		· · · · · · ·		* *
23 this form, Document 1284, was first used? 23 the record, that's section VI B1a and VI B1b.				
at an arm of the state of the s				
MR. FEE: Objection. Asked and 24 Please tell me when you're done reviewing it.		-		
25 answered. Page 107 A. [Reviewing document.] Okay. Page 109	25		25	
1 4gC 107		1 age 107		29 (Pages 104 100)

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1
         Q. This section says it relates to
                                                    1
                                                        BY MR. BECKER:
    "Intellectual Property Other Than Standards,"
                                                    2
                                                                  Does ASTM believe that if a
 3
    and it says, "ASTM International recognizes
                                                    3
                                                        standard was prepared in the course of the
    different ways to assign intellectual
                                                        author's employment by the U.S., Canadian or
    property rights: ...When individual authors
                                                     5
                                                        British governments, that a copyright exists
                                                    6
 6
    submit manuscripts of technical papers for
                                                        in that standard?
    publication by ASTM International, the author
                                                    7
                                                                 MR. FEE: Objection. Calls for
    must sign an agreement (Author Agreement)
                                                    8
                                                            a legal conclusion. Instruct you not
    whereby ownership of the material is assigned
                                                    9
                                                            to disclose any communications with
10
    to ASTM International...."
                                                    10
                                                            counsel regarding that matter. If you
11
             Why does ASTM have a special
                                                   11
                                                            can answer it without disclosing those
    agreement for authors of intellectual
                                                   12
12
                                                            communications, go ahead.
    property other than standards?
                                                    13
                                                                 THE WITNESS: I don't know.
13
14
             MR. FEE: Objection. Calls for
                                                   14
                                                        BY MR. BECKER:
15
         a legal conclusion. To the extent you
                                                   15
                                                            Q. Who would know?
         can answer that question without
16
                                                    16
                                                                 MR. FEE: Objection. Calls for
         disclosing communications with
17
                                                   17
                                                            speculation.
18
         counsel, you may go ahead and do so.
                                                                 THE WITNESS: I would
                                                   18
19
             THE WITNESS: I don't know.
                                                    19
                                                            potentially think that our ASTM
                                                   20
20
                                                            general counsel would know.
    BY MR. BECKER:
21
         Q. Do you know who would know?
                                                   21
                                                        BY MR. BECKER:
22
             MR. FEE: Objection. Calls for
                                                   22
                                                            O.
                                                                Is there anybody else who would
23
         speculation.
                                                   23
                                                        know?
24
             THE WITNESS: I would --
                                                   24
                                                                 MR. FEE: Same objection.
25
                                                                 THE WITNESS: I don't know.
         potentially in part the ASTM general
                                                   25
                                           Page 110
                                                                                               Page 112
1
        counsel.
                                                     1
                                                        BY MR. BECKER:
                                                    2
                                                            Q. Does ASTM recognize a
    BY MR. BECKER:
                                                    3
                                                        distinction between standards and
3
        Q.
            Is there anybody else who would
4
    know?
                                                        intellectual property other than standards in
                                                     5
5
                                                        terms of its copyrightability when created by
            MR. FEE: Same objection.
            THE WITNESS: I don't know.
                                                    6
                                                        someone who is acting in the course of their
6
                                                    7
                                                        employment by the U.S., Canadian or British
    BY MR. BECKER:
                                                    8
                                                        governments?
8
        Q. This document again goes on to
                                                    9
    say, ".. however, if a technical paper was
                                                                 MR. FEE: Objection. Vague.
                                                   10
10
    prepared in the course of the author's
                                                            Confusing. Compound. Calls for a
                                                   11
                                                            legal conclusion. Instruct you not to
    employment by the U.S., Canadian, or British
    Governments, ASTM acknowledges that copyright
                                                    12
                                                            disclose any communications with
                                                    13
                                                            counsel regarding that matter. If you
13
    does not exist."
14
            Why does ASTM acknowledge that
                                                    14
                                                            have other information you can share,
                                                   15
    copyright doesn't exist if the technical
                                                            go ahead.
    paper was prepared in the course of an
                                                   16
                                                                 THE WITNESS: I really don't
                                                    17
    author's employment by one of these federal
17
                                                            know.
18
    governments?
                                                    18
                                                        BY MR. BECKER:
19
            MR. FEE: Objection. Calls for
                                                    19
                                                                  Just to rephrase so we have a
                                                        clear question here, does ASTM recognize a
                                                   20
20
        a legal conclusion. Instruct you not
                                                   21
                                                        distinction between standards and
21
        to disclose communications with
                                                   22
                                                        intellectual property other than standards in
22
        counsel regarding that subject, but if
23
        you have knowledge from some other
                                                   23
                                                        terms of its copyrightability when created by
24
        source, go ahead and answer.
                                                   24
                                                        someone who is acting in the course of their
                                                        employment by the U.S. government?
25
            THE WITNESS: I don't know.
                                                                                               Page 113
                                           Page 111
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1	MR. FEE: Objection. Vague.	1	recent version, so let me read that again.
2	Compound. Calls for a legal	2	Section VI B1b states, "When
3	conclusion. Instruct you not to	3	ASTM International contracts, subsidizes, or
4	disclose communications with counsel	4	agrees with writers, authors, editors, or
5	regarding the subject. If you have	5	others to prepare or otherwise help create
6	other information you can share, go	6	ASTM IP other than technical papers as given
7	ahead.	7	in 1a above, a 'Work for Hire' Agreement must
8	THE WITNESS: I don't know.	8	be signed in which copyright is acknowledged
9	BY MR. BECKER:	9	to reside in ASTM International or will be
10	Q. Who would know?	10	assigned to ASTM International."
11	MR. FEE: Calls for speculation.	11	Have you ever seen one of these
12	Objection.	12	"Work for Hire" Agreements that's referenced
13	THE WITNESS: Potentially our	13	in this clause?
14	general counsel.	14	A. Not that I can recall.
15	BY MR. BECKER:	15	Q. Do you know of any situations
16	Q. Did you discuss this issue in	16	in which a "Work for Hire" Agreement as
17	preparation for your deposition today?	17	described in clause VI B1b has been executed?
18	A. No.	18	A. I don't know of any specific
19	Q. Did you inquire about the	19	ones that have been executed.
20	copyrightability of material created by	20	Q. Did you discuss the existence
21	employees of the federal government in the	21	of any "Work for Hire" Agreements in
22	course of their employment with the federal	22	preparation for your deposition today?
23	government in preparation for your deposition	23	A. No.
24	today?	24	Q. Do you know of any "Work for
25	MR. FEE: Hold on one second.	25	Hire" Agreements that have been executed with
	Page 114		Page 116
1	You can answer it yes or no.	1	respect to any ASTM standards?
2	THE WITNESS: I don't think we	2	A. No.
3	did. Not that I I can't recall	3	Q. Have any "Work for Hire"
4	that we talked about that	4	Agreements been executed with respect to any
5	specifically.	5	ASTM standards?
6	BY MR. BECKER:	6	A. I'm not aware of any, but there
7	Q. The next clause of the	7	could have been.
8	Intellectual Property Policy states, When	8	Q. Who would know?
9	ASTM contracts, subsidizes, or agrees with	9	MR. FEE: Objection. Calls for
10	writers, authors, editors, or others to	10	speculation.
11	prepare or otherwise help create ASTM	11	THE WITNESS: Whoever the vice
12	Intellectual Property other than technical	12	president of technical committee
13	papers as given in 1a above, a "Work For	13	operations has been for, you know,
14	Hire" Agreement must be signed in which	14	however long you want to go back.
15	copyright is acknowledged to reside in ASTM	15	BY MR. BECKER:
16	or will be assigned to ASTM [as read].	16	Q. I'm sorry, so that would be
17	MR. FEE: You skipped the word	17	you're saying that the previous vice
18	"International" there twice, for the	18	president of technical committee operations
19	record.	19	prior to yourself would know, might know if
20	MR. BECKER: Excuse me.	20	there had been any "Work for Hire" Agreements
21	BY MR. BECKER:	21	executed in relation to ASTM standards?
22	Q. You're right, I'm looking at	22	MR. FEE: Objection. Calls for
23	the earlier version of the Intellectual	23	speculation.
24	Property Policy, it appears that	24	THE WITNESS: They might. And
125		1 -	
25	international has been inserted into the more	25	our general counsel might know as
23	international has been inserted into the more Page 115	25	our general counsel might know as Page 117

1 well.				
Q. How long have you been the vice president of technical committee operations? A. Six months. Q. Who was the vice president of technical committee operations prior to you? A. Kathie Morgan. Q. How long was she the VP of technical committee operations at ASTM? MR. FEE: Objection. Calls for speculation. Lack of foundation. THE WITNESS: Roughly seven years, eight years. BYMR. BECKER: Q. And who was the vice president of technical committee operations prior to Kathie Morgan. Q. How long was he the vice president of technical committee operations prior to Kathie Morgan? A. Ken Pearson. Q. How long was he the vice president of technical committee operations? A. Probably 25 years. 20 to 25 years. Q. Do you know who the vice president of technical committee operations. A. I think it was Jim Thomas. A. I think it was Jim Thomas. A was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A Ayea. A No. Q. You stated earlier that you're A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" A. No. C. When you spoke with Kathie Morgan	1		l	Q. Do you know who would know if
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19 A. Ken Pearson. 20 Q. How long was he the vice 21 president of technical committee operations? 22 A. Probably 25 years. 20 to 25 23 years. 24 Q. Do you know who the vice 25 president of technical committee operations 26 president of technical committee operations 27				
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19 I wasn't sure 20 BY MR. BECKER: 21 Q. Yes. 22 A whether there was? 23 Q. Yes. 24 A. Yeah. I thought I recalled 25 that there was. 26 BY MR. BECKER: 27 Q. I'm handing you what's been 28 marked as Exhibit 1290. This is Exhibit A 29 Grow the Complaint filed by plaintiffs. Do 29 you recognize this document? 20 BY MR. BECKER: 21 Q. I'm handing you what's been 22 marked as Exhibit 1290. This is Exhibit A 23 Grow the Complaint filed by plaintiffs. Do 24 you recognize this document? 25 A. I don't think I looked at this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from
20BY MR. BECKER:20BY MR. BECKER:21Q. Yes.21Q. I'm handing you what's been22A whether there was?22marked as Exhibit 1290. This is Exhibit A23Q. Yes.23from the Complaint filed by plaintiffs. Do24A. Yeah. I thought I recalled24you recognize this document?25that there was.25A. I don't think I looked at this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for
21Q. Yes.21Q. I'm handing you what's been22A whether there was?22marked as Exhibit 1290. This is Exhibit A23Q. Yes.23from the Complaint filed by plaintiffs. Do24A. Yeah. I thought I recalled24you recognize this document?25that there was.25A. I don't think I looked at this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for
22 A whether there was? 23 Q. Yes. 24 A. Yeah. I thought I recalled 25 that there was. 22 marked as Exhibit 1290. This is Exhibit A 23 from the Complaint filed by plaintiffs. Do 24 you recognize this document? 25 A. I don't think I looked at this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that I wasn't sure	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for identification.)
23 Q. Yes. 24 A. Yeah. I thought I recalled 25 that there was. 28 from the Complaint filed by plaintiffs. Do 29 you recognize this document? 20 A. I don't think I looked at this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that I wasn't sure BY MR. BECKER:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for identification.) BY MR. BECKER:
24 A. Yeah. I thought I recalled 24 you recognize this document? 25 that there was. 25 A. I don't think I looked at this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that I wasn't sure BY MR. BECKER: Q. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been
25 that there was. 25 A. I don't think I looked at this	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that I wasn't sure BY MR. BECKER: Q. Yes. A whether there was?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1290. This is Exhibit A
	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. I think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that I wasn't sure BY MR. BECKER: Q. Yes. A whether there was? Q. Yes.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1290. This is Exhibit A from the Complaint filed by plaintiffs. Do
Page 119 Page 121	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 think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that I wasn't sure BY MR. BECKER: Q. Yes. A whether there was? Q. Yes. A. Yeah. I thought I recalled	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1290. This is Exhibit A from the Complaint filed by plaintiffs. Do you recognize this document?
	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 think it was Jim Thomas. Q. Do you know how long Jim Thomas was the vice president of technical committee operations? A. No. Q. When you spoke with Kathie Morgan in preparation for your deposition today, did you discuss "Work for Hire" Agreements with her? A. No. Q. You stated earlier that you're not certain if an Intellectual Property Policy existed prior to April 28, 1999. Is that correct? MR. FEE: Objection. Mischaracterizes his testimony. THE WITNESS: You're saying that I wasn't sure BY MR. BECKER: Q. Yes. A whether there was? Q. Yes. A. Yeah. I thought I recalled that there was.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Property Policy existed prior to 1999? A. I don't think so. MR. BECKER: Counsel, given Topic Number 2 in the Notice of Deposition, we need somebody who is able to say definitively whether an Intellectual Property Policy existed prior to 1999. MR. FEE: Do you have any other questions for him or are you done? MR. BECKER: No, we're continuing. MR. FEE: Okay. Go ahead. (Exhibit 1290, Exhibit A from Complaint, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1290. This is Exhibit A from the Complaint filed by plaintiffs. Do you recognize this document? A. I don't think I looked at this

1 document. 2 Q. Well, this is the listing of standards that ASTM is asserting are 4 infringed by Public Resource.Org. 3 standards that ASTM is asserting are 4 infringed by Public Resource.Org. 4 infringed by Public Resource.Org. 5				
as standards that ASTM is asserting are infringed by Public Resource.Org. 6 (Exhibit 1291, Certificates of Copyright Registration you viewed yesterday? 7 Copyright Registration, Bates ASTM000001 - ASTM000168, was marked for identification.) 8 ASTM000001 - ASTM000168, was marked for identification.) 10 10		document.		•
4 infringed by Public.Resource.Org. 5 (Exhibit 1291, Certificates of Copyright Registration you viewed yesterday? 7 Copyright Registration, Bates ASTM0000168, was marked of ri identification.) 8 ASTM00001-ASTM00168, was marked of ri identification.) 10	2	Q. Well, this is the listing of		•
5 (Exhibit 1291, Certificates of 7 Copyright Registration, Bates 8 ASTM000001 - ASTM000168, was marked 9 for identification.) 9 A. I believe so. 9 Did you have any discussions with anyone in preparation for your deposition today concerning Certificates of 13 Copyright Registration by ASTM? 4 Debug of 14 documents produced as Bates number ASTM000001 14 to to ASTM000168. Do you recognize this 16 document? 15 to ASTM000168. Do you recognize this 16 document? 16 document? 17 MR. FEE: Objection. 18 Mischaracterizes what has been marked as 1291 as one document. 17 MR. FEE: Objection. 18 Mischaracterizes what has been marked as 1291 as one document. 19 discussions with? 19 MR. FEE: Objection. Lack of 5 foundation. 19 MR. FEE: Objection. Lack of 6 foundation. 19 MR. FEE: Objection. 19 MR. FEE: Objection as 1291 as an an any objection. 19 MR. FEE: Objection are page 122 as an individual that you spoke with in 19 reparation for your deposition to the work a work made for his deposition. 19 MR. FEE: Objection was an example of one of these Certificates of Copyright Registration that ASTM has produced to Public. Resource in this action. 19 You said you saw an example of one of these Certificates of Copyright Registration for your deposition to the work a work made for his his preparation for your deposition to the work a work made for his his preparation for your deposition to the work a work made for his his preparation for your deposition to the work a work made for his his preparation for your deposition to the work a work made for his his preparati	3	standards that ASTM is asserting are	3	
6 (Exhibit 1291, Certificates of 7 Copyright Registration, Bates 8 ASTM000001 - ASTM00168, was marked 9 for identification.) 11 BY MR. BECKER: 12 Q. I'm handing you what has been 13 marked as Exhibit 1291. These are the 14 documents produced as Bates number ASTM000001 15 to ASTM00168. Do you recognize this 16 document? 17 MR. FEE: Objection. 18 Mischaracterizes what has been marked 19 as 1291 as one document. 19 MR. FEE: Objection. 19 A. I believe so. 10 Q. Did you have any discussions 11 with anyone in preparation for your 12 deposition today concerning Certificates of 13 Copyright Registration by ASTM? 16 THE WITNESS: Yes. 17 MR. FEE: Objection. 18 Mischaracterizes what has been marked 19 as 1291 as one document. 19 A. I had a discussion with Kathe 19 Exhibit 1291? 20 What is Exhibit 1291? 21 THE WITNESS: They look like 22 Dy MR. BECKER: 23 Q. What is Exhibit 1291? 24 MR. FEE: Objection. Lack of 25 foundation. 26 Copyright Registration 27 A. On the Witness of Copyright Registration 28 PBY MR. BECKER: 29 Q. I don't believe that Kathe 29 A. Yes. 20 Lidn't believe that Wathe 20 THE WITNESS: They look like 21 Hooper. 22 Q. Anybody else? 23 Q. Uill represent to you that 24 don't think so. 25 Q. I don't believe that Kathe 26 Exhibit 1291 is all of the Certificates of 27 Copyright Registration that ASTM has produced to Public. Resource in this action. 29 You said you saw an example of 30 one of these Certificates of Copyright 31 Registration yesterday? 32 A. Yes. 33 Q. Was that in preparation for 34 your deposition? 35 A. Yes. 36 Q. And why is that, that box 2a 37 Q. Was that in preparation for 38 You said you saw an example of 39 A. Yes. 40 Q. And why is that, that box 2a 41 Way. 42 Way? 43 A. I believe so. 45 Copyright Registration? 46 Department of the prople that you discuss when you spoke with the dorn that as a san individual that you spoke with has the dorn that as a special meeting with her. 40 Q. And why is that, that box 2a 41 Way. 42 Q. And why is that, that box 2a 43 Way? 44 We discussed why, when this f	4	infringed by Public.Resource.Org.	4	
7 Copyright Registration, Bates 8 ASTM000001 - ASTM000168, was marked 9 for identification.) 10	5		5	yesterday?
8 ASTM000001 - ASTM000168, was marked for identification.) 9 For identification.) 10	6	(Exhibit 1291, Certificates of	6	A. No.
for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) for identification.) graph of identification.) for identification.) graph of identification identification by ASTM? deposition today concerning Certificates of Copyright Registration by ASTM? deposition today concerning Certificates of THE WITNESS: Yes. graph of identification by ASTM? MR. FEE: Objection. graph of identification by ASTM? graph of identification identification by ASTM? MR. FEE: Objection. graph of identification by ASTM? MR. FEE: Objection. graph of identification by ASTM? MR. FEE: Objection. graph of identification by ASTM? MR. FEE: Objection. graph of identificates of identification by ASTM? graph of identification by ASTM? MR. FEE: Objection. graph of identification by ASTM? MR. FEE: Objection. graph of identification by ASTM? MR. FEE: Objection. graph of identification by ASTM? deposition today concerning certificates of one. Gopyright Registration by ASTM? deposition today concerning certificates of one. Gopyright Registration by ASTM? MR. FEE: Objection. graph of identification by ASTM?	7	Copyright Registration, Bates	7	Q. Was it only one Certificate of
10	8	ASTM000001 - ASTM000168, was marked	8	Copyright Registration that you looked at?
10 Q. Did you have any discussions with anyone in preparation for your deposition today concerning Certificates of documents produced as Bates number ASTM00001 MR. FEE: You can answer it yes of no.	9		9	A. I believe so.
11 BY MR. BECKER: 12 Q. I'm handing you what has been 13 marked as Exhibit 1291. These are the 14 documents produced as Bates number ASTM000001 15 to ASTM000168. Do you recognize this 16 document? 17 MR. FEE: Objection. 18 Mischaracterizes what has been marked 19 as 1291 as one document. 20 THE WITNESS: I think I saw an 21 example of one yesterday. 21 BY MR. BECKER: 22 BY MR. BECKER: 23 Q. What is Exhibit 1291? 24 MR. FEE: Objection. Lack of 25 foundation. 26 foundation. 27 Page 122 28 MR. BECKER: 29 Q. What is Exhibit 1291? 20 THE WITNESS: They look like 20 they're examples of Certificates of 31 Copyright Registration. 4 BY MR. BECKER: 4 D. And who did you have these 31 discussions with Xathe 4 Hooper. 5 Q. I don't think so. 6 Q. I don't think so. 7 Q. I don't believe that Kathe 8 Deaps 124 8 Hooper was one of the people that you listed 9 as an individual that you spoke with in 10 preparation for your 12 deposition today concerning Certificates of non. 13 Copyright Registration. 14 Your deposition. 15 to ASTM000168. Do you recognize this 16 document? 17 MR. FEE: You can answer it yes 18 Or no. 19 And who did you have these 18 discussions with Xathe 19 An Who did you have these 18 discussions with Yand discussion with Kathe 19 Hooper. 20 Q. I don't believe that Kathe 21 Hooper was one of the people that you listed 22 as an individual that you spoke with in 23 preparation for your deposition? 24 A. Yeah, we — I didn't — we did 25 not have a special meeting with her. 26 Q. What is full you discussed why, when this 27 form was filled out, why we had checked off the box yes to question 2 about "Was this ornire." 28 YAN. BECKER: 29 Q. Was that in preparation for 29 You said you saw an example of 20 nor of these Certificates of Copyright 21 pour deposition? 22 pure deposition today? 23 A. Other than the legal team, I 24 don't think so. 25 Q. Water by our deposition? 26 Q. What is Exhibit 1291 as an individual that you spoke with in 29 propright Registration yes an example of the Certificates of Copyright 29 A. We dis	10		10	Q. Did you have any discussions
Q. I'm handing you what has been marked as Exhibit 1291. These are the documents produced as Bates number ASTM000001 14 WR. FEE: You can answer it yes or no. 15 to ASTM000168. Do you recognize this 15 to ASTM000168. Do you recognize this 16 document? 16 THE WITNESS: Yes. 17 WR. FEE: Objection. 18 WR. FEE: Objection. 19 Wr. FEE: Objection. 19 discussions with? 19 discussions with Kathe 20 And who did you have these discussions with? 21 Hooper. 22 Q. And who did you have these discussions with? 23 A. Other than the legal team, I 24 don't think so. 25 don't think so. 25 don't think so. 26 don't think so. 27 don't think so. 28 don't think so. 29 don't think so. 29 don't think so. 20 I don't believe that Kathe Page 124 don't think so. 26 don't think so. 27 don't think so. 28 don't think so. 28 don't think so. 29 don't think so. 20 I don't believe that Kathe Page 124 don't think so. 26 don't think so. 27 don't think so. 28 don't think so. 28 don't think so. 29 I don't believe that Kathe Page 124 don't think so. 29 don't think so. 20 I don't believe that Kathe Page 124 don't think so. 20 I don't believe that Kathe Page 124 don't think so. 25 don't think so. 26 don't think so. 27 don't think so. 28 don't think so. 27 don't think so. 28 don't think so. 28 don't think so. 29 don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don't think so. 20 U mother than the legal team, I don'	11	BY MR. BECKER:	11	•
13 marked as Exhibit 1291. These are the 14 documents produced as Bates number ASTM0000101 14	12	Q. I'm handing you what has been	12	
14 documents produced as Bates number ASTM000001 14 MR. FEE: You can answer it yes or no.	13		13	
15 to ASTM000168. Do you recognize this document? 16 document? 17 MR. FEE: Objection. 18 Mischaracterizes what has been marked as 1291 as one document. 19 THE WITNESS: I think I saw an example of one yesterday. 20 THE WITNESS: I think I saw an example of one of these Certificates of Copyright Registration that ASTM has produced to Public.Resource in this action. 9 You said you saw an example of one of these Certificates of Copyright Registration for your deposition? 10 Q. Was that in preparation for your deposition? 11 Registration? 12 A. Yes. 13 Q. Was that in preparation for your deposition? 14 your deposition? 15 THE WITNESS: Type to be like they're examples of condition. 16 Yeah, we — I didn't — we di	14	documents produced as Bates number ASTM000001	14	
16 document? 17 MR. FEE: Objection. 18 Mischaracterizes what has been marked 19 as 1291 as one document. 20 THE WITNESS: I think I saw an 21 example of one yesterday. 21 example of one yesterday. 22 BY MR. BECKER: 23 Q. What is Exhibit 1291? 24 MR. FEE: Objection. Lack of foundation. Page 122 1 THE WITNESS: They look like 2 they're examples of Certificates of Copyright Registration that ASTM has produced to Public.Resource in this action. 4 BY MR. BECKER: 5 Q. I will represent to you that 6 Exhibit 1291 is all of the Certificates of to Public.Resource in this action. 9 You said you saw an example of one of othese Certificates of Copyright Registration yesterday? 10 one of these Certificates of Copyright 11 to one of these Certificate of Copyright 12 A. Yes. 13 Q. Was that in preparation for your deposition? 14 your deposition? 15 A. Yes. 16 Q. And who did you have these discussions with? A. I had a discussion with Kathe A. Other than the legal team, I don't think so. Q. I don't believe that Kathe Page 122 1 Hooper was one of the people that you listed as an individual that you spoke with hin preparation for your deposition: 3 preparation for your deposition: 4 BY MR. BECKER: 4 A. Yes. 15 (Q. Mat idid you discuss when you spoke with Kathe Hooper in preparation for your deposition today? 4 A. We discussed why, when this form was filled out, why we had checked off the box yes to question 2a about "Was this contribution to the work a work made for hinc." 16 Exhibit 129 li sall of the Certificate of Copyright 17 A. She said that the copyright 18 Registration? 19 MR. FEE: Objection. Vague. 20 THE WITNESS: I'm not sure what you wanen by "context." 21 gou mean by "context." 22 BY MR. BECKER: 23 Q. Were you shown an example of the Certificate of Copyright Registrations? 24 C. Jod hind in discussions with Kathe 25 A. I had a discussions with Kathe A. I had a discussions with Kathe A. I had a discussions with Kathe A. I had a discussion with Kathe A. I had a discussion with Kathe A. I				-
17 MR. FEE: Objection. 18 Mischaracterizes what has been marked 19 as 1291 as one document. 19 discussions with?		· · · · · · · · · · · · · · · · · · ·		THE WITNESS: Yes.
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1
 1
         A. I think she started back in
                                                                 Do you know what had been the
                                                    2
                                                        discussion with the copyright office by Kathe
    1984, I think she may have said.
                                                    3
                                                        Hooper's predecessor concerning checking box
              Do you know who was filling out
 3
    ASTM Certificate of Copyright Registration
                                                    4
 5
    forms prior to Kathe Hooper?
                                                    5
                                                                 Do I know?
         A. A name was mentioned yesterday,
                                                    6
 6
                                                                MR. FEE: Objection.
    but I don't recall the name.
                                                    7
7
                                                        BY MR. BECKER:
8
              Was that individual Robert L.
                                                    8
         Q.
                                                            Q. Yeah.
                                                                MR. FEE: Vague.
9
    Meltzer?
                                                    9
                                                                THE WITNESS: I only know what
10
                                                   10
         A. I recognize that name, but I
    don't know if Robert Meltzer was the one that
                                                   11
                                                            Kathe Hooper told me.
11
    was filling out this form.
                                                   12
                                                        BY MR. BECKER:
12
             Do you know who Robert Meltzer
                                                   13
                                                            Q. And what precisely did Kathe
13
                                                        Hooper tell you about that?
14
    is?
15
              He was a former vice president
                                                   15
                                                                MR. FEE: Objection. Asked and
16
    of publications.
                                                   16
                                                            answered.
                                                   17
17
              Did Kathe Hooper say what
                                                                 THE WITNESS: That the copyright
    communications with the copyright office led
                                                            office had informed Kathe Hooper's
18
                                                   18
19
    to her decision to check box 2a of the
                                                   19
                                                            predecessor to check box yes to the
    copyright registrations?
                                                   20
                                                            answer -- to the question on 2a.
20
        A. What led her to fill out this
21
                                                   21
                                                        BY MR. BECKER:
22
                                                   22
    form that way?
                                                            Q. Did Kathe Hooper tell you any
23
              Did she say what communications
                                                   23
                                                        information about what her predecessor had
    she had with the copyright office that led
                                                        said to the copyright office that led to the
    her to fill out the forms to check box 2a?
                                                        copyright office telling her to check box 2a?
                                                   25
                                                                                               Page 128
                                           Page 126
                                                                 No. My understanding is it was
1
              She had said that her
                                                    1
    predecessor had a conversation with the
                                                        just a question on how to fill out the form.
    copyright office, and they had informed her
                                                    3
                                                                 Did ASTM ever have a lawyer
                                                        review the applications for copyright
    that it should be filled out that way.
                                                    4
                                                    5
 5
              Do you know if Kathe Hooper had
                                                        registration?
    any interactions with the copyright office in
                                                    6
                                                            A.
                                                                 I don't know.
 6
    which the copyright office told her to fill
                                                    7
                                                                 Do you have any knowledge about
    out the registrations by checking box 2a?
                                                        what information the copyright office had
 8
                                                    8
 9
              I don't believe she did.
                                                        obtained from ASTM when it said to check box
10
              What is Kathe Hooper's role at
                                                   10
         Q.
                                                        2a?
    ASTM?
                                                   11
                                                            A.
11
                                                                 No.
              She assists the vice president
                                                   12
                                                                 If ASTM had provided different
12
        A.
                                                        facts concerning the material that was being
13
    of publications.
                                                   13
14
         Q. How long has Kathe Hooper held
                                                        copyrighted, that might call for a different
15
    that role for at ASTM?
                                                   15
                                                        answer to whether box 2a should be checked on
         A. I can't say for certain, but I
                                                        the copyright registration form. Correct?
16
                                                   16
    think she said yesterday, since about 1984
                                                   17
                                                                MR. FEE: Objection. Calls for
17
18
    she was in that role.
                                                   18
                                                            speculation. Calls for a legal
19
              And currently the vice
                                                   19
                                                            conclusion. Calls for expert
    president of publications is John Pace.
                                                   20
                                                            testimony. You can answer if you
20
21
    Correct?
                                                   21
                                                            know.
22
                                                   22
                                                                THE WITNESS: I don't know.
23
         Q.
              Do you know how long John Pace
                                                   23
                                                        BY MR. BECKER:
24
    has held that role for?
                                                   24
                                                                 Why is ASTM listed as the
        A. It's been about 11 years.
                                                        author under section 2a?
                                                   25
25
                                           Page 127
                                                                                               Page 129
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1	A. I think the copyright office	1	concerning how to fill out section 2a of the
2	told us to fill out the form in that manner.	2	forms for copyright registration?
3	Q. Did Kathe Hooper tell you that	3	MR. FEE: Objection. Calls for
4	the copyright office said to fill out the	4	speculation. Beyond the scope of his
5	copyright registration form by putting	5	designation. You can answer.
6	American Society for Testing and Materials	6	THE WITNESS: I don't know.
7	under name of author, section 2a?	7	Maybe the people that worked in our
8	A. Yes.	8	publications department at the time
9	Q. Did Kathe Hooper tell you	9	that that question was at the time
10	anything else about listing ASTM under the	10	that the copyright office had informed
11	name of author field in section 2a?	11	us.
12	A. No.	12	BY MR. BECKER:
13	Q. Are there any documents that	13	Q. Do you know who was the
14	reflect ASTM's communication with the	14	president of publications as of the time that
15	copyright office concerning how to fill out	15	ASTM communicated with the copyright office
16	section 2a of the forms for copyright	16	regarding how to fill out section 2a of the
17	registration?	17	copyright registration forms?
18	MR. FEE: Objection. Calls for	18	A. I believe it was Bob Meltzer,
19	speculation. This is beyond the	19	Robert Meltzer.
20	scope. You can answer.	20	Q. Do you know if Robert Meltzer
21	THE WITNESS: Not that I'm aware	21	is still alive?
22	of.	22	A. I don't know for sure.
23	BY MR. BECKER:	23	MR. FEE: Matt, is now a good
24	Q. Are there any letters that	24	time to take a break?
25	reflect ASTM's communication with the	25	MR. BECKER: We can in just a
	Page 130		Page 132
1	copyright office concerning how to fill out	1	moment.
2	section 2a of the forms for copyright	2	BY MR. BECKER:
	no cistuati su 2		
3	registration?	3	Q. Please turn to page ASTM000107
3 4	MR. FEE: Objection. Same	3 4	Q. Please turn to page ASTM000107 of Exhibit 1291. I will represent to you
			of Exhibit 1291. I will represent to you that this is the earliest copyright
4	MR. FEE: Objection. Same objections as before, plus you just answered that question. You can	4	of Exhibit 1291. I will represent to you
5	MR. FEE: Objection. Same objections as before, plus you just answered that question. You can answer it again.	4 5	of Exhibit 1291. I will represent to you that this is the earliest copyright
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1	predecessor had had a conversation with the	1	Q. Mr. Smith, do you know which
2	copyright office in which they instructed her	2	standards at issue in this litigation each
3	to check the box saying that the scratch	3	copyright registration that ASTM has provided
4	that.	4	corresponds to?
5	Is it your understanding that	5	A. I'm not sure I get the
6	as of at least January 31, 1980, someone at	6	question.
7	ASTM had had a conversation with someone from	7	Q. If you look at, we were just
8	the copyright office in which that person	8	discussing ASTM000107 in Exhibit 1291, that's
9	from ASTM was instructed to check the box	9	a standard, the title of the work is "1980
10	saying that the work was a "work made for	10	ANNUAL BOOK OF ASTM STANDARDS, Part
11	hire," and listing the name "American Society	11	1:Steel-Piping, Tubing, Fittings." Is that
12	for Testing and Materials" under the "NAME OF	12	correct?
13	AUTHOR" field?	13	A. Correct.
14	MR. FEE: Objection to form.	14	Q. Do you know how many standards
15	THE WITNESS: I'm not sure I	15	are in the 1980 Annual Book of ASTM
16	understand the question. If you could	16	Standards, Part 1:Steel-Piping, Tubing,
17	rephrase it, I'm a little lost.	17	Fittings?
18	BY MR. BECKER:	18	A. No.
19	Q. Sure. Is it your after	19	MR. FEE: Objection. Beyond the
20	looking at this document, page ASTM000107 to	20	scope of his designation.
21	108, is it your understanding that as of at	21	THE WITNESS: No, I don't.
22	least January 31, 1980, someone at ASTM had a	22	MR. BECKER: I would disagree, I
23	conversation with someone from the copyright	23	don't think this is beyond the scope
24	office in which that person from ASTM was	24	of his designation. This has to do
25	instructed to check the box saying that the	25	with the with copyright ownership
	Page 134		Page 136
1	work was a "work made for hire," and listing	1	and the chain of title. This is
2	the names "American Society for Testing and	2	MR. FEE: You just asked him how
3	Materials" under the "NAME OF AUTHOR" field?	3	many chapters essentially there were
4	MR. FEE: Objection. Form. Go	4	in a book.
5	ahead.	5	MR. BECKER: Well, that's one of
6	THE WITNESS: Yeah, I believe	6	the questions I have, is related to
7	that's right, I just don't know		
	that 5 fight, 1 just don't know	7	this particular registration. It's a
8	when that con I don't know when	7 8	
8	- ·		this particular registration. It's a
	when that con I don't know when	8	this particular registration. It's a registration for a work.
9	when that con I don't know when that conversation exactly was made.	8 9	this particular registration. It's a registration for a work. MR. FEE: We disagree for the
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1	how many standards are in the 1980 Annual	1	MR. FEE: Same objections.
2	Book of ASTM Standards, Part 1:Steel-Piping,	2	THE WITNESS: He might.
3	Tubing, Fittings?	3	BY MR. BECKER:
4	MR. FEE: Same objection.	4	Q. Who else is in the publications
5	THE WITNESS: I don't know if	5	department other than Kathe Hooper and John
6	there would be a way to find that out	6	Pace?
7	today.	7	MR. FEE: Objection. Beyond the
8	BY MR. BECKER:	8	scope of his designation.
9	Q. Why not?	9	BY MR. BECKER:
10	MR. FEE: Same objection.	10	Q. Let me rephrase. Who else
11	Beyond the scope.	11	other than
12	THE WITNESS: I just don't know	12	A. 50-some people. I don't know.
13	if we still have that information from	13	Q. Let me rephrase. Other than
14	35 years ago.	14	John Pace and Kathe Hooper, who else might
15	BY MR. BECKER:	15	know whether the whether copies of all of
16	Q. How would you go about trying	16	ASTM's publications are kept?
17	to determine how many standards were in the	17	A. I don't know.
18	1980 Annual Book of ASTM Standards, Part	18	MR. FEE: Objection. Beyond the
19	1:Steel-Piping, Tubing, Fittings?	19	scope of his designation.
20	MR. FEE: Same objection.	20	THE WITNESS: I don't know.
21	THE WITNESS: I would probably	21	MR. FEE: Calls for speculation.
22	ask our publications department if we	22	BY MR. BECKER:
23	had any record of the index for that	23	Q. If you look at Exhibit 1290 and
24	book. And if we did, you can count	24	compare it with compare the second page of
25	them.	25	1290 with ASTM0000107, the copyright
	Page 138		Page 140
	BY MR. BECKER:	1	and the second to the second t
1		1	registration page that we've been discussing,
2	Q. Would you be able to determine	2	you will see that in the middle of the page,
2 3	Q. Would you be able to determine this from anything else other than the book	2 3	you will see that in the middle of the page, page 2 of Exhibit 1290 it lists ASTM A370 as
2 3 4	Q. Would you be able to determine this from anything else other than the book itself or an index for that book?	2	you will see that in the middle of the page, page 2 of Exhibit 1290 it lists ASTM A370 as a designation, the edition 1997e2, "Standard
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2 3 4 5 6	Q. Would you be able to determine this from anything else other than the book itself or an index for that book? MR. FEE: Same objection. THE WITNESS: I don't know.	2 3 4	you will see that in the middle of the page, page 2 of Exhibit 1290 it lists ASTM A370 as a designation, the edition 1997e2, "Standard Methods and Definition for Mechanical Testing of Steel Products" with a registration
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2 3 4 5 6 7 8 9	Q. Would you be able to determine this from anything else other than the book itself or an index for that book? MR. FEE: Same objection. THE WITNESS: I don't know. BY MR. BECKER: Q. Does ASTM keep complete copies of every book it has published?	2 3 4 5 6 7 8 9	you will see that in the middle of the page, page 2 of Exhibit 1290 it lists ASTM A370 as a designation, the edition 1997e2, "Standard Methods and Definition for Mechanical Testing of Steel Products" with a registration certificate number TX 434-207. Do you see that? A. Yes.
2 3 4 5 6 7 8 9	Q. Would you be able to determine this from anything else other than the book itself or an index for that book? MR. FEE: Same objection. THE WITNESS: I don't know. BY MR. BECKER: Q. Does ASTM keep complete copies of every book it has published? MR. FEE: Same objection.	2 3 4 5 6 7 8	you will see that in the middle of the page, page 2 of Exhibit 1290 it lists ASTM A370 as a designation, the edition 1997e2, "Standard Methods and Definition for Mechanical Testing of Steel Products" with a registration certificate number TX 434-207. Do you see that? A. Yes. Q. Do you see that the
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2 3 4 5 6 7 8 9 10 11 12	Q. Would you be able to determine this from anything else other than the book itself or an index for that book? MR. FEE: Same objection. THE WITNESS: I don't know. BY MR. BECKER: Q. Does ASTM keep complete copies of every book it has published? MR. FEE: Same objection. THE WITNESS: I don't know. I don't think so.	2 3 4 5 6 7 8 9	you will see that in the middle of the page, page 2 of Exhibit 1290 it lists ASTM A370 as a designation, the edition 1997e2, "Standard Methods and Definition for Mechanical Testing of Steel Products" with a registration certificate number TX 434-207. Do you see that? A. Yes. Q. Do you see that the registration number TX 434-207 corresponds with the registration number in the top
2 3 4 5 6 7 8 9 10 11 12 13	Q. Would you be able to determine this from anything else other than the book itself or an index for that book? MR. FEE: Same objection. THE WITNESS: I don't know. BY MR. BECKER: Q. Does ASTM keep complete copies of every book it has published? MR. FEE: Same objection. THE WITNESS: I don't know. I don't think so. BY MR. BECKER:	2 3 4 5 6 7 8 9 10 11 12 13	you will see that in the middle of the page, page 2 of Exhibit 1290 it lists ASTM A370 as a designation, the edition 1997e2, "Standard Methods and Definition for Mechanical Testing of Steel Products" with a registration certificate number TX 434-207. Do you see that? A. Yes. Q. Do you see that the registration number TX 434-207 corresponds with the registration number in the top right-hand corner of the page ASTM000107 from
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Cà	ase 1.13-cv-01215-15C Document 204-	40	Filed 11/13/19 Page 39 01 114
1	Office?" And then it says, "give: Previous	1	than 1977?
2	Registration Number," and the registration	2	A. Yes.
3	number "TX 226-040 Year of Registration 1979"	3	Q. And in what case would there be
4	is provided. Is that correct?	4	more recent versions?
5	MR. FEE: Objection.	5	A. If the committee successfully
6	Mischaracterizes, eliminates portions	6	balloted a revision to the standard.
7	of that section.	7	Q. In what circumstances would a
8	THE WITNESS: That reads as you	8	revision result in a change of the year
9	said.	9	that's listed from 1977 to a different year?
10	BY MR. BECKER:	10	A. If it was approved, if a
11	Q. Do you know if the standard	11	revision was approved in a different year, it
12	ASTM A370 1997e2 was featured in this other	12	would be provided that year date.
13	work that's registered as TX 226-040 with the	13	Q. But for the version that is
14	year of registration 1979?	14	marked as 1977e2, was that version first
15	MR. FEE: Objection. Beyond the	15	released in 1977?
16	scope of his designation.	16	A. It depends when it was it
17	THE WITNESS: I don't know for	17	depends. If it was approved at the end of
18	sure. I don't know.	18	1977, it could have been published in 1978.
19	BY MR. BECKER:	19	Q. Would it have been published
20	Q. Do you know how somebody would	20	any later than 1978? Excuse me, would it
21	determine what work is referenced by this	21	have been first published any later than
22	registration number that's provided?	22	1978?
23	MR. FEE: Objection. Vague.	23	A. This particular 1977 version, I
24	Calls for speculation. Beyond the	24	wouldn't have
25	scope of his designation.	25	Q. Yes.
	Page 146		Page 148
1	THE WITNESS: I think it's this,	1	A. I wouldn't have thought that it
2	the 1980 Annual Book of ASTM Standards		would be published any later than 1978.
3	or the 1979 book correlates with this	3	Q. Does ASTM release a new version
4	registration.	4	of the Annual Book of ASTM Standards every
5	BY MR. BECKER:	5	year?
6	Q. For ASTM A370 1997e2, what does	6	A. Yes.
7	the 19 excuse me, did I say let me	7	Q. What is contained in the Annual
8	rephrase that.	8	Book of ASTM Standards? Is that every
9	For ASTM A370 1977e2, what does	l	standard that ASTM excuse me. Is that
10	1977 designate?	10	every ASTM standard that is current as of
11	A. It means that's the year that	11	that year?
12	that version was approved. So A370 may have	l	MR. FEE: Objection. Compound.
13	been a new standard that was first approved	13	THE WITNESS: The Annual Book o
14	in 1977, or it could have been revised and	14	ASTM Standards comprises a collection
15	that version was approved in 1977.	15	of volumes, so there are specific
16	Q. So 1977 is the year of most	16	volumes of ASTM standards. This Part
17	recent either approval or revision?	17	1:Steel-Piping, Tubing, Fittings is a
18	MR. FEE: Objection. Compound.	18	volume.
19	Vague. Mischaracterizes his testimony.	19	BY MR. BECKER:
l	THE WITNESS. N. 4	20	Q. Would volume have been would
20	THE WITNESS: Not necessarily.		
21	There could be there could be more	21	there have been a 1979 Annual Book of ASTM
1			

Page 149

Would there have been a 1978

Page 147

24

Q. For ASTM A370 1977e2, could

25 there have been more recent versions of it

24

25

A.

Q.

Yes.

			1
1	Annual Book of ASTM Standards, Part	1	A. Yes. Nothing is technically
2	1:Steel-Piping, Tubing, Fittings?	2	significant.
3	A. I don't know specifically if	3	Q. Returning to ASTM000108, just
4	there would be you know, if it was called	4	below where it lists the information under
5	the same thing, a Part 1 or because	5	"PREVIOUS REGISTRATION," it has a section
6	sometimes we have to reshuffle our volumes	6	that says, "COMPILATION OR DERIVATIVE WORK"
7	depending as they get bigger, we have to	7	which says, "PREEXISTING MATERIAL." And then
8	manage the size of each volume. So I don't	8	below that it says, "1979 Annual Book of ASTM
9	know if it was would have been called Part	9	Standards, Part 1." And then below that,
10	1 or something else, but I also don't know if	10	"MATERIAL ADDED TO THIS WORK," it says,
11	the same exact standards that were in there	11	"Compilation of previously published text
12	in 1979 are not necessarily in there in 1980.	12	plus additional text."
13	Q. Would ASTM A370 1977e2 have	13	Do you know what that
14	been published in an Annual Book of ASTM	14	additional text is that was added to the 1979
15	Standards prior to 1980?	15	Annual Book of ASTM Standards, Part 1 to
16	A. Most yeah, most likely, yep.	16	create the 1980 Annual Book of ASTM
17	Q. Do you know why ASTM has not	17	Standards, Part 1?
18	provided Public.Resource with the copyright	18	A. I don't know exactly what that
19	registrations for any such volumes prior to	19	text was, but it's my guess is that it
20	1980?	20	means revisions to the standards that were
21	MR. FEE: Objection. Calls for	21	included in the 1979 book that are also
22	speculation. Beyond the scope of his	22	included in the 1980 book, but there are also
23	designation.	23	revisions, and any new standards that were
24	THE WITNESS: I don't know.	24	approved that were not in the 1979 book but
25	BY MR. BECKER:	25	made it to the 1980 book.
	Page 150		Page 152
1	Q. Why are some standards	1	Q. Is the basis of your previous
2	re-approved?	2	statement that typically the next years'
2 3	re-approved? MR. FEE: Objection. Beyond the	2 3	statement that typically the next years' Annual Book of Standards includes standards
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1	question means, but I'll just explain	1	compound.
2	it that if there let's just say,	2	THE WITNESS: It's internal to
3	for example, that there's a standard	3	ASTM, but we do make historical
4	that is in the 1979 book. If that	4	versions of standards available from
5	standard is revised, then the revision	5	our Web site. I believe we started
6	is included in the 1980 book. Does	6	that from 19 it might have been
7	that kind of answer your question?	7	like 2000.
8	MR. BECKER: Yes.	8	BY MR. BECKER:
9	BY MR. BECKER:	9	Q. And who maintains these logs?
10	Q. And generally that's the case	10	MR. FEE: Objection. Vague.
11	for any successive Annual Book of Standards.	11	THE WITNESS: It's part of our
12	Is that correct?	12	automated system.
13	MR. FEE: Objection. Vague.	13	BY MR. BECKER:
14	Compound.	14	Q. Who is in charge of that
15	THE WITNESS: Yeah, that's the	15	automated system?
16	way it works.	16	A. I guess the system itself, our
17	BY MR. BECKER:	17	technology area.
18	Q. Is there a log of every	18	Q. Would that be the VP of
19	revision over time to any particular standard	19	technology who is in charge of that?
20	from its first creation?	20	A. Uh-huh. Yes. I'm sorry.
21	MR. FEE: Objection. Vague.	21	Q. On Exhibit 1291, please turn to
22	THE WITNESS: ASTM is 115 years	22	ASTM000149. And when you have that open,
23	old, so I don't think there is a log	23	please also flip to ASTM000155. If you look
24	that exists for standards that were	24	at ASTM000149 under the section 2-1, it says,
25	approved in our early stages.	25	"AUTHOR OF (Briefly describe nature of this
	Page 154		Page 156
1	BY MR. BECKER:	1	author's contribution)," and it says, "Entire
2	Q. Does ASTM keep a log of every	2	Text." In contrast, if you look at
3	revision over time to any particular standard	3	ASTM000155 under section 2-1 "AUTHOR OF
4	from its first creation for those standards	4	(Briefly describe nature of this author's
5	that have been created in the past ten years?	5	contribution)," it says, "Collective Work."
6	MR. FEE: Objection. Vague.	6	Do you know why ASTM has said
7	THE WITNESS: We might. It's	7	that under one registration, that they are
8	possible.	8	the author of the entire text, but under a
9	BY MR. BECKER:	9	this other registration, ASTM000155, ASTM
10	Q. Do you know who would know	10	says that it is a collective work?
11	whether this is the case or not?	11	A. I don't know why.
12	A. I just don't know the	12	MR. FEE: Objection.
13	particular time frame. You say ten years, I	13	Mischaracterizes the document. Did
14	don't know if it's ten years or what the time	14	you answer? Sorry.
15	frame is that we have it in our system.	15	THE WITNESS: I'm sorry, too.
16	Q. So are you saying that a log	16	BY MR. BECKER:
17	exists but you're not certain how far back it	17	Q. Who would know why there is
18	goes?	18	this difference between these two copyright
19	A. Correct.	19	registrations?
20	MR. FEE: Objection. Vague.	20	MR. FEE: Objection. Calls for
21	THE WITNESS: Correct.	21	speculation.
22	BY MR. BECKER:	22	THE WITNESS: I don't know.
23	Q. And is that log publicly	23	BY MR. BECKER:
24	available or is that only internal to ASTM?	24	Q. You don't know who would know
25	MR. FEE: Objection. Vague, and Page 155	25	the answer to that question? Page 157

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1
             MR. FEE: Objection. Asked and
                                                     1
                                                             copies were available prior to them
                                                     2
 2
         answered.
                                                             being available in the volume, we
                                                     3
                                                             began filing separate registrations.
 3
             THE WITNESS: I don't know. Bob
 4
         Meltzer maybe since it was from 1980.
                                                     4
                                                         BY MR. BECKER:
 5
                                                     5
    BY MR. BECKER:
                                                             Q. At approximately what time did
                                                         ASTM begin filing for separate registrations?
 6
         Q. Please turn to ASTM000167 of
                                                     6
    Exhibit 1291. This is a copyright
                                                     7
                                                                  MR. FEE: Objection. Vague.
7
    registration for "F1193-06 Standard Practice
                                                     8
                                                                  THE WITNESS: I'm not exactly
 8
 9
    for Quality, Manufacture, and Construction of
                                                     9
                                                             sure
    Amusement Rides and Devices." Is this a
                                                    10
                                                         BY MR. BECKER:
10
11
    registration for a single standard by ASTM?
                                                    11
                                                                  Was it prior to 2013 when ASTM
             MR. FEE: Objection. Calls for
                                                         first started filing for individual
12
                                                    12
                                                         registrations of individual standards?
13
         a legal conclusion.
                                                    13
14
             THE WITNESS: It appears to be.
                                                    14
                                                             A.
                                                                   Yes.
15
    BY MR. BECKER:
                                                    15
                                                             O.
                                                                   The standard listed in
         Q. Is F1193-06 just one standard?
16
                                                    16
                                                         ASTM000167 that we're discussing says its
                                                         year of completion was 2006 and date of first
17
                                                         publication was March 3, 2006. But the
18
         Q.
              Why has ASTM here registered a
19
    single standard whereas for the bulk of the
                                                         effective date of the registration as stated
    registrations that are provided by ASTM to
                                                         in the top right-hand corner is April 10,
20
                                                    20
    Public.Resource they have registered entire
                                                         2013. Was this standard first registered in
21
                                                    21
22
                                                    22
    volumes of standards?
                                                         2013?
23
             MR. FEE: Objection. I think I
                                                    23
                                                                  MR. FEE: Objection. Calls for
24
         need to talk about a privilege issue
                                                    24
                                                             speculation. Calls for a legal
25
                                                             conclusion. You can answer.
         before he can respond to that
                                                    25
                                            Page 158
                                                                                                Page 160
 1
         question. Go outside for one second.
                                                     1
                                                                 THE WITNESS: Yeah. I really
 2
             VIDEOGRAPHER: The time is now
                                                     2
                                                             don't know.
3
                                                     3
         3:56. We're going off the video
                                                         BY MR. BECKER:
 4
         record. This concludes disc two.
                                                     4
                                                             Q. If you look in Exhibit 1291 at
 5
                                                     5
                                                         the four registrations immediately preceding
                 - - -
 6
                                                         this registration we're discussing as
             (A recess was taken.)
 7
                                                     7
                                                         ASTM 00167, so that's the pages ASTM 00159 to
 8
             VIDEOGRAPHER: The time is now
                                                         166. These are all copyright registrations
 9
         4:02. We're back on the video record.
                                                         from 2013 -- excuse me, March 5, 2013, but
10
         This begins disc three.
                                                    10
                                                         they concern standards that were first
             MR. FEE: If you could just read
                                                         published many years prior to 2013. Is that
11
                                                    11
         back the question so he can respond.
12
                                                    12
                                                         correct?
13
                                                    13
                                                                 MR. FEE: Objection. Compound.
14
             (The court reporter read the
                                                    14
                                                             Calls for speculation.
15
         pertinent part of the record.)
                                                    15
                                                                 THE WITNESS: I don't know for
16
                                                    16
                                                             sure.
17
             THE WITNESS: My understanding
                                                    17
                                                         BY MR. BECKER:
         was that back when we only published
18
                                                    18
                                                             Q. Do you know if ASTM filed for
19
         books and we didn't make our standards
                                                    19
                                                         these registrations in preparation for
20
         available as separates, we would
                                                         litigation with Public.Resource?
                                                    20
21
         copyright, we would submit copyright
                                                                 MR. FEE: Objection. I'm going
                                                    21
22
         registrations for the entire volume.
                                                             to instruct him not to answer that
                                                    22
23
         As we began making standards available
                                                    23
                                                             question.
24
         as single standards available for
                                                    24
                                                                 THE WITNESS: I won't answer
25
         purchase, we began -- and those single
                                                    25
                                                             that question.
                                            Page 159
                                                                                                Page 161
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1 MR. BECKER: Counsel, I'm not 2 interested in any attorney-client 3 communications here. I'm simply 4 asking about the reasons why ASTM took 5 a particular action here. 6 MR. FEE: I've instructed him 7 not to answer. He said he's not 8 answering the question. 9 BY MR. BECKER: 10 Q. Is there any distinction other 3 than the payment of \$400 that separates 4 organizational members from individual 5 members? 6 MR. FEE: Objection. Vague. 7 Beyond the scope of his designation. 8 THE WITNESS: Organizational 9 members may get some other fringe 10 benefits that the individual members 11 this question? 12 A. Yes. 13 Q. What was the business reason 14 for filing any of these five registrations 15 that I just discussed that were filed in 16 2013? 17 MR. FEE: Objection. Calls for 18 through a larger membership fee of \$400. 2 Q. Is there any distinction other 3 than the payment of \$400 that separates organizational members from individual 5 members? 6 MR. FEE: Objection. Vague. 17 BY MR. BECKER: 18 Q. Do organizational members 19 don't receive. 19 Do organizational members 10 constitute organizations as apart from 11 individuals? 11 MR. FEE: Objection. Vague. 12 MR. FEE: Objection. Vague. 13 MR. FEE: Objection. Vague. 14 BY MR. FEE: Objection. Vague. 15 MR. FEE: Objection. Vague. 16 Beyond the scope of his designation.				
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6	4	MR. FEE: If it's done in	4	filed these as we would for any other
7	5	anticipation of litigation, it's work	5	standard that we produced.
7	6		6	-
8 MR. BECKER: Counsel, I'm not certain if I agree with that. This is a public filing. 10 MR. FEE: It doesn't matter if you agree with it. I'm not you can 13 say whatever you want, but his instruction is what it is, he's going 14 instruction is what it is, he's going 15 to follow it. 16 MR. BECKER: Counsel, I'll state 17 for the record that I believe that 18 this concerns a public filing and it's 18 not work product. 19 MR. FEE: The reason why 21 something was done is not contained in 18 these public filings. That's what 23 you're asking him. If you want to ask 24 him questions about what appears in 18 the case of public filings, feel free. 10 MR. BECKER: Counsel, I'm not 25 interested in any attorney-client 26 most work a particular action here. 11 MR. BECKER: The reason why ASTM took 27 a particular action here. 12 MR. BECKER: The reason why ASTM took 38 particular action here. 13 MR. BECKER: 17 we instructed him 18 mot to answer. He said he's not 29 ms. MR. FEE: I've instructed him 19 mot to answer. He said he's not 29 ms. MR. FEE: I've instructed him 19 mot to answering the question. 14 MR. BECKER: 29 ms. MR. FEE: Objection. Vague. 15 MR. FEE: Objection. Calls for 19 for any of these standards under ASTMs mame? 16 MR. FEE: Objection. To the 20 mthat for any of these standards under ASTMs name? 18 MR. FEE: Objection. To the extent that requires you to disclose attorney-client communications, you and os houldn't do so. If you're aware of business reasons separate and apart from legal communications, you can go ahead and answer. 16 MR. FEE: The reason why 20 made and answer. 17 THE WITNESS: My understanding is that we copyright these standards so that we can sell them and support the operations of the organizational members are essentially members that wish to support ASTM Page 16 18 MR. BECKER: Ounsel, I'm not to asking about the reasons why ASTM took a particular action here. 19 MR. BECKER: Ounsel, I'm not to answer in the case of public filings, feel free. 10 MR. FEE: Objection. Vague. 11 The WITNESS: Or			7	Q. What are the business reasons
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15 that I just discussed that were filed in 16 2013? 17 MR. FEE: Objection. Calls for 18 individuals? 19 MR. FEE: Objection. Vague. 19 Beyond the scope of his designation.				
16 2013? 16 MR. FEE: Objection. Vague. 17 MR. FEE: Objection. Vague. 17 Beyond the scope of his designation.				
MR. FEE: Objection. Calls for 17 Beyond the scope of his designation.				
				ž ž
18 a legal strike that. 18 THE WITNESS: Organizational	18	a legal strike that.	18	THE WITNESS: Organizational
19 Objection. To the extent that 19 members get to designate a particular				
that requires you to disclose 20 individual on the committee. Others				
21 attorney-client communications, I 21 that would join ASTM from that				
22 would direct you not to do so. If you 22 organization would be considered		•		
23 are aware of business reasons 23 individual members.				
24 unrelated to attorney-client 24 BY MR. BECKER:				
communications, you can disclose 25 Q. Do individuals who are not part			25	
				Page 165

Page 169

For organizational memberships,

does the organization itself typically pay

Page 167

23

24

25

their behalf?

designate an individual to participate on

MR. FEE: Objection. Asked and

23

24

25

BY MR. BECKER:

```
MR. FEE: Objection. This is
    the $400 fee?
                                                      1
 1
 2
            MR. FEE: Objection. Calls for
                                                      2
                                                              beyond the scope of his designation.
3
                                                      3
                                                                  THE WITNESS: No.
        speculation.
 4
            THE WITNESS: I don't know for
                                                      4
                                                                  MR. BECKER: For the record, I
                                                      5
 5
        sure. Not necessarily. But probably
                                                              don't believe that this is beyond his
        in most cases, probably.
                                                      6
                                                              designation as this concerns an
 6
 7
    BY MR. BECKER:
                                                      7
                                                              organizational membership renewal.
                                                      8
                                                                  MR. FEE: I don't think he was
8
        Q. Do you know of any instance
9
    when a person indicated that he or she
                                                      9
                                                              designated to authenticate checks from
                                                              2013, but we'll agree to disagree.
10
    disagreed with his or her organization's
                                                     10
    position with respect to an action on a
                                                         BY MR. BECKER:
                                                     11
    technical committee?
                                                     12
                                                              Q. Does this document indicate to
13
        Α.
                                                     13
                                                         you that the Department of Consumer Affairs
            No.
14
             Do you know of any instance
                                                     14
                                                          from the State of California had paid for an
    when an individual indicated that he or she
                                                          organizational membership renewal with ASTM?
15
                                                     15
    was specifically speaking on his or her own
                                                     16
                                                                  MR. FEE: Objection. Calls for
    behalf as apart from the organization that he
                                                     17
                                                              speculation. Beyond the scope of his
    or she is part of?
                                                              designation.
18
                                                     18
19
        A. No.
                                                     19
                                                                  THE WITNESS: I guess you could
                                                     20
                                                              assume that. I don't know for sure.
20
        Q.
             Are any U.S. federal agencies
                                                         BY MR. BECKER:
    organizational members of ASTM?
                                                     21
21
22
        A. I don't know.
                                                     22
                                                              Q. Do you have any reason for
23
        O.
             Who would know if any federal
                                                     23
                                                          thinking this -- that's not what this
    agencies are organizational members of ASTM?
24
                                                     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
 7
             And where on the Web site is
                                                              identification.)
 8
    that organizational member directory located?
                                                      8
 9
              I think it's on the membership
                                                      9
                                                          BY MR. BECKER:
                                                     10
10
                                                              Q. I'm handing you what's been
    page.
                                                     11
                                                          marked as Exhibit 1293. This is the document
11
             (Exhibit 1292, Check, Bates
                                                          produced by plaintiffs as ASTM086030 to
12
13
         ASTM049368, was marked for
                                                     13
                                                          086031. Can you tell me what this document
14
         identification.)
                                                     14
                                                          is?
15
                                                     15
                                                              A.
                                                                    It is a 2011 membership renewal
    BY MR. BECKER:
16
                                                     16
                                                          invoice.
17
         Q. I'm handing you what's been
                                                     17
                                                                    It is a different 2011
    marked as 1292. This is the document
18
                                                     18
                                                          membership renewal invoice on each side.
    produced by plaintiffs as Bates number
                                                     19
                                                          Correct?
    ASTM049368.
20
                                                     20
                                                              A.
                                                                    Yeah. For different persons,
21
             Do you recognize this document?
                                                     21
                                                          yeah.
22
                                                     22
                                                                   And these persons are employees
23
              Do you have any reason to
                                                     23
                                                          of NIST. Is that correct?
    believe that this document produced by ASTM
                                                                   MR. FEE: Objection. Calls for
                                                     24
    is not authentic?
                                                              speculation. Beyond the scope of his
                                                     25
                                            Page 171
                                                                                                  Page 173
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designation. THE WITNESS: It says here they're from NIST. BY MR. BECKER: O. NIST is a federal agency. Correct? THE WITNESS: 1 believe. Sorry. BY MR. FEE: Same objections. THE WITNESS: 1 believe. Sorry. BY MR. BECKER: O. And they both give their NIST designation. Vou can answer. THE WITNESS: 1 that correct? MR. FEE: objection. Calls for speculation. Beyond the scope of his designation. You can answer. THE WITNESS: The e-mail addresses are not his piece of paper. MR. BECKER: O. And the e-mail addresses asy Omist.gov. Correct? A. Yes. O. And the addresses that they provide are for NIST. Correct? A. Yes. O. And the addresses that they sprovide are for NIST. Correct? A. MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Yes, the NIST address is on these pieces of paper. BY MR. BECKER: O. 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 scope of his designation. THE WITNESS: It appears that the same. BY MR. BECKER: O. And that ame appears to be an these pieces of paper. BY MR. BECKER: O. And that ame appears to be an these pieces of paper. BY MR. BECKER: O. And that ame appears to be an these pieces of paper. MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the same. MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: It appears that the scope of his designation. THE WITNESS: It appears that the seame. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Calls for speculation beyond the scope of his designation. MR. FEE: Objection. Calls for speculation beyond the scope of his designation. MR. FEE: Objection of the service and saint and papers that the same. MR. FEE: Objection of the service and service and an and addresses are an and understand the provision that I just read out loud? MR. FEE: Objection. Seyond the scope of his designation.				
they're from NIST. BY MR. BECKER: O, NIST is a federal agency. THE WITNESS: I believe. Sorry. I believe so. BY MR. BECKER: O, And they both give their NIST Speculation. Beyond the scope of his designation. You can answer. THE WITNESS: The e-mail addresses are on this piece of paper. THE WITNESS: The e-mail addresses are on this piece of paper. A Ves. O, And the addresses that they rovide are for NIST. Correct? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Yes, the NIST address is on these pieces of paper. THE WITNESS: Yes, the NIST address is on these pieces of paper. WR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Yes, the NIST addresses that they provide are for NIST. Correct? MR. FEE: Objection. Calls for speculation and payer is the same for both renewal invoices. Correct? MR. FEE: Objection. Beyond the scope of his designation. THE WITNESS: I tappears that they scope of his designation. THE WITNESS: I tappears that they scope of his designation. THE WITNESS: I tappears that they scope of his designation. THE WITNESS: I tappears that they scope of his designation. THE WITNESS: I tappears that they scope of his designation. THE WITNESS: I tappears that they scope of his designation. THE WITNESS: I tappears that they scope of his designation. THE WITNESS: I tappears that the scope of his designation. THE WITNESS: I tappears that the scope of his designation. THE WITNESS: I tappears that the scope of his designation. THE WITNESS: I tappears that the scope of his designation. THE WITNESS: I tappears that the scope of his designation. THE WITNESS: I tappears that the scope of his designation. THE WITNESS: I depears that the scope of his designation. THE WITNESS: I depears that the scope of his designation. THE WITNESS: I depears that the scope of his designation. THE WITNESS: I depears that the scope of his designation. THE WITNESS: I depears that the scope of his designation. THE WITNESS: I			1	
B Y MR. BECKER: Q. NIST is a federal agency. 5			2	language exists that would assign any
5 Q. NIST is a federal agency. 6 Correct? 7 MR. FEE: Same objections. 8 THE WITNESS: I believe. Sorry. 10 BY MR. BECKER: 11 Q. And they both give their NIST 12 e-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. You can answer. 16 THE WITNESS: The e-mail addresses are on this piece of paper. 18 BY MR. BECKER: 19 Q. And the e-mail addresses say 10 @inist.gov. Correct? 21 A. Yes. 22 Q. And the addresses that they provide are for NIST. Correct? 24 MR. FEE: Objection. Calls for speculation. Beyond the scope of his addresses in these pieces of paper. 4 BY MR. BECKER: 5 Q. And did the credit card information and payer is the same for both renewal invoices, Correct? 4 BY MR. BECKER: 5 Q. And did the credit card information and payer is the same for both renewal invoices. Correct? 6 MR. FEE: Objection. Beyond the scope of his designation. 7 THE WITNESS: I tappears that the scope of his designation. 8 BY MR. BECKER: 9 Q. And that name appears to be make a feet of the scope of his designation. 10 THE WITNESS: I tappears that the scope of his designation. 11 THE WITNESS: I the semant of the benefits of your annual addresses and addresses and addresses and addresses in the species of paper. 14 BY MR. BECKER: 15 Q. And did the credit card information and payer is the same for both renewal invoices, Correct? 16 Compound. 17 THE WITNESS: I don't see here where there's a box to check off. 18 SYMR. BECKER: 19 Q. And that name appears to be invoices, are individuals required to check any box showing that they have read and understand the provision that I just read out loud? 10 MR. FEE: Objection. Vague. 11 Invoices, are individuals required to sign anywhere else other than the signature for where there's a box to check off. 12 MR. FEE: Same objections. 13 MR. FEE: Same objections. 14 Invoices, are the members required to sign anywhere else other than the signature for where the credit card information is nown to be recessary to sign this membership renewa	3	they're from NIST.	3	copyright that Charles E. Gibson or Benjamin
6 Correct? 7 MR. FEE: Same objections. 8 THE WITNESS: I believe. Sorry. 9 I believe so. 10 BY MR. BECKER: 11 Q. And they both give their NIST 12 e-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. You can answer. 14 speculation. Beyond the scope of his designation. You can answer. 15 designation. You can answer. 16 THE WITNESS: The e-mail addresses are on this piece of paper. 18 BY MR. BECKER: 19 Q. And the e-mail addresses say 10 Q. And the e-mail addresses say 20 @inist.gov. Correct? 21 A. Yes. 22 Q. And the addresses that they provide are for NIST. Correct? 23 mR. FEE: Objection. Calls for speculation. Beyond the scope of his row speculation. Beyond the scope of his designation. 2 THE WITNESS: Yes, the NIST address is on these pieces of paper. 3 BY MR. BECKER: 4 BY MR. BECKER: 5 Q. And did - the credit card information and payer is the same for both renewal invoices. Correct? 2 MR. FEE: Objection. Beyond the scope of his designation. 2 THE WITNESS: It appears that the names are the same. 3 Q. And that name appears to be Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is spelled Aruella Kuehl, K-U-E-H-L. Aruella is open designation. 3 Q. And that name appears to be aruella Kuehl K-U-E-H-L. Aruella is open designation. 4 R-V-E-L-L-A. Sexuella K-U-E-M-L.	4	BY MR. BECKER:	4	K. Tsai, the individuals listed on these
MR. FEE: Same objections. THE WITNESS: I believe. Sorry. 10	5	Q. NIST is a federal agency.	5	membership renewal invoices, might have
8 THE WITNESS: I believe. Sorry. 9 I believe so. 10 BY MR. BECKER: 11 Q. And they both give their NIST 12 e-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. You can answer. 15 designation. You can answer. 16 THE WITNESS: The e-mail addresses are on this piece of paper. 17 And the e-mail addresses say 18 Q. And the e-mail addresses say 19 Q. And the e-mail addresses say 20 @inist.gov. Correct? 21 A. Yes. 22 Q. And the addresses that they 23 provide are for NIST. Correct? 24 MR. FEE: Objection. Calls for speculation. Beyond the scope of his begination. 25 THE WITNESS: Yes, the NIST addresses is on these pieces of paper. 26 MR. FEE: Objection. Beyond the scope of his remain and payer is the same for both renewal invoices. Correct? 28 MR. FEE: Objection. Beyond the scope of his designation. 29 Q. And did the credit card information and payer is the same for both renewal invoices. Correct? 30 Q. And did the credit card information and payer is the same for both renewal invoices. Correct? 31 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. excuse me, that's Arvella, A-R-V-E-L-L-A. THE WITNESS: If that's yeah, that's the way you want to spell it. 31 MR. FEE: Objection. Calls for speculation. Sepond the scope of his designation. 32 Q. And that name appears to be account of the benefits of your annual manual manual manual manual manual manual manual manual manual membership, to have transferred and assigned enjoyment of the benefits of your annual membership, to have transferred and assigned any and all interest you possess or may possess, including copyright, in the development or creation of ASTM standards or vealunt of the benefits of your annual membership, to have transferred and assigned any and all interest you possess or may possess, including copyright, in the development or creation of ASTM standards or vealunt manual manual manual manual manual manual	6	Correct?	6	granted to ASTM?
8 THE WITNESS: I believe. Sorry. 1 believe so. 1 BYMR. BECKER: 11 Q. And they both give their NIST 2 e-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. You can answer. 15 designation. You can answer. 16 THE WITNESS: The e-mail addresses are on this piece of paper. 17 A. Ayes. 20 Q. And the e-mail addresses say 20 Q. And the addresses that they 21 A. Yes. 22 Q. And the addresses that they 23 provide are for NIST. Correct? 24 MR. FEE: Objection. Calls for speculation. Beyond the scope of his address is on these pieces of paper. 25 THE WITNESS: Yes, the NIST 3 address is on these pieces of paper. 26 Q. And did the credit card information and payer is the same for both renewal invoices. Correct? 28 MR. FEE: Objection. Beyond the scope of his designation. 29 THE WITNESS: It appears that the names are the same. 20 Q. And that name appears to be Aruella Kuchl, K-U-E-H-L. Aruella is spelled A-R-U-E-L-L-A - excuse me, that's Arvella, A-R-U-E-L-L-A - excuse me, that's Arvella, A-R-U-E-L-L-A - excuse me, that's Arvella, A-R-U-E-L-L-A - excuse me, that's Arvella, A-R-V-E-L-L-A - in the WITNESS: If that's - yeah, that's the way you want to spell it. 20 Q. Could you, please, indicate 21 BY MR. BECKER: 22 Q. Is that correct? 23 manual membership in the iddle of both pages beginning with "You agree" 24 A. Yes. 25 agne and all interest you possess or may possess, including copyright, in the embership renewal membership to have transferred and assigned enjoyment of the benefits of your annual membership, to have transferred and assigned enjoyment of the benefits of your annual membership, to have transferred and assigned enjoyment of the benefits of your annual membership, to have transferred and assigned enjoyment of the benefits of your annual membership, to have transferred and assigned enjoyment of the benefits of your annual membership to have transferred and assigned enjoyment of the brox powers, and all interest you possess or may possess or may pos	7	MR. FEE: Same objections.	7	-
9 Ibelieve so. 9 Can answer if you know. 10 BY MR. BECKER: 11 Q. And they both give their NIST 12 c-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for 14 speculation. Beyond the scope of his 15 designation. You can answer. 15 designation. You can answer. 16 THE WITNESS: The e-mail addresses are on this piece of paper. 18 BY MR. BECKER: 19 Q. And the c-mail addresses say 19 possess, including copyright, in the device of paper. 18 MR. FEE: Objection. Calls for 21 A. Yes. 22 Q. And the addresses that they 22 provide are for NIST. Correct? 24 MR. FEE: Objection. Calls for 25 speculation. Beyond the scope of his Page 174 27 designation. 27 MR. FEE: Objection. Calls for 28 Speculation. Beyond the scope of his 29 MR. BECKER: 20 And didthe credit card 6 information and payer is the same for both 7 renewal invoices. Correct? 8 MR. FEE: Objection. Beyond the scope of his designation. 10 THE WITNESS: It appears that the names are the same. 11 invoices, are the membership renewal 11 invoices, are the members required to sign 18 MR. FEE: Same objections. 18 MR. FEE: Same objections. 19 MR. FEE: Objection. 20 Could you, please, indicate 20 Could you, please, indicate 20 MR. FEE: Objection. 21 Call of the provision of the provision tha	8		8	
10 BY MR. BECKER: 10 THE WITNESS: No, there's 11 addresses. Is that correct? 12 e-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for 14 special segments of the segment of the	9	· · · · · · · · · · · · · · · · · · ·	9	
11 Q. And they both give their NIST 12 e-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. You can answer. 15 agree, by your participation in ASTM and elegination. You can answer. 15 agree, by your participation in ASTM and elegination. You can answer. 15 agree, by your participation in ASTM and elegination. 16 THE WITNESS: The e-mail addresses are on this piece of paper. 18 BY MR. BECKER: 18 any and all interest you possess or may 18 possess, including copyright, in the elevelopment or creation of ASTM standards or 21 ASTM IP to ASTM. For additional information, please see the ASTM IP Policy, available at www.astm.org." 22 provide are for NIST. Correct? 23 www.astm.org." 24 A. Yes. 25 provide are for NIST. Correct? 23 www.astm.org." 24 A. Yes. 25 Q. For these membership renewal 25 and didthe credit card 10 and did-steep indicates 25 Asteroidal of the provision that I just read out 10 10 THE WITNESS: It appears that the names are the same. 11 anguage in the middle of both pages beginning with "You agree" 13 BY MR. BECKER: 15 Asteroidal of the e-mail addresses of paper. 15 agree, by your participation in ASTM and 16 eneptite of the efficit of any agree, by your participation in ASTM and 16 eneptite of the provision and any and all interest you possess or may 16 possess, or may 17 possess, or may 18 possess, or may 19 possess, or may 19 possess, or may 19 possess, or may 18 possess, or may 19 possess or may 18 possess or may 18 possess or may 18 poss	10	BY MR. BECKER:	10	
12 c-mail addresses. Is that correct? 13 MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. You can answer. 15 designation. You can answer. 16 THE WITNESS: Tee-mail 16 addresses are on this piece of paper. 17 addresses are on this piece of paper. 18 BY MR. BECKER: 19 Q. And the e-mail addresses say 19 possess, including copyright, in the 20 development or creation of ASTM standards or may an all interest you possess or may possess, including copyright, in the 21 A. Yes. 21 ASTM IP to ASTM. For additional information of ASTM standards or your sprice of may an all interest you possess or may possess, including copyright, in the 22 development or creation of ASTM standards or your sprice of may and all interest you possess or may possess, including copyright, in the 22 development or creation of ASTM standards or 23 ASTM IP to ASTM. For additional information 24 A. Yes. 25 Q. And the addresses that they 25 Q. And the scope of his 25 Q. For these membership renewal 26 minormation and payer is the same for both 26 renewal invoices. Correct? 27 A. Yes. Q. For these membership renewal 28 MR. FEE: Objection. Beyond the 29 scope of his designation. 29 MR. FEE: Objection. Beyond the 20 And that name appears to be 30 And that name appears to be 31 Aruella Kuehl, K-U-E-H-L. Aruella is spelled 34 -R-U-E-L-L-A - excuse me, that's Arvella, 34 Are.U-E-L-L-A - excuse me, that's Arvella, 34 Are.U-E-L-L-A - excuse me, that's Arvella, 34 Are.U-E-L-L-A - excuse me, that's Arvella, 35 AR-V-E-L-L-A - excuse me, that's Arvella, 34 Are.U-E-L-S - Exame objection. 37 Are.U-E-L-L-A - excuse me, that's Arvella, 34 Are.U-E-L-L-A - excuse me, that's Arvella, 35 Are.U-E-L-L-A - excuse me, that's Arvella, 35 Are.U-E-L-L-A - excuse me, that's Arvella, 36 Are.U-E-L-L-A - excuse me, that's Arvella, 37 Are.U-E-L-L-A - excuse me, that's Arvella, 37 Are.U-E-L-L-		O. And they both give their NIST		
MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. You can answer. THE WITNESS: The e-mail addresses are on this piece of paper. 17	12		12	
speculation. Beyond the scope of his designation. You can answer. THE WITNESS: The e-mail addresses are on this piece of paper. BYMR. BECKER: A. Yes. Q. And the addresses that they provide are for NIST. Correct? MR. FEE: Objection. Calls for speculation. Beyond the scope of his address is on these pieces of paper. THE WITNESS: Yes, the NIST address is on these pieces of paper. 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 mames are the same. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Objection. Beyond the scope of his designation. MR. FEE: Same objection. THE WITNESS: If that's yeah, that's the way you want to spell it. MR. FEE: Objection. Calls for speculation to recation of ASTM standards or calcular development or creation of ASTM standards or AXTM IP to ASTM. For additional information information, please see the ASTM IP Policy, available at www.astm.org? A. Yes. Q. For these membership renewal invoices, are individuals required to check any box showing that they have read and understand the provision that I just read out loud? MR.				
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		_	
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	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
22	that any copyright he or she has in the	22	this clause that we feel is informs
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	25	participation at ASTM.
	Page 178		Page 180
1	confusing. Calls for speculation.	1	BY MR. BECKER:
2	Calls for a legal conclusion.	2	Q. How does ASTM know that a
3	THE WITNESS: Through the	3	member has read that clause?
4	original membership application,	4	A. We don't.
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	Q. My question was with regards to	9	conclusion. Also calls for
10	the 2011 membership renewal invoice. I'll	10	speculation. You can answer.
11	read it again.	11	THE WITNESS: We don't know for
12	Is there any means through the	12	sure.
13	membership renewal invoice that ASTM ensures	13	
14	that it has the understanding and assent of	14	(Exhibit 1294, Organizational
15	the individual renewing his or her membership	15	Membership Directory, was marked for
16	that any copyright he or she has in the	16	identification.)
17	development or creation of ASTM standards is	17	
18	to be assigned to ASTM?	18	BY MR. BECKER:
19	MR. FEE: Objection to form.	19	Q. I'm handing you what's been
20	Vague and confusing. Compound. Calls	20	marked as Exhibit 1294. It's a document
21	for speculation and calls for a legal	21	titled: "Organizational Membership
22	conclusion.	22	Directory." This is two separate printouts
23	THE WITNESS: Within the 2011	23	combined. It is the A to K listing and the L
24	membership renewal invoice, the only	24	to Z listing. It's something it's over
24	1		
25	thing that is there is this language Page 179	25	100 pages long.

1	Do you recognize this document?	1	Q. Okay.
2	A. Yes.	2	A. Unless I'm on the wrong page.
3	MR. FEE: Objection. You should	3	MR. FEE: Let me see your page.
4	really look at the document before you	4	THE WITNESS: Maybe you meant
5	answer that question.	5	the 12th page in?
6	THE WITNESS: The first page I	6	BY MR. BECKER:
7	do. I mean, if this is just the	7	Q. Yes, I meant the next page. Do
8	organizational directory, I'm aware	8	you see the U.S. Air Force now?
9	that it exists and I recognize it.	9	A. Yes.
10	BY MR. BECKER:	10	Q. Okay. So does this indicate to
11	Q. Is this the organizational	11	you that the U.S. Air Force is an
12	directory?	12	organizational member of ASTM?
13	A. It appears to be.	13	MR. FEE: Objection. Beyond the
14	Q. Is this the organizational	14	scope of his designation.
15	directory that you were discussing earlier	15	THE WITNESS: It would appear to
16	today that lists the organizational members	16	be.
17	of ASTM?	17	BY MR. BECKER:
18	A. Yes.	18	Q. Looking at this page and the
19	Q. This is the just to be	19	following two pages, which lists a number of
20	clear, this is the organizational membership	20	U.S. federal agencies, please tell me if any
21	directory of ASTM. Correct?	21	of them participate in standards development
22	A. Yes.	22	at ASTM?
23	Q. Unfortunately I don't think	23	MR. FEE: Objection. Vague.
24	that this document has page numbers on it,	24	Beyond the scope of his designation.
25	but if you look, let's see, at the 11th from	25	Compound.
	Page 182		Page 184
		_	
1	last page please. This page in about the	1	THE WITNESS: I'm not sure how
1 2	last page, please. This page, in about the	$\begin{vmatrix} 1 \\ 2 \end{vmatrix}$	THE WITNESS: I'm not sure how to answer that other than if you had
2	middle of the page you'll see the U.S. AIR	2	to answer that other than if you had
2 3	middle of the page you'll see the U.S. AIR FORCE, U.S. AIR FORCE NONDESTRUCTIVE		to answer that other than if you had asked me a specific question. I might
2 3 4	middle of the page you'll see the U.S. AIR FORCE, U.S. AIR FORCE NONDESTRUCTIVE INSPECTION OFFICE, U.S. AMC LOGSA PSCC, the	2 3	to answer that other than if you had asked me a specific question. I might know some of them, but I mean, they're
2 3	middle of the page you'll see the U.S. AIR FORCE, U.S. AIR FORCE NONDESTRUCTIVE INSPECTION OFFICE, U.S. AMC LOGSA PSCC, the U.S. Army Engineering Research & Development	2 3 4	to answer that other than if you had asked me a specific question. I might know some of them, but I mean, they're members, but also I'm not sure how you
2 3 4 5 6	middle of the page you'll see the U.S. AIR FORCE, U.S. AIR FORCE NONDESTRUCTIVE INSPECTION OFFICE, U.S. AMC LOGSA PSCC, the U.S. Army Engineering Research & Development Center and the U.S. Army Natick Soldier RD&E	2 3 4 5	to answer that other than if you had asked me a specific question. I might know some of them, but I mean, they're
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1 THE WITNESS: They make contributions at the meetings. 3 BY MR. BECKER: 4 Q. And do those contributions end up in the final approved standards? 5 MR. FEE: Objection. Vague. 7 THE WITNESS: I don't – I can't say specifically. 8 say specifically. 9 BY MR. BECKER: 9 DY MR. BECKER: 10 Q. What kind of contributions do 11 they provide at these meetings? 11 MR. FEE: Objection. Vague. 12 THE WITNESS: Oral contributions. 14 BY MR. BECKER: 15 Q. Do they provide any written contributions? 16 contributions? 17 THE WITNESS: They may through the balloting process. 18 THE WITNESS: They may through the balloting process. 19 BY MR. BECKER: 10 Q. Do they vote on standard drafts or or revisions? 10 Q. Do they vote on standard drafts or revisions? 11 THE WITNESS: They may through the balloting process. 12 G. Do they vote on standard drafts or revisions? 13 MR. FEE: Objection. Form. 14 THE WITNESS: They may. They have the opportunity to. 15 Page 186 16 C				
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23 MR. FEE: Objection. Form. THE WITNESS: They may. They have the opportunity to. Page 186 24	22		22	•
THE WITNESS: They may. They have the opportunity to. Page 186 1	23	MR. FEE: Objection. Form.	23	
25 have the opportunity to. Page 186 A. Yes. Q. And it says, "Jeff: Attached is a summary of all the potentially relevant attachment, Bates ASTM025633 - 4 ASTM025640, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1295. Could you, please, take a 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. THE WITNESS: I think that's the order. MR. BECKER: BY MR. BECKER: BY MR. BECKER: Could you, please, take a line of the previous exhibit back in the same order that they were provided to you, if possible? THE WITNESS: I think that's the order. MR. BEIDGES: I'll do that. Could you recognize this document that has been provided to you as that has been provided to you as to 025640. A. No. Could you please, take a line order that that has been provided to you as the top says, "The following representatives individuals. Is that correct? A. Yes. Could you, please, take a line order that they were provided to you, if possible? A. Yes. Could you, please, take a line order that they were provided to you, if possible? A. That's what it says. Could you the pages for the line or the previous exhibit back in the same order that they were provided to you, if possible? A. Yes. Could you what's been line of the EPA articipate on the relevant ASTM committees," and then lists a number of individuals. Is that correct? A. Yes. Could you you know any of these individuals that are listed? A. Yes. Could you what's been levironmental footprint of focus on the environmental flate to the UE's efforts that focus on the environmental floture of the tors and services. This list is more over inclusive. I also included a list of the EPA members that participate in E50 or the EPA nembers that participate in E50 or the EPA nembe	24		24	
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7 BY MR. BECKER: 8 Q. I'm handing you what's been 9 marked as Exhibit 1295. 10 Could you, please, take a 11 moment to try to put the pages for the 12 previous exhibit back in the same order that 13 they were provided to you, if possible? 14 MR. BRIDGES: I'll do that. 15 Hand them to me, I'll do that. 16 THE WITNESS: I think that's the 17 order. 18 BY MR. BECKER: 19 Q. Do you recognize this document 19 Q. Do you recognize this document 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 7 the EPA members that participate in E50 or 8 E60." Is that correct? 9 A. That's what it says. 10 Q. Then if you turn to Bates 11 number ASTM025637, the second paragraph from 12 the top says, "The following representatives 13 from EPA participate on the relevant ASTM 14 committees," and then lists a number of 15 individuals. Is that correct? 16 A. Yes. 17 Q. Do you know any of these 18 individuals that are listed? 19 A. Yes. 20 Q. Which individuals do you know? 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 Q. Which individuals do you know? 24 Q. Are you copied on this e-mail 25 A. She works in the EPA. It's	5	identification.)	5	products and services. This list is more
8 Q. I'm handing you what's been 9 marked as Exhibit 1295. 10 Could you, please, take a 11 moment to try to put the pages for the 12 previous exhibit back in the same order that 13 they were provided to you, if possible? 14 MR. BRIDGES: I'll do that. 15 Hand them to me, I'll do that. 16 THE WITNESS: I think that's the 17 order. 18 BY MR. BECKER: 19 Q. Do you recognize this document 19 Q. Do you recognize this document 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 8 E60." Is that correct? 9 A. That's what it says. 10 Q. Then if you turn to Bates 11 number ASTM025637, the second paragraph from 12 the top says, "The following representatives 13 from EPA participate on the relevant ASTM 14 committees," and then lists a number of 15 individuals. Is that correct? 16 A. Yes. 17 Q. Do you know any of these 18 individuals that are listed? 19 A. Yes. 20 Q. Which individuals do you know? 21 Exhibit 1295? It is Bates number ASTM025633 22 Sven-Erik Kaiser. And I know Patricia 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 that's Exhibit 1295? 26 A. She works in the EPA. It's	6		6	over inclusive. I also included a list of
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11 moment to try to put the pages for the 12 previous exhibit back in the same order that 13 they were provided to you, if possible? 14 MR. BRIDGES: I'll do that. 15 Hand them to me, I'll do that. 16 THE WITNESS: I think that's the 17 order. 18 BY MR. BECKER: 19 Q. Do you recognize this document 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 21 Innumber ASTM025637, the second paragraph from 12 the top says, "The following representatives 13 from EPA participate on the relevant ASTM 14 committees," and then lists a number of 15 individuals. Is that correct? 16 A. Yes. 17 Q. Do you know any of these 18 individuals that are listed? 19 A. Yes. 20 Q. Which individuals do you know? 21 Exhibit 1295? It is Bates number ASTM025633 22 Sven-Erik Kaiser. And I know Patricia 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 that's Exhibit 1295? 26 A. She works in the EPA. It's	9	marked as Exhibit 1295.	9	A. That's what it says.
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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. Do you recognize this document Characteristic being provided to you as Exhibit 1295? The were provided to you, if possible? If mand them to me, I'll do that. If committees," and then lists a number of individuals. Is that correct? A. Yes. Do you know any of these individuals that are listed? A. Yes. Q. Do you know? A. Yes. Q. Which individuals do you know? A. I know Deb Goldblum. I know Sven-Erik Kaiser. And I know Patricia Overmeyer. A. She works in the EPA. It's	11		11	
14 MR. BRIDGES: I'll do that. 15 Hand them to me, I'll do that. 16 THE WITNESS: I think that's the 17 order. 18 BY MR. BECKER: 19 Q. Do you recognize this document 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 14 committees," and then lists a number of 15 individuals. Is that correct? 16 A. Yes. 17 Q. Do you know any of these 18 individuals that are listed? 19 A. Yes. 20 Q. Which individuals do you know? 21 Exhibit 1295? It is Bates number ASTM025633 22 Sven-Erik Kaiser. And I know Patricia 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 A. She works in the EPA. It's	12	previous exhibit back in the same order that	12	the top says, "The following representatives
15 Hand them to me, I'll do that. 16 THE WITNESS: I think that's the 17 order. 18 BY MR. BECKER: 19 Q. Do you recognize this document 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 15 individuals. Is that correct? 16 A. Yes. 17 Q. Do you know any of these 18 individuals that are listed? 19 A. Yes. 20 Q. Which individuals do you know? 21 Exhibit 1295? It is Bates number ASTM025633 22 Sven-Erik Kaiser. And I know Patricia 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 A. She works in the EPA. It's	13	they were provided to you, if possible?	13	from EPA participate on the relevant ASTM
16 THE WITNESS: I think that's the 17 order. 18 BY MR. BECKER: 19 Q. Do you recognize this document 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 26 A. She works in the EPA. It's	14	MR. BRIDGES: I'll do that.	14	committees," and then lists a number of
17 Q. Do you know any of these 18 BY MR. BECKER: 19 Q. Do you recognize this document 19 A. Yes. 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 26 Do you know any of these 18 individuals that are listed? 19 A. Yes. 20 Q. Which individuals do you know? 21 A. I know Deb Goldblum. I know 22 Sven-Erik Kaiser. And I know Patricia 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 A. She works in the EPA. It's	15	Hand them to me, I'll do that.	15	individuals. Is that correct?
18 BY MR. BECKER: 19 Q. Do you recognize this document 20 that has been provided to you as 21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 18 individuals that are listed? 19 A. Yes. 20 Q. Which individuals do you know? 21 A. I know Deb Goldblum. I know 22 Sven-Erik Kaiser. And I know Patricia 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 A. She works in the EPA. It's	16	THE WITNESS: I think that's the	16	A. Yes.
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21 Exhibit 1295? It is Bates number ASTM025633 22 to 025640. 23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 21 A. I know Deb Goldblum. I know 22 Sven-Erik Kaiser. And I know Patricia 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 A. She works in the EPA. It's			19	A. Yes.
22to 025640.22Sven-Erik Kaiser. And I know Patricia23A. No.23Overmeyer.24Q. Are you copied on this e-mail24Q. Who is Deborah Goldblum?25that's Exhibit 1295?25A. She works in the EPA. It's		÷ · · · · · · · · · · · · · · · · · · ·	20	· · · · · · · · · · · · · · · · · · ·
23 A. No. 24 Q. Are you copied on this e-mail 25 that's Exhibit 1295? 23 Overmeyer. 24 Q. Who is Deborah Goldblum? 25 A. She works in the EPA. It's		Exhibit 1295? It is Bates number ASTM025633		A. I know Deb Goldblum. I know
24 Q. Are you copied on this e-mail 24 Q. Who is Deborah Goldblum? 25 that's Exhibit 1295? 25 A. She works in the EPA. It's		to 025640.		
25 that's Exhibit 1295? 25 A. She works in the EPA. It's				
		O American comical on this consil	24	O. Who is Deborah Goldblum?
Page 187 Page 189		· · · · · · · · · · · · · · · · · · ·		
		that's Exhibit 1295?		A. She works in the EPA. It's

1 I'm not sure what region it is, but it's in 2 Philadelphia, office in Philadelphia 3 Q. Do you know what her position 4 is? 5 A. I don't. 6 Q. Do you know what Sven-Erik 6 Kaiser's position is? 8 A. No. 9 Q. Do you know what Patricia 10 Overmeyer's position is? 11 A. No. 12 Q. How do you know Deborah 13 Goldblum? 14 A. No. 15 Q. And how do you know Deborah 16 Q. And how do you know Sven-Erik 17 Kaiser's position is? 18 A. The same. 19 Q. And how do you know Patricia 20 Overmeyer? 21 A. The same. 22 Q. How has Deborah Goldblum 23 participated on the Committee ESO? 24 Q. How has Deborah Goldblum 25 participated on the Committee ESO? 26 MR. FEE: Objection. Vague. 27 THE WITNESS: She brought forward the idea 28 for a standard for green cleanup? 29 Q. And what happened with her 20 idea? 30 Q. What itime frame. 30 Q. What happened after Deborah 31 Goldblum brought forward the idea of the scope of his designation. 31 HIE WITNESS: It man, there were many task group meetings, they had discussions about developing content. 31 HIE WITNESS: It mean, there were many task group meetings, they had discussions about developing content. 32 Pay MR. BECKER: 33 Q. What idea was that? 4 A. It was there were standards for green cleanup? 4 A. It was there were standards for green cleanup? 4 A. It was there were standards for green cleanup? 4 A. It was there were standards for green cleanup? 4 A. It was there were standards for green cleanup? 4 A. It was there were standards. 4 A. It was there were standards for green cleanup? 5 Q. And what happened with her idea it to the subcommittee in E50. 4 Q. What idea was that? 5 BY MR. BECKER: 6 Q. Sa she brought forward the idea it to the subcommittee in E50. 7 MR. FEE: Objection. Vague. 7 THE WITNESS: I'm not sure. I'm no longer with that committee. 8 BY MR. BECKER: 9 Q. What year is this that Deborah 18 Goldblum brought forward that idea? 19 MR. FEE: Objection. Vague. 10 MR. FEE: Objection. Vague. 11 THE WITNESS: I'm not sure. I'm no longer with that committee. 12 Q. What year is this tha				
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1	any contributions for standards or standard	1	marked as Exhibit 1296. This is the document
2	revisions for Committee E50?	2	produced by plaintiffs as Bates number
3	MR. FEE: Objection. Compound.	3	ASTM068894. Can you tell me what this
4	Form. You can answer.	4	document is?
5	THE WITNESS: I don't know.	5	A. It appears to be a membership
6	BY MR. BECKER:	6	application, but I an older version of a
7	Q. Did Patricia Overmeyer provide	7	membership application.
8	any contributions for standards for Committee	8	Q. And what does the there's
9	E50?	9	a it looks like a stamp with some
10	MR. FEE: Objection. Vague.	10	handwriting in the bottom right-hand corner.
11	THE WITNESS: I don't know other	11	It says, "ACCT #," "ORD #," "DEC 02 2008,"
12	than they Patricia participated at	12	"PROCESSED BY: DG." And then it has some
13	the meetings and attended meetings.	13	other numbers associated with it. Do you
14	MR. FEE: Matt, why don't we	14	know what that is?
15	take a break, we've been going an hour	15	A. The account number is the is
16	and a half.	16	that individual's membership number. So when
17	MR. BECKER: Just a moment.	17	you join, you get assigned a membership
18	BY MR. BECKER:	18	number. I don't know what the order number
19	Q. Did Patricia vote in the	19	is. Dec 02, 2008, is, I guess, the date that
20	Committee E50?	20	was processed by ASTM, but I don't know for
21	A. I don't know.	21	sure.
22	MR. FEE: Objection. Beyond the	22	Q. And do you know who DG is when
23	scope of his designation.	23	it says, "PROCESSED BY: DG"?
24	BY MR. BECKER:	24	A. No.
25	Q. Do you know if Deborah Goldblum Page 194	25	Q. Does that designate an Page 196
			-
1	voted in Committee E50?	1	in dividual on a donantus ant?
1		1	individual or a department?
2	MR. FEE: Same objection.	2	A. I don't know.
2 3	MR. FEE: Same objection. THE WITNESS: No, I don't know.	2 3	A. I don't know.Q. Does this stamp indicate that
2 3 4	MR. FEE: Same objection. THE WITNESS: No, I don't know. BY MR. BECKER:	2 3 4	A. I don't know. Q. Does this stamp indicate that this form has been processed and entered into
2 3 4 5	MR. FEE: Same objection. THE WITNESS: No, I don't know. BY MR. BECKER: Q. Do you know if Sven-Erik Kaiser	2 3 4 5	A. I don't know. Q. Does this stamp indicate that this form has been processed and entered into the system
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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	MR. FEE: Same objection. THE WITNESS: No, I don't know. BY MR. BECKER: Q. Do you know if Sven-Erik Kaiser voted in Committee E50? MR. FEE: Same objection. THE WITNESS: I don't know. MR. BECKER: We can take a break. VIDEOGRAPHER: The time is now 4:57. We're going off the video record. (A recess was taken.) VIDEOGRAPHER: The time is now 5:05. We're back on the video record (Exhibit 1296, Membership application, Bates ASTM068894, was marked for identification.)	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. I don't know. Q. Does this stamp indicate that this form has been processed and entered into the system MR. FEE: Objection. BY MR. BECKER: Q at ASTM? MR. FEE: Objection. Vague. It's beyond the scope of his designation. THE WITNESS: I really don't know the specifics of processing these forms. BY MR. BECKER: Q. Who would know whether this stamp in the bottom right-hand corner of this page designates that this application has been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope. Matt, can you explain to me how this has anything to do with these

1	MR. BECKER: Yeah. It's a	1	A. Could have been. I don't know
2	membership application. That's one of	2	for sure, though.
3	the ways that ASTM claims that it gets	3	Q. Do you know who else might have
4	assignment of rights.	4	been the head of internal sales in 2008?
5	MR. FEE: And the identity of	5	A. I'm not exactly sure.
6	who DG is is relevant to all this	6	Q. Could you show me where, if
7	because of what?	7	anywhere, on this document Exhibit 1296 there
8	MR. BECKER: Because this is	8	is language that ASTM believes it is assigned
9	this is a feature on the membership	9	copyright through?
10	application and I need to understand	10	MR. FEE: Objection. Calls for
11	what it means.	11	a legal conclusion. To the extent
12	MR. FEE: I'll let you ask that	12	that question calls for you to
13	question, but I'm not going to allow	13	disclose attorney-client
14	too many more questions along these	14	communications, I'd instruct you not
15	lines, but go ahead.	15	to do that. If you have an answer
16	MR. BECKER: I think this is	16	otherwise, you can go ahead and
17	perfectly relevant right here. My	17	answer.
18	question goes to whether this was	18	THE WITNESS: I don't see the
19	entered into the system and whether	19	language on this form that was on the
20	this person is, therefore, a member of	20	other forms.
21	ASTM.	21	BY MR. BECKER:
22	MR. FEE: Do you want to read	22	Q. Is there any language on this
23	back the question? Or do you know	23	page that would transfer copyright from the
24	what it is?	24	individual who is listed on this form, Diana,
25	THE WITNESS: I'm not I'm a	25	I believe it's M-E-N-A-G-E-D to ASTM?
	Page 198		Page 200
1	little	1	MR. FEE: Objection. Calls for
2	MR. FEE: You can answer.	2	a legal conclusion. To the extent the
3	THE WITNESS: No. Just for	3	answer would disclose attorney-client
4	clarity, I'd like it repeated, if	4	communications, I instruct you not to
5	possible.	5	disclose that. You can answer if you
6	BY MR. BECKER:	6	have knowledge of it otherwise.
7	Q. Who would know whether this	7	THE WITNESS: I don't see any
8	stamp in the bottom right-hand corner of this	8	language on this particular form that
9	page designates that this application has	9	1.1 (4)4 - 41 - 4
			would indicate that.
10	been processed into ASTM's system?	10	
11	been processed into ASTM's system? MR. FEE: Objection. Vague.	11	 (Exhibit 1297, 2010 ASTM
11 12	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation.	11 12	(Exhibit 1297, 2010 ASTM International Committee Membership
11 12 13	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody	11 12 13	(Exhibit 1297, 2010 ASTM International Committee Membership Application, Bates ASTM079420, was
11 12 13 14	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody who works in our customer service	11 12 13 14	(Exhibit 1297, 2010 ASTM International Committee Membership
11 12 13 14 15	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody who works in our customer service department back in 2008.	11 12 13 14 15	(Exhibit 1297, 2010 ASTM International Committee Membership Application, Bates ASTM079420, was marked for identification.)
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11 12 13 14 15 16 17 18	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody who works in our customer service department back in 2008. BY MR. BECKER: Q. Who heads the customer service department at ASTM?	11 12 13 14 15 16 17 18	(Exhibit 1297, 2010 ASTM International Committee Membership Application, Bates ASTM079420, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1297. This is the document
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11 12 13 14 15 16 17 18 19 20	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody who works in our customer service department back in 2008. BY MR. BECKER: Q. Who heads the customer service department at ASTM? MR. FEE: Objection. Vague. THE WITNESS: Derek Franco is	11 12 13 14 15 16 17 18 19 20	(Exhibit 1297, 2010 ASTM International Committee Membership Application, Bates ASTM079420, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1297. This is the document produced by ASTM as ASTM079420. Do you know what this document is?
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11 12 13 14 15 16 17 18 19 20 21 22	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody who works in our customer service department back in 2008. BY MR. BECKER: Q. Who heads the customer service department at ASTM? MR. FEE: Objection. Vague. THE WITNESS: Derek Franco is the director of our, I believe it's called internal sales.	11 12 13 14 15 16 17 18 19 20 21 22	(Exhibit 1297, 2010 ASTM International Committee Membership Application, Bates ASTM079420, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1297. This is the document produced by ASTM as ASTM079420. Do you know what this document is? A. It says, "2010 ASTM International Committee Membership Application."
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11 12 13 14 15 16 17 18 19 20 21 22 23 24	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody who works in our customer service department back in 2008. BY MR. BECKER: Q. Who heads the customer service department at ASTM? MR. FEE: Objection. Vague. THE WITNESS: Derek Franco is the director of our, I believe it's called internal sales. BY MR. BECKER: Q. Was Derek Franco the head of	11 12 13 14 15 16 17 18 19 20 21 22 23 24	(Exhibit 1297, 2010 ASTM International Committee Membership Application, Bates ASTM079420, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1297. This is the document produced by ASTM as ASTM079420. Do you know what this document is? A. It says, "2010 ASTM International Committee Membership Application." Q. Is there any language on this document, Exhibit 1297, that would assign
11 12 13 14 15 16 17 18 19 20 21 22 23	been processed into ASTM's system? MR. FEE: Objection. Vague. Beyond the scope of his designation. THE WITNESS: Possibly somebody who works in our customer service department back in 2008. BY MR. BECKER: Q. Who heads the customer service department at ASTM? MR. FEE: Objection. Vague. THE WITNESS: Derek Franco is the director of our, I believe it's called internal sales. BY MR. BECKER:	11 12 13 14 15 16 17 18 19 20 21 22 23	(Exhibit 1297, 2010 ASTM International Committee Membership Application, Bates ASTM079420, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1297. This is the document produced by ASTM as ASTM079420. Do you know what this document is? A. It says, "2010 ASTM International Committee Membership Application." Q. Is there any language on this

1	MR. FEE: Objection. Calls for	1	that is on the form.
2	a legal conclusion. To the extent	2	
3	that question would require you to	3	(Exhibit 1298, ASTM Application,
4	disclose attorney-client	4	Bates ASTM073844, was marked for
5	communications, I instruct you not to	5	identification.)
6	do so. If you can answer otherwise,	6	
7	go ahead.	7	BY MR. BECKER:
8	THE WITNESS: I don't see any	8	Q. I'm handing you what's been
9	language on here similar to the	9	marked as Exhibit 1298. This is a document
10	language that we had talked about	10	produced by ASTM as ASTM073844. Can you tell
11	earlier.	11	me what this document is?
12	BY MR. BECKER:	12	A. It looks like it's an ASTM
13	Q. The applicant here, Raymond	13	application.
14	Ortiz, is an organization member of the	14	Q. Is there any language on this
15	Defense Energy Support Center. Is that	15	document that Exhibit 1298, that ASTM
16	correct?	16	believes assigns copyright from the applicant
17	MR. FEE: Objection.	17	to ASTM?
18	Mischaracterizes the document.	18	MR. FEE: Objection. Calls for
19	THE WITNESS: I don't see how	19	a legal conclusion. To the extent
20	you're figuring out he's an	20	that question would require you to
21	organizational member.	21	disclose attorney-client
22	BY MR. BECKER:	22	communication, I instruct you not to
23	Q. Excuse me, let me rephrase	23	do so. If you have other responsive
24	that.	24	information, go ahead and do so.
25	Raymond Ortiz says lists his	25	THE WITNESS: I don't see the
	Page 202		Page 204
1	organization name as "Defense Energy Support	1	language on this form that was on the
2	Center." Is that correct?	2	previous forms.
3	A. That would appear to be right.	3	BY MR. BECKER:
4	Q. And he lists a, looks like a	4	Q. When you say "the previous
5	military e-mail address. Is that correct?	5	forms," are you referring to Exhibit 1293?
6	MR. FEE: Objection. Calls for	6	A. Correct.
7	speculation. Beyond the scope of his	7	Q. But you're not referring to
8	designation.	8	Exhibit 1297 or Exhibit 1296. Correct?
9	THE WITNESS: That's what would	9	A. Correct.
10	appear from this form.	10	
11	BY MR. BECKER:	11	(Exhibit 1299, ASTM
12	Q. It would appear that Raymond	12	Applications, Bates ASTM066848 -
13	Ortiz is a member of the military. Is that	13	ASTM066853, was marked for
14	correct?	14	identification.)
15	MR. FEE: Objection. Calls for	15	
16	speculation. Beyond the scope of his	16	BY MR. BECKER:
17	designation.	17	Q. I'm handing you what's been
18	THE WITNESS: I suppose that	18	marked as Exhibit 1299. These are the
19	looks like that's the case.	19	documents produced by ASTM as ASTM066848 to
20	BY MR. BECKER:	20	ASTM066853. Could you tell me what these
21	Q. And it appears that someone	21	documents are?
22	else, Zoe Fitzsimmonds is paying by credit	22	A. Looks like they're ASTM
23	card, Visa, for Mr. Ortiz's committee	23	applications.
1 2 4	membership application. Is that correct?	24	Q. These are ASTM applications
24		_	
25	A. That's the name that appears, Page 203	25	that are in Spanish. Correct? Page 205

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1
              Would appear to be that.
                                                    1
                                                        reports on the use of ASTM standards.
         A.
 2
         O.
              Are they membership applications?
                                                    2
                                                                 Are those national standards
              I believe they are.
 3
                                                    3
                                                        bodies that you're describing government
         A.
 4
              Is there any language on these
                                                        bodies or private bodies?
 5
    membership applications that ASTM believes
                                                    5
                                                                MR. FEE: Objection. Beyond the
    assigns ASTM any copyright by the applicants?
                                                    6
 6
                                                            scope of his designation.
 7
             MR. FEE: Objection. Calls for
                                                    7
                                                                 THE WITNESS: I'm not exactly
 8
         expert testimony to the extent it
                                                    8
                                                            sure.
 9
         requires a translation, to the extent
                                                    9
                                                        BY MR. BECKER:
10
         it is in Spanish. Calls for a legal
                                                   10
                                                                 What uses of ASTM standards do
11
         conclusion. To the extent that that
                                                   11
                                                        these national standards bodies report to
         question requires the disclosure of
12
                                                   12
                                                        ASTM?
         any attorney-client communication, you
13
                                                   13
                                                                MR. FEE: Same objection.
14
         shouldn't disclose it. You can answer
                                                   14
                                                                THE WITNESS: I'm not exactly
15
         it otherwise.
                                                   15
                                                            sure. I just think in general use,
                                                            but I've never seen one of the
16
             THE WITNESS: I don't know.
                                                   16
17
    BY MR. BECKER:
                                                   17
                                                            reports.
                                                        BY MR. BECKER:
18
              Do you speak Spanish?
                                                   18
19
         A.
                                                   19
                                                            Q.
                                                                 When you say "general use,"
                                                        what do you mean by that?
20
         Q.
              Have you seen this document
                                                   20
                                                                MR. FEE: Same objection.
21
    previously?
                                                   21
22
                                                   22
                                                                 THE WITNESS: How they may be
         A.
23
         O.
              In preparation for your
                                                   23
                                                            utilizing ASTM standards within their
    deposition today, had you spoken with
                                                   24
                                                            country.
                                                        BY MR. BECKER:
25
    anybody -- excuse me, let me rephrase.
                                                   25
                                           Page 206
                                                                                               Page 208
1
             In preparation for your
                                                    1
                                                                 When you say how they are
    deposition today, have -- had you
                                                    2
                                                        utilizing ASTM standards within their
    communicated with anyone at ASTM about
                                                        country, when you say "they," are you
                                                    3
    membership applications that were not in
                                                        referring to these standards bodies?
                                                    4
 5
                                                    5
                                                                MR. FEE: Same objection.
    English?
 6
        A.
                                                    6
              No.
                                                            Vague.
                                                    7
              I will submit to you that there
                                                                 THE WITNESS: I believe it's how
    is no assignment language on this document.
 8
                                                    8
                                                            they're -- the people are utilizing
 9
             MR. FEE: Move to strike that to
                                                    9
                                                            them. If they're referenced in
10
         the extent you're ever going to try to
                                                   10
                                                            regulation or if they're being used.
         use it for something.
                                                   11
                                                        BY MR. BECKER:
11
                                                   12
                                                                  When you say "the people," are
12
    BY MR. BECKER:
                                                        you referring to the actual citizens of
13
                                                   13
         Q.
              Do you know what an MOU
14
    affiliation is?
                                                   14
                                                        that -- those countries?
15
              It stands for Memorandum of
                                                   15
                                                                MR. FEE: Objection. Beyond the
                                                            scope. Matt, I'm going to let him
16
    Understanding.
                                                   16
              What is a Memorandum of
                                                   17
                                                            answer this question, but you are so
17
         Q.
18
                                                            far off of the topics now, that this
    Understanding?
                                                   18
19
              It's part of our MOU program
                                                   19
                                                            is going to be the last question on
    that we have with developing countries.
                                                   20
                                                            this topic. You can answer it. Go
20
21
              What is the MOU program?
                                                   21
                                                            ahead.
22
              It's roughly that we will
                                                   22
                                                                THE WITNESS: I'm not sure.
23
    provide on a gratuitous basis standards to
                                                   23
    national standards bodies of developing
                                                   24
                                                                (Exhibit 1300, Membership
    countries. And in return, they provide us
                                                   25
                                                            application, Bates ASTM067024, was
                                           Page 207
                                                                                              Page 209
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1
                                                          respective years, 2007 through 2014?
        marked for identification.)
                                                       2
                                                                   MR. FEE: Objection to form.
 2
                                                       3
                                                                   THE WITNESS: There probably
 3
    BY MR. BECKER:
 4
        Q. I'm handing you what's been
                                                       4
                                                               was, yes.
                                                       5
    marked as Exhibit 1300. Could you, please,
                                                          BY MR. BECKER:
 5
    identify this document?
                                                       6
                                                               Q. How do you know that?
 6
                                                       7
                                                                    Well, because I know our
 7
             It says at the top "Laboratory
    Inspection Program," but it would appear to
                                                       8
                                                          applications, we have applications that have
 8
 9
    be a membership application.
                                                       9
                                                          the language that we spoke about earlier that
                                                      10
                                                          was on, was it 1293, Exhibit 1293? We have
10
             I'll note that this document is
                                                          copies of membership applications that have
    produced by ASTM as ASTM067024. Is there any
11
    mention of copyright assignment or ASTM's IP
                                                     12
                                                          that language on there.
    Policy on this document?
                                                                    Exhibit 1293 is a membership
                                                     13
13
14
            MR. FEE: Objection to form.
                                                          renewal invoice. Correct?
15
            THE WITNESS: I don't see that
                                                     15
                                                                    Yes.
                                                               A.
                                                     16
                                                               Q.
                                                                    And a membership renewal
16
        language on here, no.
                                                          invoice is different from a membership
17
                                                     17
                                                          application. Correct?
18
            (Exhibit 1301, Membership
                                                     18
19
        applications, Bates ASTM066871,
                                                     19
                                                               A.
                                                                    Yes.
        ASTM069213, ASTM069058, ASTM080176,
                                                     20
                                                               Q.
                                                                    So when you say that there are
20
                                                          different versions, do you mean that there is
21
        ASTM061450, ASTM063146, ASTM063147,
                                                     21
                                                     22
                                                          different versions of the membership
22.
        ASTM065682 & ASTM066345, was marked
23
        for identification.)
                                                     23
                                                          applications for each year or that there is a
                                                          membership application and there also is a
24
25
                                                          membership renewal invoice --
    BY MR. BECKER:
                                             Page 210
                                                                                                   Page 212
 1
        Q. I'm handing you what's been
                                                       1
                                                                  MR. FEE: Objection. Form.
    marked as Exhibit 1301. This is a
                                                       2
                                                          BY MR. BECKER:
                                                       3
 3
    compilation of documents that were provided
                                                              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
    membership application starting with the 2007
                                                       6
                                                          Exhibit 1293 on them.
 6
                                                       7
    membership application and ending with the
 7
                                                              Q. How do you know that there are
    2014 membership application. And the Bates
                                                       8
                                                          membership applications for all of the years
 8
    numbers are ASTM066871, ASTM069213,
                                                          2007 through 2014 that have the same language
10
    ASTM069058, ASTM080176, ASTM061450,
                                                      10
                                                          that is from the 2011 membership renewal
    ASTM063146, ASTM063147, ASTM065682 and
                                                      11
                                                          invoice Exhibit 1293?
11
12
    ASTM066345.
                                                      12
                                                                  MR. FEE: Objection to form.
                                                                  THE WITNESS: Because I believe
13
            Are these the ASTM membership
                                                     13
    application forms for the years 2007 through
                                                      14
                                                              we put the language on the renewal
    2014?
                                                      15
15
                                                              forms and the application forms at the
16
            MR. FEE: Objection to the
                                                     16
                                                              same time.
        extent the witness has cherry picked
17
                                                      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,
                                                          applications that do not have the language
20
                                                          that you're referring to? And to -- let
        and compound.
                                                     20
            THE WITNESS: These are versions
                                                          me -- hold on. Let me clarify.
21
                                                     21
22
        of the application from these years.
                                                     22
                                                                  By the language that you're
                                                          referring to on Exhibit 1293, you're
23
    BY MR. BECKER:
                                                     23
24
             Were there multiple versions of
                                                     24
                                                          referring to the purported copyright
    the ASTM membership applications for these
                                                          assignment language that starts with "You
25
                                             Page 211
                                                                                                   Page 213
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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.
21	THE WITNESS: Just what I	21	Q. Or 2014?
22	remember.	22	A. No.
23	BY MR. BECKER:	23	Q. Do you know why ASTM has
24	Q. Do you know when ASTM first	24	different membership application forms?
25	used the language that you're referring to Page 214	25	MR. FEE: Objection. To the Page 216
			-
1	from Exhibit 1293?	1	extent that your answering that
2	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
		22	we also have informational members
22	copyright assignment language that you're		d at a transfer and a transfer at
22 23	referring to from 1293 was first used by ASTM	23	that just joined ASTM but they do not
22 23 24	referring to from 1293 was first used by ASTM on membership forms?	23 24	join a particular technical committee.
22 23	referring to from 1293 was first used by ASTM	23	

1	between a committee membership	1	BY MR. BECKER:
2	application and a membership	2	Q. And what's that answer?
3	application.	3	MR. FEE: Same objection again.
4	BY MR. BECKER:	4	Asked and answered.
5	Q. If you look in this	5	THE WITNESS: At the top of the
6	Exhibit 1301 at page Bates number ASTM063146	6	page it says, "YOU ACKNOWLEDGE YOU
7	and compare that with ASTM063147 following	7	HAVE READ AND AGREE TO ABIDE BY ASTM'S
8	it, do you see that ASTM063146 is a 2012	8	INTELLECTUAL PROPERTY POLICY."
9	membership application whereas ASTM063147 is	9	BY MR. BECKER:
10	an ASTM committee membership application?	10	Q. But does it include the text
11	A. Yes.	11	from the Intellectual Property Policy that it
12	Q. Can you, please, indicate	12	says that the membership applicant must abide
13	where, if anywhere on ASTM063146, the 2012	13	by?
14	membership application, there is any language	14	MR. FEE: Objection. Asked and
15	that ASTM believes assigns it copyright from	15	answered.
16	the applicant?	16	BY MR. BECKER:
17	MR. FEE: Objection. Calls for	17	Q. It's a yes or no question.
18	a legal conclusion. To the extent	18	MR. FEE: He can answer the
19	that requires you to disclose	19	question however he feels appropriate.
20	attorney-client communications, you	20	THE WITNESS: If you're asking
21	shouldn't do so, but you can answer	21	me if the actual text of the
22	otherwise.	22	Intellectual Property Policy is on
23	THE WITNESS: At the top it	23	this membership application, the
24	mentions that by applying or renewing	24	answer is no.
25	your ASTM membership, you acknowledge Page 218	25	BY MR. BECKER: Page 220
		1	<u> </u>
1	you have read and agree and abide by	1	Q. This application is filled in
2	ASTM's Intellectual Property Policy.	2	by hand. Correct?
3	The policy is available in the ASTM	3 4	MR. FEE: Objection. Calls for speculation.
4	Web site (www.astm.org) and/or by	5	-
5	request to ASTM International	6	THE WITNESS: It appears to be. BY MR. BECKER:
6	headquarters [as read]. BY MR. BECKER:	7	Q. Does ASTM ever receive requests
7		8	for its Intellectual Property Policy by
8	Q. Does this document, ASTM063146,	9	anybody other than Public.Resource.Org?
9	include any of the text from the ASTM	10	A. Possibly.
	Intellectual Property Policy?	11	
11	MR. FEE: Objection. The	12	Q. Do you know one way or the other?
12	document speaks for itself. You can	13	A. No.
13	answer. THE WITNESS: The document	14	Q. Who would know?
14		15	MR. FEE: Objection. Calls for
15	speaks for itself. It references the	16	speculation. It's also beyond the
16	intellectual recognizes and says,	17	scope of the designation.
17	"YOU ACKNOWLEDGE YOU HAVE READ AND	18	THE WITNESS: Anyone who has
18	AGREE TO ABIDE BY ASTM'S INTELLECTUAL	18	
19	PROPERTY POLICY."		ever received a request would know. BY MR. BECKER:
20	BY MR. BECKER:	20	
21	Q. But does it include the text	21	Q. Are you personally aware of any
22	from the ASTM Intellectual Property Policy	22	requests?
23	that it requires members to abide by?	23	MR. FEE: Same objection.
24	MR. FEE: Same objection.	24 25	THE WITNESS: Not that I can
25	THE WITNESS: Same answer. Page 219	23	think of. Page 221
	1 450 217		1 450 221

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	Policy as on ASTM063146. Correct?
17	THE WITNESS: Yep, that looks correct. Slightly different.	18	A. That's what it looks like.
18	· ·	19	
19	BY MR. BECKER:	1	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.
1 2	communications, you shouldn't do so. If you can answer otherwise, go ahead.	2	MR. FEE: Objection. Vague. THE WITNESS: That's what it
		1	
2	If you can answer otherwise, go ahead.	2	THE WITNESS: That's what it
2 3	If you can answer otherwise, go ahead. THE WITNESS: My perspective is	2 3	THE WITNESS: That's what it would appear to me.
2 3 4	If you can answer otherwise, go ahead. THE WITNESS: My perspective is that they're the same thing. They're	2 3 4	THE WITNESS: That's what it would appear to me. BY MR. BECKER:
2 3 4 5	If you can answer otherwise, go ahead. THE WITNESS: My perspective is that they're the same thing. They're both intended for an individual to	2 3 4 5	THE WITNESS: That's what it would appear to me. BY MR. BECKER: Q. Who knows how many different
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2 3 4 5 6 7	If you can answer otherwise, go ahead. THE WITNESS: My perspective is that they're the same thing. They're both intended for an individual to join a particular committee. BY MR. BECKER: Q. Why is the copyright you say	2 3 4 5 6 7	THE WITNESS: That's what it would appear to me. BY MR. BECKER: Q. Who knows how many different versions exist for the membership applications during each year from 2007 to 2014?
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2 3 4 5 6 7 8 9	If you can answer otherwise, go ahead. THE WITNESS: My perspective is that they're the same thing. They're both intended for an individual to join a particular committee. BY MR. BECKER: Q. Why is the copyright you say	2 3 4 5 6 7 8 9	THE WITNESS: That's what it would appear to me. BY MR. BECKER: Q. Who knows how many different versions exist for the membership applications during each year from 2007 to 2014? A. I don't know if anybody knows. Q. Why is that?
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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	If you can answer otherwise, go ahead. THE WITNESS: My perspective is that they're the same thing. They're both intended for an individual to join a particular committee. BY MR. BECKER: Q. Why is the copyright you say they're the same thing, the copyright assignment language? MR. FEE: Same objection and instruction. THE WITNESS: No, I believe the form is the same thing. It serves the same purpose. It's an application so an individual can join the technical committee. BY MR. BECKER: Q. And my question was about the actual language that ASTM believes concerns copyright assignment. Why is there a difference in the language concerning ASTM's	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	THE WITNESS: That's what it would appear to me. BY MR. BECKER: Q. Who knows how many different versions exist for the membership applications during each year from 2007 to 2014? A. I don't know if anybody knows. Q. Why is that? MR. FEE: Objection. Calls for speculation. THE WITNESS: My experience as being a staff manager is I don't think people think about the version of an application that's being used. I think it's viewed as a tool that enables an individual to join a technical committee. BY MR. BECKER: Q. Who creates the membership applications such as the 2014 membership
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18 participants in all standards that ASTM is seeking to enforce in this lawsuit going back to the first creation of the standards at to to the first creation of the standards at issue in this litigation? 21 issue in this litigation? 22 MR. FEE: Hold on one second. 23 Objection. Calls for speculation. Calls for a legal conclusion. It's beyond the scope of Page 226 24 speculation. Calls for a legal conclusion. It's beyond the scope of Page 226 25 THE WITNESS: I don't know. 26 In his designation. You can answer if you know. 27 In HE WITNESS: I have no idea. 28 ASTM067015, ASTM067321, ASTM067813, ASTM067124, ASTM067321, ASTM067813, ASTM07124, ASTM071048, ASTM071048, ASTM0714751, ASTM081145, was marked for identification. 28 MR. FEE: Same objections. 29 BY MR. BECKER: 20 Would anybody other than ASTM's decuments, Bates ASTM066829, 4 ASTM067015, ASTM067321, ASTM067813, 5 ASTM070124, ASTM067321, ASTM067813, 6 ASTM075283, ASTM060533, ASTM051140, 7 ASTM081145, was marked for identification. 8 ASTM081145, was marked for identification. 9 BY MR. BECKER: 10 Q. Would anybone other than ASTM's general counsel know? 11 MR. FEE: Same objections. 12 MR. FEE: Same objections. 13 THE WITNESS: I don't know. 14 BY MR. BECKER: 15 Q. Who would know? 16 ASTM075283, ASTM060533, ASTM051140, 17 ASTM081145, was marked for identification. 18 BY MR. BECKER: 19 C. Would anybody other than ASTM's identification. 19 BY MR. BECKER: 20 D. Would anybody other than ASTM's identification. 21 BY MR. FEE: Same objections. 22 (Exhibit 1302, Compilation of documents produced by ASTM as identification.) 23 ASTM067015, ASTM067321, ASTM0671140, OR1145. 24 ASTM066829, ASTM067015, ASTM067321, 067813, 25 D. The WITNESS: I don't think so. 26 D. Would anybody other than ASTM's identification. 27 D. The MITNESS: Iden't know. 28 D. Would anybody other than ASTM's identification. 29 D. The MITNESS: Iden't know. 20 D. Would anybody other than ASTM's identification. 20 D. The MITNESS: Iden't know. 21 D. The MITNESS: Iden't k
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to the first creation of the standards at issue in this litigation? MR. FEE: Hold on one second. MR. FEE: Hold on one second. Objection. Calls for 23 general counsel know? Speculation. Calls for 24 general counsel know? Speculation. Calls for 25 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know? The With Second of Page 226 general counsel know. The With Second of Page 226 general counsel know. The With Second of Page 226 general counsel know? The With With Second of Page 226 general counsel know? The With With Second of Page 226
1 issue in this litigation? 2 MR. FEE: Hold on one second. 3 Objection. Calls for speculation. Calls for a legal conclusion. It's beyond the scope of Page 226 1 his designation. You can answer if you know. 3 THE WITNESS: I have no idea. 4 BY MR. BECKER: 5 Q. Who would know? 6 MR. FEE: Same objections. 7 MR. FEE: Same objections. 6 MR. FEE: Same objections. 7 MR. FEE: Same objections. 8 Maybe possibly our general counsel. 9 BY MR. BECKER: 10 Q. Would anyone other than ASTM's general counsel know? 11 MR. FEE: Same objections. 12 MR. BECKER: 13 G. Would anyone other than ASTM's general counsel know? 14 BY MR. BECKER: 15 Q. Has ASTM collected for production all applications and renewals of all participants in all standards that ASTM is seeking to enforce in this lawsuit going back to the first creation of the standards 21 BY MR. BECKER: 22 Q. Would anybody other than ASTM's general counsel know? 24 MR. FEE: Same objections. 25 THE WITNESS: I don't know. 26 (Exhibit 1302, Compilation of documents, Bates ASTM066829, ASTM067015, ASTM067813, ASTM067015, ASTM067813, ASTM07124, ASTM071068, ASTM071068, ASTM071451, ASTM067813, ASTM081145, was marked for identification.) 26 BY MR. BECKER: 27 (Exhibit 1302, Compilation of documents, Bates ASTM066829, ASTM067015, ASTM067813, ASTM07124, ASTM
22 MR. FEE: Hold on one second. 23 Objection. Calls for speculation. Calls for a legal conclusion. It's beyond the scope of Page 226 24 Speculation. Calls for a legal conclusion. It's beyond the scope of Page 226 25 Conclusion. It's beyond the scope of Page 226 26 Page 226 27 MR. FEE: Same objections. 28 THE WITNESS: I don't know. 29 (Exhibit 1302, Compilation of documents, Bates ASTM066829, ASTM067015, ASTM067321, ASTM067813, ASTM070124, ASTM071068, ASTM074751, ASTM071028, ASTM071028, ASTM071058, ASTM071140, ASTM081145, was marked for identification.) 29 BY MR. BECKER: 30 Would anyone other than ASTM's general counsel know? 40 Would anyone other than ASTM's general counsel know? 41 BY MR. BECKER: 42 (Exhibit 1302, Compilation of documents, Bates ASTM068829, ASTM0670321, ASTM067813, ASTM070124, ASTM071058, ASTM071058, ASTM070124, ASTM071058, ASTM074751, ASTM081145, was marked for identification.) 41 BY MR. BECKER: 42 (Exhibit 1302, Compilation of documents, Bates ASTM067813, ASTM067321, ASTM067321, ASTM067321, ASTM081140, ASTM081145, was marked for identification.) 41 BY MR. BECKER: 42 (Exhibit 1302, Compilation of documents astamon of documents astamon of documents produced by ASTM as compilation of documents produced by ASTM as astamon of documents assembled in this manner
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24 speculation. Calls for a legal 25 conclusion. It's beyond the scope of Page 226 1 his designation. You can answer if 2 you know. 2 (Exhibit 1302, Compilation of 3 THE WITNESS: I have no idea. 4 BY MR. BECKER: 4 ASTM067015, ASTM067321, ASTM067813, 5 Q. Who would know? 5 ASTM07124, ASTM071068, ASTM074751, 6 MR. FEE: Same objections. 7 THE WITNESS: I don't know. 8 Maybe possibly our general counsel. 9 BY MR. BECKER: 9 10 Q. Would anyone other than ASTM's 11 general counsel know? 12 MR. FEE: Same objections. 13 THE WITNESS: I don't know. 14 BY MR. BECKER: 15 Q. Has ASTM collected for 16 production all applications and renewals of 17 all participants in all standards that ASTM 18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 10 MR. FEE: Same objections. 24 MR. FEE: Same objections. 25 THE WITNESS: I don't know. 26 (Exhibit 1302, Compilation of 27 (Exhibit 1302, Compilation of 38 documents, Bates ASTM066829, 4 ASTM066813, ASTM066829, 4 ASTM066813, ASTM066833, ASTM051140, 5 ASTM066813, OSTM067015, ASTM067321, 067813, 6 OST140, 081145. 6 MR. FEE: Same objections. 7 ASTM066829, ASTM067015, ASTM067321, 067813, 7 OST140, 081145. 7 MR. FEE: I object to the use of 2 cherry picked documents assembled in 3 documents, Bates ASTM066829, 4 ASTM066829, ASTM066829, 5 ASTM066829, ASTM067015, ASTM067321, 067813, 6 OST140, 081145. 7 MR. FEE: I object to the use of 6 cherry picked documents assembled in 7 this manner
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2 you know. 3 THE WITNESS: I have no idea. 4 BY MR. BECKER: 5 Q. Who would know? 6 MR. FEE: Same objections. 7 THE WITNESS: I don't know. 8 Maybe possibly our general counsel. 9 BY MR. BECKER: 10 Q. Would anyone other than ASTM's 11 general counsel know? 12 MR. FEE: Same objections. 13 THE WITNESS: I don't think so. 14 BY MR. BECKER: 15 Q. Has ASTM collected for 16 production all applications and renewals of 17 all participants in all standards that ASTM 18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 10 (Exhibit 1302, Compilation of 3 documents, Bates ASTM066829, 4 ASTM067015, ASTM067321, ASTM067813, 5 ASTM070124, ASTM067015, ASTM067331, ASTM074751, 6 ASTM07124, ASTM060533, ASTM051140, 7 ASTM081145, was marked for 8 identification.) 9 10 BY MR. BECKER: 11 Q. I'm handing you what's been 12 marked as Exhibit 1302. This is a 13 compilation of documents produced by ASTM as 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 MR. FEE: I object to the use of 18 cherry picked documents assembled in 19 back to the first creation of the standards 19 this manner
THE WITNESS: I have no idea. BY MR. BECKER: Q. Who would know? MR. FEE: Same objections. THE WITNESS: I don't know. Maybe possibly our general counsel. PR. BECKER: Q. Would anyone other than ASTM's general counsel know? MR. FEE: Same objections. MR. FEE: Same objections. MR. BECKER: Q. Would anyone other than ASTM's general counsel know? MR. FEE: Same objections. THE WITNESS: I don't think so. MR. FEE: Same objections. MR. FEE: Same objections. THE WITNESS: I don't think so. ASTM081145, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1302. This is a compilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, incompilation of documents assembled in this manner
4 BY MR. BECKER: 4 ASTM067015, ASTM067321, ASTM067813, 5 Q. Who would know? 5 ASTM070124, ASTM071068, ASTM074751, 6 MR. FEE: Same objections. 7 THE WITNESS: I don't know. 8 Maybe possibly our general counsel. 9 BY MR. BECKER: 9 10 Q. Would anyone other than ASTM's 11 general counsel know? 12 MR. FEE: Same objections. 13 THE WITNESS: I don't think so. 14 BY MR. BECKER: 15 Q. Has ASTM collected for 16 production all applications and renewals of 17 all participants in all standards that ASTM 18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 19 ASTM067015, ASTM067321, ASTM067311, ASTM067813, ASTM0671140, 17 ASTM067124, ASTM067015, ASTM067813, O70124, O71068, O74751, O75283, O60533, 18 Cherry picked documents assembled in 19 back to the first creation of the standards 19 Cherry picked documents assembled in 19 this manner
5 Q. Who would know? 6 MR. FEE: Same objections. 7 THE WITNESS: I don't know. 8 Maybe possibly our general counsel. 9 BY MR. BECKER: 10 Q. Would anyone other than ASTM's general counsel know? 11 MR. FEE: Same objections. 12 MR. FEE: Same objections. 13 THE WITNESS: I don't think so. 14 BY MR. BECKER: 15 Q. Has ASTM collected for production all applications and renewals of all participants in all standards that ASTM 18 is seeking to enforce in this lawsuit going back to the first creation of the standards 5 ASTM070124, ASTM071068, ASTM071051, ASTM060533, ASTM051140, 7 ASTM081145, was marked for identification.) 9 BY MR. BECKER: 10 Q. I'm handing you what's been marked as Exhibit 1302. This is a compilation of documents produced by ASTM as 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 MR. FEE: I object to the use of cherry picked documents assembled in this manner
6 MR. FEE: Same objections. 7 THE WITNESS: I don't know. 8 Maybe possibly our general counsel. 9 BY MR. BECKER: 10 Q. Would anyone other than ASTM's general counsel know? 11 Q. I'm handing you what's been 12 MR. FEE: Same objections. 13 THE WITNESS: I don't think so. 14 BY MR. BECKER: 15 Q. Has ASTM collected for production all applications and renewals of 18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 16 ASTM075283, ASTM060533, ASTM051140, 7 ASTM081145, was marked for 18 identification.) 9 Production. 10 BY MR. BECKER: 11 Q. I'm handing you what's been 12 marked as Exhibit 1302. This is a 13 compilation of documents produced by ASTM as 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 All participants in all standards that ASTM 17 MR. FEE: I object to the use of 18 cherry picked documents assembled in 19 this manner
THE WITNESS: I don't know. Maybe possibly our general counsel. BY MR. BECKER: Q. Would anyone other than ASTM's general counsel know? MR. FEE: Same objections. THE WITNESS: I don't think so. MR. BECKER: MR. BECKER: MR. FEE: Same objections. THE WITNESS: I don't think so. ASTM081145, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1302. This is a compilation of documents produced by ASTM as ASTM066829, ASTM067015, ASTM067321, 067813, ASTM066829, ASTM067015, ASTM067321, 067813, DR. FEE: I object to the use of cherry picked documents assembled in this manner
8 Maybe possibly our general counsel. 9 BY MR. BECKER: 9 10 Q. Would anyone other than ASTM's general counsel know? 11 Q. I'm handing you what's been 12 MR. FEE: Same objections. 13 THE WITNESS: I don't think so. 14 BY MR. BECKER: 15 Q. Has ASTM collected for 16 production all applications and renewals of all participants in all standards that ASTM is seeking to enforce in this lawsuit going back to the first creation of the standards 18 identification.) 9 10 BY MR. BECKER: 11 Q. I'm handing you what's been 12 marked as Exhibit 1302. This is a 13 compilation of documents produced by ASTM as 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 MR. FEE: I object to the use of cherry picked documents assembled in 19 back to the first creation of the standards 19 this manner
9
10 Q. Would anyone other than ASTM's general counsel know? 11 general counsel know? 12 MR. FEE: Same objections. 13 THE WITNESS: I don't think so. 14 BY MR. BECKER: 15 Q. Has ASTM collected for production all applications and renewals of all participants in all standards that ASTM 16 is seeking to enforce in this lawsuit going back to the first creation of the standards 10 BY MR. BECKER: 11 Q. I'm handing you what's been 12 marked as Exhibit 1302. This is a 13 compilation of documents produced by ASTM as 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 MR. FEE: I object to the use of 18 cherry picked documents assembled in 19 this manner
11
12 MR. FEE: Same objections. 13 THE WITNESS: I don't think so. 14 BY MR. BECKER: 15 Q. Has ASTM collected for 16 production all applications and renewals of 17 all participants in all standards that ASTM 18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 10 marked as Exhibit 1302. This is a 11 compilation of documents produced by ASTM as 12 marked as Exhibit 1302. This is a 13 compilation of documents produced by ASTM as 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 MR. FEE: I object to the use of 18 cherry picked documents assembled in 19 this manner
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14 BY MR. BECKER: 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 Q. Has ASTM collected for 16 production all applications and renewals of 17 all participants in all standards that ASTM 18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 14 ASTM066829, ASTM067015, ASTM067321, 067813, 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 MR. FEE: I object to the use of 18 cherry picked documents assembled in 19 this manner
15 Q. Has ASTM collected for 15 070124, 071068, 074751, 075283, 060533, 16 051140, 081145. 17 all participants in all standards that ASTM 18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 19 this manner
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18 is seeking to enforce in this lawsuit going 19 back to the first creation of the standards 18 cherry picked documents assembled in this manner
19 back to the first creation of the standards 19 this manner
20 AR DECKER, That for
20 at issue in this litigation? 20 MR. BECKER: That's fine.
MR. FEE: Objection. Calls for 21 MR. FEE: used as an exhibit.
speculation. Beyond the scope of his 22 MR. BECKER: That's fine. There
designation. Calls for a legal 23 are many more like this.
24 conclusion. 24 BY MR. BECKER:
THE WITNESS: I don't understand 25 Q. Once you've had a chance to
25 THE WITNESS: I don't understand Page 227 Q. Once you've had a chance to Page 229

1	look at them, can you tell me what these	1	The only possible thing I can think of
2	documents are?	2	is that they're only including a
3	A. I believe these are portions of	3	portion of the renewal notice that
4	our renewal notice that we send each year.	4	pertains to the payment. I believe
5	Q. When ASTM members return the	5	it's about a four-page form or
6	renewal letters that ASTM sends them, do they	6	five-page form that has other
7	sometimes return only portions of the renewal	7	information on there.
8	letters?	8	
9	MR. FEE: Objection. Beyond the	9	(Exhibit 1303, Compilation of
10	scope of his designation. Calls for	10	documents, various Bates from
11	speculation.	11	ASTM069093 to ASTM057841, was marked
12	THE WITNESS: Possibly.	12	for identification.)
13	BY MR. BECKER:	13	
14	Q. Do you know one way or the	14	BY MR. BECKER:
15	other?	15	Q. I'm handing you what's been
16	MR. FEE: Same objections.	16	marked as Exhibit 1303. This, again, is a
17	THE WITNESS: No.	17	compilation of documents produced by ASTM.
18	BY MR. BECKER:	18	It starts with ASTM069093, and I won't read
19	Q. Who would know?	19	all of the page numbers in between, but I'll
20	MR. FEE: Same objections.	20	simply say that the last page is Bates number
21	THE WITNESS: I don't know. I	21	ASTM057841.
22	suppose the people at our customer	22	MR. FEE: Object to this exhibit
23	relations department that receives the	23	as well as being cherry picked
24	invoices to process.	24	portions of documents or document
25	BY MR. BECKER:	25	production.
	Page 230		Page 232
	Q. Did you speak with anyone in	1	MR. BECKER: And as I noted
1			
2	preparation for the deposition today about	2	before, there are many more documents
	preparation for the deposition today about individuals who had returned partial	2 3	before, there are many more documents that ASTM has produced that look just
2	preparation for the deposition today about individuals who had returned partial membership invoices that did not include any	2	before, there are many more documents that ASTM has produced that look just like these.
2 3	preparation for the deposition today about individuals who had returned partial membership invoices that did not include any discussion of ASTM copyright or ASTM IP	2 3	before, there are many more documents that ASTM has produced that look just like these. BY MR. BECKER:
2 3 4 5 6	preparation for the deposition today about individuals who had returned partial membership invoices that did not include any discussion of ASTM copyright or ASTM IP Policy?	2 3 4	before, there are many more documents that ASTM has produced that look just like these. BY MR. BECKER: Q. Could you tell me what these
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1	Q. How so?	1	Renewal Invoice, Bates ASTM075697, was
2	MR. FEE: Same objections.	2	marked for identification.)
3	THE WITNESS: I just don't know	3	
4	that.	4	BY MR. BECKER:
5	BY MR. BECKER:	5	Q. I'm handing you what's been
6	Q. Who would know that?	6	marked as Exhibit 1304. This has been
7	MR. FEE: Same objections.	7	produced by ASTM as ASTM075697. Can you tell
8	THE WITNESS: I guess if the	8	me what this document is?
9	person who processed this back in 2008	9	A. It says it's the "2010
10	would remember, maybe that person.	10	Membership Renewal Invoice."
11	BY MR. BECKER:	11	Q. It would appear that somebody
12	Q. Is there any way to find out	12	has crossed out language on this renewal
13	whether, when these renewal invoices were	13	invoice and it includes the language that
14	sent in to ASTM, if they included just this	14	references the ASTM IP Policy. Is that
15	single third section of the ASTM renewal	15	correct?
16	invoice?	16	MR. FEE: Objection.
17	MR. FEE: Same objections.	17	Mischaracterizes the document.
18	THE WITNESS: No, other than by	18	THE WITNESS: Yes. It looks
19	asking people that processed these.	19	like that information and other
20	BY MR. BECKER:	20	information is crossed out.
21	Q. Does ASTM keep the original	21	BY MR. BECKER:
22	copies of renewal invoices that it receives	22	Q. Does somebody review the
23	from members?	23	membership renewal invoices when they are
24	MR. FEE: Same objections.	24	delivered to ASTM?
25	THE WITNESS: I don't know.	25	A. We have someone that processes
	Page 234		Page 236
1	Probably for a certain period of time.	1	that.
2	BY MR. BECKER:	2	Q. Is a membership renewal ever
3	Q. Who would know?	3	refused for crossing out the language
4	MR. FEE: Same objections.	4	referencing the ASTM IP Policy?
5	THE WITNESS: People on our	5	MR. FEE: Objection. Beyond the
6	internal sales.	6	scope of his designation. Calls for
7	BY MR. BECKER:	7	speculation.
8	Q. Anybody else?	8	THE WITNESS: I have no idea.
9	MR. FEE: Same objections.	9	BY MR. BECKER:
10	THE WITNESS: Not that I'm aware	10	Q. Who would know?
11	of.	11	MR. FEE: Same objections.
12	BY MR. BECKER:	12	THE WITNESS: I don't know.
13	Q. Do you know any specific people	13	BY MR. BECKER:
14	in ASTM's internal sales that would know the	14	Q. Does ASTM attribute any
15	answer to that question?	15	significance to the IP Policy language being
16	MR. FEE: Same objections.	16	crossed out in membership invoices that are
17	THE WITNESS: Possibly Derek	17	returned to it?
18	Franco.	18	MR. FEE: Objection. Calls for
19	BY MR. BECKER:	19	a legal conclusion. To the extent
20	Q. And what is Derek Franco's role	20	that question requires you to disclose
21	at ASTM?	21	attorney-client communications, you
22	A. He's the director of internal	22	shouldn't do so. If you can answer
23	sales.	23	that question otherwise, go ahead.
24		24	THE WITNESS: I don't know. But
$_{1}-\cdot$		1	
25	(Exhibit 1304, 2010 Membership	25	our online renewal process does not Page 237

Correct?

A.

BY MR. BECKER:

Yes.

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allow you to not acknowledge it.

Q. ASTM continues to this day to

(Exhibit 1305, 2011 Membership

Renewal Invoice, Bates ASTM082973, was

accept mail-in membership renewal forms.

- 12 BY MR. BECKER:
- 13 Q. I'm handing you what's been 14 marked as Exhibit 1305. Can you tell me what

marked for identification.)

- this document is? 15
- A. It says it's the "2011 16 17 Membership Renewal Invoice."
- 18 Q. And this document has the ASTM
- 19 IP Policy crossed out as well. Correct? MR. FEE: Objection. 20
- 21 Mischaracterizes the document.
- 22 THE WITNESS: There's a line
- 23 through the section 2.
- 24 BY MR. BECKER:
 - Q. And section 2 includes the

Do you know which retreat this document is referring to when at the top line 15 of the e-mail it says, "One more 'talking points' document for the retreat"? 18 A. It was most likely for our 19 spring 2012 retreat.

- Q. What was the purpose of the 20 21 spring 2012 retreat?
- 22 MR. FEE: Objection. This is 23 beyond the scope. Explain to me how 24 this has had anything to do with the 25 three topics.

Page 240

- 1 AS -- the language referencing the ASTM IP 2 Policy. Correct?
- 3 A. Yes, the statement is in there, "You agree, by your participation...." 4
- 5 Q. For the record, this is 6 document Bates number ASTM082973.
- 7 MR. BECKER: We can go off the 8 record.
- 9 VIDEOGRAPHER: The time is now 10 6:06. We're going off the video record. This concludes disc three. 11
- 12 - - -
- 13 (A recess was taken.) 14
- 15 VIDEOGRAPHER: The time is now 6:14. We're back on the video record. 16 17 This begins disc four.
- 18
- 19 (Exhibit 1306, E-mail chain, 20 Bates ASTM101777 - ASTM101779, was 21 marked for identification.)
- 22 - - -23 BY MR. BECKER:
- 24 Q. I've handed you what's been marked as Exhibit 1306. This is a document 25
 - Page 239

Page 238

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- MR. BECKER: This has to do with 1 2 a document that he is included on. 3
 - MR. FEE: That's it?
 - MR. BECKER: We have a 30(b)(6) designee and we can ask him documents that relate to his work with ASTM.
 - MR. FEE: I'm going to instruct him not to answer that question.
 - MR. BECKER: This also has to do with copyright issues.
 - MR. FEE: Copyright issues. If it has to do with one of the three topics, he's not going to answer your question about it, and I don't think it has to do with any of the three. You haven't articulated even an argument that it does.
 - MR. BECKER: I disagree, and I believe that the witness should answer any questions that are posed to him that we have. And we are entitled to be able to ask the witness about his background and his operations with ASTM.

MR. FEE: This isn't about his

Page 241

A Case #22-7003	וטע	Cument #1902413	Filed. UT	/20/2023	Page 323 0
Case 1:13-cv-01215-T	SC	Document 204-46	Filed 11/13/19	Page 63 of	114

1 background. I'm instructing him not 2 to answer this question. 3 MR. BECKER: We are entitled to 4 ask the witness what we want. As a 5 30(b)(6) witness, we can ask him in 6 his individual capacity, and this 7 e-mail is fair game under that. 8 BY MR. BECKER: 9 Q. Mr. Smith, are you going to 10 answer the questions that we ask regarding 11 this document? 12 MR. FEE: No, he's not. 13 THE WITNESS: No, I'm not. 14 MR. BECKER: 15 that's in violation of the 30(b)(6) 16 requirements. 17 MR. FEE: The court's order said 18 that this was supposed to be on the 19 three topics that we've been talking 20 about all day. That's what the basis 21 for this deposition is. 22 MR. BECKER: The 30(b)(6) rules 23 allow us to ask questions of the 24 30(b)(6) designee. They don't have to 25 be focused purely on those topics, but 26 focused purely on those topics, but 27 answer the question. 28 be if they are outside of those topics, 29 quo can always object to them, but you 30 cannot instruct your client not to 4 answer the question. 5 MR. FEE: The court has 6 specifically ordered what the subject 7 matter of this deposition is going to 8 be. It did not include anything other 11 A. Yes. 2 Q. Do you have any reason to 3 believe that this document? 4 A. No. 4 A. No. 6 A. No. 9 Q. Do you have any reason to 3 believe that you did not receive this 4 document at the time it was sent? 9 A. No. 10 A. No. 11 A. Yes. 12 D. Do you have any reason to 12 believe that you did not receive this 13 document at the time it was sent? 14 A. Tran not sure. 15 Limitation of the anily at the time that it was sent to you? 16 A. No. 17 A. No. 18 believe that you did not receive this 18 document at the time it was sent? 19 A. No. 10 D. Do you have any reason to 12 believe that you didn't review this document 13 at the time it was sent to you? 14 A. I'm not sure. 15 Limitation of the anily with attachment, Bates ASTM003314 & ASTM003315, was marked for 16 (Exhibit 1308, 8/20/14 E-mail 17 with attachment, Bates ASTM003315, was marked for 18 MR. BECKER: I'll note
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7 matter of this deposition is going to 7 protective order and ordered that a
deposition was to commence:
9 than those three topics, so I'm 9 BY MR. BECKER:
instructing him not to answer. 10 Q. Mr. Smith, do you see your name
MR. BECKER: I disagree. 11 listed under the "To" line for Exhibit 1308?
12 MR. FEE: Disagree. 12 A. Yes.
13 MR. BECKER: The court 13 Q. Did you receive this e-mail?
14 instructed 14 A. I'm sure I did.
15 15 Q. Mr. Smith, do you is this
16 (Exhibit 1307, E-mail chain, 16 document as produced by ASTM authentic?
17 Bates ASTM099502 - ASTM099506, was 17 MR. FEE: Objection. Calls for
18 marked for identification.) 18 a legal conclusion. Beyond the scope
18 marked for identification.) 19 19 of his designation.
20 BY MR. BECKER: 20 MR. BECKER: How is a request
1
, 8,
22 document that's been marked as Exhibit 1307. 22 MR. FEE: Subject to the federal
23 This is the document produced by ASTM as rules of evidence.
24 ASTM099502 to ASTM099506. Do you see that 24 MR. BECKER: Authentication?
· ·
25 you are cc'd on this document? 25 BY MR. BECKER: Page 243 Page 245

1	Q. Mr. Smith, is this a correct	1	Q. And when you say "we," are
2	copy of the this e-mail that you received?	2	you do you mean ASTM?
3	A. It could be. There's only	3	A. Correct.
4	one looks like there's only one metric	4	Q. And who specifically at ASTM is
5	attached here.	5	focusing on these five projects?
6	Q. And is that the document	6	A. Our organization.
7	titled: "GMAC.DOCX," that's the first	7	Q. And what are the five different
8	attachment listed in the e-mail?	8	metrics?
9	MR. FEE: Objection. Calls for	9	MR. FEE: Objection. This is
10	speculation.	10	beyond the scope. Did any of the five
11	THE WITNESS: There's only one	11	metrics have to do with ownership of
12	attachment here, GMAC.	12	copyrights?
13	BY MR. BECKER:	13	THE WITNESS: No.
14	Q. What is page 2 of this document?	14	MR. BECKER: I'd like to know
15	A. It's one of the five metrics	15	what the background of this document
16	that we have in 2015.	16	is.
17	Q. What do you mean "one of the	17	MR. FEE: Is there any link to
18	five metrics"?	18	the topics that are at issue in this?
19	MR. FEE: Objection. This is	19	MR. BRIDGES: He's explained
20	beyond the scope of his designations.	20	that, Counsel.
21	Does this have something to do with	21	MR. FEE: It's turned out that
22	respect to three topics that are the	22	it has nothing do with copyright
23	subject of today's deposition?	23	issues.
24	MR. BRIDGES: Absolutely.	24	MR. BRIDGES: You don't get to
25	MR. FEE: How?	25	ask him the questions.
	Page 246		Page 248
1	MR. BECKER: This concerns the	1	MR. FEE: He's already said it.
1 2	federal government participation in	2	MR. FEE: He's already said it. If you can link this to one of your
		l	
2	federal government participation in	2	If you can link this to one of your
2 3	federal government participation in the creation of standards.	2 3	If you can link this to one of your three topics, go ahead, but he's not
2 3 4	federal government participation in the creation of standards. MR. FEE: And that is relevant	2 3 4	If you can link this to one of your three topics, go ahead, but he's not going to spend the next ten minutes
2 3 4 5	federal government participation in the creation of standards. MR. FEE: And that is relevant to which of your three topics?	2 3 4 5 6 7	If you can link this to one of your three topics, go ahead, but he's not going to spend the next ten minutes talking about a topic that's beyond
2 3 4 5 6	federal government participation in the creation of standards. MR. FEE: And that is relevant to which of your three topics? MR. BECKER: Copyright ownership	2 3 4 5 6	If you can link this to one of your three topics, go ahead, but he's not going to spend the next ten minutes talking about a topic that's beyond the scope of his designation.
2 3 4 5 6 7	federal government participation in the creation of standards. MR. FEE: And that is relevant to which of your three topics? MR. BECKER: Copyright ownership and assignments and chain of title.	2 3 4 5 6 7	If you can link this to one of your three topics, go ahead, but he's not going to spend the next ten minutes talking about a topic that's beyond the scope of his designation. MR. BECKER: The document
2 3 4 5 6 7 8	federal government participation in the creation of standards. MR. FEE: And that is relevant to which of your three topics? MR. BECKER: Copyright ownership and assignments and chain of title. MR. FEE: This is respective	2 3 4 5 6 7 8	If you can link this to one of your three topics, go ahead, but he's not going to spend the next ten minutes talking about a topic that's beyond the scope of his designation. MR. BECKER: The document concerns the 1,500 federal agency
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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	federal government participation in the creation of standards. MR. FEE: And that is relevant to which of your three topics? MR. BECKER: Copyright ownership and assignments and chain of title. MR. FEE: This is respective works at issue. Do you contend that this document has something to do with the work at issue? It's seven years after the most recent work of issue. MR. BECKER: But it still concerns the, potentially the works that are at issue given some of the discussions that are on this document. MR. FEE: I'll give you a little bit of leeway on this, but frankly I don't see that that's going to be the case. Go ahead. BY MR. BECKER: Q. What are the five metrics that you were mentioning? A. We have five different metric	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	If you can link this to one of your three topics, go ahead, but he's not going to spend the next ten minutes talking about a topic that's beyond the scope of his designation. MR. BECKER: The document concerns the 1,500 federal agency participants in ASTM technical committees. I would like to know what the background of this document is and why it was created. MR. FEE: If you want to ask him about the 1,500 federal government participants, go ahead. BY MR. BECKER: Q. What are the five metrics? MR. FEE: Objection. Beyond the scope. Go ahead. Let him ask a couple more questions. THE WITNESS: That's fine. This is one metric. We have another metric that is investigating whether or not there would be a value to hire
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1	We have another metric that is	1	would know?
2	piloting new technology for	2	MR. FEE: Same objections.
3	collaborating in development of	3	THE WITNESS: Not for sure.
4	documents. We have another metric	4	BY MR. BECKER:
5	that is evaluating a technology	5	Q. Was Jim Thomas in charge of
6	options for consolidating or having a	6	this metric?
7	content management system, a unified	7	MR. FEE: Objection. Vague.
8	content management system. And	8	THE WITNESS: No.
9	there's another one that I'm not	9	MR. FEE: Calls for speculation.
10	thinking of right now.	10	Beyond the scope of his designation.
11	BY MR. BECKER:	11	THE WITNESS: No.
12	Q. What is what metric does	12	BY MR. BECKER:
13	this document concern?	13	Q. The top bullet point statement
14	MR. FEE: Objection. Vague.	14	on the second page says, "Take inventory of
15	THE WITNESS: It deals with	15	the existing 1,500 Federal agency
16	coordinating, it says it right at the	16	participants in ASTM technical committees to
17	top. Addresses government interaction	17	identify areas of under-representation and
18	issues and creates an ASTM Government	18	participation."
19	Member Advisory Committee to advance	19	Do you know if that figure of
20	the following objectives.	20	1,500 federal agency participants in ASTM
21	BY MR. BECKER:	21	technical committees is correct?
22	Q. What is the ASTM Government	22	MR. FEE: Objection. Vague.
23	Member Advisory Committee?	23	THE WITNESS: It's probably
24	A. There is not one.	24	ballpark.
25	Q. So the ASTM Government Member	25	BY MR. BECKER:
	Page 250		Page 252
1	Advisory Committee was never created?	1	Q. Who would know what the exact
1 2	Advisory Committee was never created? A. No.	1 2	
1		_	Q. Who would know what the exact number of federal agency participants in ASTM technical committees is?
2	A. No.	2	number of federal agency participants in ASTM
2 3	A. No.Q. Does ASTM plan to is ASTM	2 3	number of federal agency participants in ASTM technical committees is?
2 3 4	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government	2 3 4	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for
2 3 4 5	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the	2 3 4 5	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his
2 3 4 5 6	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee?	2 3 4 5 6	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation.
2 3 4 5 6 7	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope.	2 3 4 5 6 7	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody
2 3 4 5 6 7 8	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering	2 3 4 5 6 7 8	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a
2 3 4 5 6 7 8 9	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it.	2 3 4 5 6 7 8 9	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis.
2 3 4 5 6 7 8 9	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER:	2 3 4 5 6 7 8 9	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis.
2 3 4 5 6 7 8 9 10	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric?	2 3 4 5 6 7 8 9 10 11	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis.
2 3 4 5 6 7 8 9 10 11 12	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague.	2 3 4 5 6 7 8 9 10 11 12	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272,
2 3 4 5 6 7 8 9 10 11 12 13	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure.	2 3 4 5 6 7 8 9 10 11 12 13	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272,
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know?	2 3 4 5 6 7 8 9 10 11 12 13 14 15	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) BY MR. BECKER:
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the scope. Calls for speculation. THE WITNESS: Jim Thomas.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1309. This is the document that was produced by ASTM last night as Bates
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the scope. Calls for speculation. THE WITNESS: Jim Thomas. BY MR. BECKER:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) PHY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1309. This is the document that was produced by ASTM last night as Bates number ASTM103272. It's titled "ASTM
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the scope. Calls for speculation. THE WITNESS: Jim Thomas. BY MR. BECKER: Q. Would anybody else besides Jim	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1309. This is the document that was produced by ASTM last night as Bates number ASTM103272. It's titled "ASTM Collaboration Area." And it appears that it
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the scope. Calls for speculation. THE WITNESS: Jim Thomas. BY MR. BECKER: Q. Would anybody else besides Jim Thomas know who prepared this?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1309. This is the document that was produced by ASTM last night as Bates number ASTM103272. It's titled "ASTM Collaboration Area." And it appears that it was printed on it was printed yesterday.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the scope. Calls for speculation. THE WITNESS: Jim Thomas. BY MR. BECKER: Q. Would anybody else besides Jim Thomas know who prepared this? MR. FEE: Same objections.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) BY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1309. This is the document that was produced by ASTM last night as Bates number ASTM103272. It's titled "ASTM Collaboration Area." And it appears that it was printed on it was printed yesterday. Could you tell me what this document is?
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the scope. Calls for speculation. THE WITNESS: Jim Thomas. BY MR. BECKER: Q. Would anybody else besides Jim Thomas know who prepared this? MR. FEE: Same objections. THE WITNESS: Possibly. BY MR. BECKER: Q. Can you name anybody else who	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) PY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1309. This is the document that was produced by ASTM last night as Bates number ASTM103272. It's titled "ASTM Collaboration Area." And it appears that it was printed on it was printed yesterday. Could you tell me what this document is? A. I believe it is a picture of an
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. No. Q. Does ASTM plan to is ASTM still considering creating a Government Member Advisory Committee? MR. FEE: Objection. Beyond the scope. THE WITNESS: We're considering it. BY MR. BECKER: Q. Who prepared this metric? MR. FEE: Objection. Vague. THE WITNESS: I'm not sure. BY MR. BECKER: Q. Who would know? MR. FEE: Objection. Beyond the scope. Calls for speculation. THE WITNESS: Jim Thomas. BY MR. BECKER: Q. Would anybody else besides Jim Thomas know who prepared this? MR. FEE: Same objections. THE WITNESS: Possibly. BY MR. BECKER:	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	number of federal agency participants in ASTM technical committees is? MR. FEE: Objection. Calls for speculation. Beyond the scope of his designation. THE WITNESS: Perhaps somebody in our membership department. It's a figure that changes on a daily basis. (Exhibit 1309, ASTM Collaboration Area, Bates ASTM103272, was marked for identification.) PY MR. BECKER: Q. I'm handing you what's been marked as Exhibit 1309. This is the document that was produced by ASTM last night as Bates number ASTM103272. It's titled "ASTM Collaboration Area." And it appears that it was printed on it was printed yesterday. Could you tell me what this document is? A. I believe it is a picture of an image on our Web site that indicates a member

1	there before joining a collaboration area.	1	the membership application as it currently		
2	Q. Is this the ASTM collaboration	2	exists on the Web?		
3	area language concerning the ASTM IP Policy	3	A. It might be, or it might be		
4	and copyright that you had discussed earlier	4	part of it.		
5	today in the deposition?	5	Q. What is missing, if anything,		
6	A. Looks like it's very similar,	6	from this document if it is the membership		
7	yeah.	7	application on the Web?		
8	Q. When you say it's "very	8	A. This appears to be the 2003		
9	similar," is there any differences that you	9	version, so I don't think this is the most		
10	see between this and the version that is on	10	11		
11	the ASTM Web site that you were describing	11	language at the very bottom of page		
12	earlier today?	12	ASTM013275, it asks for acknowledgment about		
13	MR. FEE: Objection. Vague.	13	reading and understanding ASTM's Intellectual		
14	THE WITNESS: I meant that this	14	Property Policy, and agree to abide by its		
15	is very similar to the language that	15	terms, [check off box].		
16	we talked about earlier that was on	16	Q. It says, "put in weblink"		
17	the renewal form.	17	there. Do you know why it says that?		
18	BY MR. BECKER:	18	A. No, I don't know why.		
19	Q. When you described earlier that	19	Q. Does this appear to be a draft		
20	participants in technical committees who set	20	of the ASTM membership application as of		
21	up an ASTM collaboration area would have to	21	approximately 2003?		
22	agree to language concerning copyright and	22	A. I would I can't say for sure		
23	the ASTM IP Policy, were you describing this	23	but since it says, "Costs for 2003" up top, I		
24	document 1309?	24	would say that's probably correct.		
25	MR. FEE: Objection to form.	25	Q. Do you know if this precise		
	Page 254		Page 256		
1	THE WITNESS: When earlier was	1	version of the ASTM member application was		
2	that?	2	ever implemented online on the ASTM Web site?		
3	BY MR. BECKER:	3	A. I don't know for sure, but I'm		
4	Q. At the start of the deposition.	4	guessing it was since this looks like a		
5	MR. FEE: Same objection.	5	picture from the ASTM Web site.		
6	THE WITNESS: I may have been.	6	Q. Who would know for certain?		
7	I'm not sure I recall the beginning of	7	A. I don't know if anybody would		
8	the deposition, but I think that's	8	at this point since it was an online		
9	right.	9	application.		
10		10	MR. BECKER: Let's go off the		
11	(Exhibit 1310, ASTM Membership	11	record.		
12	Application, Bates ASTM103274 -	12	VIDEOGRAPHER: The time is now		
13	ASTM103276, was marked for	13	6:40. We're going off the video		
14	identification.)	14	record.		
15		15			
16	BY MR. BECKER:	16	(A recess was taken.)		
17	Q. I'm handing you what's been	17			
18	marked as Exhibit 1310. This is the document	18	VIDEOGRAPHER: The time is now		
19	produced by ASTM last night as Bates number	19	7:01. We're back on the video record.		
20	ASTM103274 to ASTM103276.	20			
21	Do you recognize this document?	21	(Exhibit 1311, Record Retention		
22	A. It looks like it's our	22	Policy, Bates ASTM003501 - ASTM003522,		
23	membership application that we have on our	23	was marked for identification.)		
	4	0.4			
24	on the Web.	24			
24 25	on the Web. Q. Is this a correct depiction of Page 255	25	MR. FEE: Before we get started,		

1 I Jiust want to say that Mr. Smith has 2 been available to be deposed since 3 10:00 a.m. this morning. It's now 4 7:00. We have about 55 minutes left. 4 With attachment, Bates ASTM088320 - ASTM088325. was marked for 5 We're not staying past 8:00. So if 6 you're going to take any other breaks, 1 it better be short. That was a 8 20-minute break and I think a complete 9 waste of lime. Go shead. 1 BY MR. BECKER: 10 Q. Mr. Smith, I've handed you 10 what's marked as Exhibit 1311. This is a 13 document produced by ASTM as 003501 to 3522. 14 Could you, please, identify it'g 15 A. It says, "RECORD RETENTION 16 POLICY." 17 Q. Is this ASTM's record retention 18 policy? 19 A. Yes, I believe it is. 20 Q. Have you — did you review 21 ASTM's record retention policy in preparation 18 policy? 21 ASTM's record retention policy that membership 22 marked as Exhibit 1312. This is the document 19 morning by a STM as ASTM08825. 18 this attachment a correct 10 and "Legal Could you review 21 ASTM's record retention policy in preparation 22 for the deposition today? 23 A. I reviewed it very briefly. 24 Q. Do you know what category under 25 the record retention policy that membership 26 may particular pages? 27 BY MR. BECKER: 28 BY MR. BECKER: 39 Q. The handing you what's been 30 marked as Exhibit 1312. This is the document 11 pronduced by ASTM as ASTM08825. 13 marked as Exhibit 1312. This is the document 14 Apprenent." Is this attachment a correct 15 to an email with an attachment that says, 16 deument produced by ASTM as ASTM08825. 18 waster of the analysis of the same marked as Exhibit 1312. This is the document marked as Exhibit 1312. This is the document produced by ASTM as ASTM08825. 18 waster of the analysis of the analysis of the same marked as Exhibit 1312. This is the document in its an email with an attachment at correct 11 produced by ASTM as ASTM088225. 18 with an email with the says, "Records," Section B. The WITNESS: I'm not sure. 18 by MR. BECKER: 19 Q. Po you know that category the poly of the correct of the designatio					
3 10:00 a.m. this morning. It's now 4 7:00. We have about 55 minutes left. 4 with attachment, Bates ASTM088320 -	1	I just want to say that Mr. Smith has	1	of Records," section III.	
4 7:00. We have about 55 minutes left. 5 We're not staying past 8:00. So if 6 you're going to take any other breaks, 7 it better be short. That was a 8 20-minute break and It think a complete 9 waste of time. Go ahead. 10 BY MR. BECKER: 11 Q. Mr. Smith, I've handed you 12 what's marked as Exhibit 1311. This is a 13 document produced by ASTM as 003501 to 3522. 14 Could you, please, identify it? 15 A. It says, "RECORD RETENTION 16 POLICY." 17 Q. Is this ASTM's record retention 18 policy? 19 A. Yes, I believe it is. 20 Q. Have you did you review 21 ASTM's record retention policy in preparation 22 for the deposition today? 23 A. Treviewed it very briefly. 24 Q. Do you know what category under 25 the record retention policy that membership 26 BY MR. FEE: Objection. It's 3 beyond the scope of his designation. 4 THE WITNESS: Are you referring 4 to any particular pages? 5 BY MR. BECKER: 6 Q. Yes. If you look at ASTM 3502 8 and 3503, it says, "Types of Records." That includes "Temporary Records," "Flank Records" 10 and "Permanent Records." And then it also 11 has B is section B, "Types of Records," and "Flegal Records." 10 and "Permanent Records." And then it also 11 has B is section B, "Types of Records," and "Flegal Records." 11 ASTM Policy would fall under, 12 would just I'm not sure. 13 Records." 14 ASTM Policy would fall under, 15 you only a see. 16 THE WITNESS: No, I don't know. 17 A. I don't know what category the scope. 18 THE WITNESS: No, I don't know. 29 C. Po you know what category the scope. 20 Q. Do you know what category the scope. 21 ASTM Policy would fall under? 22 MR. FEE: Objection. Beyond the scope. 23 A. This looks like it is 24 THE WITNESS: No, I don't know. 25 The mot very familiar with the "Types" 26 The mot very familiar with the "Types" 27 In mot very familiar with the "Types" 28 The mot very familiar with the "Types" 29 The mot very familiar with the "Types" 20 The mandad sould reave their embership. 21 ASTM Policy would fall under? 22 The mot very familiar with the "Types" 23 A. Th	2	been available to be deposed since	2		
Second Programment Records, "That membership and Ergel State Program of the Records," "A STM of the State Program of the Records," "A state Program of the Records," "A state Program of the Records," "A state Program of the Records," "A state Program of the Records," "A state Program of the State Prog	3	10:00 a.m. this morning. It's now	3	(Exhibit 1312, 11/21/08 E-mail	
6 identification.) 7 it better be short. That was a 8 20-minute break and I think a complete 9 waste of time. Go ahead. 10 BY MR. BECKER: 11 Q. Mr. Smith, I've handed you 12 what's marked as Exhibit 1311. This is a 13 document produced by ASTM as O35501 to 3522. 14 Could you, please, identify it? 15 A. It says, "RECORD RETENTION 16 POLICY." 17 Q. Is this ASTM's record retention 18 policy? 19 A. Yes, I believe it is. 19 Q. Have you did you review 21 ASTM's record retention policy in preparation 22 for the deposition today? 23 A. I reviewed it very briefly. 24 Q. Do you know what category under 25 the record retention policy that membership 26 the record retention policy that membership 27 and 3503, it says, "Types of Records." That 28 includes "Temporary Records," "Final Records" 29 and 3503, it says, "Types of Records." That 20 and "Permanent Records." And then it also 21 and Employee Records," "Employment 22 and Engloyee Records," "Bank Records," and 23 Retention," "Accounting and Corporate Tax 24 Records." 25 ASTM Policy would fall under, 26 Name Records, "Bank Records," and 27 Referention, "Corporate Records," "Employment 28 Records." 30 A. I don't know what category the 31 Retention," "Accounting and Corporate Tax 4 Records," "Corporate Records," "Employment 5 and Employee Records," "Bank Records," and 6 "Legal Records." 4 A I don't know what category the 23 ASTM IP Policy would fall under, 24 Would just - I'm not sure. 25 MR. FEE: Objection would fall under, 26 Wowld just - I'm not sure. 27 Wowld just - I'm not sure. 28 Wowld just - I'm not sure. 29 Q. Do you know what category the 20 Q. Do you know what category the 21 ASTM IP Policy would fall under? 22 MR. FEE: Objection Beyond the 23 Scope. 24 THE WITNESS: No, I don't know. 25 I'm not very familiar with the "Types" 26 I'm not very familiar with the "Types" 27 I'm not very familiar with the "Types" 28 SymR. BECKER: 29 Q. I'm handing you what's been 29 Q. I'm handing you what's been 20 Q. Do you know what category the 21 ASTM I'm handing you what's be	4	7:00. We have about 55 minutes left.	es left. 4 with attachment, Bates ASTM088320		
20-minute break and I think a complete 9 waste of time. Go ahead. 9	5	We're not staying past 8:00. So if		ASTM088325, was marked for	
20-minute break and I think a complete 9 waste of time. Go ahead. 9	6	6 you're going to take any other breaks,		identification.)	
8 BYMR. BECKER: 9 waste of time. Go ahead. 9 Warts marked as Exhibit 1311. This is a document produced by ASTM as 003501 to 3522. 12 what's marked as Exhibit 1311. This is a document produced by ASTM as 003501 to 3522. 14 Could you, please, identify it? 15 A. It says, "RECORD RETENTION 15 Opposition of the policy." 16 POLICY." 17 Q. Is this ASTM's record retention 16 policy? 18 policy? 19 A. Yes, I believe it is. 20 Q. Have you did you review 21 ASTM's record retention policy in preparation 22 for the deposition today? 23 A. I reviewed it very briefly. 24 Q. Do you know what category under 25 to any particular pages? 24 Q. Do you know what category and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records." 19 includes "Temporary Records," "Final Records." 19 includes "Temporary Records," "Employment and Employee Records," "Bank Records," and Employee Records, "Bank Records," and Employee Records, "Bank Records," and Employee Records, "Bank Records," and Employee Records, "Bank Records," and Employee Records, "Bank Records," and Employee Records, "Bank Records," and Employee Records, "Bank Records," and Employee Records, "Bank Records,"	7		7		
waste of time. Go ahead. By MR. BECKER: What's marked as Exhibit 1311. This is the document What's marked as Exhibit 1311. This is a document produced by ASTM as ASTMO88320 to ASTM088325. What's marked as Exhibit 1311. This is a document produced by ASTM as ASTMO88325. A Could you, please, identify it? A. It says, "RECORD RETENTION POLICY." A. It says, "RECORD RETENTION POLICY." A. Yes, I believe it is. Q. Is this ASTM's record retention policy? A. Yes, I believe it is. Q. Hawe you - did you review ASTM's record retention policy in preparation for the deposition today? A. It reviewed it very briefly. A. I reviewed it very briefly. A. Treviewed it very briefly. MR. FEE: Objection. It's application forms would qualify as? MR. FEE: Objection. It's application forms would qualify as? MR. FEE: Objection. It's application forms would qualify as? MR. FEE: Objection. It's application forms would as ASTM 3502 and and 3503, it says, "Types of Records." That includes "Temporary Records," "Final Records" and "Permanent Records." And then it also includes "Temporary Records," "Employment and Employee Records," "Bank Records," and Employee Records," "Bank			8	BY MR. BECKER:	
10 BY MR. BECKER: 10 marked as Exhibit 1312. This is the document produced by ASTM as 003501 to 3522. 13 document produced by ASTM as 003501 to 3522. 14 Could you, please, identify it? 14 Agreement." Is this attachment that says, "RECORD RETENTION 15 A. It says, "RECORD RETENTION 16 POLICY." 16 Author/Copyright Owner Ast Moles 20 copy of the ASTM International Author/Copyright Owner Ast Moles 20 copy of the ASTM International Author/Copyright Ownership Agreement? 17 MR. FEE: Objection. Vague as 18 to time. Beyond the scope of the designation as well. 18 to time. Beyond the scope of the designation as well. 19 MR. BECKER: 19 MR. FEE: Objection today? 19 A. I reviewed it very briefly. 20 A. I reviewed it very briefly. 21 ASTM's record retention policy in preparation 21 BY MR. BECKER: 22 Q. Who would know whether this 23 attachment is a correct copy of the ASTM 10 International Author/Copyright Ownership 25 Agreement? 26 Agreement? 27 Agreement as a correct copy of the ASTM 10 International Author/Copyright Ownership 28 Agreement? 29 Agreement? 20 Agreement? 21 BY MR. BECKER: 20 Q. Who would know whether this 23 attachment is a correct copy of the ASTM 10 International Author/Copyright Ownership 25 Agreement? 26 Agreement? 27 Agreement? 28 Agreement? 29 A				O. I'm handing you what's been	
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1	Q. Is this a correct copy of the	1	A. This is for joining a technical
2	current language for the renewal for the	2	committee. It's a participating membership
3	membership renewal process on the ASTM Web	3	application. So on page ASTM001802 you
4	site?	4	select the type of membership that you want
5	MR. FEE: Objection. Vague.	5	to purchase. And in this particular instance
6	THE WITNESS: These are Web	6	the screenshots show that they've selected
7	screenshots, so I'm not sure if this	7	the participating member. And then after
8	is the current version or not. It's	8	that it's an example of what one would see if
9	kind of hard to read, but it looks	9	they selected the organizational membership.
10	like it was I mean, it could be	10	And then the informational and then the
11	current.	11	student.
12	BY MR. BECKER:	12	
13	Q. Did you review the membership	13	(Exhibit 1315, ASTM Member
14	renewal online application in preparation for	14	Application Forms, Bates ASTM052816,
15	your deposition today?	15	ASTM052817, ASTM062194, ASTM062195,
16	A. Yes.	16	ASTM062198 & ASTM062199, was marked
17	Q. Is there any reason why you	17	for identification.)
18	think that this may not be an accurate copy	18	
19	of the current membership renewal process on	19	BY MR. BECKER:
20	the ASTM Web site?	20	Q. I'm handing you what's been
21	A. No.	21	marked as Exhibit 1315. This is a
22	Q. Looking at Exhibit 1313, on the	22	document this is a number of documents
23 24	second page near the top of the page	23	Bates labeled ASTM052816 to 817, ASTM062194
25	ASTM001793, does that depict the membership renewal screen that discusses a copyright and	24 25	to 195, and ASTM062198 to 199. Would you, please, tell me what these documents are?
23	Page 262	23	Page 264
1	the ASTM IP Policy?	1	MR. FEE: Object to the use of
2	A. Yes.	2	randomly selected documents stapled
3	MR. FEE: Objection. The	3	together as one exhibit. You can
4	document speaks for itself.	4	answer.
5	THE WITNESS: It's a little	5	THE WITNESS: It says at the top
6	tough to read, but it would appear	6	in English "ASTM MEMBER APPLICATION
7	that way.	7	FORM."
8		8	BY MR. BECKER:
9	(Exhibit 1314, Screenshots,	9	Q. Is this an ASTM member
10	Bates ASTM001801 - ASTM001813, was	10	application form that's in English and
11	marked for identification.)	11	Chinese?
12		12	MR. FEE: Objection. Calls for
13	BY MR. BECKER:	13	expert testimony to the extent you're
14	Q. I've handed you what's been	14	asking him to speak to what language
15	marked as Exhibit 1314. This is the ASTM	15	this is.
16	document Bates labeled ASTM001801 to 1813	16	THE WITNESS: I've never seen
17	Could you, please, identify this document?	17	this application before, but it says
18	A. This looks like screenshots of	18	ASTM member application form. It's
19	the path that an individual could take to	19	perhaps something that we used as a
20	access the membership application and	20	service to have Chinese members or
21	complete it and submit it online so that they	21	have Chinese individuals join ASTM.
22	can join a technical committee.	22	BY MR. BECKER:
23	Q. Is this for joining a technical	23	Q. Are you aware of any discussion
24	committee or is this for getting an ASTM	24	of copyright or the ASTM IP Policy in these
25	membership? Page 263	25	forms that are in both English and Chinese Page 265

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?
21	things to assist the members of the technical	21	A. Grammatical things. We'll
22	committees?	22	inform members if they have mandatory
23	MR. FEE: Objection. Vague.	23	language in a non-mandatory section, that
124	THE WITNESS: Yes.	24	that's outside the form and style policy. Or
24	DILLED DECLIES		
25	BY MR. BECKER: Page 267	25	vice versa, if they have non-mandatory Page 269

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
2 3	changes to the content of the draft standard? MR. FEE: Objection. Vague.	2 3	Q. What did you mean when you said precision statements?
2 3 4	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking	2 3 4	Q. What did you mean when you said precision statements? A. Precision statements are
2 3 4 5	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format	2 3 4 5	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods.
2 3 4 5 6	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format	2 3 4 5 6	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements?
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2 3 4 5 6 7 8 9	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no?	2 3 4 5 6 7 8 9	 Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that?
2 3 4 5 6 7 8 9	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can	2 3 4 5 6 7 8 9 10	 Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can answer the question however you like. You don't have to answer it yes or no. THE WITNESS: Did you ask me is that a no? BY MR. BECKER: Q. Yeah.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement of repeatability would be a laboratory taking the ASTM test method and running the test in the laboratory several times. And they take the results of that test and they see how close each iteration is. And if the results are very close, then that would indicate good
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can answer the question however you like. You don't have to answer it yes or no. THE WITNESS: Did you ask me is that a no? BY MR. BECKER: Q. Yeah. A. What was can you repeat the original question? Q. The question was, when you say you put it into publication format, does that	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement of repeatability would be a laboratory taking the ASTM test method and running the test in the laboratory several times. And they take the results of that test and they see how close each iteration is. And if the results are very close, then that would indicate good precision. If it's if the results are not close, then that would indicate poor precision. So that's what repeatability is. Then reproducibility is at least six labs
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can answer the question however you like. You don't have to answer it yes or no. THE WITNESS: Did you ask me is that a no? BY MR. BECKER: Q. Yeah. A. What was can you repeat the original question? Q. The question was, when you say you put it into publication format, does that involve any changes to the content of the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement of repeatability would be a laboratory taking the ASTM test method and running the test in the laboratory several times. And they take the results of that test and they see how close each iteration is. And if the results are very close, then that would indicate good precision. If it's if the results are not close, then that would indicate poor precision. So that's what repeatability is. Then reproducibility is at least six labs doing the same thing as what I just described
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can answer the question however you like. You don't have to answer it yes or no. THE WITNESS: Did you ask me is that a no? BY MR. BECKER: Q. Yeah. A. What was can you repeat the original question? Q. The question was, when you say you put it into publication format, does that involve any changes to the content of the draft standards?	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement of repeatability would be a laboratory taking the ASTM test method and running the test in the laboratory several times. And they take the results of that test and they see how close each iteration is. And if the results are very close, then that would indicate good precision. If it's if the results are not close, then that would indicate poor precision. So that's what repeatability is. Then reproducibility is at least six labs doing the same thing as what I just described as that one lab. And then the
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can answer the question however you like. You don't have to answer it yes or no. THE WITNESS: Did you ask me is that a no? BY MR. BECKER: Q. Yeah. A. What was can you repeat the original question? Q. The question was, when you say you put it into publication format, does that involve any changes to the content of the draft standards? MR. FEE: Objection. Vague.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement of repeatability would be a laboratory taking the ASTM test method and running the test in the laboratory several times. And they take the results of that test and they see how close each iteration is. And if the results are very close, then that would indicate good precision. If it's if the results are not close, then that would indicate poor precision. So that's what repeatability is. Then reproducibility is at least six labs doing the same thing as what I just described as that one lab. And then the reproducibility is a statement that analyzes
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can answer the question however you like. You don't have to answer it yes or no. THE WITNESS: Did you ask me is that a no? BY MR. BECKER: Q. Yeah. A. What was can you repeat the original question? Q. The question was, when you say you put it into publication format, does that involve any changes to the content of the draft standards? MR. FEE: Objection. Vague. THE WITNESS: It could,	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement of repeatability would be a laboratory taking the ASTM test method and running the test in the laboratory several times. And they take the results of that test and they see how close each iteration is. And if the results are very close, then that would indicate good precision. If it's if the results are not close, then that would indicate poor precision. So that's what repeatability is. Then reproducibility is at least six labs doing the same thing as what I just described as that one lab. And then the reproducibility is a statement that analyzes the results from all six or more labs.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	changes to the content of the draft standard? MR. FEE: Objection. Vague. THE WITNESS: It involves taking what was balloted in the Word format and placing it into our XML format that we use for producing PDFs. BY MR. BECKER: Q. Is that a no? MR. FEE: Objection. You can answer the question however you like. You don't have to answer it yes or no. THE WITNESS: Did you ask me is that a no? BY MR. BECKER: Q. Yeah. A. What was can you repeat the original question? Q. The question was, when you say you put it into publication format, does that involve any changes to the content of the draft standards? MR. FEE: Objection. Vague.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. What did you mean when you said precision statements? A. Precision statements are included in test methods. Q. What are precision statements? A. Precision statements include statements on repeatability and reproducibility. Q. What do you mean by that? A. For a test method, a statement of repeatability would be a laboratory taking the ASTM test method and running the test in the laboratory several times. And they take the results of that test and they see how close each iteration is. And if the results are very close, then that would indicate good precision. If it's if the results are not close, then that would indicate poor precision. So that's what repeatability is. Then reproducibility is at least six labs doing the same thing as what I just described as that one lab. And then the reproducibility is a statement that analyzes

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 agree		
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	14	Q. I'm handing you what's been	
15	appearance, the published format?	15	marked as Exhibit 1317. This document has	
16	BY MR. BECKER:	16	been produced by ASTM as ASTM064686 to 64692.	
17	Q. Yes.	17	What is this document?	
18	A. No.	18	A. This looks like a copy of an	
19	Q. Do ASTM committee members vote	19	old application that was downloaded and saved	
20	on the content that appears in the final form	20	from our Web site and that was filled out by	
21	of ASTM standards?	21	hand. Best guess.	
22	MR. FEE: Objection. Vague.	22		
23	THE WITNESS: The content that	23	(Exhibit 1318, E-mail chain with	
24	is balloted and approved through our	24	attachment, Bates ASTM087493 -	
25	consensus process is not changed	25	ASTM087497, was marked for	
	Page 275		Page 277	

1	identification.)	1	Standards Writing 101 How To [as read]. It
2		2	looks like something that was written in
3	BY MR. BECKER:	3	Standardization News back in 2000.
4	Q. I'm handing you what's been	4	Q. Does this document accurately
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	attempting to renew his application,	7	MR. FEE: You're going to have
8	membership application with ASTM by phone	8	to read the whole document to answer
9	A. I'd 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,	13	standard.
14	but it doesn't say that it actually happened.	14	BY MR. BECKER:
15	Q. Can ASTM members renew their	15	Q. So there were other ways that
16	membership by phone or e-mail?	16	an individual could request the development
17	A. They could. It's not I	17	of a new standard as of March 2000?
18	don't think it's very common, but they could.	18	A. Yeah, they could make a request
19		19	from the subcommittee or by the subcommittee
20	(Exhibit 1319, 2011 ASTM	20	chairman.
21	International Committee Membership	21	
22	Application, Bates ASTM061183, was	22	(Exhibit 1321, How Standards are
23	marked for identification.)	23	Developed article, was marked for
24		24	identification.)
25	BY MR. BECKER:	25	
	Page 278		Page 280
1	Q. I'm handing you what's been	1	BY MR. BECKER:
2	marked as Exhibit 1319, document produced by	2	Q. I'm handing you what's been
3	ASTM as Bates number ASTM061183. What is	3	marked as Exhibit 1321. This document was
4	this document?	4	printed from the ASTM Web site at
5	A. It says, "2011 ASTMCommittee	5	www. astm. org/MEMBERSHIP/standards develop. HTML.
6	Membership Application."	6	What is this document?
7	Q. Does this document appear to	7	A. It looks like maybe an article.
8	have a line crossed through the language	8	MR. FEE: Objection. Lack of
9	concerning the ASTM IP Policy?	9	foundation.
10	MR. FEE: Objection. The	10	THE WITNESS: Maybe an article
11	document speaks for itself.	11	we have on our Web site that helps
12	THE WITNESS: I can't say that	12	provide guidance for our members.
13	that's a line or whether that's an	13	BY MR. BECKER:
14	indicator towards the individual's	14	Q. Do you know what a US TAG ISO
15	account number.	15	list is?
16		16	A. A US
17	(Exhibit 1320, How To Standards	17	Q. US TAG ISO list.
18	Writing 101 New Standards, was marked	18	A. United States Technical
19	for identification.)	19	Advisory Group ISO list, I don't know if that
20		20	refers to the list of members that are
21	BY MR. BECKER:	21	serving on the technical advisory group.
22	Q. I'm handing you what's been	22	
23	marked as Exhibit 1320. What is this	23	(Exhibit 1322, 8/13/08 E-mail,
24	document?	24	Bates ASTM073852, was marked for
25	A. I'm not sure. It says	25	identification.)
	Page 279		Page 281

3 Q. I'm handing you what's been 3 that?	
3 Q. I'm handing you what's been 4 that? 4 marked as Exhibit 1322 which has been 5 produced by ASTM as ASTM073852. Can you tell 5 this as the next of	I I
4 marked as Exhibit 1322 which has been 4 MR. BECK 5 produced by ASTM as ASTM073852. Can you tell 5 this as the next of	Do you want to mark
5 produced by ASTM as ASTM073852. Can you tell 5 this as the next of	
	ER: Yeah. Let's mark
6 me what this document is?	one.
o me what this accument is.	
7 A. It's an e-mail from Tom O'Toole 7 (Exhibit 132	23, Bates Numbers of
8 to our customer service department. 8 Assignment Doc	cuments, was marked for
9 Q. Does this refresh your 9 identification.)	
10 recollection at all as to what a US TAG ISO 10	
11 list is? 11 BY MR. BECKER:	
12 A. I'm assuming it's the 12 Q. Is this your	r answer to my
13 membership list, because it says, "listed 13 question?	•
14 as members of the US TAG to ISO TC 160." 14 A. Yes.	
15 Q. Is that an ASTM membership 15 Q. Is this corr	ect to the best of
16 list? 16 your is this Exhibi	t 1323 your answer to
17 A. It appears that it's ASTM 17 my question concern	
18 subcommittee C14.92, holds the US TAG to the 18 A. Yes.	
	ibit 1323 correct,
20 MR. BECKER: All right. Let's 20 to the best of your kr	I I
	best of my
22 break. 22 knowledge.	-
23 VIDEOGRAPHER: The time is now 23 Q. Who prepa	ared this document,
24 7:44. We're going off the video 24 Exhibit 1323?	·
25 record. 25 A. I'm not sur	e. I think our
Page 282	Page 284
1 1 counsel.	
	provided this
3 document, Exhibit 13	
4 VIDEOGRAPHER: The time is now 4 A. Yes.	, ,
	you do to confirm that
6 BY MR. BECKER: 6 Exhibit 1323 is accur	
	through number by
7 O. Looking at Exhibit 1289 which 7 A. I didn't go	
`	
8 is the Amended Notice of Rule 30(b)(6) 8 number.	ok at any of the
8 is the Amended Notice of Rule 30(b)(6) 8 number. 9 Deposition, topic 9 Q. Did you lo	ok at any of the are listed on this
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 8 number. 9 Q. Did you lo 10 Bates numbers that a	are listed on this
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor	are listed on this nfirm that they
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with an	nre listed on this nfirm that they ny assignment language?
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with ar 13 A. We looked	are listed on this nfirm that they
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with an 13 A. We looked 14 yes.	nre listed on this infirm that they ny assignment language? I at them yesterday,
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with an 13 A. We looked 14 yes.	nre listed on this nfirm that they ny assignment language? I at them yesterday, ok at all of them?
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 18 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with ar 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I	nre listed on this nfirm that they ny assignment language? I at them yesterday, ok at all of them?
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 18 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with ar 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I	nre listed on this nfirm that they ny assignment language? I at them yesterday, ok at all of them? did.
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 17 "The bates numbers of at least one instance 18 of every form of assignment with which You 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with an 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I 17 Q. All of the I 18 are listed?	nre listed on this nfirm that they ny assignment language? I at them yesterday, ok at all of them? did.
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 17 "The bates numbers of at least one instance 18 of every form of assignment with which You 19 claim a person assigned any copyright in the 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with ar 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I 17 Q. All of the I 18 are listed? 19 A. I don't kno	are listed on this infirm that they ny assignment language? I at them yesterday, ok at all of them? did. Bates numbers that w if I looked at the
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 17 "The bates numbers of at least one instance 18 of every form of assignment with which You 19 claim a person assigned any copyright in the 20 Works-At-Issue to You." 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with ar 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I 17 Q. All of the I 18 are listed? 19 A. I don't kno 20 exact Bates numbers	are listed on this infirm that they ny assignment language? I at them yesterday, ok at all of them? did. Bates numbers that w if I looked at the to correspond to
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 17 "The bates numbers of at least one instance 18 of every form of assignment with which You 19 claim a person assigned any copyright in the 20 Works-At-Issue to You." 21 Could you, please, provide the 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with ar 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I 17 Q. All of the I 18 are listed? 19 A. I don't kno 20 exact Bates numbers	are listed on this infirm that they ny assignment language? I at them yesterday, ok at all of them? did. Bates numbers that w if I looked at the
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 17 "The bates numbers of at least one instance 18 of every form of assignment with which You 19 claim a person assigned any copyright in the 20 Works-At-Issue to You." 21 Could you, please, provide the 22 Bates number of at least one instance of 22 I believe I looked at	are listed on this infirm that they iny assignment language? I at them yesterday, ok at all of them? did. Bates numbers that w if I looked at the to correspond to in individual document, but
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 17 "The bates numbers of at least one instance 18 of every form of assignment with which You 19 claim a person assigned any copyright in the 20 Works-At-Issue to You." 21 Could you, please, provide the 22 Bates number of at least one instance of 23 every form of assignment with which ASTM 20 Did you lo 11 Exhibit 1323 and cor 12 corresponded with an 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I 17 Q. All of the I 18 are listed? 19 A. I don't kno 20 exact Bates numbers 21 correspond with each 22 I believe I looked at 23 every form of assignment with which ASTM 24 C. Has there be	are listed on this infirm that they iny assignment language? I at them yesterday, ok at all of them? did. Bates numbers that w if I looked at the to correspond to individual document, but all of the documents. been any impairment
8 is the Amended Notice of Rule 30(b)(6) 9 Deposition, topic 10 MR. FEE: Hold it. Let him grab 11 it. 12 BY MR. BECKER: 13 Q. Okay. Do you have it? 14 A. Yeah. 15 Q. If you turn to page 7. Topic 16 24 is on which you've been designated is, 17 "The bates numbers of at least one instance 18 of every form of assignment with which You 19 claim a person assigned any copyright in the 20 Works-At-Issue to You." 21 Could you, please, provide the 22 Bates number of at least one instance of 23 every form of assignment with which ASTM 24 claims that a person assigned any copyright 8 number. 9 Q. Did you lo 10 Bates numbers that a 11 Exhibit 1323 and cor 12 corresponded with an 13 A. We looked 14 yes. 15 Q. Did you lo 16 A. I believe I 17 Q. All of the I 18 are listed? 19 A. I don't kno 20 exact Bates numbers 21 correspond with each 22 I believe I looked at a 23 every form of assignment with which ASTM 24 claims that a person assigned any copyright 24 to the operations of the	are listed on this infirm that they iny assignment language? I at them yesterday, ok at all of them? did. Bates numbers that w if I looked at the to correspond to individual document, but all of the documents. been any impairment

1	years?	1	Q. Are you refusing to answer that
2	MR. FEE: Objection. Vague.	2	question?
3	Beyond the scope of his designation.	3	A. Yes.
4	What topic does this relate to? I'm	4	MR. BECKER: Then I'm going to
5	instructing him not to answer unless	5	end the deposition now and reserve my
6	there's a topic that this relates to.	6	right to follow up on those questions
7	BY MR. BECKER:	7	MR. FEE: Just so the record is
8	Q. In your work with the ASTM	8	clear
9	technical committees, are you familiar with	9	MR. BECKER: and the
10	of any difficulties that have arisen in the	10	questions that counsel instructed the
11	past five years that concern the operations	11	witness to refuse to answer.
12	of the ASTM technical committees?	12	MR. FEE: Okay. We're now at
13	MR. FEE: Can you identify any	13	six minutes and 50 six hours and
14	topic that that relates to? I take	14	55 minutes of testimony, just so the
15	your silence as refusal to do so.	15	record is clear. I have one or two
16	I'll instruct him not to answer.	16	questions for you.
17	BY MR. BECKER:	17	
18	Q. Have are you going to refuse	18	EXAMINATION
19	to answer that question?	19	
20	MR. FEE: Yes, he is.	20	BY MR. FEE:
21	THE WITNESS: Yes.	21	Q. Would you turn back to 1323.
22	BY MR. BECKER:	22	A. Yes.
23	Q. Has there been any lack of	23	Q. I just want to make sure that
24	resources for the operations of the ASTM	24	we're clear about one question. You see in
25	technical committees in the past five years?	25	the middle, slightly above the middle of that
	Page 286		Page 288
1	MR. FEE: Can you identify a	1	page it says, "Bates Range of Paper
2	topic to which that relates? I take	2	Membership Forms," and it says ASTM034596
3	that as a no. I'll instruct you not	3	through ASTM0088302. Did you review
4	to answer that question.	4	approximately 54,000 pages in connection with
5	MR. BECKER: I don't have to	5	the creation of this document?
6	identify any topics to which that	6	A. No.
7	relates.	7	MR. BECKER: Object as to form.
8	BY MR. BECKER:	8	BY MR. FEE:
9	Q. Will you answer that question?	9	Q. Would you turn to Exhibit 1313.
10	MR. FEE: No, he won't.	10	A. I'm afraid I
11	THE WITNESS: No.	11	Q. That is, I believe, the
12	BY MR. BECKER:	12	membership renewal
13	Q. In the scope of your work with	13	A. Got it. Got it.
14	ASTM, are you familiar with any lack of	14	Q pages of their screenshots.
15	resources that members of ASTM technical	15	A. Yes.
16	committees have encountered in the past five	16	Q. Do you recall Mr. Becker
17	years?	17	pointed you to, I believe, language on the
18	MR. FEE: Can you identify any	18	second page of this document and asked
19	topic to which that relates?	19	whether or not that had any language related
20	MR. BECKER: I do not have to	20	to the IP Policy or assignments?
21	identify a topic.	21	A. Yes.
22	MR. FEE: If you don't do so,	22	MR. BECKER: Object as to form.
23	I'm going to instruct him not to	23	BY MR. FEE:
24	answer.	24	Q. Are there any other portions of
25	BY MR. BECKER:	25	what's been marked as 1313 that relate to the
L	Page 287		Page 289

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	DANIEL SMITH		
14	or is he done?	14			
15	MR. BECKER: No, no redirect.	15			
16	MR. FEE: Great. Thank you.	16			
17	THE WITNESS: Thanks.				
18	VIDEOGRAPHER: The time is now	17			
19		18			
20	7:57. This concludes the videotape	19			
21	deposition of Dan Smith.	20			
21 22	(Witness averaged)	21			
	(Witness excused.)	22			
23		23			
24	(Deposition concluded at 7:57	24			
25	p.m.)	25			Page 292
					1 age 272
1 2	CERTIFICATE				
3					
,	I do hereby certify that I am a Notary				
4	Public in good standing, that the aforesaid testimony was taken before me, pursuant to				
5	notice, at the time and place indicated; that				
6	said deponent was by me duly sworn to tell the truth, the whole truth, and nothing but				
	the truth; that the testimony of said				
7	deponent was correctly recorded in machine				
8	shorthand by me and thereafter transcribed under my supervision with computer-aided				
	transcription; that the deposition is a true				
9	and correct record of the testimony given by the witness: and that I am neither of counsel				
10	nor kin to any party in said action, nor				
l	interested in the outcome thereof.				
11	WITNESS my hand and official seal this				
12	7th day of August, 2015.				
13					
14 15					
	Notary Public				
16 17					
18					
19					
20 21					
22					
23 24					
25					
	Page 291				

[& - 199]

&	10:00 258:3	1296 4:9 195:20	1322 6:11 281:23	
& 1:15 2:4,10 4:20	10:46 12:11,17	196:1 200:7 205:8	282:4	
5:11,24 9:16 10:19	11 127:25	1297 4:11 201:11,18	1323 6:12 284:7,16	
183:5 210:22	11/21/08 5:17 260:3	201:24 205:8	284:19,24 285:3,6	
244:17 264:16	1111 2:5	1298 4:13 204:3,9	285:11 288:21	
	115 154:22	204:15	15 86:19 109:16	
0	11:48 57:14	1299 4:15 205:11,18	244:25	
00108 145:18	11th 182:25	12:02 57:20	160 282:14,19	
00159 161:7	12 7:6	12:54 87:23	161 7:5	
00167 161:7	121 3:25	12th 2:12 184:5	166 161:8	
003501 258:13	122 4:1	13 7:5 65:11 69:10	171 4:3	
01215 1:3 9:5	1284 3:9 34:22 35:5	69:23	173 4:4	
02 196:11,19	38:20 80:11 81:11	1300 4:16 209:24	1800 1:18 8:20	
025640 187:22	106:24 107:1,5,13	210:5	261:22	
04 26:5	107:16,23	1301 4:18 210:18	1801 1:17 8:19	
05 26:5	1285 3:12 60:2,9	211:2 218:6	181 4:6	
051140 229:16	61:24 62:10,12,15	1302 4:21 229:2,12	1813 263:16	
060533 229:15	64:22 71:18 72:15	1303 5:1 232:9,16	187 4:7	
067813 229:14	72:22 76:5	1304 5:3 235:25	19 147:7 156:6	
070124 229:15	1286 3:14 64:5,13	236:6	19103 1:19	
071068 229:15	64:22 74:8,12	1305 5:5 238:8,14	195 4:9 264:24	
074751 229:15	1287 3:16 65:19	1306 5:7 239:19,25	1970s 22:9,21	
075283 229:15	66:2	1307 5:8 243:16,22	1977 147:10,14,15	
081145 229:16	1288 3:19 68:13,21	1308 5:10 244:16,23	147:16 148:1,9,15	
086031 173:13	69:21 72:16,21 73:2	245:11	148:18,23	
1	74:24 75:4 78:11	1309 5:12 253:11,17	1977e2 147:9,24	
1 1:25 7:6 37:17	109:17	254:24	148:14 150:13	
136:11,16 137:14	1289 3:21 88:7,16	1310 5:13 255:11,18	1978 148:18,20,22	
138:2,19 141:20	283:7	1311 5:15 257:21	149:2,25	
144:9 149:17,22	1290 3:25 121:16,22	258:12	1979 146:3,14 147:3	
150:2,5,10 152:9,15	140:23,25 141:3	1312 5:17 260:3,10	149:21 150:12	
152:17	1291 4:1 122:6,13	1313 5:19 261:13,20	152:8,14,21,24	
1,500 249:8,14	122:19,23 123:6	262:22 289:9,25	153:15,18 154:4	
252:15,20	133:4 136:8 141:14	1314 5:20 263:9,15	1980 63:8 133:22,25	
10 3:4 7:6,15 86:19	142:1 145:17	1315 5:22 264:13,21	134:6,22 135:12	
160:20	156:21 158:7 161:4	266:1	136:9,15 137:13	
100 181:25	1292 4:3 142:1	1316 5:25 266:8,14	138:1,18 141:19	
101 6:8 279:18	171:12,18	1317 6:1 277:8,15	144:8 147:2 150:12	
280:1	1293 4:4 173:4,11	1318 6:3 277:23	150:15,20 152:16	
101779 240:1	205:5 212:10,10,13	278:5	152:22,25 153:19	
103277 61:5	213:6,11,23 214:10	1319 6:5 278:20	154:6 158:4	
103284 61:6	215:1,5,9,23 222:14	279:2	1980s 22:10,21	
108 134:21	1294 4:6 181:14,20	1320 6:8 279:17,23	1984 126:2 127:17	
	1295 4:7 187:2,9,21	1321 6:9 280:22	199 264:24	
	187:25 188:3	281:3		
	1	1	ı	

[1997e2 - 739-5353]

1997e2 141:4,18	200:4 216:6 234:9	24 1:20 8:15 89:6,10	31 133:21,25 134:6
146:12 147:6	2009 192:1 216:10	90:8,10 283:16	134:22 135:12
1999 60:19 61:9	201 4:11	284:17	34 3:9
62:25 66:15 69:8	2010 4:11 5:3 65:11	241 7:5	35 138:14
70:1,12,21 71:5,19	65:16 68:6,7,8	242 7:6	3502 259:7
73:23 76:13 119:14	69:11,24 73:2	243 5:8 7:6	3503 259:8
120:3,12,15,23	109:18 192:2	244 5:10	3522 258:13
120:3,12,13,23	201:11,21 216:13	25 118:22,22	3:08 135:18
1:13 1:3 9:5	235:25 236:9	253 5:12	3:20 135:24
1:58 88:4	2011 4:4 5:5 6:5	255 5:13	3:56 159:3
1a 109:22 115:13	173:4,15,17 179:10	257 5:15	
116:7	179:23 180:20	260 5:17	4
			4 72:7
2	213:10 216:15	261 5:19	40 17:13
2 7:7 89:5,10 90:7	222:14 238:8,16	263 5:20	400 165:1,3 170:1
90:10 121:5 141:3	278:20 279:5	264 5:22	415 2:13
143:1 238:23,25	2012 216:17 218:8	266 5:25	434-207 141:7,11
246:14 290:7	218:13 222:4,21,22	277 6:1,3	4:02 159:9
2-1 133:8 156:24	240:19,21	278 6:5	4:57 195:12
157:3	2013 68:6 73:1	279 6:8	5
20 7:5 50:5 51:3	160:11,21,22 161:9	28 60:19 61:8 62:25	
52:21 53:8,20	161:9,11 163:16	65:10 69:10,23 70:1	5 7:6 161:9
118:22 258:8 292:5	172:10 216:19	70:12,21 71:5,19	50 17:13 87:9
2000 156:7 280:3,6	224:14	76:13 119:14 120:3	140:12 288:13
280:17	2014 211:8,15 212:1	280 6:9	54,000 289:4
20004 2:5	213:9 216:21	281 6:11	55 258:4 288:14
2000s 23:3 108:3	224:20,25 225:8,22	284 6:12	555 2:12
2000 3 23:3 100:3 2002 33:18 36:13	226:4,10	286 7:5,5,7	5:05 195:18
40:24	2015 1:20 8:15	287 7:6,6,7	6
2003 24:25 25:7	246:16 247:25	288 3:5	6 1:14 3:23 88:9,18
26:4,6,11 27:14	291:12	292 1:25	241:4 242:5,15,22
29:2,8 41:15 42:4,7	202 2:6	2a 125:11,14 126:19	242:24 283:8
58:6 59:16 65:11	204 4:13	126:25 127:8 128:4	60 3:12
66:17 67:13 69:10	205 4:15	128:20,25 129:10	64 3:14
69:23 82:1 94:10	209 4:16	129:15,25 130:7,11	64692 277:16
	21 7:5	130:16 131:2,14	65 3:16
107:20,21 256:8,21	210 4:18	132:1,16	68 3:19
256:23	22 7:7	3	6:06 239:10
2004 63:18	226-040 146:3,13		6:14 239:16
2005 26:7 215:6	229 4:21	3 7:15 17:13 20:3	6:40 257:13
2006 160:17,18	23 23:6	89:5,10 90:7,10	
2007 211:6,14 212:1	232 5:1	160:18	7
213:9 216:2 225:7	235 5:3	3/17/10 65:6	7 7:5 283:15
226:4,9	238 5:5	30 1:14 3:23 20:3	70s 22:18
2008 192:1 196:11	239 5:7	88:9,18 241:4 242:5	739-5353 2:6
196:19 199:15,25		242:15,22,24 283:8	

[75 - answer]

75 21:11 95:21	accurately 280:4	affairs 172:13	aided 291:8
97:19 98:2,3	acknowledge 103:5	affect 95:19	air 1:7 183:2,3,16,20
7:00 258:4	104:10 111:14	affiliation 207:14	184:8,11
7:01 257:19	218:25 219:17	aforesaid 291:4	al 8:25
7:44 282:24	220:6 238:1	afraid 289:10	alive 132:21
7:49 283:5	acknowledged	agencies 170:20,24	allow 198:13 238:1
7th 291:12	115:15 116:8	183:10 184:20	242:23
8	acknowledgement	185:9	allows 21:22
	3:10 34:18,24 35:12	agency 174:5 249:8	ambiguous 275:3
8/13/08 6:11 281:23	39:11,14,19 40:1,23	252:15,20 253:2	amc 183:4
8/20/14 5:10 244:16	80:13	ago 27:21,25 28:4	amended 3:22 65:9
80s 105:3,12,19	acknowledges	45:16 92:9 93:12	66:16 69:9,22 88:8
817 264:23	111:12	97:18 100:10	88:17 283:8
875-2389 2:13	acknowledgment	138:14 274:11	american 1:2,6,15
88 3:21	256:12	agree 8:11 17:23,23	3:23 8:24 88:10,18
8:00 258:5	acting 47:20 48:24	18:1,1 78:14 79:11	130:6 133:10
9	53:20 113:6,24	80:18 162:9,12	134:11 135:2
90s 58:15 61:21,21	action 123:8 133:7	172:10 176:12,15	amusement 158:10
63:9	163:5 170:11	214:1,11 219:1,18	analyzes 273:23
94104 2:13	291:10	220:7 239:4 253:25	andrew 2:11 9:16
9:00 35:8	activities 30:25	254:22 256:14	announcing 95:17
a	actual 84:14 209:13	agreed 276:11	annual 73:4 101:22
a.m. 1:19 8:17 258:3	220:21 223:20	agreement 110:8,8	101:23,24 102:2
a370 141:3,18 142:1	add 57:25 59:22	110:12 115:14	136:10,15 137:13
146:12 147:6,9,12	added 152:10,14	116:7,16 260:14,16	138:1,18 141:19
147:24 150:13	additional 57:24	260:25 261:9	144:8 147:2 149:4,7
abide 219:1,18,23	89:9,11 152:12,14	agreements 116:12	149:13,21 150:1,14
220:7,12 256:14	176:21 290:4,8	116:21,25 117:4,20	152:8,15,16 153:3
able 13:17 22:16	additions 274:25	119:10	154:11 176:16
50:22 104:7 121:7	address 13:11	agrees 73:3 115:9	answer 7:3 12:6
139:2 241:22 261:7	100:14 175:3 203:5	116:4 181:6	13:6 14:10 15:23
276:20	addressed 240:2	ahead 41:11 44:10	22:13 29:23 30:14
abridges 2:14	addresses 54:21	45:11 46:21 47:12	31:3 34:5 37:10
absolutely 246:24	174:12,17,19,22	48:3 52:16 67:10	38:2,4 41:11 42:12
accept 238:4	250:17	72:5 75:13 76:1	42:25 45:23 48:3
access 263:20	adds 73:3	93:17 110:18	49:7 52:6 71:15
accomplish 104:7	adjuncts 78:21	111:24 112:12	73:25 74:20 75:13
account 196:15	adopted 61:1 62:3	113:15 114:7	75:25 76:1,20 77:3
279:15	67:12 68:7,8 70:21	121:14 135:5	77:13 80:8 82:10
accounting 87:4	advance 250:19	164:16 193:21	90:3,9,17 92:17
259:13	advice 76:24 268:5	198:15 200:16	110:16 111:24
acct 196:11	advise 267:16	202:7 204:24	112:11 115:1 120:5
accurate 262:18	advisory 250:19,23	209:21 223:2	124:14 128:20
285:6	251:1,5 281:19,21	237:23 247:20	129:15,20 130:20
		249:3,15,19 258:9	131:7,18 132:5

[answer - assign]

142:20 144:5 154:7	appear 65:13 104:2	263:20 264:3,14	33:18 81:23 94:12
157:14,25 160:25	184:15 203:3,10,12	265:6,10,17,18	102:19 103:9
161:22,24 162:3	206:1 210:8 225:3	277:19 278:7,8,22	156:17 167:3
163:7,10 164:16	233:7 236:11	279:6	253:12,20 254:1,3
168:14 174:15	256:19 263:6	applications 4:15,18	254:21
176:9 180:15,17,18	266:23 274:1 278:6	6:2 25:1,5,11 27:18	areas 21:21 22:25
180:19 181:10	279:7	103:4 129:4 166:25	27:9 252:17
182:5 185:2 194:4	appearance 275:11	167:1 205:12,23,24	argument 241:17
199:2 200:15,17	275:15	206:2,5 207:4	arisen 285:25
201:3,5 202:6	appearing 90:5,25	210:19 211:18,25	286:10
206:14 209:17,20	appears 54:15 64:25	212:8,8,11,23 213:4	armstrong 2:20
217:5 218:21	65:6,17 66:6 70:2	213:8,19 225:7,22	8:13
219:13,25 220:2,18	115:24 133:18	226:9,17 227:16	army 183:5,6
220:24 222:8 223:2	158:14 162:24	228:6 277:9	article 6:10 280:23
224:6 227:1 231:9	175:10,13 182:13	applying 84:14	281:7,10
235:15 237:22	196:5 203:21,25	218:24	articulated 241:16
241:8,13,19 242:2	215:5 221:5 233:16	approach 86:2,3	aruella 175:14,14
242:10 243:4,10	253:20 256:8,10	appropriate 78:15	arvella 175:15
261:5 265:4 271:11	275:20 282:17	80:20 220:19	asked 25:6 37:9
271:12 280:8	applicant 201:25	approval 147:17	57:8 58:5,22 72:9
284:12,16 286:5,16	202:13 204:16	151:21,23	79:25 81:2,12 82:5
286:19 287:4,9,24	218:16 220:12	approve 151:7	93:16 94:3 97:11,24
288:1,11	applicants 206:6	approved 1:21	107:24 108:14
answered 37:10	application 4:9,12	60:18 61:2,8 66:15	128:15 137:2 158:1
58:23 93:17 97:25	4:13,16 5:14,22 6:6	67:5 69:7 70:1	167:25 180:12,14
107:25 128:16	81:21,22 94:11	94:19 147:12,13,15	185:3 193:20 220:4
131:6 158:2 168:1	102:17 104:14	148:10,11,17 151:2	220:14 231:7
180:12,14 193:21	179:4 195:21 196:6	151:12 152:24	289:18
220:4,15	196:7 197:18 198:2	153:4 154:25 186:5	asking 11:12 35:19
answering 75:21	198:10 199:9	270:19 275:24	35:21 42:2,4 53:3
90:13 163:8 217:1	201:13,22 203:24	approximate 39:17	58:23 59:6 62:10
answers 11:13 13:9	204:3,13 209:25	approximately 8:16	142:6 162:6,23
92:19	210:9 211:6,7,8,14	20:3 23:11 28:14	163:4 220:20
anticipation 162:5	211:22 212:18,24	29:1 33:18 35:8	234:19 265:14
anybody 63:19,23	213:15 214:16	40:24 63:5 67:23	asks 256:12
84:25 85:2,5,8,11	216:2,5,9,13,24	82:1 107:22 160:5	aspects 193:12
109:2,9 111:3	217:10,12,15,16	256:21 280:6 289:4	assembled 229:18
112:22 123:25	218:2,3,9,10,14	april 60:19 61:9	assent 178:20
124:22 143:22	220:23 221:1 222:5	62:25 65:11 66:15	179:14 180:6
206:25 221:9 225:9	222:21,22 223:15	69:8,10,23 70:1,12	asserting 122:3
228:22 235:8	224:15,21 225:16	70:21 71:5,19 76:13	
251:20,25 257:7	225:23 226:3		assessment 185:19
apart 164:14 165:14	233:12 255:12,23	160:20	185:22 190:15
170:17	256:1,7,20 257:1,9	area 5:12 23:9,13	assign 25:2,6 31:11
	259:1,18 262:14	24:6,19 26:22 27:1	79:25 81:3,18 82:5
206:25 221:9 225:9 228:22 235:8 251:20,25 257:7 apart 164:14 165:14	222:21,22 223:15 224:15,21 225:16 225:23 226:3 233:12 255:12,23 256:1,7,20 257:1,9	69:8,10,23 70:1,12 70:21 71:5,19 76:13 101:1 119:14 120:3 160:20 area 5:12 23:9,13	asserting 122:3 assertions 96:13 assessment 185:19 185:22 190:15 assign 25:2,6 31:11

[assign - astm]

84:6 107:10 110:4	assumes 82:8	79:24 80:1,12,17,20	170:24 171:24
176:2 201:24	assuming 282:12	80:24 81:1,2,4,12	172:15 176:6,15,20
assigned 10:6 29:13	astm 1:3 2:18 3:9,12	81:13 82:4,7,25	176:21,21,22
46:13 110:9 115:16	3:14,17,19 4:11,13	83:2,3,5,6,14,16,19	178:19,23,24
116:10 176:17	4:15 5:12,13,22,25	83:21 84:4,5,7,18	179:13,17,18 180:5
178:24 179:18	6:5 9:20,24 14:5,7	85:23 87:5,8,11,12	180:9,10,25 181:2,5
180:10 196:17	14:17 18:7,22,25	89:1,5,9,10 90:6,14	182:17,21 183:11
200:8 283:19,24	19:10,13,16 20:20	91:15,24 92:1 94:17	183:23 184:12,22
assigning 30:6 31:21	20:21 21:5,6,8	94:18,23,24 95:1,5	185:10 188:7,11
31:25 32:12 35:14	22:24 23:4,7,14,18	95:7,11 96:14,18,20	189:13 191:19
36:10 58:4 86:24	23:21 24:1,4,7,11	96:21 97:19,21 98:5	196:20 197:8 198:3
180:23	24:15,21 25:2,5,7	98:8 100:6,15,21	198:21 199:18
assignment 6:13	26:15 27:3,9,17,18	102:12,23,24	200:8,25 201:11,19
42:16,19 81:13	27:22 28:1,5,8,16	103:11,12,12 104:2	201:21,25 204:3,10
82:23 83:15 85:17	28:17,19 29:6,8,11	105:7,12,19 107:7,8	204:12,15,17
85:23 87:11,20 94:9	29:13,16,16 30:3,4	107:11,16 108:10	205:11,19,22,24
94:14,23 97:13	30:5,7,17,24 31:6	108:19 109:18	206:5,6 207:3 208:1
99:19 167:4,5,7	31:10,11,12,22 32:1	110:3,7,10,11,25	208:10,12,23 209:2
198:4 207:8 210:12	32:5,6,10,14,15,22	111:12,14 112:2,19	210:11 211:4,5,13
213:25 215:22	32:25 33:1,5,9	113:2,20 115:9,11	211:25 214:1,14,24
223:10,21 283:18	34:17,22 35:8,10,15	115:15,16 116:3,6,9	215:4,8,23 216:5,9
283:23 284:8	36:7,10,24 37:7,14	116:10 117:1,5,21	216:13,23 217:15
285:12	37:14,21 38:6,7,11	118:10 122:3 123:7	217:15,23 218:10
assignments 26:2	38:21,24 39:9,15,20	124:13 126:4	218:15,25 219:3,5,9
83:6,20,25 84:18	40:2,19,25 41:2,3,4	127:11,15 129:3,9	219:22 221:7 222:3
94:4 102:11 104:23	41:21 42:5,7,18	129:12,24 130:10	223:20 224:16,24
108:10,18 166:18	43:6,9,12,15,21	132:15 133:6 134:7	226:1,8,18 227:15
166:22 247:7	44:19,22 45:1,4,4,6	134:9,22,24 136:3	227:17 228:4,8
289:20 290:1	45:18,21 46:2,12,15	136:10,15 137:13	229:13 230:5,6
assigns 47:18	46:25 47:3,17,18,20	138:2,18 139:8	231:5,5,14,15,17,18
102:24 103:9	48:7,9,23 49:2	141:3,16,17,18,19	232:17 233:3
204:16 206:6	55:20 56:6 58:5,8	142:16 143:10,24	234:14,15,21
218:15	58:21,21 60:3,10,15	143:25 144:9	235:21 236:7,14,24
assist 185:23 267:21	61:5,6,7,12,16,22	145:18 146:12	237:4,14 238:3,18
268:2,14,14	62:3,8 63:7,17,20	147:2,6,9,24 149:3	239:1 240:1 241:6
assistance 268:5,20	64:6,14,16 65:9,15	149:4,8,9,10,14,16	241:24 243:23
269:9,12,17,20	65:20 66:3,19 67:20	149:21 150:1,13,14	244:24 245:16
270:2,6,7,17	67:24 68:9,14 69:2	150:17 152:8,15,16	248:2,4 249:9,25
assists 127:12 268:8	69:5,9,13,22 70:3	154:22 155:2,24	250:18,22,25 251:3
associated 92:11,13	70:11,16,20,22 71:3	156:3 157:6,9	251:3 252:16,20
196:13	71:8,19,20,24 73:8	158:11,18,20 160:6	253:2,11,18,19
association 1:5	73:8,10,11,21 76:11	160:11 161:7,7,18	254:2,3,11,21,23
assume 12:7 62:22	76:13,23,23,25 77:9	163:4 164:22,25	255:11,19 256:20
65:7 172:20 274:20	77:16,16 78:2,12,16	165:21 166:18,23	257:1,2,5 258:13
	78:19,25 79:5,9,13	169:3,14,18 170:21	259:7,21 260:11,13
L	1	<u> </u>	<u> </u>

[astm - astm087497]

260:15,23 261:21	astm001792 5:19	astm057841 5:2	astm067024 4:17
262:3,20 263:1,15	261:14,21	232:11,21	209:25 210:11
263:24 264:13	astm001793 262:24	astm060533 4:24	astm067321 4:22
265:6,9,18,21,24	astm001796 290:9	229:6	229:4,14
266:9,17,20 267:3	astm001798 290:10	astm061183 6:7	astm067813 4:22
267:12,13 268:13	astm001800 5:19	278:22 279:3	229:4
269:10,13 272:21	261:15	astm061450 4:19	astm068894 4:10
273:12 275:7,11,12	astm001801 5:21	210:21 211:10	195:21 196:3
275:19,21 276:13	263:10,16	astm062194 5:23	astm069058 4:19
277:16 278:8,15,20	astm001802 264:3	264:15,23	210:20 211:10
279:3,5,9 280:6	astm001813 5:21	astm062195 5:23	astm069093 5:2
281:4 282:5,15,17	263:10	264:15	232:11,18
283:23,25 285:24	astm003314 5:11	astm062198 5:24	astm069213 4:18
286:8,12,24 287:14	244:17,24	264:16,24	210:20 211:9
287:15	astm003315 5:11	astm062199 5:24	astm069635 233:17
astm's 48:12 58:11	244:18	264:16	astm070124 4:23
58:17,18 62:2	astm003437 3:20	astm063146 4:19	229:5
130:14,25 131:12	68:15,23	210:21 211:11	astm071068 4:23
131:24 140:16	astm003440 109:21	218:6,8,13 219:8	229:5
144:10,17 145:4,11	astm003441 3:20	223:23 224:9,17	astm073844 4:14
164:9 197:19	68:16,23	astm063147 4:20	204:4,10
199:10 210:12	astm003445 3:18	210:21 211:11	astm073852 6:11
215:21 219:2,18	65:21 66:3	218:7,9 222:2,13	281:24 282:5
220:7 223:22,24	astm003448 3:18	223:25 224:11	astm074751 4:23
227:10 228:22	65:22 66:4	astm064686 6:2	229:5
231:19 235:14	astm003501 5:16	277:10,16	astm075283 4:23
256:13 258:17,21	257:22	astm064692 6:2	229:6
astm.org 240:3	astm003522 5:16	277:10	astm075697 5:4
astm.org. 188:23	257:22	astm065682 4:20	236:1,7
astm000001 4:2	astm0088302 289:3	210:22 211:11	astm079420 4:12
122:8,14	astm013275 256:12	224:14	201:13,19
astm0000107	astm025633 4:8	astm066345 4:20	astm080176 4:19
140:25	187:3,21	210:22 211:12	210:20 211:10
astm000107 133:3	astm025637 189:11	225:23	astm081145 4:24
134:20 136:8	astm025640 4:8	astm066829 4:22	229:7
141:13	187:4	229:3,14	astm082973 5:6
astm000108 152:3	astm034596 289:2	astm066848 4:15	238:9 239:6
astm000149 156:22	astm049368 4:3	205:12,19	astm086030 4:5
156:24	171:13,20	astm066853 4:15	173:5,12
astm000155 156:23	astm051140 4:24	205:13,20	astm086031 4:5
157:3,9	229:6	astm066871 4:18	173:6
astm000167 158:6	astm052816 5:23	210:19 211:9	astm087493 6:4
160:16	264:14,23	astm067015 4:22	277:24
astm000168 4:2	astm052817 5:23	229:4,14	astm087497 6:4
122:8,15	264:15		277:25

[astm088320 - becker]

astm088320 5:18	217:3 218:20	266:5	basis 40:5 49:18
260:4,11	222:25 224:3	awareness 58:4	70:7,14 75:11 94:22
astm088325 5:18	237:21	awful 269:16	95:4,8,12 96:19
260:5,11	attorneys 9:7	b	105:11,18 120:14
astm099502 5:9	attributable 153:20	b 1:3,14 2:17 3:7,23	153:1,13,16 207:23
243:17,24	attribute 237:14	63:4 88:9,18 109:19	242:20 253:9
astm099506 5:9	attributed 96:4	109:22 241:4 242:5	bates 5:1 6:12 34:24
243:17,24	audible 11:24	242:15,22,24	35:9 60:3 61:5,8
astm101777 5:7	audio 8:10	259:11,11 283:8	64:7,14 65:21 66:3
239:20 240:1	august 291:12	b1a 109:23	68:15,22 92:11,13
astm101779 5:7	authentic 171:25	b1b 109:23 116:2,17	92:24 93:7,14
239:20	188:12 240:12	back 12:17 15:21	109:20 122:7,14
astm103272 5:12	244:5 245:16	18:5 19:7 57:20	124:2 171:12,19
253:12,19	authenticate 172:9	66:16 80:7 88:4	173:5 187:3,21
astm103273 3:11	authentication	96:23 105:2 108:5	189:10 195:21
34:25 35:9	245:21,24	117:14 120:4 126:1	196:2 201:13 204:4
astm103274 5:14	author 110:7,8	135:24 145:19	205:12 209:25
255:12,20	129:25 130:7,11	155:17 159:9,12,18	210:19 211:8 218:6
astm103276 5:14	133:9 134:13 135:3	187:12 195:18	229:3 232:10,20
255:13,20	156:25 157:3,8	198:23 199:15	236:1 238:9 239:6
astm103277 3:13	260:13,16,24 261:9	226:19 227:19	239:20 243:17
60:4 61:8	author's 111:10,17	228:9 231:10 234:9	244:17,24 253:12
astm103284 3:13	112:4 133:11 157:1	239:16 257:19	253:18 255:12,19
60:4	157:4	280:3 283:5 288:21	257:22 260:4
astm103285 3:15	authors 110:5,12	background 241:23	261:14,21 263:10
64:7,15	115:10 116:4	242:1 248:15	263:16 264:14,23
astm103290 3:15	authorship 143:4	249:11	277:9,24 278:22
64:8,15	automated 156:12	ballot 151:21	279:3 281:24
attached 189:1 246:5	156:15	balloted 148:6 271:5	283:17,22 284:7
attachment 4:8 5:10	available 102:1 144:10,17 155:24	275:24	285:10,17,20 289:1 becker 2:10 3:4 9:15
5:17 6:4 187:3	156:4 159:20,23,24	balloting 186:19	9:16 10:17,18 11:9
244:17 246:8,12	160:1,2 176:22	270:20	12:19 13:7 14:14
260:4,12,14,23	219:3 258:2	ballots 98:15,19,20	15:12 16:11 17:25
277:24	avenue 2:5	98:22	18:20 19:6,24 20:12
attempting 278:7	average 17:8 20:1	ballpark 252:24	21:3,14 22:19 24:2
attendance 86:12	aware 33:20 41:13	bank 259:15	24:17 25:3,18 28:13
attended 54:14	41:17 42:3 45:10,13	based 55:10,13	30:1,16,22 31:8,23
194:13	46:22 58:9 59:19	74:19 75:9 95:24	33:13 34:2,12 35:3
attending 9:9	76:23 77:4 79:9,9	278:12	35:24 36:21 37:6,15
100:23	117:6 130:21 131:8	basic 43:3,4,5 44:3,4	38:8,18 39:3,24
attorney 163:2,21	131:20 163:23	44:16,23 45:2 94:15	40:21 41:16 42:1,17
163:24 164:12	164:2,13 182:8	94:23 96:25	43:22 44:2,14 45:15
200:13 201:3 202:4	217:25 221:21	basically 97:13	46:5,11,24 47:15
204:21 206:13	235:10 265:23		48:10,18 49:17 50:9
			·

[becker - beyond]

50:14 51:11,22 52:2	162:1,8,16 163:1,9	245:1,9,20,24,25	55:14 58:5,14,18
52:12,17 53:4,16	164:6,21 165:12,24	246:13 247:1,6,13	60:12,16 61:13
54:5,18 55:1,16	166:6,12 167:21	247:21 248:14	63:22 68:2 70:10,13
56:2 57:11,22 59:2	168:5,21 169:23	249:7,16 250:11,21	71:21 72:8 85:12
59:8,11,17 60:7	170:7 171:6,16	251:10,14,19,24	88:24 89:19 90:7
61:3 62:6,11,19	172:4,11,21 173:9	252:4,12,25 253:15	93:18 101:10
64:11 65:2,25 67:6	174:4,10,18 175:4	254:18 255:3,16	104:18 107:22
68:19 71:1,17 72:10	175:12,19,24	257:10 258:10	108:13,22,23 112:2
72:19 73:19 74:3,17	176:13 177:9,18	259:6 260:8,21	120:17 124:9,25
74:21,23 75:2,17	178:6,17 179:8	261:18 262:12	125:23 127:9
76:4,10,22 77:6,15	180:2,16 181:1,18	263:13 264:19	132:18 135:6,11
77:20 78:1,10 79:22	182:10 183:15,21	265:8,22 266:12	156:5 162:17
80:6 81:9 82:14,21	184:6,17 185:7,20	267:10,25 268:12	166:15 171:24
84:1,9 86:11 88:14	186:3,9,14,20 187:7	269:14 271:8,15	172:5 173:2 174:8,9
89:7,17 90:1,21	187:18 188:16	272:1,7 273:1	188:11 192:9
92:21 93:20 96:10	191:2,15,23 192:12	274:14,22 275:5,16	199:21 200:25
97:8 98:6,18 100:9	192:21 193:5,11,24	276:3 277:13 278:3	206:3 209:7 213:13
103:13,22 104:12	194:6,17,18,24	278:25 279:21	214:14 223:13
104:20 108:4,15,24	195:4,9,24 197:7,15	280:14 281:1,13	224:7 230:3 231:7
110:20 111:2,7	198:1,8,16 199:6,16	282:2,20 283:6,12	232:4 240:8,12
112:1,14,21 113:1	199:23 200:21	284:4,11 286:7,17	241:19 242:14
113:18 114:9,15	201:16 202:12,22	286:22 287:5,8,12	244:5,8,12 253:23
115:6,20,21 117:15	203:11,20 204:7	287:20,25 288:4,9	258:19 280:11
118:2,15 119:20	205:3,16 206:17	289:7,16,22 290:2	284:1 285:16,22
120:20 121:4,12,20	207:12 208:9,18,25	290:15	289:11,17 290:10
122:11,22 123:4,22	209:11 210:3,25	began 159:23,25	believes 42:6 47:18
124:17 128:7,12,21	211:23 212:5 213:2	160:3 215:8	55:15 84:6 102:23
129:23 130:23	213:17 214:13,23	beginning 28:21,23	200:8 204:16 206:5
131:10,22 132:12	215:13 217:13	105:3 176:12 255:7	218:15 223:20
132:25 133:2	218:4 219:7,20	begins 88:5 159:10	believing 49:19 70:8
134:18 135:10,15	220:1,9,16,25 221:6	214:11 239:17	70:15
135:25 136:22	221:20 222:1,11,19	behalf 2:3,8 9:20	belong 45:5
137:5,11,18 138:8	223:7,18 224:12	89:1,4 90:5,14	benefits 73:5 165:10
138:15 139:1,7,13	225:4,20 227:4,9,14	167:24 168:10	176:16
139:19,24 140:3,9	228:3,16,21 229:10	169:8 170:17	benjamin 176:3
140:22 142:7,23	229:20,22,24	belief 53:6 55:9	best 13:22 14:1
143:20 144:7,15,23	230:13,18,25	58:18 94:22 95:4	17:12 192:24
145:2,9,16 146:10	232:14 233:1,5,25	105:24,24 120:10	277:21 284:15,20
146:19 147:5,23	234:5,11,20 235:2,7	133:24	284:21
149:19 150:25	235:12,19 236:4,21	believe 24:24 25:9	better 258:7
151:10,22 153:11	237:9,13 238:2,12	26:9 30:5,15,17	beyond 51:17,23
154:8,9,17 155:1,9	238:24 239:7,23	36:4,12,15 40:13	89:10 130:19
155:22 156:8,13	241:1,4,9,18 242:3	42:14 43:17 47:21	131:17 132:4
157:16,23 158:5,15	242:8,14,22 243:11	48:23 49:10,11,11	136:19,23 138:11
160:4,10 161:3,17	243:13,20 244:21	49:20 50:15 51:4,22	139:16,22 140:7,18

[beyond - certificates]

141:21 142:18,25	box 125:11,14	california 2:12,13	245:17 246:9
143:13 144:3,12,19	126:19,25 127:8	172:14	251:17 252:9 253:4
145:14 146:15,24	128:3,19,25 129:9	call 129:14 169:10	265:12 272:23
150:22 151:3 165:7	129:15 133:13	called 86:9,10 150:4	canadian 111:11
165:17 166:4 171:1	134:3,9,25 145:23	150:9 199:22	112:4 113:7
172:2,5,17 173:25	177:2,8 256:15	217:19	capacity 50:18,19
174:14,25 175:8,17	break 12:21,22 13:1	calls 19:18 20:23	51:5 52:23 53:10,21
183:12 184:13,24	52:10,16 57:9,9,12	22:12 29:17 30:9	55:5 242:6
192:7,16,25 193:19	132:24 194:15	31:14 33:10,24 37:2	caption 8:23 10:4,5
194:22 197:10,21	195:10 258:8	37:25 38:14 39:1,21	card 175:5 177:16
199:12 203:7,16	282:22	41:5 42:8,20 46:17	177:21 203:23
208:5 209:15	breakfast 100:22,24	47:6,22,23 49:3,4	carl 2:19 10:1
221:16 226:25	101:3,6,17,21	51:7 52:25 53:12,23	case 1:2 8:23 9:2,4
227:22 228:12	breaks 258:6	54:8,23 55:7 62:16	143:6 148:3 154:10
230:9 231:22	bridges 2:11 9:16,21	66:24 70:23 71:12	155:11 162:25
233:21 237:5	9:25 187:14 246:24	71:25 73:13 74:14	203:19 228:6
240:23 245:18	248:19,24	75:6,19 76:15 77:11	247:20
246:20 248:10	briefly 156:25 157:4	77:18,22 78:6 80:2	cases 170:6
249:5,18 251:6,16	258:23	81:5 102:25 110:14	cassidy 84:24 85:14
252:10 253:5 259:3	bring 38:6 83:1	110:22 111:19	85:20,22 86:2 87:7
259:22 260:18	bringing 32:4,13	112:7,16 113:10	87:19 99:7 108:25
261:1 267:5 286:3	36:6 37:23 40:18	114:2,11 117:9,22	cast 98:16
bigger 150:7	107:8	118:11 129:17,18	category 258:24
biggest 95:14	british 111:11 112:5	129:19 130:18	259:17,20
bit 18:6 247:18	113:7	131:16 132:3	caveat 276:24 277:3
board 65:10 66:16	broader 16:23	139:15,21 140:21	caveats 269:12
67:8,12 69:9,22	brooke 63:1,6,11,21	146:24 150:21	276:13,15,18,22
bob 132:18 158:3	63:23,25	157:20 158:12	277:2,2
bockius 2:4	brought 32:20,25	160:23,24 161:14	cc 188:8
bodies 207:24 208:3	190:25 191:6,25	163:17 170:2,25	cc'd 188:23 243:25
208:4,4,11 209:4	192:4	172:16 173:24	ccr 1:21
book 136:10,15	bulk 158:19	174:13,24 176:7	cell 8:7
137:4,13 138:2,18	bullet 252:13	177:24 178:14	center 1:18 183:6,7
138:24 139:3,4,9	business 95:19	179:1,2,20,21 181:8	202:15 203:2
141:19 144:9 147:2	163:13,23 164:3,7	181:9 188:13	certain 26:7 62:13
147:3 149:4,8,13,21	164:14	192:16 200:10,12	62:18,21 64:3
150:1,14 152:8,15	buy 43:11	201:1 202:1 203:6	119:13 127:16
152:16,21,22,24,25	buying 95:14	203:15 204:18	155:17 162:9 235:1
153:3,15,18,19	c	206:7,10 214:7	257:6 277:1
154:4,6,11	c 2:1 74:11 75:5	218:17 221:3,15	certificate 123:17
books 159:19	76:6,12 77:8 291:1	224:2 225:11	123:24 124:3,7
bottom 60:22 65:8	291:1	226:23,24 227:21	126:4 141:7,25
69:21 133:17	c14.92 282:18	227:23 228:13	142:3
196:10 197:17		230:10 231:23	certificates 4:1
199:8 256:11		233:22 237:6,18	122:6 123:2,6,10

[certificates - complete]

certification 78:21 claim 283:19 collectively 78:25 249:10 252:16,21 carify 291:3 claiming 143:11 columbia 1:1 9:4 253:3 254:20 266:18,20 266:18,20 266:18,20 266:18,20 267:48,8 137:1 143:2 187:2 clarify 12:4 80:16 23:17:1 48:6 94:17 266:18,20 267:48,8 266:18,20 267:48,8 267:12,17,22 268:269:17 285:25 286:9,12,2 287:16 278:18 260mmencing 1:19 260mmencing 21:19 278:18 260mmencing 21:19 278:18 260mmencing 21:19 278:18 260mmencing 21:19 278:18 260mmencing 21:19 278	124:12 164:8	citizens 209:13	collective 157:5,10	189:14 217:21
133:16				
certify 291:3 chaims 29:11 198:3 29:11 198:3 23:12 239:19 243:16 247:7 277:23 chairman 280:20 chailenged 95:11 96:13 26asification 15:17 26asification 15:17 26asification 15:50 275:14 74:18 151:24 266:18,20 267:48, 267:12,17,22 268: 23:24 247:7 277:23 chairman 280:20 chailenged 95:11 96:13 26asification 15:15 26asification 15:15 26asification 15:50 275:14 74:18 151:24 275:25 276:4 277:13 76:61,12 77:8 77:10 115:7 116:13 271:2,3 17:2,2 275:25 276:4 276:7,11 276:24 276:7,11 276:23 276:3,11 274:24 276:77,11 276:23 276:3,11 274:24 276:77,11 276:23 276:3,11 274:24 276:77,11 276:23 276:3,11 274:24 276:77,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:30 276:3,11 276:3,11 276:30 276			· ·	253:3 254:20 266:9
chain		C		
137:1 143:2 187:2 239:19 243:16 247:7 277:23 chairman 280:20 challenged 95:11 96:13 chance 13:14 229:25 change 148:8 275:25 276:4 77:10 115:7 116:13 116:17 180:22 276:14 276:17,11 276:23 193:8 276:27,11 276:27,11 252:5 276:24 276:7,11 252:5 276:24 276:7,11 252:5 26aracteristics 21:4 252:5 256:14,19 252:5 256:15 26ack 4:3 126:19,25 26ack 5:3 128:19,25 131:3 26ack 6ing 127:8 26ack 5:3 128:3 26ack 5:3 13:3 26ack 6ing 127:8 26ack 5:3 128:3 26ack 5:3 13:3 26ack 6ing 127:8 26ack 5:3 128:3 26ack 5:3 13:3 26ack 6ing 127:8 26ack 5:3 129:18 232:23 26ack 5:3 12,20 26ack 12,22 17:79 26ack 5:11,20 25ack 11:20 25ac	_			1
239:19 243:16				1 ' '
chairman 280:20 chairman 280:20 chairman 280:20 chairman 280:20 chairman 280:20 chairman 280:20 chairman 280:20 chairman 280:20 chairman 280:20 chairman 280:25 change 148:8 chairman 280:25 chairma				
chairman 280:20 classification 15:17 commence 245:8 278:18 of:13 chance 13:14 229:25 classifications 15:5 comment 1:19 communicated chance 13:14 229:25 classified 55:21 comment 13:15 207:3 changed 153:4 75:13 76:6,12 77:8 75:13 76:6,12 77:8 16:1,12,18,20,23,25 14:12,15,18 15:22 communication changes 13:15,16,17 16:17 180:22 49:20 50:8 56:12 20:20:13 20:22 20:13 c5:14 74:18 151:24 181:3,6 57:2,5 78:14 80:18 22:20:13 20:422 20:613 communication 253:9 271:2,21,25 181:3,6 57:2,5 78:14 80:18 22:21,17,23,17,22 42:22 47:8 130:14 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 41:8 42:10 44:8 characteristics 21:4 182:20 288:8,15,24 118:10,17,21,25 49:6 52:18 53:6 71:13 72:27 3:15 71:13 72:27 3:15 71:13 72:27 3:15 72:13 11:2 72:13 12:12 72:27 3:15 72:13 12:12 72:27:13 12:12 <t< td=""><td></td><td></td><td>1</td><td></td></t<>			1	
challenged 95:11 56:4,7,9 commencing 1:19 communicated g6:13 chance 13:14 229:25 classifications 15:5 classifications 15:5 comment 13:17 comment 13:17 207:3 communicated 109:10 132:15 207:3 change 148:8 clause 74:11 75:5,9 14:12,15,18 15:22 committee 4:12,15,18 15:22 communication changes 13:15,16,17 75:13 76:6,12 77:8 16:1,12,18,20,23,25 27:2,5 78:14 80:18 22:24 7:8 130:14 changes 13:15,16,17 116:17 180:22 49:20 50:8 56:12 204:22 20:13 communication 253:9 271:2,21,25 181:3,6 57:2,5 78:14 80:18 20:13 20:42 20:13 20:42:2 20:13 communication 275:13,11 274:24 cleane 191:5,7 95:16 100:25 41:84 2:10 44:8 41:84 2:10 44:8 chapters 13:7:3 clear 89:4 113:20 117:12,18 118:4,7 45:8 46:19 47:25 characteristics 21:4 clear 89:4 113:20 110:17,21,25 71:13 72:2 73:15 <tr< td=""><td></td><td></td><td></td><td></td></tr<>				
Classifications 15:5 Comment 13:17 Committee 4:11 6:6 Clause 74:11 75:5,9 Change 148:8 Changed 153:4 75:13 76:6,12 77:8 16:1,12,18,20,23,25 42:22 47:8 130:14 275:25 276:4 77:10 115:7 116:13 17:1,2,3,17,22 130:25 131:12 204:22 206:13 204:22 206:				
chance 13:14 229:25 classified 55:21 committee 4:11 6:6 207:3 change 148:8 clause 74:11 75:5,9 16:1,12,18,20,23,25 communication 275:25 276:4 77:10 115:7 116:13 17:1,2,3,17,22 130:25 131:12 changes 13:15,16,17 16:17 180:22 49:20 50:8 56:12 204:22 206:13 253:9 271:2,21,25 clauses 74:18 82:13,17 83:5,12 204:22 206:13 272:3,11 274:24 cleanup 191:5,7 95:16 100:25 41:8 42:10 44:8 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 chapters 137:3 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characteristics 21:4 click 81:7 168:20,24 169:6,16 71:13 72:2 73:15 charles 176:3 201:3 202:4 204:21 192:5,10 194:2,8,20 110:17 111:21 charles 176:3 206:3 217:3 195:1,6 201:12,22 114:4 126:18,23 134:3,9,25 17:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 20:14		1 1		
changed 153:4 75:13 76:6,12 77:8 16:1,12,18,20,23,25 42:22 47:8 130:14 changes 13:15,16,17 116:17 180:22 49:20 50:8 56:12 204:22 206:13 65:14 74:18 151:24 181:3,6 57:2,5 78:14 80:18 communications 253:9 271:2,21,25 clauses 74:18 82:13,17 83:5,12 29:19 30:12 31:16 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 characteristics 21:4 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characterize 50:23 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charge 156:14,19 164:12 200:13 190:14,23 191:22 190:14,23 191:22 110:17 111:21 chack 4:3 126:19,25 206:13 217:3 190:14,23 191:22 110:17 111:21 chack 4:3 126:19,25 206:13 217:3 190:14,23 191:22 110:17 111:21 chack 4:3 126:19,25 206:13 217:3 190:14,23 191:22 112:9,12 113:12 check 4:3 126:19,25 20:13 217:3 195:1,6 201:12,22 114:4 126:1				
changed 153:4 75:13 76:6,12 77:8 16:1,12,18,20,23,25 42:22 47:8 130:14 changes 13:15,16,17 116:17 180:22 49:20 50:8 56:12 204:22 206:13 65:14 74:18 151:24 181:3,6 57:2,5 78:14 80:18 communications 253:9 271:2,21,25 clauses 74:18 82:13,17 83:5,12 29:19 30:12 31:16 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 characteristics 21:4 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characterize 50:23 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charge 156:14,19 164:12 200:13 190:14,23 191:22 190:14,23 191:22 110:17 111:21 chack 4:3 126:19,25 206:13 217:3 190:14,23 191:22 110:17 111:21 chack 4:3 126:19,25 206:13 217:3 190:14,23 191:22 110:17 111:21 chack 4:3 126:19,25 206:13 217:3 190:14,23 191:22 112:9,12 113:12 check 4:3 126:19,25 20:13 217:3 195:1,6 201:12,22 114:4 126:1	change 148:8	clause 74:11 75:5.9	14:12.15.18 15:22	communication
275:25 276:4 77:10 115:7 116:13 17:1,2,3,17,22 130:25 131:12 changes 13:15,16,17 116:17 180:22 49:20 50:8 56:12 204:22 206:13 65:14 74:18 151:24 181:3,6 57:2,5 78:14 80:18 communications 253:9 271:2,21,25 clauses 74:18 82:13,17 83:5,12 29:19 30:12 31:16 272:3,11 274:24 cleanup 191:5,7 95:16 100:25 41:8 42:10 44:8 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 chapters 137:3 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characteristics 21:4 click 81:17 168:20,24 169:6,16 71:13 72:2 73:15 charge 156:14,19 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charles 176:3 201:3 202:4 204:21 190:14,23 191:22 110:17 111:21 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 114:4 126:18,23 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaboration 5:12	S	*	1 1	
changes 13:15,16,17 116:17 180:22 49:20 50:8 56:12 204:22 206:13 65:14 74:18 151:24 181:3,6 57:2,5 78:14 80:18 communications 253:9 271:2,21,25 clauses 74:18 82:13,17 83:5,12 29:19 30:12 31:16 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 chapters 137:3 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characteristics 21:4 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charge 156:14,19 252:5 164:12 200:13 190:14,23 191:22 99:2,7 106:4,9 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 110:17 111:21 177:1,8 178:2,4,5 206:13 217:3 195:1,6 201:12,22 114:4 126:18,23 129:15 checked 125:10,15 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 129:15 checking 127:8 24:6,19 25:17 26:20 26:21,22 27:1,7,8 256:15 201aboration 5:12 250:19,23 25:1.5 224:4 237:21 224:4 237:21 224:4 237:21 224:4 237:2		-		
65:14 74:18 151:24 181:3,6 57:2,5 78:14 80:18 communications 253:9 271:2,21,25 clauses 74:18 82:13,17 83:5,12 29:19 30:12 31:16 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 chapters 137:3 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characteristics 21:4 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charge 156:14,19 164:12 200:13 190:14,23 191:22 110:17 111:21 252:5 164:12 200:13 190:14,23 191:22 110:17 111:21 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 112:9,12 113:12 134:3,9,25 171:12 206:13 217:3 218:20 222:25 203:23 217:11,16 13:25 163:3,21,2 129:15 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaborating 250:3 255:19 226:8 225:19 226:8 checking 127:8 24:6,19 25:17 26:20 26:21,22 27:1,7,8 274:16,21,23 275:6 201:4 202:5 217:3 129:15 21:21 22:25 23:9,13 26:21,22 27:1,7,8 274:16,21,23 275:6 20mpany 46:1 47:				
253:9 271:2,21,25 272:3,11 274:24 clauses 74:18 cleanup 191:5,7 82:13,17 83:5,12 95:16 100:25 29:19 30:12 31:16 41:8 42:10 44:8 276:7,11 chapters 137:3 characteristics 21:4 characterize 50:23 charge 156:14,19 252:5 clear 89:4 113:20 182:20 288:8,15,24 click 81:17 118:10,17,21,25 192:4 148:5 165:20 119:4 2 185:19,23 190:14,23 191:22 110:17 111:21 190:14,23 191:22 110:17 111:21 190:14,23 191:22 110:17 111:21 110:17 103:9 167:3 120:22:22 223:23 17:11,16 226:21,22 27:1,7,8 24:6,19 25:17 26:20 268:15 269:6 274:16,21,23 275:6 274:16,21,23 275:6 278:21 279:5 278:21 279:25 278:21 279:25 278:21 279:25 278:21 279:25 278:21 279:25 278:21 279:25 278:21 279:25 2				
272:3,11 274:24 cleanup 191:5,7 95:16 100:25 41:8 42:10 44:8 276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 chapters 137:3 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characterize 50:23 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charge 156:14,19 click 164:12 200:13 190:14,23 191:22 99:2,7 106:4,9 252:5 164:12 200:13 190:14,23 191:22 110:17 111:21 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 114:4 126:18,23 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 177:1,8 178:2,4,5 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 275:15 collaborating 250:19,23 251:1,5 224:4 237:21 checked 125:10,15 21:21 22:25 23:9,13 263:22,24 264:2 224:4 237:21 28:3 26:21,22 27:1,7,8 274:16,21,23 275:6 46:13 47:1 224:4 237:21 29:18 23:23 179:6 253:12,20	253:9 271:2,21,25	clauses 74:18	1	29:19 30:12 31:16
276:7,11 192:23 193:8 117:12,18 118:4,7 45:8 46:19 47:25 chapters 137:3 clear 89:4 113:20 118:10,17,21,25 49:6 52:18 53:6 characteristics 21:4 182:20 288:8,15,24 119:4 148:5 165:20 71:13 72:2 73:15 charge 156:14,19 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charles 176:3 201:3 202:4 204:21 190:14,23 191:22 110:17 111:21 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 114:4 126:18,23 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 177:1,8 178:2,4,5 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 129:15 collaborating 250:3 225:19 226:8 218:20 223:1 224: checked 125:10,15 21:21 22:25 23:9,13 263:22,24 264:2 224:4 237:21 218:3 24:6,19 25:17 26:20 26:21,22 27:1,7,8 274:16,21,23 275:6 46:13 47:1 checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 cherry 211:17 102:19 103:9 167:3 282:19 company 46:1 47: cherry 218:20	272:3,11 274:24	cleanup 191:5,7	95:16 100:25	41:8 42:10 44:8
characteristics 21:4 182:20 288:8,15,24 119:4 148:5 165:20 71:13 72:2 73:15 characterize 50:23 click 81:17 168:20,24 169:6,16 74:19 75:9,22 76: charge 156:14,19 client 163:2,21,24 170:12 185:19,23 99:2,7 106:4,9 252:5 164:12 200:13 190:14,23 191:22 110:17 111:21 check 4:3 126:19,25 206:13 217:3 192:5,10 194:2,8,20 112:9,12 113:12 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 134:3,9,25 171:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 224:4 237:21 218:3 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 218:3 24:6,19 25:17 26:20 278:21 279:5 49:15 55:15 229:18 232:23 179:6 253:12,20 278:21 279:5 <		192:23 193:8	117:12,18 118:4,7	45:8 46:19 47:25
characterize 50:23 click click 81:17 client 168:20,24 169:6,16 170:12 185:19,23 190:14,23 191:22 110:17 111:21 164:12 200:13 202:4 204:21 190:14,23 191:22 110:17 111:21 191:25,10 194:2,8,20 112:9,12 113:12 192:5,10 194:2,8,20 112:9,12 113:12 192:5,10 194:2,8,20 112:9,12 113:12 195:1,6 201:12,22 114:4 126:18,23 193:25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 17:1,18 178:2,4,5 256:15 close 273:15,16,18 collaborating 250:3 collaborating 250:3 collaboration 5:12 21:21 22:25 23:9,13 263:22,24 264:2 21:21 22:25 23:9,13 263:22,24 264:2 22:4 237:21 243:3 145:22 172:9 31:13 81:22 94:12 278:21 279:5 company 46:1 47: 29:18 232:23 179:6 253:12,20 chinese 265:11,20 168:20,24 169:6,16 170:12 185:19,23 110:17 111:21 170:12 185:19,23 110:17 111:21 190:14,23 191:22 110:17 111:21 190:14,23 191:22 112:22 112:22 112:22 12:25 10:14 102:19 103:9 167:3 282:19 company 46:1 47: 249:15 55:15 company 46:1 47: 249:15 55:15 company 46:1 47: 249:15 25:15 152:6,11 211: 249:15 20:14 14:20 15:20 31:1 5:1 152:6,11 211: 249:15 20:14 14:20 15:20 31:1 5:1 152:6,11 211: 249:15 20:14 14:20 15:20 31:1 5:1 152:6,11 211: 249:15 20:14 14:20 15:20 31:1 5:1 152:6,11 211: 249:15 20:14 20:	chapters 137:3	clear 89:4 113:20	118:10,17,21,25	49:6 52:18 53:6
charge 156:14,19 client 163:2,21,24 170:12 185:19,23 99:2,7 106:4,9 charles 176:3 164:12 200:13 190:14,23 191:22 110:17 111:21 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 112:9,12 113:12 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 134:3,9,25 171:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaborating 250:3 225:19 226:8 218:20 223:1 224: checked 125:10,15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 20mpanies 33:7 checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 274:16,21,23 275:6 274:16,21,23 275:6 275:10,19 276:12 49:15 55:15 checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 20mpany 46:1 47:	characteristics 21:4	182:20 288:8,15,24	119:4 148:5 165:20	71:13 72:2 73:15
252:5 164:12 200:13 190:14,23 191:22 110:17 111:21 charles 176:3 201:3 202:4 204:21 192:5,10 194:2,8,20 112:9,12 113:12 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 114:4 126:18,23 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 134:3,9,25 171:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaborating 250:3 225:19 226:8 218:20 223:1 224: checked 125:10,15 21:21 22:25 23:9,13 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 46:13 47:1 278:21 279:5 49:15 55:15 checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 278:21 279:5 49:15 55:15 29:18 232:23 179:6 253:12,20 254:1,2,21 278:21 279:5 20mpilation 4:21 ch	characterize 50:23	click 81:17	168:20,24 169:6,16	74:19 75:9,22 76:17
charles 176:3 201:3 202:4 204:21 192:5,10 194:2,8,20 112:9,12 113:12 check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 114:4 126:18,23 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 134:3,9,25 171:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 companies 33:7 checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 company 46:1 47: checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 145:22 172:9 31:13 81:22 94:12 278:21 279:5 compare 72:14 cherry 211:17 102:19 103:9 167:3 282:19 compilation 4:21 29:18 232:23 179:6 253:12,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	charge 156:14,19	client 163:2,21,24	170:12 185:19,23	99:2,7 106:4,9
check 4:3 126:19,25 206:13 217:3 195:1,6 201:12,22 114:4 126:18,23 128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 134:3,9,25 171:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaborating 250:3 225:19 226:8 218:20 223:1 224: checked 125:10,15 21:21 22:25 23:9,13 263:22,24 264:2 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 268:15 269:6 274:16,21,23 275:6 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 275:10,19 276:12 49:15 55:15 checks 133:13 28:5,8,18 30:4 31:4 278:21 279:5 282:19 278:21 279:5 cherry 211:17 102:19 103:9 167:3 282:19 282:19 20mpare 72:14 229:18 232:23 179:6 253:12,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	252:5	164:12 200:13	190:14,23 191:22	110:17 111:21
128:19,25 129:9 218:20 222:25 203:23 217:11,16 131:25 163:3,21,2 134:3,9,25 171:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaborating 250:3 225:19 226:8 218:20 223:1 224: checked 125:10,15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 20mpanies 33:7 checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 29:18 232:23 checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 company 46:1 47: 278:21 279:5 282:19 278:21 279:5 cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 compilation 4:21 5:1 152:6,11 211: chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	charles 176:3	201:3 202:4 204:21	192:5,10 194:2,8,20	112:9,12 113:12
134:3,9,25 171:12 224:3 237:21 243:3 217:24 218:1,10 164:12,15 200:14 177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaborating 250:3 225:19 226:8 218:20 223:1 224:2 checked 125:10,15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 companies 33:7 checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 company 46:1 47: checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 145:22 172:9 31:13 81:22 94:12 278:21 279:5 compane 72:14 cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	check 4:3 126:19,25	206:13 217:3	195:1,6 201:12,22	114:4 126:18,23
177:1,8 178:2,4,5 close 273:15,16,18 222:21 223:6,17 201:4 202:5 217:3 256:15 collaborating 250:3 225:19 226:8 218:20 223:1 224:4 checked 125:10,15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 companies 33:7 checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 275:10,19 276:12 49:15 55:15 checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 49:15 55:15 cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	128:19,25 129:9	218:20 222:25	203:23 217:11,16	131:25 163:3,21,25
256:15 collaborating 250:3 225:19 226:8 218:20 223:1 224:2 checked 125:10,15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 toekking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 toekks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 therry 211:17 102:19 103:9 167:3 282:19 company 46:13 47:1 cherry 211:17 229:18 232:23 179:6 253:12,20 278:21 279:5 company 46:13 47:1 company 46:13 47:1 49:15 55:15 49:15 55:15 49:15 55:15 company 46:13 47:1 49:15 55:15 49:15 55:15 49:15 55:15 company 46:13 47:1 49:15 55:15 49:15 55:15 49:15 55:15 49:15 55:15 49:15 55:15 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 40:24,24 218:7 20:24:4 23:24:4 20:24:4 23:25:4 20:24:4 23:25	134:3,9,25 171:12	224:3 237:21 243:3	217:24 218:1,10	164:12,15 200:14
checked 125:10,15 collaboration 5:12 250:19,23 251:1,5 224:4 237:21 129:15 21:21 22:25 23:9,13 263:22,24 264:2 companies 33:7 checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 company 46:1 47: checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 145:22 172:9 31:13 81:22 94:12 278:21 279:5 company 46:1 47: cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	177:1,8 178:2,4,5	close 273:15,16,18	222:21 223:6,17	201:4 202:5 217:3
129:15 21:21 22:25 23:9,13 263:22,24 264:2 companies 33:7 checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 company 46:1 47: checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 145:22 172:9 31:13 81:22 94:12 278:21 279:5 compane 72:14 cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	256:15	collaborating 250:3	225:19 226:8	218:20 223:1 224:3
checking 127:8 24:6,19 25:17 26:20 268:15 269:6 46:13 47:1 128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 company 46:1 47:1 checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 145:22 172:9 31:13 81:22 94:12 278:21 279:5 compare 72:14 cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:1	checked 125:10,15	collaboration 5:12	250:19,23 251:1,5	224:4 237:21
128:3 26:21,22 27:1,7,8 274:16,21,23 275:6 company 46:1 47: checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 145:22 172:9 31:13 81:22 94:12 278:21 279:5 company 46:1 47: cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	129:15	21:21 22:25 23:9,13	263:22,24 264:2	companies 33:7
checks 133:13 28:5,8,18 30:4 31:4 275:10,19 276:12 49:15 55:15 145:22 172:9 31:13 81:22 94:12 278:21 279:5 compare 72:14 cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:1	checking 127:8	24:6,19 25:17 26:20	268:15 269:6	46:13 47:1
145:22 172:9 31:13 81:22 94:12 278:21 279:5 compare 72:14 cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 compilation 4:21 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:1	128:3	26:21,22 27:1,7,8	274:16,21,23 275:6	company 46:1 47:19
cherry 211:17 102:19 103:9 167:3 282:19 140:24,24 218:7 229:18 232:23 179:6 253:12,20 committees 5:25 chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:1	checks 133:13	28:5,8,18 30:4 31:4	275:10,19 276:12	49:15 55:15
229:18 232:23	145:22 172:9	31:13 81:22 94:12	278:21 279:5	compare 72:14
chinese 265:11,20 254:1,2,21 14:20 15:20 31:1 5:1 152:6,11 211:	cherry 211:17	102:19 103:9 167:3	282:19	140:24,24 218:7
		179:6 253:12,20		_
265:21.25 collected 227:15 49:11.25 50:5 51:3 229:2.13 232:9.17			14:20 15:20 31:1	5:1 152:6,11 211:3
	265:21,25	collected 227:15	49:11,25 50:5 51:3	229:2,13 232:9,17
choose 169:13				
circumstances collecting 268:24 55:20,23 151:6,14 121:17,23		_		· · · · · · · · · · · · · · · · · · ·
56:23 148:7 collection 149:14 151:15,16 166:8,16 complete 139:8	56:23 148:7			_
228:1 167:14 168:4,9 258:8 263:21		228:1	167:14 168:4,9	258:8 263:21

[completed - copyright]

completed 93:3	conclusion 29:18	consolidating 250:6	134:23 135:9
completed 93.3	30:10 31:15 37:2	constitute 165:14	conversations 8:6
153:25	38:1,15 41:6 42:9	constituted 50:17	convert 32:15
	42:21 46:18 47:6,23	construction 158:9	converted 32:21
completion 160:17			
compliance 46:4	49:4 51:8 53:1,13	193:3,13	coordinating 250:16
comply 228:5	53:24 54:9 55:8	consumer 172:13	copied 187:24
component 143:5	72:1 73:14 74:15	contact 276:10	copies 39:10 139:8
compose 19:1 20:21	75:7 76:16 80:3	contacts 270:22	140:15 160:1
composes 18:14	81:6 103:1 110:15	272:10,13	212:11 234:22
compound 53:1,13	111:20 112:8	contain 137:21	copy 120:22 246:2
53:24 54:9,22 73:25	113:11 114:3	contained 149:7	260:15,23 262:1,18
96:6 104:4,17	129:19 158:13	162:21 224:11	277:18
108:12,21 113:10	160:25 169:10	contend 247:9	copyright 4:1 30:6
114:2 147:18	176:8 179:2,22	content 17:24 18:2	31:12 41:20 42:7
149:12 154:14	181:9 188:14	18:12 20:5 169:18	45:5 47:2,18,21
156:1 161:13 176:8	200:11 201:2 202:2	192:20 250:7,8	52:3 58:19 73:7
177:6 179:20	204:19 206:11	271:2,21 272:12	79:12,25 81:3,13
184:25 185:11	214:8 218:18	275:20,23	82:5,23 83:21 84:6
194:3 211:20 214:7	226:25 227:24	contents 41:1	84:18 85:18,23
comprises 149:14	228:14 237:19	context 123:16,21	86:24 87:11,20 94:5
computer 291:8	245:18 272:23	continue 8:11	94:14,22 95:6 96:13
con 135:8	concrete 53:15	continued 224:24	97:13 99:19 100:6
concept 95:25	conditioning 1:7	continues 238:3	100:14 102:11,24
concern 161:10	conference 217:8	continuing 121:13	104:23 105:9,13,20
193:14 250:13	conferences 100:21	contracts 115:9	107:10 108:10,18
286:11	confirm 137:23	116:3	111:12,15 112:5
concerned 25:10	142:9 215:7,18	contrast 157:2	115:15 116:8 122:7
concerning 44:17	285:5,11	contribute 32:5 54:3	123:3,7,10,17,24
83:16 108:9,18	confirmed 141:17	97:2	124:4,8,13 125:15
124:12 128:3	141:17	contributed 41:1	125:17,20,25 126:4
129:13 130:15	confirming 215:15	81:1	126:18,20,24 127:3
131:1,13 132:1	confirms 142:4	contributes 38:11	127:6,7 128:2,17,24
192:23 222:3	confusing 38:2	58:18	128:25 129:4,8,16
223:22,24 224:16	113:10 153:8,23	contributing 36:23	130:1,4,5,15,16
245:3 254:3,22	179:1,20	44:18 48:8 54:15	131:1,2,13,14,25
279:9 284:17	conjunction 39:6	169:17	132:2,10,15,17
concerns 26:2	40:12	contribution 125:12	133:5 134:2,8,23
162:18 172:6	connection 289:4	133:12 157:1,5	136:3,25 140:25
223:20 247:1,14	consensus 14:24,25	contributions 54:6	142:16 143:3,4,9,11
249:8	16:14,15 17:15	55:3,13 81:19 96:21	143:23 145:19,25
concluded 290:24	151:8 275:25	103:11 105:7 186:2	150:18 157:18
concludes 87:24	considered 57:6	186:4,10,13,16	158:7 159:21,21
159:4 239:11	165:22	194:1,8	161:8 164:18
290:19	considering 251:4,8	conversation 55:12	166:18,22 176:3,19
		87:19 127:2 134:1,7	178:22 179:16
		07.17 127.2 137.1,7	1/0.22 1/7.10

[copyright - deficient]

190.9 24 200.0 22	221.2 222.6 15 19	20unlo 52.12 14	282:8
180:8,24 200:9,23 201:25 204:16	221:2 222:6,15,18	couple 52:12,14 249:20	
	224:17,22 233:20		customers 95:14
206:6 210:12	236:15 238:5,19	course 21:24 30:24	cv 1:3 9:5
213:24 215:22	239:2 246:1 248:3	78:24 111:10,16	d
218:15 223:8,9,21	252:21 255:25	112:3 113:6,24	d 1:3 3:1 72:8,12,15
231:5,15,18 241:10	256:24 260:14,23	114:22 267:13	72:21 78:12 79:8
241:11 247:6	261:8 262:1 284:15	court 1:1 9:3,11	80:16 200:25
248:22 254:4,22	284:19 291:9 292:3	11:16,20 159:14	d.c. 2:5
260:13,16,24 261:9	correctly 291:7	243:5,13 245:4,5	d04 50:7
262:25 265:24	correlate 143:23	court's 242:17 245:2	daily 253:9
283:19,24	correlates 147:3	covered 143:7	dan 9:6 240:3
copyrightability	correspond 285:20	create 27:1 104:1	290:20
113:5,23 114:20	285:21	115:11 116:5	daniel 1:16 3:3
copyrighted 43:10	corresponded	152:16 269:5	10:11,24 292:12
43:15 94:20 96:21	285:12	created 28:24 29:15	dar 1:3 10:6
129:14	corresponds 136:4	30:8 33:17 61:17	data 268:24
copyrighting 95:11	141:11 142:15	71:23 81:4 82:7,24	date 8:15 25:8 65:3
97:1	costs 256:23	113:5,23 114:20	66:12 67:13 69:4
copyrights 29:14	counsel 2:18 8:22	155:5 249:12 251:1	86:15 91:3 133:21
41:4 46:13 58:4	29:20 30:12 31:17	274:16,17	143:19 148:12
71:22 78:18 80:23	34:2 41:8 42:11,23	creates 225:21,24	160:17,19 196:19
248:12	44:8 45:9 46:19	250:18	dates 70:9 101:4,7,8
corner 65:4 141:13	47:9,25 49:6 62:23	creating 251:4	day 93:24 238:3
160:20 196:10	63:6,11,14,17,20	creation 83:17	242:20 291:12
197:17 199:8	64:1,2 67:2 71:13	98:23 154:20 155:4	deal 269:8
corporate 259:13,14	72:3 73:16 74:20	176:20 178:23	deals 250:15 277:3
correct 13:10 20:6	75:10,23 76:3,18	179:17 180:9	deb 189:21
23:10 25:9,11 26:12	83:14 84:17 86:9	226:20 227:19	deborah 189:24
36:14 60:19,23,24	110:18 111:1,22	228:9 247:3 289:5	190:12,22 191:17
61:9 63:14,15 65:11	112:10,20 113:13	credit 175:5 177:16	191:24 192:3,22
70:5 82:2,3 89:13	114:4,14 117:25	177:21 203:22	193:7,13 194:25
90:6,23 98:25 99:14	121:4 162:1,8,16	crossed 236:12,20	dec 196:11,19
102:5 119:15	163:1 215:16,21	237:16 238:19	decade 23:8,8
127:21,22 129:16	224:5 227:8,11	279:8	decision 126:19
136:12,13 145:15	228:20,23 242:14	crossing 237:3	151:6
146:4 154:12	245:2 248:20 285:1	crunching 268:25	declare 292:1
155:19,21 161:12	285:3 288:10 291:9	cuff 54:16 55:2	deemed 78:15 80:19
167:12 173:19,23	count 56:14,18,21	current 63:13 68:6	defendant 1:10 2:8
174:6,12,20,23	56:24 138:24	69:12 92:1 149:10	3:21 9:17 10:19
175:7,20 178:8,13	counterclaims 1:11	151:17 217:12	88:7
182:21 183:17	countries 207:20,25	262:2,8,11,19	defense 8:22 202:15
188:24 189:8,15	209:14	currently 127:19	203:1
202:16 203:2,5,14	country 208:24	256:1	deficient 89:23
203:24 205:6,8,9,25	209:3	customer 199:14,17	
212:14,18 214:2		225:25 230:22	

[define - disclose]

define 15:13,25	derek 199:20,24	245:19 249:6	100:25 110:4
185:6	235:17,20	252:10 253:6 259:3	129:12,14 148:9,11
defined 270:10	derivative 152:6	260:19 286:3	173:17,20 212:17
defines 79:5	describe 40:14	designations 151:4	212:21,22 216:1,4
definition 141:5	45:19 50:10 156:25	246:20	216:24 222:3,10,18
definitively 121:7	157:4	designee 241:5	222:20 225:5 226:7
delivered 236:24		242:24	247:24 248:7 274:1
denied 245:6	described 27:2,21 27:25 28:4 36:9		290:6
		details 87:18 193:6	
department 132:8 138:22 139:18	41:19 44:4,17 93:12	determine 137:25	differently 19:5
	94:24 116:17	138:17 139:2	55:21 56:1
140:5 172:13 197:1	254:19 273:21	144:16 146:21	difficulties 286:10
199:15,18 226:1	274:25	develop 14:20 15:20	digital 144:11,17
230:23 253:8 261:6	describing 32:8,21	16:2 18:12 20:16	145:4,11
269:5 274:6,17	33:16 34:14 35:13	21:22 22:7 23:14	direct 163:22
282:8	45:17 104:16 208:3	27:4 83:2 94:17	direction 7:3
depend 82:13	254:11,23	192:11,14 267:9	directly 37:22
depending 56:11	description 3:8	developed 6:10 18:7	director 199:21
150:7	designate 147:10	19:23 22:9,21 83:5	235:22
depends 57:1	165:19 167:23	280:5,23	directors 65:10
148:16,17	168:3 169:5,15	developing 16:13	66:17 69:10,23
depict 262:24	196:25	21:16 27:16 43:8	directory 4:6 171:4
depiction 255:25	designated 172:9	83:2 94:25 192:20	171:8 181:15,22
deponent 291:5,7	283:16	207:20,24 272:17	182:8,12,15,21
deposed 258:2	designates 168:18	272:18	disagree 89:25
deposition 1:14 3:23	168:23 197:18	development 25:25	136:22 137:9
7:1 8:10,18 10:21	199:9	28:9 54:3,17 56:5	142:25 172:10
11:1,12 13:13 67:16	designating 168:8	176:20 178:23	241:18 243:11,12
67:21 68:1,5 69:17	169:7	179:17 180:9 183:5	disagreed 170:10
71:6 83:22 84:11,19	designation 131:18	184:21 250:3	disc 87:24 88:5
85:15 86:4 88:9,18	132:5 136:20,24	267:19 280:12,16	159:4,10 239:11,17
90:17 91:1,6,21	140:8,19 141:4,22	develops 20:5	disclose 29:19 30:11
92:4 93:14,22 99:3	142:19 143:1,14	devices 158:10	31:16 41:7 42:10,22
99:8,13 106:5,10,15	144:4,13,20 145:14	dg 196:12,22,23	44:7,11 45:8 46:19
108:7 109:3,11,15	146:16,25 150:23	198:6	47:8,24 49:6 71:13
114:17,23 116:22	165:7,17 166:4	diana 200:24	71:14 72:2 73:15
119:8 121:6 123:14	171:2 172:2,6,18	difference 16:19	75:10,22,24 76:17
124:12 125:3,8	174:1,15 175:1,9,18	74:9 157:18 167:20	111:21 112:9
143:16,22 206:24	183:13 184:14,24	168:6 217:14,25	113:12 114:4
207:2 231:2,12	192:8 193:1,20	223:22	163:20,25 164:11
242:21 243:7 245:3	194:23 197:11	differences 22:6	200:13 201:3,5
245:4,8 246:23	199:12 203:8,17	72:20 74:9 98:7	202:4 204:21
254:5 255:4,8	208:6 221:17 227:1	254:9	206:14 217:2,4
258:22 262:15	227:23 228:12	different 21:2 50:5	218:19 222:25
283:9 288:5 290:20	230:10 231:23	51:3 52:21 53:8,20	224:4 237:20
290:24 291:8	233:22 237:6	54:12,13 70:3 95:16	

[disclosing - electronic]

disclosing 110:17	171:24 172:12,24	230:2 232:10,17,24	244:16 245:13
112:11	173:11,13 181:20	233:2,7 241:5 250:4	246:2,8 260:3,12
disclosure 206:12	182:1,4,24 187:19	264:22,25 265:2	277:23 278:10,16
discovery 228:5	188:11 196:1,4	268:21 284:8	281:23 282:7 291:1
discuss 71:2 94:1	200:7 201:18,20,24	285:22	291:1
97:13 99:16,24	202:18 204:9,11,15	doing 30:5 37:22	e50 189:7 190:15,23
105:25 106:21	206:20 207:8 210:6	268:25 273:21	191:14 194:2,9,20
114:16 116:20	210:10,13 219:8,12	downloaded 277:19	195:1,6
119:9 125:6	219:14 232:24	draft 18:2,4,13 20:6	e60 189:8
discussed 58:1	236:8,17 238:15,18	21:16,22 22:7,9	earlier 27:2 36:9
89:18 91:20 106:23	238:21 239:6,25	23:14 27:4 28:10	59:22 79:17 80:10
125:9 163:15 254:4	240:5,9,12,15,17	30:7 37:22 38:12	81:25 102:17,22
discusses 262:25	241:2 242:11	46:14 66:6,9 78:21	107:19 115:23
discussing 64:23	243:22,23,25 244:2	80:1 81:3 82:6	119:12 145:24
136:8 141:1 145:20	244:5,9,12,23	103:25 104:13	166:25 167:2
160:16 161:6	245:16 246:6,14	185:10 256:19	182:15 202:11
182:15 222:6	247:10,16 248:15	269:9 270:13 271:2	212:9 254:4,12,16
discussion 97:15,17	249:7,11 250:13	271:22	254:19 255:1
120:9 124:20 128:2	253:17,22 254:24	drafted 33:7 45:4	earliest 26:11 133:5
231:5,14 265:23	255:18,21 256:6	62:7,15	early 23:3 105:3,12
discussions 124:10	258:13 260:10	drafting 24:21	105:19 108:3
124:19 192:20	261:20,22 263:4,16	28:19 29:7 36:24	154:25
247:16	263:17 264:22	37:20 44:18 45:18	edition 61:11 73:2
distinction 113:3,21	266:15,22 270:8,19	45:20 58:21 79:23	141:4
165:2	277:15,17 278:11	81:1 97:22 98:9	editor 269:7
distinguish 21:6	279:2,4,7,11,24	185:24 268:15	editorial 268:19,20
46:25	280:4,8 281:3,6	drafts 22:21 24:3,11	269:19 270:6,17
distributed 43:11	282:6 284:23 285:3	24:21 29:14 41:1	271:25 272:10
district 1:1,1 9:3,4	285:21 289:5,18	71:22 95:6,7 105:15	276:6,11
division 14:17	290:4	105:22 186:21	editors 115:10 116:4
document 32:14,16	documentation	dsmith 188:23 240:3	270:18 272:9 276:8
32:24 33:19,22 34:3	44:21 94:9	duly 10:12 291:5	effect 66:20
34:14 35:7,9,10,12	documented 44:5,13	e	effective 160:19
35:22,25 36:3,4,6,8	documents 4:21 5:1	e 2:1,1,16,16 3:1,7	effectuate 78:17
36:9,13 37:13,19	6:13 7:9 15:2,3	4:7 5:7,8,10,17 6:3	80:21
38:6,9 61:5 64:13	32:20 34:7 37:24	6:11 21:25 54:21	efforts 189:3
64:18,22 65:5 66:2	40:18 44:15,22 45:1	63:4 89:16 174:12	egs 9:5 10:4
66:5 67:15,18 68:21	45:10,14 46:21 59:9	174:16,19 175:14	eight 118:14
68:24 69:1 70:2	59:10,14,20 78:15	175:15,16 176:3	either 25:24 56:10
76:6,9 81:3 82:6	79:11 80:19 84:5	187:2,24 188:3,7,21	77:25 78:9 81:8
83:7 88:20,22 107:8	92:8,10,12,23 93:4	188:22,22 200:25	103:6 147:17
107:23 109:22,25	93:6,11 122:14	200:25 203:5	elaborate 17:17
111:8 121:24 122:1	124:2 130:13	239:19 240:2,16	167:17
122:16,19 134:20	131:24 205:19,21	242:7 243:16	electronic 104:1
157:13 171:18,21	211:3 229:3,13,18		178:7,11

[elements - extent]

elements 143:2	erik 189:22 190:6,16	excused 290:22	239:19,25 243:16
eliminates 146:6	193:25 195:5	execute 78:14 79:11	243:22 244:16,23
embraced 95:25	esquire 2:4,10,11	80:19 81:12	245:11 253:11,17
employed 47:19	essentially 25:21	executed 83:6	255:11,18 257:21
51:1 52:19 71:24	104:7 137:3 164:25	116:17,19,25 117:4	258:12 260:3,10
employee 56:14,18	266:21	117:21 166:18,22	261:13,20 262:22
56:21,24 168:3,18	et 8:25	292:5	263:9,15 264:13,21
168:23 259:15	evaluating 250:5	executive 85:9	265:3 266:1,8,14
employees 48:21,24	eventually 29:16	106:14	277:8,15,23 278:5,5
50:17,19 51:5,13	everybody 85:12	exhibit 3:9,12,14,16	278:20 279:2,17,23
52:24 53:11,22 55:6	evidence 78:9 82:9	3:19,21,25,25 4:1,3	280:22 281:3,23
55:20 56:5 114:21	245:23	4:4,6,7,9,11,13,15	282:4 283:7 284:7
173:22 272:21	exact 67:5,12,13,18	4:16,18,21 5:1,3,5,7	284:16,19,24 285:3
employment 47:20	150:11 253:1	5:8,10,12,13,15,17	285:6,11 289:9
48:25 111:11,17	285:20	5:19,20,22,25 6:1,3	exhibits 72:15
112:4 113:7,25	exactly 74:6 82:20	6:5,8,9,11,12 34:22	exist 25:8 26:10 76:6
114:22 259:14	91:2 104:6 135:9	35:5 38:20 60:2,9	111:13,15 131:24
enables 225:18	152:18 160:8 200:5	61:24 62:12,15 64:5	225:6 226:8
encountered 287:16	208:7,14 215:2	64:13,22 65:19 66:2	existed 61:17 70:12
energy 202:15 203:1	274:9 276:17	68:13,21 69:21	71:4 119:14 120:2
enforce 226:19	examination 10:15	71:18 72:16,21,22	120:23 121:2,8
227:18 228:8	288:18	73:2 74:12,24 75:4	216:2
engineering 183:5	examined 10:12	76:5 78:11 80:11	existence 71:2
engineers 1:7	example 50:6,23	81:11 88:7,16 107:1	116:20
english 207:5 265:6	54:11 122:21 123:9	107:5,13,16 109:17	existing 252:15
265:10,25	123:17,23 154:3	121:16,16,22,22	272:18
enjoy 98:8	185:16 211:4 264:8	122:6,13,23 123:6	exists 112:5 154:24
enjoyment 73:4	examples 21:19 33:2	133:4 136:8 140:23	155:17 176:2 182:9
176:16	50:2 53:15 57:3	141:3,14 142:1,1	226:3 256:2
ensures 178:19	84:20,22 92:25	145:17 156:21	expect 77:9
179:13 180:5	123:2	158:7 161:4 171:12	experience 19:21
entered 197:4	exchanged 24:4	173:4,11 181:14,20	20:10 49:21,22,24
198:19	excluding 58:25	187:2,9,12,21,25	50:22 54:1 185:17
entire 157:1,8	84:17	188:3 195:20 196:1	217:6 225:13
158:21 159:22	excuse 20:18 44:25	200:7 201:11,18,24	expert 129:19 206:8
266:21	55:18 67:9 70:8	204:3,9,15 205:5,8	265:13
entitled 241:21	73:2 74:17 79:9	205:8,11,18 209:24	expertise 249:25
242:3	97:19 115:20	210:5,18 211:2	experts 16:2,4
entry 95:20	137:24 147:7	212:10,13 213:6,11	explain 76:24 95:2
environmental	148:20 149:9	213:23 214:10	154:1 197:22
185:18,22 189:4	153:15 161:9	215:1,5,9 218:6	240:23
190:15	175:15 191:16	222:14 229:2,12,21	explained 94:7 248:19
epa 183:25 189:7,13 189:25	202:23 206:25	232:9,16,22 233:9 233:11 235:25	
107.43	270:15	236:6 238:8,14	extent 35:18 37:1 38:14 41:6 46:17
		230.0 230.0,14	30.17 71.0 70.1/

[extent - fenwick.com]

50:20 51:1,6,12,15 52:20,24 53:10,22 54:20,21 55:6,19 56:13,17,20,24 57:5	103:17 104:4,17 107:24 108:11,20 110:14,22 111:5,19 112:7,16,24 113:9 114:1,11,25 115:17	193:15,17,19 194:3 194:10,14,22 195:2 195:7 197:6,9,20 198:5,12,22 199:2 199:11,19 200:10	286:13,20 287:1,10 287:18,22 288:7,12 288:20 289:8,23 290:11,16 feel 42:15,18 44:20
52:20,24 53:10,22 54:20,21 55:6,19	107:24 108:11,20 110:14,22 111:5,19	194:10,14,22 195:2 195:7 197:6,9,20	287:18,22 288:7,12 288:20 289:8,23
52:20,24 53:10,22	107:24 108:11,20	194:10,14,22 195:2	287:18,22 288:7,12
1 1 1 1	· · · · · · · · · · · · · · · · · · ·		
	103.17 104.4 17	193115 1 / 19 19413	286.13 20 287.1 10
federal 48:25 50:16			
215:9	100:8 102:25	192:6,15,25 193:9	283:10 284:2 286:2
featured 146:12	97:22,24 98:12	190:24 191:11,20	279:10 280:7 281:8
feature 198:9	93:16 96:6 97:5,19	186:17,23 188:13	275:22 276:19
fax 24:9,11	89:24 90:18 92:17	185:14,25 186:6,12	274:7,19 275:1,13
209:18	84:8 86:5 89:3,13	184:3,13,23 185:11	271:23 272:4,22
far 58:1 155:17	81:5 82:8,18 83:23	182:3 183:12,18	268:3,17 271:3,10
287:14	78:6 79:14 80:2	180:11,14,18 181:7	266:2 267:5,23
259:25 286:9	76:15 77:2,11,18,22	178:25 179:19	263:3 265:1,12
familiar 11:11	74:25 75:6,19 76:8	177:5,13,24 178:14	260:17 261:1 262:5
fall 259:18,21	73:13,24 74:2,13,18	175:8,17,21 176:7	257:25 259:2,22
fair 242:7	71:11,25 72:17	173:24 174:7,13,24	254:13,25 255:5
facts 82:9 129:13	64:24 66:24 70:23	172:1,8,16,25	252:2,7,9,22 253:4
fact 95:9 96:17,22	60:25 62:4,9,16	169:9 170:1,2,25	251:6,12,16,22
facilitated 24:11,15	58:22 59:4,10,13	167:18,25 168:11	249:1,13,18 250:14
facilitate 26:18	54:22 55:7,24 57:7	165:1,6,16 166:3,10	247:17 248:9,17,21
f1193-06 158:8,16	52:25 53:12,23 54:8	163:17 164:10	246:9,19,25 247:4,8
f 291:1	51:16,25 52:6,9,14	162:4,11,20 163:6	243:5,12 245:17,22
_	49:3 50:3,12 51:7	160:7,23 161:13,21	241:25 242:12,17
f	47:4,22 48:15,17	158:23 159:11	240:22 241:3,7,11
237:19 265:13	45:7,22 46:7,16	157:12,20 158:1,12	237:5,11,18 238:20
222:24 224:2	42:20 43:24 44:6	155:25 156:10	235:9,16 236:16
217:1 218:18	40:15 41:5,22 42:8	154:13,21 155:6,20	234:2,7,17,24 235:4
207:10 211:17	38:13,25 39:21	151:3,13 153:6,22	232:22 233:21
204:19 206:8,9,11	36:18,25 37:9,25	149:12 150:21	230:20 231:22
200:11 201:2 202:2	33:10,24 34:5 35:17	146:23 147:18	229:17,21 230:9,16
168:13 181:8	30:9,18 31:2,14	145:5,13 146:5,15	228:11,18,24
163:19 164:11	25:12 28:11 29:17	144:3,12,19,25	226:22 227:6,12,21
110:15 143:10	23:23 24:12,23	142:18 143:15	224:1 225:1,11
47:5,7 71:12 74:14 74:15 75:7,20	20:23 21:9,11 22:11	140:7,18,21 141:21	222:23 223:11
	18:16 19:2,18 20:7	139:10,15,21 140:1	221:15,23 222:7,16

[field - general]

field 130:11 134:13	161:10 182:6	107:6,9,23 108:11	216:1,5,8,12,24
135:3	214:24 215:4,23	108:20 125:10,18	217:15,16 238:4
figure 67:2 226:5	226:20 227:19	125:21 126:12,22	259:1 264:14
252:19 253:9	228:9 246:7 261:4	129:2,16 130:2,5	265:25 289:2
figures 274:10,15,17	firsthand 22:22	134:14 135:4	forward 28:15 32:4
figuring 202:20	fittings 136:11,17	145:20 177:25	32:25 36:6 40:18
filed 121:23 161:18	137:15 138:3,19	178:12 179:19	107:8 191:1,6,25
163:15 164:4	141:20 144:10	186:23 194:4 197:4	192:4
files 91:16,25	149:17,23 150:2	200:19,24 201:8	found 91:2
filing 160:3,6,12	fitzsimmonds	203:10 204:1 205:1	foundation 20:8
162:10,18 163:14	203:22	210:14 211:19	22:12 39:1 45:23
164:8	five 163:14 232:6	212:2 213:1,12	86:6 118:12 122:25
filings 162:22,25	246:15,18 247:22	214:5 223:14 224:1	266:3 281:9
fill 24:21 26:16	247:24 248:5,7,10	232:5,6 233:13,15	four 100:25 161:5
27:17,21,25 28:4,8	249:17 285:25	233:18,19 254:17	232:5 239:17
28:17 29:6 30:4	286:11,25 287:16	254:25 265:7,10,18	frame 155:13,15
36:17 37:8 125:18	flip 156:23	268:6 269:10,24	192:2
125:21 126:21,25	floor 2:12	270:3,10 274:19	francisco 2:13
127:7 129:2 130:2,4	focus 189:4 268:11	275:20 276:16,18	franco 199:20,24
130:15 131:1,13	focused 217:8	283:18,23 289:7,22	235:18
132:1,16	242:25 247:25	290:2	franco's 235:20
filled 93:1 107:9	focusing 248:5	formal 41:14 42:3	frankly 247:18
125:10 127:4 221:1	folks 17:21 139:17	42:16,16,19	free 98:14 162:25
277:20	follow 162:15 267:8	formally 62:3 70:21	friendly 274:13
filling 26:18 126:3	288:6	94:8	fringe 165:9
126:12	followed 267:18	format 270:21 271:1	front 69:24,25 79:4
fills 26:13 47:17	following 184:19	271:5,6,20 275:15	266:16 269:7
final 69:20 186:5	189:12 218:7	formation 266:3	full 10:23 107:8
259:9 275:7,9,11,14	224:20 250:20	formed 20:14,15	future 103:10
275:20	follows 10:13	192:10	g
finalized 18:3	footprint 189:4	former 126:15	g 89:16 200:25
find 138:6 226:2	force 183:3,3,16,20	forms 5:22 24:20,25	game 242:7
234:12	184:8,11	25:4,14,15 26:11,16	gap 63:24
fine 13:4 229:20,22	foregoing 292:2	27:22 28:1,5,8,18	general 2:18 45:24
249:21 finish 12:25 13:5	form 3:10 19:2 21:9 24:23 25:20 26:3,13	29:7 30:4,23 31:5	56:11,21,25 62:23
fire 1:4	24:23 23:20 20:3,13 26:18,20 27:7 28:25	39:14,19 41:14 42:3 46:12 52:4 81:24	63:6,10,14,17,20,25
first 11:8 22:24 23:9	31:2,5,13,20,24,25	84:13,13 94:11,11	64:2 67:2 76:3
36:13 58:12 60:22	32:2,7,11 33:15	104:2,15,15 108:8	83:14 84:12,21,23
61:11 78:19,20 79:2	34:18,24 35:12,14	104.2,13,13 108.8	86:9 101:8 110:25
79:3 82:1 90:24	36:10,16,22 37:8,12	130:16 131:2,14	112:20 114:14
91:3,6 107:16,23	37:16 38:5,16,20,24	130:10 131:2,14	117:25 208:15,19
71.5,0 107.10,25		152.2,17 157.11	215:16,21 227:8,11
		200:20 205:2 5	1
108:8,19 147:13	39:5,11 40:1,14,23	200:20 205:2,5	228:20,23 268:4
		200:20 205:2,5 211:14 213:15,15 214:16,16 215:24	1

[generally - hire]

generally 20:22 84:6	143:17 159:3	gratuitous 207:23	handing 35:4 60:8
154:10	161:21 162:14	great 269:8 290:16	64:12 66:1 68:20
gerald 10:24	194:15 195:12	green 191:5,7	88:15 121:21
gestures 11:25	198:13 207:10	192:23 193:7	122:12 171:17
getting 94:8 103:19	209:16,19 226:19	group 16:2 18:9,10	173:10 181:19
104:8 263:24	227:18 228:9	18:15,17,19,22 19:1	187:8 195:25
gibson 176:3	239:10 241:7,13	19:10,17 20:5,10,13	201:17 204:8
give 11:7 17:10	242:9 243:7 247:19	20:15 21:15 22:7	205:17 210:4 211:1
21:19 33:2 36:5	249:4 257:13 258:6	24:5,20 27:4 31:11	229:11 232:15
37:11 52:14 57:3	280:7 282:24	32:3 36:17,23 37:20	236:5 238:13
92:18 100:11 146:1	286:18 287:23	37:23 38:10 192:10	243:21 244:22
174:11 185:16	288:4	192:14,19 281:19	253:16 255:17
247:17 261:4	goldblum 189:21,24	281:21	260:9 261:19
given 32:2,7,11 56:4	190:13,22 191:18	groups 19:13,25	264:20 266:13
56:7 115:13 116:6	191:25 192:4	20:21 21:7,7 22:20	277:14 278:4 279:1
121:4 247:15 291:9	194:25	23:1,14 27:16 28:16	279:22 281:2 282:3
giving 11:15 13:22	goldblum's 192:22	29:5,12 30:3 32:7	handwriting 196:10
14:1	193:7,13	32:11 40:25 55:21	happened 191:9
gmac 246:12	good 13:2 96:24	55:23	192:3,13 278:14
gmac.docx 246:7	132:23 270:23	grove 89:15,15,19	happy 151:17
go 8:11 11:10 16:13	273:16 291:4	89:23 188:22	hard 262:9
21:15 26:23 27:4	governing 5:25	guess 22:23 24:8	hazardous 277:2
41:11 44:10 45:11	266:9,17,20 267:3	38:23 39:18 40:4	head 199:24 200:4
46:21 47:11 48:3	267:12	152:19 153:13,17	headquarters 219:6
52:16 67:9 72:4,23	government 48:21	156:16 172:19	heads 199:17
75:13 76:1 93:17	48:24 49:1,16 50:16	178:2 196:19 234:8	hear 10:3
110:18 111:24	50:17,20 51:1,6,13	277:21	heard 101:2
112:12 113:15	51:15 52:20,24	guessing 23:2 40:6	heating 1:6
114:6 117:14 120:4	53:10,22 54:20,21	257:4	held 1:16 8:18 9:2
121:14 135:4,16	55:6,19 56:4,13,17	guidance 281:12	95:7 127:14,24
138:16 159:1	56:20,24 113:25	guide 15:17	help 26:18 27:4
164:15 193:21	114:21,23 185:8	guidelines 270:4	102:15 115:11
198:15 200:16	208:3 247:2 249:14	guides 15:5	116:5 185:10
202:7 204:24	250:17,18,22,25	h	268:21 269:4
209:20 215:14	251:4	h 3:7 175:14	helped 103:18 104:1
217:7 223:2 237:23	governments 111:12	half 194:16	helping 104:25
239:7 247:20 249:3	111:18 112:5 113:8	hand 65:4 141:13	helps 281:11
249:15,19 257:10	grab 283:10	160:20 187:15	highway 57:5
258:9 266:25	grammatical 269:21	196:10 197:17	hire 115:14 116:7,12
282:21 285:7	270:6 272:2,11	199:8 221:2 277:21	116:16,21,25 117:3
goes 111:8 155:18	granted 47:21 176:6	291:11	117:20 119:9
198:18	granting 47:2	handed 239:24	125:13 133:13
going 12:11 52:9	grants 71:22	258:11 263:14	134:11 135:1
57:7,9,14 87:23	graphics 269:4,5		249:24
94:18 105:8 135:18	274:6,8,17		

[historical - instruct]

historical 156:3	identify 9:9 46:21	indicated 96:22	272:16
hold 77:2 100:24	94:21 95:4 210:6	170:9,15 291:5	inform 269:22
114:25 193:15,17	252:17 258:14	indicates 253:24	informal 41:17,25
213:21 214:4 222:7	263:17 276:25	indication 96:24	42:5
226:22 283:10	286:13 287:1,6,18	indicator 279:14	information 31:18
holds 282:18	287:21	individual 32:3,13	40:11 41:10 42:12
honest 59:5	identity 198:5	32:23 36:5 37:12	42:24 44:10 47:11
hooper 124:21	iii 260:1	38:5 45:25 46:1	48:2 49:8 57:24
125:1,7 126:5,17	ils 269:1	47:17,19 49:10,13	85:16 100:5 104:25
127:5,14 128:11,14	image 253:24	49:14 50:18 51:5	107:11 113:14
128:22 130:3,9	imagine 24:13 76:2	52:23 53:9,21 54:2	114:6 128:23 129:8
139:20 140:5,14	immediately 161:5	55:5 79:25 80:25	138:13 152:4 175:6
hooper's 127:10	impairment 285:23	81:2,12,18 82:5,6	176:21 177:16
128:3,18 133:25	implemented 257:2	82:25 98:4 107:7	204:24 232:7
hour 52:10 194:15	impression 54:7	110:5 125:2 126:8	233:15 236:19,20
hours 109:16 288:13	inc.'s 3:22 88:8	160:12,13 165:4,10	informational
huh 99:15 156:20	incentives 45:19	165:20,23 167:8,16	217:22 264:10
i	include 48:20 52:5	167:23 168:8,16	informed 127:3
idea 61:19 62:21	108:17 219:9,21	169:5,7,15,17,19	128:18 132:10
188:15 191:1,3,6,10	220:10 231:4,14	170:15 177:19	informs 180:22
191:17,25 192:4,23	243:8 273:7	178:21 179:15	infringed 122:4
193:7,14 215:3	included 108:9	180:6 197:1 200:24	initial 21:16
227:3 237:8	152:21,22 153:14	217:8 223:5,16	initially 20:13
identification 35:1	154:6 189:6 234:14	225:18 242:6	initiate 26:22,24
60:5 64:9 65:23	241:2 266:22,24	261:25 263:19	86:7,8 151:20
68:17 88:12 121:18	273:5	268:14 278:6	input 49:12 99:22
122:9 171:14 173:7	includes 153:3	280:11,16 285:21	inquire 114:19
181:16 187:5	236:13 238:25	individual's 196:16	insert 73:10
195:22 201:14	259:9	279:14	inserted 115:25
204:5 205:14 210:1	including 73:6	individuals 18:25	inspection 183:4
210:23 229:8	78:18 80:22 143:3	19:15 25:6 27:20,24	210:8
232:12 236:2	176:19 232:2	28:3,15 29:4,11	instance 170:8,14
238:10 239:21	inclusive 189:6	30:2,6 32:20 33:6	183:17 264:5
243:18 244:19	incorporate 272:10	37:7 41:18 42:6	283:17,22
253:13 255:14	276:10	44:18 45:3,20 47:1	instances 32:19 40:7
257:23 260:6	incorporated 9:1	48:6,20,21 49:1	40:9,12 50:11,13,15
261:16 263:11	105:14,21	50:25 51:14 52:19	79:10,19 81:11,15
264:17 266:10	independent 29:22	53:7,19 55:4,17,22	instituted 58:13
277:11 278:1,23	41:10	58:20 71:23 79:11	65:16 82:1
279:19 280:24	index 7:1 138:23 139:4	97:21 98:8,10 100:6	instruct 29:18 30:10
281:25 284:9		100:23 102:24	31:15 44:7 45:7 46:18 49:5 73:14
identified 290:7	indicate 172:12	105:14,21 109:9	
identifies 290:5	175:25 183:9	165:15,25 176:4	74:20 111:20 112:8
	184:10 197:3 201:9	177:1 189:15,18,20	113:11 114:3
	218:12 273:16,18	231:3,12 265:21	161:22 200:14

[instruct - ken]

201:4 202:5 204:22	interfere 8:9	involvement 102:15	96:7,8,11,16 97:3,9
241:7 243:3 286:16	interlaboratory	103:15	99:2 100:11,13
287:3,23	268:7,22	involves 17:15 271:4	101:2 108:25 119:2
instructed 134:2,9	internal 131:11	ip 59:23 73:8 77:21	119:3 120:9,9,13,25
134:25 163:6	155:24 156:2	78:19,25 79:5 80:24	251:18,20 252:5
			· · · · · · · · · · · · · · · · · · ·
243:14 288:10	199:22,25 200:4	116:6 176:21,22	jim's 94:13
instructing 162:2	235:6,14,22	210:12 223:23,24	jkfee 2:6
242:1 243:10 286:5	international 1:3	231:5,15,19 236:14	john 85:3 99:11
instruction 30:19	2:18 3:9,15,17,20	237:4,15 238:19	106:9 109:1 127:20
41:23 162:14	4:11 6:5 8:25 14:5,7	239:1 254:3,23	127:23 139:25
223:12	34:17,23 35:11 64:6	259:21 263:1	140:5,14
instructions 43:25	64:17 65:10,20	265:24 279:9	join 48:5,19 49:1,1
48:17 75:1	68:14 69:9,22 78:13	289:20 290:1	165:21 196:17
intellectual 3:12,14	78:16 80:12,17,21	iso 281:14,17,19	217:21,24 223:6,16
3:16,19 58:8,12,17	110:3,7,10 115:18	282:10,14,19	225:18 263:22
60:2,10,15 61:6,12	115:25 116:3,9,10	issue 43:14 52:3	265:21
61:16,23 62:2,8	201:12,21 219:5	114:16 136:2	joined 217:23
64:5,16,19 65:15,19	260:13,15,24	142:14 143:5,6	joining 103:7 254:1
66:7,9,19 67:20,24	278:21	158:24 226:21	263:23 264:1
68:9,13 69:2,5,13	introduced 26:3	227:20 228:10	journal 261:10,11
70:4,11,16,20 71:3	27:8 76:11	247:9,11,12,15	jr 2:17
71:9,20,21 73:11,22	introduction 24:6	248:18 283:20,25	july 1:20 8:15 91:4,7
76:14,25 78:4 91:15	24:18 40:22 79:5	issued 54:21	june 101:1
91:24 92:2 109:18	inventory 252:14	issues 99:25 100:14	k
109:19 110:2,4,12	investigating 249:23	101:5 241:10,11	k 63:4 175:14 176:4
113:4,22 115:8,12	invited 100:24	248:23 250:18	181:23
115:23 119:13	invoice 5:3,5 173:16	item 25:16,19,22,23	kaiser 189:22
120:2,11,15,22	173:18 177:12,22	26:3,13,16 28:1	190:17 193:25
121:1,8 219:2,10,16	178:19 179:10,13	81:16 91:12,19	195:5
219:18,22 220:8,11	179:24 180:5,21	102:19 103:6 167:5	kaiser's 190:7
220:22 221:8 222:4	212:14,17,25	179:5	kathe 124:20,25
224:16 256:13	213:11 222:15	items 79:6	125:7 126:5,17
intended 223:5	234:16 236:1,10,13	iteration 273:15	127:5,10,14 128:2
interacted 51:2 53:7	238:9,17	iv 74:11 75:5 76:6	128:11,13,18,22
interaction 250:17	invoices 4:4 173:5	76:12 77:8	130:3,9 133:25
interactions 127:6	175:7 176:1,5 177:1	j	139:20 140:5,14
interest 16:22,23	177:11 230:24	i 2:4	kathie 85:9 106:14
30:7 31:12 32:1	231:4,13,20 234:13	january 101:1	106:19,22 107:4,12
56:11,21,25 176:18	234:22 236:23	133:21,25 134:6,22	107:15 109:1 118:8
interested 19:21	237:16	135:12	118:18 119:7
36:5 37:13 40:17,19	involve 271:1,21		
46:2 87:6 163:2	involved 11:4 82:13		
291:10	82:16,19 103:24		_
interests 20:22 21:2	167:2	0	Ken 110:19 119:1
73:6		94:3 93:13 96:1,4,3	
46:2 87:6 163:2 291:10 interests 20:22 21:2	involved 11:4 82:13 82:16,19 103:24	jeff 89:15,15,19 188:22 189:1 jim 85:1 93:21 94:1 94:3 95:15 96:1,4,5	keep 139:8 155:2 234:21 ken 118:19 119:1

[kept - levels]

kept 101:20 140:16	155:10,12,14 157:6	284:20,22	large 19:25
kevin 2:4 9:19	157:11,17,22,24,24	knows 225:5,9	larger 165:1
kin 291:10	158:3 161:2,15,18	226:1,7	late 63:8
kind 105:4 154:7	166:5 170:4,8,14,22	kuehl 175:14	law 11:17
186:10 262:9	170:23 172:20	1	laws 292:2
know 12:4,21 13:11	176:9 178:1 181:2,5	1 0 1 (10 (0 100 17	lawsuit 95:17
20:25 22:20,22 24:3	181:11 183:7 185:4	1 2:16 126:8 133:17	226:19 227:18
24:10 29:24 33:22	188:18 189:17,20	175:14,15,15,16,16	228:9
34:1,3,13 38:22	189:21,21,22 190:3	181:23	lawsuits 11:4
39:2,4,7,13,25 40:3	190:6,9,12,16,19	lab 273:22	lawyer 72:6 129:3
51:9,10 52:8 61:15	193:6,23 194:5,11	labeled 35:9 263:16	lead 272:17
62:1,7,14 63:5,16	194:21,25 195:3,5,8	264:23	learn 85:19
66:12,18,21,23 67:1	196:14,18,20,22	laboratory 210:7	led 126:18,21,24
67:3,4,11,17,23	197:2,13,16 198:23	273:11,13 labs 273:20,24	128:24
68:3 70:22,25 71:8	199:7 200:1,3	lack 20:7 22:11	leeway 247:18
71:15 73:18 74:7	201:19 206:16	38:25 45:22 86:5	left 258:4
75:14,18,24,25 76:3	207:13 212:6,7	118:12 122:24	legal 8:14 9:12
76:11,19 77:7,9,14	213:7 214:24	266:3 281:8 286:23	29:18 30:10 31:15
77:16,24 78:2 79:20	215:20 216:3,4,8,12	287:14	37:2 38:1,14 41:6
81:8 82:4,11 83:9	216:23 221:11,14	language 26:1 76:25	42:9,21 46:17 47:6
83:10 86:15 92:12	221:19 225:9 226:5	77:17 78:4 102:16	47:23 49:4 51:8
97:14 107:17,19	226:6,11,14,14,15	102:21,23 103:2,15	53:1,13,24 54:9
110:19,21,21 111:4	226:15 227:2,5,7,11	103:20,25 104:8,14	55:8 72:1 73:14
111:6,25 112:13,15	228:15,17,23,25	108:9,18 167:7	74:14 75:7,16 76:16
112:20,23,25	230:14,19,21	176:2,11 179:25	76:24 80:3 81:6
113:17 114:8,10	231:25 233:24	200:8,19,22 201:8	86:14 103:1 109:5
116:15,18,24 117:8	234:3,6,25 235:3,13	201:23 202:9,10	110:15 111:20
117:13,19,19,25	235:14 237:10,12	204:14 205:1 206:4	112:8 113:11 114:2
118:24 119:3 120:1	237:24 240:14	207:8 210:16 212:9	124:23 129:18
120:1 121:1 126:3	248:14 249:10	212:12 213:5,9,14	158:13 160:24
126:11,13 127:5,23	251:15,21 252:1,19	213:19,22,25 214:9	163:18 164:15
128:1,5,10 129:6,21	253:1 256:17,18,25	214:15,25 215:4,8	169:10 176:8 179:2
129:22 131:19,23	257:3,6,7 258:24	215:22 218:14	179:21 181:8
132:6,13,20,22	259:17,20,24	222:3,9,12,13,20	188:14 200:11
135:7,8,13,14 136:1	260:22 268:9 274:9	223:10,20,22,24	201:2 202:2 204:19
136:14 137:19,25	281:14,19 285:19	224:8,9,10,15,21,25	206:10 214:8
138:5,12 139:6,11	knowledge 16:9 17:12 23:15 28:20	236:12,13 237:3,15	218:18 226:24
139:14,20,25		239:1 253:25 254:3	227:23 228:13
140:12,15,17,20 141:16,17,23	29:9,22,25 36:20 37:5 38:20 48:8	254:15,22 256:11	237:19 245:18
141:10,17,23	49:14 68:11 73:20	262:2 265:14	259:12,16 272:23 letters 130:24 230:6
142:10,12,21,22	83:13,15 86:1 99:18	269:12,23 270:1,2	230:8
144.8,14,10 140.11	99:23 111:23 129:7	279:8 285:12	level 17:17
150:4,9,10,17,24	166:19 169:3	289:17,19 290:4,8	levels 16:16
150:4,9,10,17,24	192:24 201:6		10.10
132.13,10 133.10	1/2.2 201.0		

[lewis - matter]

lewis 2:4 9:20	lively's 103:14	low 95:20	marge's 86:25
library 144:11,18	living 14:4	m	mark 284:2,4
145:4,11	llp 2:4,10	m 200:25	marked 3:8 7:17
limit 245:4	located 8:19 171:8	machine 291:7	34:25 35:5 60:4,9
limited 59:14 78:18	228:4	mail 4:7 5:7,8,10,17	64:8,13 65:22 66:2
80:23	location 27:2	6:3,11 21:25 24:8	68:16,21 88:11,16
linda 1:20 9:11	log 154:18,23 155:2	24:10 54:21 174:12	121:17,22 122:8,13
line 7:4,4,10,10,14	155:16,23	174:16,19 187:2,24	122:18 148:14
7:18,18 12:23,24,25	logo 43:10,21 94:19	188:3,7,21 203:5	171:13,18 173:6,11
73:3 188:8 238:22	183:23	238:4 239:19 240:2	181:15,20 187:4,9
240:15 245:11	logos 78:24	240:16 242:7	195:22 196:1
279:8,13	logs 156:9	243:16 244:16	201:14,18 204:4,9
lines 198:15	logsa 183:4	245:13 246:2,8	205:13,18 210:1,5
link 248:17 249:2	long 12:22 23:4	260:3,12 277:23	210:22 211:2 229:7
list 59:6 70:3 189:5	37:22 43:6 86:18	278:10,16 281:23	229:12 232:11,16
189:6 281:15,17,19	87:5,7 117:14 118:3	282:7	236:2,6 238:10,14
281:20 282:11,13	118:9,20 119:3		239:21,25 243:18
282:16	127:14,23 181:25	main 16:18,20,22 17:1,2,16	243:22 244:18,23
listed 79:6 92:9	longer 191:22	maintain 95:20	253:13,17 255:13
125:1 129:24	look 34:7 76:5 123:1	maintain 95.20 maintains 156:9	255:18 257:23
137:13 148:9	136:7 140:23	making 159:23	258:12 260:5,10
160:15 176:4 185:9	156:23 157:2 161:4	malamud 2:19 10:1	261:15,20 263:11
188:8 189:18	182:4,25 218:5	manage 53:8 150:8	263:15 264:16,21
200:24 245:11	230:1 233:3 259:7	manage 33.8 130.8 managed 50:4 52:22	266:10,14 277:10
246:8 282:13	285:9,15	management 51:2	277:15,25 278:5,23
285:10,18	looked 121:25 124:8	250:7,8	279:2,18,23 280:23
listing 122:2 130:10	228:4 285:13,19,22	manager 83:12	281:3,24 282:4
134:11 135:1	looking 71:18	105:2,4 217:10	284:8 289:25
181:23,24	115:22 134:20	225:14	market 1:17 8:19
lists 133:9,17 141:3	184:18 262:22	mandatory 269:22	material 37:18,21
152:4 178:7 182:16	283:7	269:23,25 270:1	38:11 97:1 105:9,13
184:19 189:14	looks 196:9 203:4	manner 130:2	105:20 110:9
202:25 203:4	203:19 204:12	229:19	114:20 129:13
litigation 136:2	205:22 222:17	manual 268:7	152:7,10
142:15 144:2	224:18 233:14	270:11 276:16,18	materials 1:3,15
161:20 162:5	236:18 246:4 254:6	manuals 78:23	3:24 8:25 78:22,24
226:21 227:20	255:22 257:4	manufacture 158:9	88:11,19 124:1
228:10	261:23 262:9	manuscripts 110:6	130:6 133:10
little 18:5 134:17	263:18 267:1	march 160:18 161:9	134:12 135:3
199:1 247:17 263:5	270:23 277:18	280:6,17	matt 132:23 194:14
lively 85:6 102:4,10	278:11 280:2 281:7	marge 84:23 85:13	197:22 209:16
102:13 103:24,24	lost 134:17	85:20,22 86:2,14,20	matter 41:9 76:18
103:25 104:13,21	lot 269:16	87:7,10,19 99:7	112:10 113:13
105:10,17 106:1,4	loud 177:4	108:25	162:11 166:9 243:7
108:6,16 109:1		100.23	

[matthew - mid]

matthew 2:10 9:15	194:13,13	180:23 182:16	233:12,13 235:25
10:18	meltzer 126:9,11,13	183:11 185:5 189:7	236:10,23 237:2,16
mbecker 2:14	132:18,19,20	217:22 219:23	238:4,8,17 253:8
mean 14:7,19,23	132:16,15,26	230:5 231:21	255:11,23 256:1,6
15:1,11,24 19:4	member 5:22 18:22	234:23 265:20	256:20 258:25
28:23 32:17 41:25	26:14,17,21 37:19	267:20,21 268:1,2,8	259:18 261:25
44:13 47:14 56:1	38:10 43:14 56:21	268:14,15 269:7,22	262:3,13,19,24
62:21 74:5,7 91:25	56:25 73:3 77:9,17	274:16,21,23,24	263:20,25 264:2,4,9
97:16 104:6 123:21	82:15,17 93:1,3	275:6,10,19 278:15	277:9 278:8,13,16
151:23 168:25	95:9 96:12 98:2	281:12,20 282:14	278:21 279:6 281:5
182:7 185:4,16,23	103:7 168:3,8,16,18	287:15 290:7	282:13,15 289:2,12
192:18 208:20	168:19,23 169:20	membership 4:4,6,9	290:5
212:21 233:11	171:4,8 181:3,6	4:11,16,18 5:3,5,13	memberships 93:1
246:17 248:2	184:12 198:20	6:1,6 21:5,11,12	166:2 169:24
262:10 269:20	202:14,21 203:13	25:1,4,5,11,14	memorandum
270:12 273:2,9	250:19,23,25 251:5	27:18 51:12 73:5	207:15,17
275:8 276:5	253:24 257:1 264:7	81:20 84:15 91:11	memory 94:3
meaning 15:8	264:13 265:6,9,18	91:17 94:11 95:21	memos 131:11
means 11:23 29:10	267:9	102:17,18 103:4,8	mention 59:23
31:9 40:24 41:18	members 18:25 19:1	104:14 165:1	210:12 231:18
42:5 55:4 75:15	19:9,10,12,13,14,16	166:24 167:11	mentioned 58:25
77:8,10 147:11	19:16 20:18,20 21:6	169:15 171:9 172:7	59:3 60:11 92:6
152:20 154:1	21:6,7,8,10 24:5,20	172:15 173:4,15,18	93:4 101:11 126:6
177:20 178:18	25:2 26:15 27:3,10	176:5,17,25 177:10	185:10 276:13
179:12 180:4	27:15,17 28:15,16	177:22,23 178:19	mentioning 101:14
198:11 228:1	29:5,6,12,13 30:3,3	178:21 179:4,10,13	247:23
meant 74:24 184:4,7	31:11 32:6,10 36:17	179:15,24 180:4,7	mentions 218:24
254:14	36:23 40:17,25 41:3	180:21 181:15,21	mercury 277:4
mechanical 141:5	43:11 44:24 48:5,19	182:20 195:20	met 92:5 94:2 96:16
medication 13:21	49:10,19 50:25 54:2	196:5,7,16,17 198:2	97:4,10 99:11 102:8
meet 86:18 93:21	54:7,20 56:8 58:3,9	198:9 201:12,22	106:13 109:2
102:3,7 106:18	76:24 78:3,14 80:18	203:24 206:2,5	method 15:16
meeting 22:2,18	83:20 84:5,14 85:18	207:4 209:24 210:9	273:10,12
48:7 86:9,10,13,16	85:24 94:9,14,15,23	210:18 211:6,7,8,13	methods 15:4 141:5
86:21 94:17 95:21	94:25 95:5,13,24	211:18,25 212:11	273:5 274:2,3
97:12 99:3,9,25	96:18,20,24 97:1,19	212:13,16,17,22,24	metric 246:4 247:24
100:2,3,23,24	98:8,11 99:20	212:25 213:4,8,10	249:22,22 250:1,4
101:23,24 106:1,6	102:12 103:5 104:9	213:18 215:24	250:12 251:11
106:11,22 120:8,10	105:6 145:3,10	216:2,5,9,13,24	252:6
125:5	164:23,24,25 165:4	217:15,16,19,20	metrics 246:15,18
meetings 22:23	165:5,9,10,13,19,23	218:1,2,9,10,14,25	247:22 248:8,11
23:16,17,20,25 54:1	166:7,8,16,16,17,22	220:12,23 222:5,14	249:17
54:14 95:17 100:22	167:8,9,10,13,16,16	222:21,22 224:14	microphones 8:4,8
101:3,6,17,21 102:2	167:22 169:4	224:20 225:6,21,22	mid 61:21
186:2,11 192:19	170:21,24 177:11	226:1,3 231:4,13,19	

[middle - objection]

middle 12:23,24	name 8:13 9:5 10:18	nods 11:24	nw 2:5
141:2 176:11 183:2	10:23 126:6,7,10	non 47:10 269:23,25	0
183:22,24 288:25	130:7,11 133:8	nondestructive	o 2:16 63:4,4 89:16
288:25	134:11,12 135:3	183:3	o'brien 2:17 9:23,23
military 203:5,13	164:9 175:13 188:8	nonmember 31:6	63:12,13,16,21,23
mind 22:4 31:5	203:1,25 245:10	43:14	64:1
269:18	251:25 276:21	nonmembers 20:21	o'toole 282:7
mine 107:19	names 135:2 175:11	21:11 30:24 31:10	oath 11:15
minute 258:8	narrow 16:22	98:16	object 11:7 224:2
minutes 52:13 86:19	natick 183:6	notary 1:21 291:3	229:17 232:22
101:20,23 249:4	national 1:4 207:24	291:15	243:2 265:1 289:7
258:4 288:13,14	208:2,11	note 8:4 210:10	289:22 290:2
mischaracterizes	nature 156:25 157:4	245:1	objecting 143:12
77:12 119:17	near 91:20 133:16	noted 233:1	objection 11:6 14:9
122:18 146:6	145:21 262:23	notice 3:22 88:9,17	15:9 16:7 17:19
147:19 153:7	necessarily 18:23	121:5 230:4 232:3	18:16 19:2,18 20:7
157:13 168:12	49:15 55:14 147:20	283:8 291:5	20:23 21:9 22:11
202:18 236:17	150:12 169:20	noticed 90:5	23:23 24:12,23
238:21 272:5 275:2	170:5	notified 90:25	25:12 28:11 29:17
missing 256:5	necessary 78:15	number 9:4 37:17	30:9,18 31:2,14
model 95:19	79:12 80:20 143:18	61:5,8 64:14 66:3	33:10,24 35:17,23
moe 63:1,6,11,20,23	151:20 177:21	68:22 121:5 122:14	36:18,25 37:1,9,25
63:25	need 11:23 12:20	141:7,11,12 142:11	38:13,25 39:21
moment 19:8 27:21	97:16 121:6 158:24	146:2,3,22 171:19	40:15 41:5,22 42:8
27:25 28:4 45:16	178:12 198:10	183:10 184:19	42:20 44:6 45:7,22
80:7 92:9 93:12	needed 42:15,19	187:21 189:11,14	46:7,16 47:4,22
97:18 100:10 133:1	44:21	196:2,15,16,18,18	49:3 50:3,12 51:7
187:11 194:17	needs 269:10	218:6 232:20 239:6	51:16 52:25 53:12
months 118:5	neither 291:9	244:24 253:2,19	53:23 54:8,22 55:7
morgan 2:4 9:19	never 43:13 95:9	255:19 261:21	55:24 58:22 60:25
85:9 106:14 107:4	96:13 208:16 251:1	264:22 268:25	62:4,9,16 64:24
107:12,15 109:2	265:16	279:3,15 283:22	66:24 70:23 71:11
118:8,18 119:8	new 6:8 25:22,25	285:7,8	71:25 72:17 73:13
morganlewis.com	103:7 147:13 149:3	numbered 109:21	73:24 74:13 75:6,19
2:6	152:23 153:20	124:2	76:8,15 77:11,18
morning 258:3	250:2 270:20	numbers 6:12 92:11	78:6 79:14 80:2
motion 245:6	272:17 279:18	92:13,24 93:7,15	81:5 82:8,18 83:23
mou 207:13,19,21	280:12,17	141:25 142:3	84:8 86:5 90:18
move 207:9	news 280:3	182:24 196:13	93:16 96:6 97:5,24
multiple 60:14	night 35:8 64:14	211:9 232:19	98:12 100:8 102:25
137:12 211:24	253:18 255:19	283:17 284:7	103:17 104:4,17
n	nist 173:23 174:3,5	285:10,17,20	107:24 108:11,20
n 2:1,16 3:1 200:25	174:11,23 175:2	numerous 17:4	110:14,22 111:5,19
	nist.gov. 174:20	95:16	112:7,16,24 113:9

[objection - owned]

114110115000	010 10 014 4 00	000 105 10 01	260.25
114:1,12 117:9,22	213:12 214:4,20	office 125:18,21	268:25
118:11 119:16	215:10 216:25	126:18,24 127:3,6,7	ordered 243:6 245:7
120:16 122:17,24	217:17 218:17	128:2,18,24,25	organization 164:20
123:19 128:6,15	219:11,24 220:3,14	129:8 130:1,4,15	165:22 168:17,17
129:17 130:18	221:3,15,23 222:16	131:1,13,25 132:10	168:22 169:1,25
131:4,16 132:3	222:23 223:11	132:15 134:2,8,24	170:17 202:14
134:14 135:4	224:1 225:1,11	146:1 183:4 190:2	203:1 248:6
136:19 137:16	226:23 227:21	offices 1:16	organization's
138:4,10,20 139:5	228:11 230:9	official 191:18	169:8,21 170:10
139:10,15,21 140:7	231:22 233:21	291:11	organizational 4:6
140:18 141:21	236:16 237:5,18	oh 59:4,10	164:22,24 165:4,8
142:18 143:16	238:20 240:22	okay 79:7 109:25	165:13,18 166:2,7
144:3,12,19,25	245:17 246:9,19	121:14 184:1,10	166:15,17,21 167:9
145:5,6,13 146:5,15	248:9 249:18	185:15 283:13	167:10,13,22 168:7
146:23 147:18	250:14 251:6,12,16	288:12	168:15 169:4,12,14
149:12 150:21	252:7,22 253:4	old 154:23 274:11	169:19,22,24
151:3,13 153:6,22	254:13,25 255:5	277:19	170:21,24 171:4,8
154:13,21 155:6,20	259:2,22 260:17	older 196:6	172:7,15 181:14,21
155:25 156:10	261:1 262:5 263:3	once 80:25,25	182:8,11,14,16,20
157:12,20 158:1,12	265:12 267:5,23	229:25 231:20	183:11 184:12
158:23 160:7,23	268:3,17 271:3,10	ones 79:17 80:10	202:21 264:9
161:13,21 163:17	271:23 272:4,22	92:8,16 93:11	organizations
163:19 164:10	274:7,19 275:1,13	116:19	165:14 166:1 168:2
165:6,16 166:3	275:22 276:19	online 21:21 22:25	169:7,13
167:18,25 168:11	279:10 281:8 286:2	23:9,12 24:6,19	organize 23:25
169:9 170:2,25	objections 43:24	26:23 27:1,3 81:24	270:9
172:1,16 173:24	48:15 74:25 131:5	237:25 257:2,8	organized 23:17,21
174:13,24 175:8,17	140:1 172:25 174:7	262:14 263:21	organizing 268:23
175:21 176:7 177:5	177:13 180:11	open 156:22	original 20:5 37:17
177:24 178:14,25	227:6,12 228:18,24	opening 25:21 103:8	37:20 38:11 41:1
179:19 181:7 182:3	230:16,20 234:2,7	operations 14:13,16	179:4 234:21
183:12,18 184:13	234:17,24 235:4,9	95:23 117:13,18	271:18
184:23 185:11,25	235:16 237:11	118:4,7,10,17,21,25	originally 66:14
186:6,12,17,23	251:22 252:2 266:2	119:5 164:20	69:7,25
188:13 190:24	objectives 250:20	241:23 285:24	ortiz 202:14,25
191:11,20 192:6,15	obligations 228:6	286:11,24	203:13
192:25 193:9,19	observations 53:18	opportunity 186:25	ortiz's 203:23
194:3,10,22 195:2,7	observing 54:2	opposed 223:23	outcome 291:10
197:6,9,20 199:11	55:10	options 250:6	outside 24:1 37:24
199:19 200:10	obtained 129:9	oral 186:13	159:1 243:1 269:24
201:1 202:1,17	occasions 71:10	ord 196:11	overmeyer 189:23
203:6,15 204:18	october 65:10 69:10	order 28:9,18 29:7	190:20 194:7
206:7 208:5,13,21	69:23	177:23 187:12,17	overmeyer's 190:10
209:5,15 210:14	offhand 39:7	196:18 228:5	owned 58:21
211:16 212:2 213:1		242:17 245:2,7	
			l

[owner - placing]

owner 260:13 261:9	paper 32:18 42:16	80:12 95:21 98:9	234:19 235:5,13
ownership 52:3 73:6	42:19 111:9,16	176:15 180:25	267:16
78:17 79:12 80:22	174:17 175:3	185:6 214:1,12	perfectly 198:17
100:14 110:9	261:10,11 289:1	239:4 247:2 252:18	perform 276:8
136:25 143:3,4,9,11	papers 78:23 110:6	particular 50:24	period 26:7 91:10
247:6 248:11	115:13 116:6	66:22 69:8 72:24	235:1
260:16,24	paragraph 78:20	83:12,16,24 98:24	periods 259:12
р	79:4 189:11	137:7 148:23	perjury 292:1
p 2:1,1,11,16 188:22	part 16:8 72:8,12,15	154:19 155:3,13	permanent 259:10
p.m. 35:8 290:25	72:21 74:11 75:5	163:5 165:19 201:8	person 26:18 83:11
pace 85:3 99:12,17	83:5 110:25 136:10	217:11,24 223:6	87:4 134:8,24 170:9
99:21,25 100:4	136:16 137:14	259:5 264:5 269:18	193:23 198:20
106:9 109:1 127:20	138:2,18 141:19	277:1	234:9,10 283:19,24
127:23 139:25	144:9 149:16,22	parties 8:11 9:10	personal 185:17
140:6,14	150:1,5,9 152:9,15	parts 143:5	personally 221:21
packet 34:11	152:17 156:11	party 291:10	persons 173:20,22
page 3:2,8 7:4,4,10	159:15 165:25	path 263:19	perspective 86:23
7:10,14,18,18 34:16	170:18 207:19	patricia 189:22	87:1,3 223:3
60:22,23 61:1,7	256:4	190:9,19 194:7,12	pertains 232:4
65:8 69:20,25 72:7	partial 231:3,8,13	194:19	pertinent 159:15
78:20 79:4 133:3,15	233:12,12	paving 50:7 57:4	petre 188:22
133:17 134:20	participants 78:13	pay 21:10,12 97:21	phil 85:6 102:4,8,9
140:24 141:1,2,3,13	80:18 226:18	98:1,3 145:7,11	102:13 108:6 109:1
145:18 171:10	227:17 228:7 249:9	169:25 178:3	philadelphia 1:17
182:6,24 183:1,1,2	249:15 252:16,20	payer 175:6	1:18 8:20 190:2,2
183:23,24 184:2,3,5	253:2 254:20	paying 98:5 203:22	phone 10:1 278:8,13
183:23,24 164:2,3,3	participate 28:9,18	payment 165:3	278:16
197:18 199:9	29:7 45:17,20 54:19	178:11 232:4	phones 8:7
200:23 218:6 220:6	55:18,20,22 56:5	233:14,18	pick 8:5
222:2 224:13,19,20	97:22 98:3,4 167:14	payments 178:8	picked 211:17
232:5,6,19,20	167:23 168:4,9	pays 177:19	229:18 232:23
233:17 246:14	169:5,16 184:21	pdfs 271:7	picture 253:23
252:14 256:11	185:22 189:7,13	pearson 118:19	257:5
262:23,23 264:3	participated 52:20	119:1	piece 32:18 174:17
266:16 283:15	53:19 58:20 190:23	penalty 292:1	pieces 175:3
289:1,18 290:7,9	194:12	pending 57:10	piloting 250:2
pages 1:25 91:13,19	participates 185:18	166:11	piping 136:11,16
91:20 161:7 176:11	participating 6:1	penn 1:18	137:14 138:2,19
181:25 184:19	51:4 53:9 55:5	pennsylvania 1:19	141:20 144:9
185:9 187:11 211:4	167:15 217:20	2:5 8:21	149:17,22 150:2
211:18 259:5 289:4	264:2,7 277:8	people 27:15 45:17	place 8:8 270:9
289:14	participation 3:10	54:15 55:12 92:5	291:5
paid 51:14,14	34:18,23 35:11	125:1 132:7 140:12	placed 269:13
172:14	39:10,14,18 40:1,23	209:8,12 225:15	placing 271:6
1,211	50:16,18 52:23 73:4	230:22 231:8	
	50.10,10 52.25 15.T	250.22 251.0	

[plaintiff's - produced]

plaintiff's 245:6		85:14 86:3 91:5	206:21
plaintiffs 1:8 2:3	231:6,15,19 236:14 237:4,15 238:19	93:13,22 99:8,13	printed 253:21,21
68:22 121:23	239:2 254:3,23	106:4,9,15 108:7	281:4
171:19 173:12	256:14 257:22	109:3,10,15 114:17	printouts 181:22
196:2	258:16,18,21,25	114:23 116:22	prior 23:8,12 24:5
plan 251:3	259:21 263:1	119:8 123:13	24:18 25:8 26:11
please 8:4,7 10:22	265:24 269:24	124:11 125:3,7	29:8 40:22 41:14
12:3,21 13:10 50:10	279:9 289:20 290:1	143:21 161:19	42:4,7 58:6 59:13
63:3 72:14 109:19	poor 273:18	206:23 207:1 231:2	61:13,17,23 70:12
109:21,24 120:7	portion 232:3	231:11 258:21	70:15,19,20 71:4
133:3 156:21,23	portions 146:6	262:14	87:11 94:12 101:9
158:6 175:25	230:3,7 232:24	prepare 90:16 91:9	101:14 107:20,21
176:22 183:1	289:24	92:4 115:11 116:5	117:19 118:7,17
184:20 187:10	posed 241:20	prepared 13:14 90:9	119:14 120:2,12,15
210:5 218:12	position 44:23 45:2	111:10,16 112:3	120:23 121:2,9
258:14 263:17	49:16 170:11 190:3	125:24 251:11,21	126:5 150:15,19
264:25 266:14	190:7,10	284:23	160:1,11 161:11
283:21	possess 73:7,7	prepares 217:10	224:10 270:23
plus 131:5 152:12	176:18,19	preparing 90:3	private 8:6 208:4
180:11,13 266:2	possible 81:8 155:8	present 9:8 81:20	privilege 158:24
point 12:2 13:9 22:5	187:13 199:5 232:1	94:10 103:10	privileged 47:10
61:20 252:13 257:8	possibly 78:19 80:23	presentation 102:1	probably 23:3 50:5
pointed 289:17	199:13 221:10	presentations 95:16	67:2 96:24 101:11
points 240:17	227:8 228:19	95:24 96:9 100:11	118:22 138:21
policy 3:12,14,15,17	230:12 235:17	100:13,17,19	170:5,6 212:3 235:1
3:17,19,20 5:15	251:23 261:4	presented 191:12,13	252:23 256:24
	potentially 95:18	191:18	proceed 9:14
60:3,10,15 61:7,12	110:25 112:19	president 2:17	process 16:14,15
61:16,23 62:2,8	114:13 189:2	14:12 85:1,3,4,6,10	17:15,18 26:23
64:6,7,16,17,20	247:14	99:12 102:4 106:14	81:17 97:23 98:10
	practice 15:17 158:8	117:12,18 118:4,6	104:11 142:11
-	practices 15:5	118:16,21,25 119:4	151:9 179:6,7
	preamble 35:18	126:15 127:12,20	186:19 230:24
	preceding 161:5	132:14	237:25 262:3,19
1 1 1	precise 256:25	pretty 94:7	270:20 275:25
-	precisely 26:7	prevent 13:21,25	processed 196:12,20
76:14 77:1,21 78:5	128:13	previous 41:19 80:8	196:23 197:4,19
1	precision 269:1	96:3 117:17 120:5	199:10 234:9,19
115:24 119:14	273:3,4,6,7,17,19,25	145:21 146:1	processes 236:25
	predecessor 127:2	151:24 152:5 153:1	processing 197:13
121:2,8 176:22	128:3,19,23 134:1	187:12 205:2,4	produce 269:1,2
	preexisting 152:7	233:8,11	produced 33:23
	preparation 67:16	previously 15:15	34:3 35:7 64:14
220:22 221:8 222:4	67:21 68:1,4 69:17	33:7 82:7,24 92:6	66:3 68:22 92:16
223:23,24 224:17	71:5 83:21 84:10,18	105:5 152:11	122:14 123:7 164:5

[produced - read]

171:19,24 173:12	protection 1:4	publications 85:4	163:8,11 166:10,20
188:7 196:2 201:19	protective 245:7	99:12 126:16	179:9 180:3 182:5
204:10 205:19	provide 22:24 30:24	127:13,20 132:8,14	185:3 198:13,18,23
210:11 211:19	31:19 47:12 50:1	138:22 139:18	200:12 202:3
229:13 232:17	89:9,11 99:22 101:7	140:4,16 261:6	204:20 206:12
233:3 236:7 240:1	105:10,17 174:23	publicly 155:23	209:17,19 217:2
243:23 244:24	178:10 186:11,15	published 29:16	220:17,19 223:19
245:16 253:18	193:25 194:7	139:9 148:18,19,21	228:1 231:10
255:19 258:13	207:23,25 268:5,19	149:2 150:14	235:15 237:20,23
260:11 261:21	268:20 269:11,16	152:11 159:18	241:8,14 242:2
277:16 279:2 282:5	270:2 281:12	161:11 275:15	243:4 271:11,18,19
producer 56:10,14	283:21	276:2,9	280:9 284:13,17
producing 271:7	provided 27:3,9	purchase 159:25	286:19 287:4,9
product 46:3 162:6	52:4 95:15 100:4	264:5	288:2,24
162:7,19	105:13,20 120:6	purely 242:25	questioned 95:10
production 7:9	129:12 133:6 136:3	purported 213:24	questioning 12:23
227:16 228:2	142:17 143:24	purports 168:13	12:24 13:1
232:25	146:4,22 148:12	purpose 38:4 43:8	questions 7:17
products 141:6	150:18 158:20	43:19 74:11,16 75:4	11:12,14 34:6 52:15
189:5	187:13,20 188:11	75:8,12 94:16,25	58:1 90:4,10,13
program 207:19,21	211:3,5 266:1 285:2	223:15 240:20	92:18 97:10,12,16
210:8 268:8,22	provides 269:8	267:2	97:17 121:11 137:6
programs 78:22	providing 11:13	pursuant 291:4	162:24 198:14
projects 247:25	37:13 49:15 55:12	put 187:11 213:14	241:20 242:10,23
248:5	provision 177:3	214:15 256:16	248:25 249:20
proper 269:10	psc 1:3 10:6	269:10 270:21,25	288:6,10,16 290:12
property 3:12,14,16	pscc 183:4	271:20	290:13
3:19 58:9,12,17	public 1:22 145:3,10	putting 104:25	quite 57:7
60:3,10,15 61:6,12	162:10,18,22,25	130:5 276:8	r
61:16,23 62:2,8	291:4,15	q	r 2:1,16 63:4 89:16
64:6,16,19 65:15,20	public.resource	qualify 259:1	175:15,16 188:22
66:7,9,19 67:20,25	33:23 34:4 123:8	quality 158:9	291:1
68:10,14 69:3,5,13	133:7 142:17	question 12:3,4,6	ramifications 95:18
70:4,11,16,20 71:4	143:25 144:1	13:5 35:22 41:19	randomly 265:2
71:9,20,21 73:11,22	150:18 158:21	47:14 52:7 57:10	range 17:10 289:1
76:14 77:1 78:5	161:20 226:16	58:6 59:13 72:18	raymond 202:13,25
91:16,24 92:2	public.resource.org	75:21 76:1 80:5,15	203:12
109:18,20 110:2,5	1:10 2:9,19 3:22 9:1	83:8 105:16 110:16	rd&e 183:6
110:13 113:4,22	10:20 88:8,17 89:8	113:20 125:11	read 66:15 74:8
115:8,12,24 119:13	89:18 221:9	128:20 129:2 131:6	115:16 116:1
120:2,11,15,22	public.resource.org.	132:9 134:16 136:6	159:11,14 177:2,3
121:2,8 219:2,10,19	9:18 10:2 122:4	143:9 154:1,7	179:11 180:1 181:3
219:22 220:8,11,22	publication 110:7	157:25 159:1,12	198:22 219:1,6,17
221:8 222:4 224:16	160:18 270:21,24	161:23,25 162:3	220:7 231:10
256:14	271:1,20	,	-

[read - remember]

232:18 240:3 261:4	257:16 283:2	referencing 107:2	136:3 137:7,8 141:1
262:9 263:6 278:9	recognize 35:25	237:4 239:1	141:6,11,12,25
280:1,8	64:18 66:4 68:23	referred 78:25	142:11 145:19,22
reading 10:8 72:7	88:19 113:2,20	81:25 97:18 100:10	145:23 146:2,2,3,14
79:1 256:13 278:12	121:24 122:15	referring 49:23	146:22 147:4 152:5
reads 146:8	126:10 171:21	50:11 80:11 91:19	157:7,9 158:8,11
ready 52:15	182:1,9 187:19	96:3 98:20 100:20	160:19 161:6 164:8
real 96:24	240:5 244:2 255:21	102:23 103:16	179:5,7
realize 13:8	recognizes 110:3	205:5,7 209:4,13	registrations 125:16
really 81:7 85:25	219:16	213:20,23,24	125:25 126:20
87:16 95:10 113:16	recollect 40:12	214:15,25 215:23	127:8 142:16 143:8
135:14 142:12	recollection 94:13	240:15 259:4 272:3	143:24 150:19
161:1 182:4 193:16	106:24 107:18	refers 281:20	157:19 158:20
193:22 197:12	191:13 282:10	reflect 44:16 53:6	159:22 160:3,6,13
reason 12:21 13:21	recollections 57:24	130:14,25 131:12	161:5,8,19 163:14
13:24 43:7,17	record 5:15 8:3,12	130:14,23 131:12	regulation 209:10
162:20 163:13	10:23 12:12,18	reflected 52:22	regulations 5:25
171:23 172:22	57:15,21 61:4,22	refresh 282:9	266:8,17,19 267:3,8
171.23 172.22	75:3 87:24 88:4	refrigerating 1:6	267:11,17,18 268:6
231:17 240:7,11	89:3,7 109:23	refusal 286:15	regulatory 259:12
244:4,7,11 262:17	115:19 135:16,19	refuse 163:10	reiterating 105:5
reasons 44:17 45:17	135:24 137:10	286:18 288:11	relate 52:1 167:7,9
46:6,9 163:4,23	138:23 142:24	refused 89:11 237:3	241:6 286:4 289:25
164:3,7,14	159:4,9,15 162:17	refusing 288:1	related 1:11 78:22
recall 43:13 70:17	172:4 195:13,18	regarding 29:20	104:22 137:6 189:3
79:16 80:9 87:18	239:5,8,11,16	41:9 42:23 72:3	276:22 289:19
92:22 95:10 100:16		73:16 76:18 84:17	relates 52:2 110:1
101:4,13 106:2	257:11,14,19,21	111:22 112:10	
107:14 115:3	258:15,17,21,25 282:21,25 283:5	113:13 114:5	286:6,14 287:2,7,19 relation 117:21
116:14 124:3 126:7	288:7,15 291:9	132:16 242:10	relations 225:25
214:18,19 255:7	recorded 101:18	regardless 37:18	230:23
289:16	291:7	regards 179:9	relationship 64:21
recalled 119:24	_, _,	region 190:1	relative 58:3 85:17
120:19	recording 8:10 records 259:8,9,9,10	registered 146:13	94:4,8,10 99:19
receive 43:9 165:11	259:11,14,14,15,15	158:18,21 160:21	120:10
188:2,6 221:7 240:8	259:16 260:1	167:4	release 149:3
244:8 245:13	redirect 290:15	registering 103:6	released 148:15
received 221:19	redline 65:14	registering 103.0	relevant 143:8
226:16 231:20	refer 50:24	25:16,19 28:1 81:16	189:2,13 198:6,17
246:2	reference 81:10	91:13,19 102:20	247:4 261:10
receives 39:10	referenced 116:12	122:7 123:3,7,11,18	270:10
230:23 234:22	146:21 209:9 269:3	123:24 124:4,8,13	remediation 193:3
recess 12:14 57:17	references 219:15	126:4 129:5,16	193:12
88:1 135:21 159:6	236:14	130:5,17 131:3,15	remember 11:7 40:7
195:15 239:13	230.17	130:3,17 131:3,13	40:10,17 79:18
173.13 237.13		132.2,17 133.0	10.10,17 /7.10

[remember - role]

07.16.104.04.107.1	05 2 07 20 112 10	10.0.200.7	12.15.67.7
87:16 104:24 105:1	95:3 97:20 113:19	reserve 10:8 288:5	review 13:15 67:7
214:22 234:10	134:17 140:10,13	reshuffle 150:6	67:15,19 92:7
remembered 120:18	147:8 202:23	reside 115:15 116:9	109:21 129:4
remotely 9:9	206:25	resolved 143:17,18	236:22 244:12
remove 231:18	report 208:11	resources 286:24	258:20 262:13
renew 261:25 278:7	reporter 9:11 11:20	287:15	289:3
278:13,15	159:14	respect 41:12 45:11	reviewed 67:17,25
renewal 4:4 5:3,5	reports 78:23 208:1	117:1,4 120:8	68:4 69:17 91:11,24
25:14,15 27:22	208:17 269:2	170:11 246:22	92:1,10,14,23 93:7
81:21 91:12,18 93:2	represent 9:11	respective 212:1	93:13 258:23
94:11 102:18	123:5 133:4 168:19	247:8	reviewing 70:9
104:15 167:1 172:7	representation	respects 89:5	109:24,25 278:11
172:15 173:5,15,18	252:17	respond 35:19,21	revised 71:9 147:14
175:7 176:1,5,25	representative	45:11 72:4 158:25	153:20 154:5
177:10,12,22,23	168:24,25 169:1	159:12	revision 20:17 25:24
178:19 179:10,13	representatives	response 57:25	65:1 98:23 147:17
179:24 180:4,21	189:12	responses 11:24	148:6,8,11 154:5,19
212:14,16,25	representing 8:14	responsible 90:3	155:3 268:15
213:10,14 214:16	9:12 169:20	268:23	272:18
222:14 230:4,6,7	reproducibility	responsive 29:23	revisions 73:21 74:8
231:19 232:3	273:8,20,23	31:18 42:25 47:11	151:19 152:20,23
233:13,15,18,19	request 7:9 82:22	48:1 204:23	153:14,18 186:22
234:13,15,22 236:1	219:5 221:19	rest 233:19	194:2
236:10,12,23 237:2	245:20 280:12,16	restate 75:3 153:9	rides 158:10
237:25 238:4,9,17	280:18	result 94:18 148:8	right 36:15 46:10
254:17 262:2,3,14	requested 78:12	resulted 153:19	65:4 74:7 93:5
262:19,25 289:12	79:10 80:17 89:8,12	resulting 43:12,15	115:22 135:7,15
290:5	89:21	95:22	141:13 160:20
renewals 226:17	requests 81:18	results 273:14,15,17	183:23 196:10
227:16 228:7	221:7,22	273:24	197:17 198:17
renewing 84:14	require 37:8 75:21	retain 39:9	199:8 203:3 215:11
103:7 178:21	177:20 202:3	retention 5:15	215:19 250:10,16
179:15 180:7	204:20 222:24	257:21 258:15,17	255:9 282:20 288:6
218:24	required 25:1 28:7	258:21,25 259:13	rights 25:2,6 26:2
reorganization	28:17 29:6 36:16,22	retreat 240:14,17,19	31:21 35:14 36:10
272:11	37:19 38:10 177:1	240:21	47:3 78:17 80:22
reorganize 270:12	177:11	retroactively 79:24	81:19 110:5 198:4
repeat 19:4 58:24	requirements	return 207:25 230:5	rios 1:20
105:16 166:20	242:16	230:7	road 50:7 57:4
271:17	requires 47:7	returned 39:15,20	robert 126:8,11,13
repeatability 273:8	163:20 164:11	40:2 231:3,8,13	132:19,20 133:17
273:11,19	206:9,12 218:19	237:17	robin 268:23
repeated 199:4	219:23 237:20	returning 78:11	role 127:10,15,18,24
rephrase 44:25	research 78:23	79:8 80:15 109:17	235:20
47:16 70:8 74:22	183:5 269:2	145:17 152:3	

[rolled - side]

rolled 23:9,13	238:16 240:16	screenshots 5:19,20	seen 88:22 95:25
room 9:8	250:16 252:14	261:14,24 262:7	96:8 116:11 206:20
rossi 1:20 9:12	256:16,17,23	263:9,18 264:6	208:16 265:16
roughly 23:3,7 63:8	258:15 259:8	289:14 290:6	select 264:4
118:13 192:1	260:12 265:5,17	seal 291:11	selected 264:6,9
207:22	266:16 279:5,25	search 145:4,11	265:2
round 268:23	282:13 289:1,2	searchable 144:22	sell 95:12,22 96:23
rpr 1:21	scope 47:20 48:25	144:24	164:19
rule 3:23 88:9,18	51:17,23 56:12 57:1	second 11:7 77:2	selling 43:15
283:8	130:20 131:17	114:25 140:24	sells 96:18
rules 11:11 242:22	132:4 136:20,23	159:1 188:20	send 230:4
245:23	138:11 139:16,22	189:11 193:15	sends 230:6
running 273:12	140:8,19 141:22	222:7 226:22	senior 87:4
ryan 2:20 8:13	142:19,25 143:13	233:17 252:14	sense 12:8 22:15
S	144:4,13,20 145:14	262:23 289:18	sensitive 8:5
	146:16,25 150:22	section 72:11,15,21	sent 34:7 234:14
s 2:1,16,16 3:7	151:4 165:7,17	76:12 77:8 78:12	244:9,13
safety 277:2	166:4 171:1 172:2	79:8 80:16 109:19	sentence 73:11 79:2
sales 199:22,25	172:17 173:25	109:23 110:1 116:2	separate 160:3,6
200:4 235:6,14,23 san 2:13	174:14,25 175:9,18	129:25 130:7,11,16	164:14 181:22
san 2:13 sarah 188:21	183:13 184:14,24	131:2,14 132:1,16	separately 35:20
saran 188.21 saved 277:19	192:7,16 193:1,20	133:8,8 145:20	separates 159:20
saved 277:19 saw 122:20 123:9	194:23 197:10,21	146:7 152:5 156:24	165:3
saw 122:20 123:9 saying 23:22 29:2	199:12 203:7,16	157:3 233:18	serve 18:19
38:4 103:23 104:3	208:6 209:16	234:15 238:23,25	serves 223:14
117:17 119:18	221:17 226:25	259:11 260:1	service 46:4 199:14
120:18 134:3,10,25	227:22 228:12	269:23 270:1	199:17 265:20
155:16 167:8	230:10 231:23	sections 270:10	276:7 282:8
270:13	233:22 237:6	see 19:7 33:8 34:19	services 189:5
says 37:17 60:18,21	240:23 245:18	72:20 73:1,9 74:7	serving 281:21
60:25 61:7 65:9	246:20 248:10	76:7 80:16 123:16	set 108:8,19 254:20
66:14,16 69:21,24	249:6,19 251:7,17	133:9,16 141:2,7,10	seven 118:13 247:11
69:25 78:12,20	252:10 253:5 259:3	176:22 177:7,14	share 41:11 87:17
80:16 110:1,3 133:8	259:23 260:18	182:25 183:2,7,19	113:14 114:6
133:11 143:1	261:2 267:6 286:3	184:3,8 188:18	short 52:10 57:8
145:21,22,23 146:1	287:13	200:18 201:7 202:8	258:7 282:21
152:6,7,8,10 156:24	scratch 134:3	202:19 204:25	shorthand 291:7
157:1,5,10 160:16	137:24	210:15 218:8	show 53:19 200:6
174:2 176:14	screen 102:19	243:24 245:10	264:6 278:6
188:21,22 189:1,9	262:25	247:19 254:10	showing 65:14
189:12 196:11,23	screens 91:12,12,18	264:8 273:14	177:2
201:21 202:25	91:18 93:3 102:17	288:24	shown 123:23
210:7 219:16 220:6	102:18,20 103:21	seeking 76:24	shows 172:24
220:12 236:9	104:9 105:1	226:19 227:18	side 173:18
		228:8	

[sign - standards]

sign 110:8 166:1	12:20 13:20 14:3	185:3 235:13	spontaneously
167:10 177:11,22	57:23 88:15 90:2,16	268:10	54:16
178:2,4,12	136:1 240:2 242:9	specifically 93:12	spring 240:19,21
signature 133:19	243:21 245:10,15	115:5 150:3 170:16	staff 26:17 63:22
177:15	246:1 258:1,11	186:8 243:6 248:4	82:15 83:11,12,20
signed 39:9,15,19	290:20 292:12	specification 15:16	84:5 87:4 94:16
40:2 115:14 116:8	society 1:2,6,15 3:23	specifications 15:4	105:2,4 217:9
significance 87:17	8:24 88:10,18 130:6	specifics 39:8 79:21	225:14 249:25
237:15	133:10 134:11	197:13	267:16,20 268:1,13
significant 32:14	135:10 134.11	speculation 19:19	stages 154:25
152:2	software 78:23	20:24 22:12 33:11	stages 134.23 stamp 196:9 197:3
significantly 276:1,5	soldier 183:6	33:25 39:1,22 47:24	197:17 199:8
signing 10:8	sole 43:8,19 94:16	49:5 54:23 62:17	standard 15:13
silence 286:15	solutions 8:14 9:13	66:25 70:24 75:20	17:24 18:2,3,4,7
similar 20:22 202:9	somebody 9:22 33:3	77:12,23 78:7	19:22 20:6,16,17
222:13 254:6,9,15	121:6 146:20	110:23 112:17	21:16 22:8,9 25:24
simply 42:2 82:16 163:3 232:20 245:1	178:10 199:13 236:11,22 253:7	114:11 117:10,23 118:12 129:18	25:25 27:5 28:10,19 29:8 30:7 32:15,22
245:5	sorry 10:3 67:9 83:8	130:19 131:17	32:25 33:5 36:7,24
single 158:11,19	91:14 92:20 117:16	130:19 131:17	37:14,21 38:7,12
159:24,25 211:4	156:20 157:14,15	140:21 146:24	40:20 43:9,16,20
234:15			46:2 48:9 54:17
site 5:19 103:20	166:13,20 174:8 185:14 193:18	150:22 157:21	80:1 81:2 83:3
104:2 108:10,19	214:6 266:4 272:8	160:24 161:14 170:3 171:1 172:17	94:18,19 95:1 97:22
156:5 171:5,7 193:4	sound 13:2	170.3 171.1 172.17	98:9 105:15,22
193:13 219:4	source 111:24	173.25 174.14,25	112:3,6 136:9
253:24 254:11	space 21:22	177:23 178:13	137:22 141:4,18
257:2,5 261:13,24	spanish 205:25	192:17 203:7,16	142:4,14 145:1
262:4,20 277:20	206:10,18	221:4,16 225:12	146:11 147:13
281:4,11	speak 75:16 83:19	226:24 227:22	148:6 149:9,10
sitting 54:1	84:4,16 85:13 86:20	228:13 230:11	151:8,18 154:3,5,19
situation 56:15	102:9 143:22	231:24 233:23	155:3 158:8,11,16
situation 30.13	206:18 231:1,11	237:7 246:10	158:19 160:15,21
79:16 80:9 116:15	265:14	251:17 252:9 253:5	164:5 186:21 191:7
151:11	speaking 170:16	spell 63:2 175:23	191:16,19 192:11
six 118:5 273:20,24	speaks 76:9 219:12	spelled 175:14	192:14,23 194:1
288:13,13	219:15 263:4	spend 249:4	269:3 270:13,20
size 150:8	279:11	spent 109:14	271:2 272:17,19
skipped 115:17	special 110:11 125:5	spoke 96:11 101:5	276:23 277:1,5
slides 101:25 102:1	specific 15:8 24:20	108:6 119:7 125:2,7	280:13,17
slightly 222:18	39:4 50:1,6,23 53:5	212:9	standardization
288:25	53:17 56:3 84:13,20	spoken 206:24	280:3
smaller 16:22	84:21 92:25 97:7	spontaneous 55:3	standards 6:8,8,9
smith 1:16 3:3 9:6	100:12,13,17 101:7	55:11	14:21,22,24,25 15:7
10:11,24,25 11:3,10	116:18 149:15		15:20 16:3,13 17:21
- ,, 1110,10			

[standards - take]

22.14.24.4.22.27.16	standnaint 102.10	282:18	50:22 51:10 53:2
23:14 24:4,22 27:16	standpoint 103:19 stands 207:15		
29:15 33:8,9 39:5		subcommittees 17:5	55:25 58:14 61:21
41:2 43:12 44:19	stapled 265:2	17:7	61:25 62:5 66:21
45:4,5,18,21 46:14	start 91:21 255:4	subject 29:21 41:9	74:6 80:4 101:16,24
49:12 54:4 56:6	started 10:7 25:7	42:11,23 44:9 45:9	104:5 107:18 108:2
58:21 71:23 78:20	126:1 156:5 160:12	46:20 49:7 72:3	119:19 123:20
78:21 79:24 95:13	215:4 257:25	73:17 76:18 100:5	132:22 134:15,19
95:15,22 96:18,23	starting 16:17 24:25	100:18 101:14	136:5 142:11,12
98:14,21,24 103:11	211:6	111:22 114:5 243:6	146:18 153:24
103:12 109:20	starts 18:9 213:25	245:22 246:23	160:9 161:16 170:5
110:2,13 113:3,4,21	232:18	subjects 84:17	172:20 181:12
113:22 117:1,5,21	state 10:22 120:13	submit 31:6 110:6	185:1,5 190:1
122:3 136:2,10,14	142:24 151:17	159:21 207:7	191:21 196:21
136:16 137:12,14	162:16 172:14	263:21	200:2,5 208:8,15
137:21 138:1,2,17	stated 119:12	submitting 37:17	209:22 215:2,25
138:18 141:19	160:19 253:25	subscription 145:8	225:24 244:14
143:7,25 144:9	statement 37:18	145:12	245:14 251:13
147:2 149:4,8,14,16	96:3 104:10 105:11	subsections 109:22	252:3 255:7 256:22
149:22 150:1,11,15	105:18 153:2,17	subsequent 73:22	257:3 259:19
151:1,12 152:9,15	239:3 252:13	76:12 79:23 83:17	260:20 262:7
152:17,20,23 153:3	273:10,23	subsidizes 115:9	270:22 275:8 277:5
153:3,14,18,19,20	statements 96:5	116:3	279:25 284:25
153:21 154:11,24	269:1 273:3,4,6,7,8	successfully 148:5	288:23
155:4 156:4 158:22	274:1	successive 154:11	sven 189:22 190:6
159:19,23,24	states 1:1 9:3 115:8	suffice 89:24	190:16 193:25
160:13 161:10	116:2 281:18	sufficient 89:20	195:5
164:9,18 169:18	staying 258:5	suggesting 141:24	swear 9:13
176:20 178:23	steel 136:11,16	142:2	sworn 10:12 291:5
179:17 180:9	137:14 138:2,19	suing 144:1	system 155:15
184:21 185:10,24	141:6,20 144:9	suite 1:18 8:20	156:12,15,16 197:5
186:5 189:3 191:1,4	149:17,22 150:2	summarize 168:13	197:19 198:19
194:1,8 207:23,24	step 108:5	summary 189:2	199:10 250:7,8
208:1,2,10,11,23	stipulations 7:13	supervision 291:8	t
209:2,4 226:18,20	street 1:17 2:12 8:20	support 7:1 44:23	t 2:16 3:7 188:22
227:17,19 228:7,10	strike 163:18 207:9	45:2 95:23 164:19	291:1,1
247:3 267:9,19	strongly 142:24	164:25 169:13	table 43:7,18
268:16 269:6,13	student 264:11	202:15 203:1	tag 281:14,17
271:22 274:1 275:7	studies 268:24	suppose 178:16	282:10,14,18
275:11,12,21	study 268:7,22	203:18 230:22	take 12:22 13:1
276:14 279:17,18	style 268:6 269:11	supposed 197:24	32:23 43:14 52:10
280:1,5,22	269:24 270:3,11	242:18	52:15 57:9,11
standardsdevelop	276:16,18	sure 15:10,23,24	132:24 187:10
281:5	subcommittee 16:17	19:3 34:15,19 39:12	194:15 195:9
standing 291:4	16:20,21 17:16	40:3 41:24 44:12	252:14 258:6
	191:14 280:19,19	46:8 47:13 49:9	232.17 230.0
		I	

[take - time]

2(2.10.270.0.10	102.22.217.21.24	4-4 :6	171.0 172.0 102.22
263:19 270:8,18	193:23 217:21,24	testifying 89:1,4	171:9 172:8 182:23
272:16 273:13	223:16 225:19	testimony 11:15	187:16 188:5 193:2
274:10 282:21	249:9,25 252:16,21	13:22 14:1 51:19	198:16 208:15
286:14 287:2	253:3 254:20	59:22 77:13 119:17	221:25 225:14,15
taken 8:21 11:1	263:22,23 264:1	129:20 147:19	225:17 227:13
12:14 57:17 88:1	266:9,17,20 267:3,7	153:7 168:12 206:8	232:1 241:14 255:8
135:21 159:6	267:12,17,21 268:2	265:13 272:5 275:2	256:9 258:8 262:18
195:15 239:13	268:14 270:22	288:14 291:4,6,9	277:3 278:18
257:16 283:2 291:4	272:10,13 276:10	testing 1:3,15 3:24	284:25
talk 101:2 158:24	281:18,21 282:19	8:24 88:10,19 130:6	thinking 54:10,11
talked 79:17 80:10	285:24 286:9,12,25	133:10 134:12	93:5 120:14 172:23
84:23 102:16,22	287:15	135:2 141:5	250:10
103:3 115:4 166:25	technically 152:1	text 152:11,12,14,19	third 234:15
167:2 202:10 231:7	technology 22:18	157:2,8 219:9,21	thomas 2:17 85:1
254:16	85:7 102:5 103:19	220:10,21	93:22 94:2,21 95:4
talking 34:9 197:25	156:17,19 250:2,5	thank 290:16	95:15 96:1,4,5,11
214:10 240:16	274:12	thanks 290:17	96:17 97:3,9 99:2
242:19 249:5	telecon 2:19	thereof 291:10	100:11,13 101:2,5
task 18:9,10,14,17	tell 34:20 36:2 65:3	thing 21:13 40:16	101:13 109:1 119:2
18:19,21 19:1,9,12	74:10 100:12	150:5 179:25 223:4	119:3 120:9,9,13
19:17,25 20:4,10,13	102:13 104:21	223:9,14 232:1	121:1 251:18,21
20:21 21:7,7,15	107:12,15 108:16	273:21	252:5
22:7,20 23:1,14	109:24 128:14,22	things 58:24 59:3	thought 70:18 107:6
24:5,20 27:4,15	130:3,9 173:13	267:21 268:9	119:24 149:1 215:6
28:16 29:5,12 30:3	184:20 196:3	269:21	three 51:20 60:17
31:11 32:3,6,10	204:10 205:20	think 13:25 21:1,13	70:3 159:10 185:9
36:17,23 37:20,23	230:1 233:6 236:7	26:4 27:14 30:20	197:24 239:11
38:10 40:25 55:21	238:14 253:22	33:17 34:8 38:3	240:25 241:12,15
55:23 192:10,13,19	261:7 264:25	46:9 47:5,7 48:1	242:19 243:9
tax 259:13	266:15 282:5 291:5	51:17 53:15,18 55:3	246:22 247:5 249:3
tc 282:14	telling 128:25	55:11 56:15 59:7,11	time 8:16 9:7 12:10
team 86:14 109:5	142:14	59:24 61:20 63:18	12:16 31:3 38:19
124:23 269:2	temporary 259:9	67:3 69:15 78:8	44:1 50:6 54:12
technical 5:25 14:12	ten 1:18 155:5,13,14	91:2 93:2 95:8 97:6	57:8,13,19 59:25
14:15,18,20 15:19	249:4	97:11,12,15 100:14	63:25 87:5,22 88:3
15:22 16:1,12,24	tenure 87:12	101:25 105:3,23	91:10 105:3 109:14
17:2 30:25 49:25	term 15:7	107:17,18 108:2,2	132:8,9,14,24
78:22 98:21 110:6	terminology 15:6,18	112:19 115:2 119:2	135:17,23 154:19
111:9,15 115:12	terms 59:8 113:5,23	121:3,25 122:20	155:3,13,14 159:2,8
116:6 117:12,18	256:15 270:5,16	124:24 126:1,2	160:5 192:2 195:11
118:4,7,10,17,21,25	test 15:4,16 273:5	127:17 130:1	195:17 213:16
119:4 151:5 166:8	273:10,12,12,14	136:23 139:12	214:17 235:1 239:9
166:16 167:14	274:2,3	144:21 147:1	239:15 244:9,13
168:4,9,20,24 169:6	testified 10:12	154:23 158:23	257:12,18 258:9
169:16 170:12		167:19 169:11,12	260:18 269:18
118:4,7,10,17,21,25 119:4 151:5 166:8 166:16 167:14 168:4,9,20,24 169:6	test 15:4,16 273:5 273:10,12,12,14 274:2,3	127:17 130:1 136:23 139:12 144:21 147:1 154:23 158:23	195:17 213:16 214:17 235:1 239:9 239:15 244:9,13 257:12,18 258:9

[time - vague]

282:23 283:4	topic 51:25 89:15	224:13,19 283:15	understands 77:17
290:18 291:5	121:5 143:1 209:20	288:21 289:9	understood 12:7
times 273:13	249:5 283:9,15	turned 33:9 248:21	105:8
title 34:13 136:9	284:17 286:4,6,14	turning 145:18	unfortunately
137:1 143:2 247:7	287:2,19,21	tweaking 270:2	182:23
titled 35:10 61:6	topics 51:18,21 89:5	twice 115:18	unified 250:7
64:15 181:21 246:7	89:10,21,22 90:4,10	two 16:16 60:17	united 1:1 9:3
253:19	90:13,17 197:24	71:10 88:5 157:18	281:18
titles 92:22	209:18 240:25	159:4 181:22	units 276:23,25
today 8:15 10:21	241:13 242:19,25	184:19 288:15	unrelated 163:24
11:15,16 13:22 14:1	243:1,9 245:5	tx 141:7,11 146:3,13	update 274:12,18
22:8 30:2 34:8 43:4	246:22 247:5	type 217:18 264:4	use 16:14 21:21
51:19 58:2 67:16,21	248:18 249:3 287:6	types 259:8,11,25	22:17,25 31:21
68:1,5 69:18 71:6	torn 233:19	290:6	33:21 37:21 40:8,13
81:25 83:22 84:11	tough 263:6	typically 16:21 18:9	54:20 207:11 208:1
84:19 85:15 86:4	training 78:24	18:18 51:13 153:2	208:15,19 217:12
89:1 90:17 91:1,6	transcribed 291:7	166:1 169:25	224:24 229:17
91:21 92:4 93:14,23	transcript 13:14	u	265:1 267:11,15
99:3,8,14 106:5,10	transcription 291:8	u 175:14,15	271:7 274:12
106:15 108:7 109:4	transfer 78:16 79:12	u.s. 111:11 112:4	276:22,25
109:11,15 114:17	80:21 200:23	113:7,25 170:20	usepa 185:17
114:24 116:22	transferred 41:3,20	183:2,3,4,5,6,16,20	user 56:11,18,24
119:9 124:12 125:8	42:6 73:5 176:17		57:6 274:13
138:7 143:22	transformed 276:1	184:8,11,20 185:8	uses 208:10
138:7 143:22 182:16 197:25	transformed 276:1 translation 206:9	ue's 189:3	uses 208:10 utilizing 208:23
		ue's 189:3 uh 99:15 156:20	
182:16 197:25	translation 206:9	ue's 189:3 uh 99:15 156:20 understand 11:14	utilizing 208:23
182:16 197:25 206:24 207:2 231:2	translation 206:9 treasurer 84:24	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18	utilizing 208:23 209:2,8 v
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5	translation 206:9 treasurer 84:24 true 106:16 291:8	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4	utilizing 208:23 209:2,8 v v 8:25 72:11,15,21
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12	utilizing 208:23 209:2,8 v v 8:25 72:11,15,21 78:12 79:8 80:16
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16	utilizing 208:23 209:2,8 v v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4 66:14 69:25 141:12	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2 tuesday 90:20,22	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12 94:15,24 95:5 96:19	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24 72:17 73:24 77:22
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4 66:14 69:25 141:12 145:21 160:20	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2 tuesday 90:20,22 91:7 93:24,25,25	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12 94:15,24 95:5 96:19 96:25 105:6,12,19	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24 72:17 73:24 77:22 79:14 82:18 83:23
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4 66:14 69:25 141:12 145:21 160:20 189:12 210:7	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2 tuesday 90:20,22 91:7 93:24,25,25 96:12,17 97:4,10	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12 94:15,24 95:5 96:19 96:25 105:6,12,19 129:1 134:5,21	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24 72:17 73:24 77:22 79:14 82:18 83:23 84:8 90:18 97:5
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4 66:14 69:25 141:12 145:21 160:20 189:12 210:7 218:23 220:5 224:8	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2 tuesday 90:20,22 91:7 93:24,25,25 96:12,17 97:4,10 99:4	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12 94:15,24 95:5 96:19 96:25 105:6,12,19 129:1 134:5,21 159:17 164:17	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24 72:17 73:24 77:22 79:14 82:18 83:23 84:8 90:18 97:5 98:12 100:8 103:17
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4 66:14 69:25 141:12 145:21 160:20 189:12 210:7 218:23 220:5 224:8 240:15 250:17	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2 tuesday 90:20,22 91:7 93:24,25,25 96:12,17 97:4,10 99:4 turn 8:7 109:19	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12 94:15,24 95:5 96:19 96:25 105:6,12,19 129:1 134:5,21 159:17 164:17 178:20 179:14	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24 72:17 73:24 77:22 79:14 82:18 83:23 84:8 90:18 97:5 98:12 100:8 103:17 113:9 114:1 123:19
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4 66:14 69:25 141:12 145:21 160:20 189:12 210:7 218:23 220:5 224:8 240:15 250:17 252:13 256:23	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2 tuesday 90:20,22 91:7 93:24,25,25 96:12,17 97:4,10 99:4 turn 8:7 109:19 133:3 156:21 158:6	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12 94:15,24 95:5 96:19 96:25 105:6,12,19 129:1 134:5,21 159:17 164:17 178:20 179:14 180:6 207:16,18	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24 72:17 73:24 77:22 79:14 82:18 83:23 84:8 90:18 97:5 98:12 100:8 103:17 113:9 114:1 123:19 128:9 145:6,13
182:16 197:25 206:24 207:2 231:2 231:12 245:3 254:5 254:12 258:22 262:15 today's 246:23 told 96:7 125:18,21 127:7 128:11 130:2 tom 9:23 63:12,13 63:16,21,23 64:1 282:7 tool 225:17 tools 22:16,17 top 60:21 61:7 65:4 66:14 69:25 141:12 145:21 160:20 189:12 210:7 218:23 220:5 224:8 240:15 250:17	translation 206:9 treasurer 84:24 true 106:16 291:8 292:3 truth 291:6,6,6 try 12:4 120:21 187:11 207:10 trying 138:16 278:13 tsai 176:4 tubing 136:11,16 137:14 138:3,19 141:20 144:10 149:17,22 150:2 tuesday 90:20,22 91:7 93:24,25,25 96:12,17 97:4,10 99:4 turn 8:7 109:19	ue's 189:3 uh 99:15 156:20 understand 11:14 11:19 12:3 13:18 26:25 47:5,10 78:4 80:5 88:25 90:2,12 105:7 134:16 153:25 177:3 198:10 227:25 understanding 30:13 43:3,4,5 44:3 44:5,16,24 45:3 47:2 48:4,12,13 58:19 74:16 75:8,12 94:15,24 95:5 96:19 96:25 105:6,12,19 129:1 134:5,21 159:17 164:17 178:20 179:14	v 8:25 72:11,15,21 78:12 79:8 80:16 89:16 175:16 vague 11:6 14:9 15:9 16:7 17:19 18:16 23:23 24:12 25:12 28:11 31:3 36:18 37:3 38:1,13 40:15 47:4 50:3,12 55:24 62:4,9 64:24 72:17 73:24 77:22 79:14 82:18 83:23 84:8 90:18 97:5 98:12 100:8 103:17 113:9 114:1 123:19

[vague - witness]

153:7,22 154:13,21	versions 60:14 62:1	volunteer 82:17	95:9 141:1 145:20
155:6,20,25 156:10	67:19,24 70:3	volunteers 16:5,6,10	194:15 242:19
160:7 165:6,16	147:22,25 148:4	18:18 20:16 272:20	web 5:19 22:15,17
166:3 167:18 169:9	156:4 211:21,24	272:25	103:20 104:2 105:1
177:5 178:25	212:21,22 225:6	vote 17:20,22 98:15	108:8,10,17,19
179:20 184:23	226:3,8,12 275:7,9	186:21 194:19	156:5 171:5,7 219:4
185:12,25 186:6,12	versus 22:8 56:25	274:24 275:6,10,19	253:24 254:11
186:17 190:24	72:22 98:10	voted 195:1,6	255:24 256:2,7
191:11,20 192:6	vi 109:19,23,23	votes 98:16	257:2,5 261:13,24
194:10 197:9,20	116:2,17	voting 16:16 17:15	262:3,6,20 277:20
199:11,19 209:6	vice 2:17 14:8,11	17:16 98:22	281:4,11 290:5
214:20 215:10	85:3,4,6,10 99:12	vp 118:9 156:18	weblink 256:16
217:17 222:16	102:4 106:14	vs 1:9	week 90:22 91:3,7,7
225:1 250:14	117:11,17 118:3,6	w	weeks 100:25
251:12 252:7,22	118:16,20,24 119:4	walk 18:6	went 66:19
254:13 260:17	126:15 127:12,19	want 10:7 20:16	west 2:10 9:17 10:19
262:5 267:6,23	269:25	33:4 34:6 43:18	whispering 8:6
268:3,17 271:3,23	video 12:11,17	95:20 107:9 117:14	wish 18:19 164:25
272:6,22 274:7	57:14,20 87:23 88:4	142:23 151:7,15	witness 3:2 7:3 9:6
275:2,13,22 276:19	135:18,24 159:3,9	162:13,23 175:23	9:13 10:9 14:11
286:2	195:12,18 239:10	180:19 198:22	15:10 16:8 17:20
vaguely 40:7	239:16 257:13,19	242:4 249:13 258:1	18:17 19:3,20 20:9
value 249:24	282:24 283:5	264:4 268:11 284:2	20:25 21:10 22:14
varies 17:9 18:8	videographer 2:20	288:23	23:24 24:13,24
20:2 169:11	8:2 12:10,16 57:13	wanted 32:15,23	25:13 28:12 29:24
variety 21:1,17	57:19 87:22 88:3	86:22	30:15,20 31:4,20
268:9	135:17,23 159:2,8	wants 26:22 38:6	33:12 34:1,10 36:19
various 5:1 232:10	195:11,17 239:9,15	washington 2:5	37:4,11 38:3,16
vary 17:11	257:12,18 282:23	waste 258:9	39:2,23 40:16 41:13
veritext 1:17 8:14	283:4 290:18	way 77:25 78:2,9	41:24 42:14 43:2
8:19 9:12	videotape 290:19	81:8 101:18 125:19	44:1,12 45:13,24
versa 269:25	videotaped 1:14	125:22 126:22	46:8,22 47:13 48:4
version 60:13 66:10	viewed 124:4 225:17	127:4 137:23 138:6	48:16 49:9 50:4,13
66:13,18,22 67:5,12	views 169:22	142:13 154:16	51:9 52:8 53:2,14
68:3,9 69:5,8,13,16	violation 242:15	167:15 175:23	53:25 54:10,24 55:9
70:10,15,19 71:3,19	virtual 22:17	178:3 215:7,17	55:25 59:16 62:5,18
73:23 76:13 104:1	visa 203:23	221:11 226:6	64:25 67:1 70:25
115:23 116:1	volume 98:14	230:14 234:12	71:16 72:6 73:18
145:24 147:12,15	137:20 142:5	263:7 280:5,11	74:1 75:14 76:2,21
148:13,14,23 149:3	149:18,20 150:8	ways 21:18,23 22:1	77:4,14,24 78:8
151:25 196:6	159:22 160:2	22:3 110:4 198:3	79:15 80:4 81:7
225:15 254:10	volumes 137:21	280:15	82:11,19 83:24 86:7
256:9,10 257:1	149:15,16 150:6,19	we've 43:12 52:9	89:9,12,14,20,22
262:8 276:2,9	158:22	57:7 58:1 89:17	90:19 91:1 92:15,20
			93:18 96:7 97:6

[witness - zoe]

00.1.10.100.0.10	201 - 202 0 10	100 (101 00	2011
98:1,13 103:2,18	201:7 202:8,19	103:6 104:22	284:4
104:5,18 108:1,13	203:9,18 204:25	115:13 116:7,12,16	year 28:14 38:24
108:22 110:19,24	206:16 208:7,14,22	116:21,24 117:3,20	101:1,9,9,9,10,11,15
111:6,25 112:13,18	209:7,22 210:15	119:9 125:12,12	107:22 146:3,14
112:25 113:16	211:17,21 212:3	133:12,12 134:10	147:11,16 148:8,9
114:8,13 115:2	213:13 214:6,9,21	134:10 135:1,1	148:11,12 149:5,11
117:11,24 118:13	215:11 217:6,18	136:9 137:8 145:24	153:5,21 160:17
119:18 120:17	218:23 219:14,25	145:25 146:13,21	191:24 211:5
122:20 123:1,20	220:5,20 221:5,18	152:6,10 157:5,10	212:23 213:3 215:4
124:16 128:10,17	221:24 222:9,17	162:5,6,19 167:4	216:6,9 225:7 226:4
129:22 130:21	223:3,13 224:7	179:5 190:14 241:6	226:9 230:4
131:8,20 132:6	225:2,13 227:3,7,13	247:11,12 267:13	years 23:6 33:14,15
134:15 135:6	227:25 228:15,19	270:22 272:9 274:5	62:3 63:6,24 87:9
136:21 137:17	228:25 230:12,17	276:9 286:8 287:13	118:14,14,22,23
138:5,12,21 139:6	230:21 231:25	worked 132:7	127:25 138:14
139:11,17,23 140:2	233:24 234:3,8,18	working 49:24	153:2 154:22 155:5
140:20 141:23	234:25 235:5,10,17	works 87:3 142:12	155:13,14 161:11
142:21 144:6,14,21	236:18 237:8,12,24	143:5 144:17	211:14,22 212:1
145:1,7,15 146:8,17	238:22 241:19,22	154:16 189:25	213:5,8 247:11
147:1,20 149:13	242:4,5,13 246:11	199:14 247:9,14	274:11 286:1,11,25
150:24 151:5,14	248:13 249:21	283:20,25	287:17
153:9,24 154:15,22	250:15 251:8,13,18	writers 115:10	yep 150:16 222:17
155:7,21 156:2,11	251:23 252:3,8,11	116:4	yesterday 34:8
157:15,22 158:3,14	252:23 253:7	writing 6:8 279:18	86:17 90:19 100:3
159:17 160:8 161:1	254:14 255:1,6	280:1	102:8,10 106:6,11
161:15,24 164:2,17	259:4,24 260:20	written 186:15	106:20,22 108:6,17
165:8,18 166:5	261:3 262:6 263:5	280:2	122:21 123:11
167:19 168:2,15	265:5,16 266:5	wrong 10:5 70:18	124:5 126:6 127:17
169:11 170:4 171:3	267:7,24 268:4,18	184:2	253:21 285:13
172:3,19 173:1	271:4,13,24 272:24	www.astm.org	Z
174:2,8,16 175:2,10	274:8,20 275:4,14	176:23 219:4 281:5	z 181:24
175:22 176:10	275:23 276:20	X	zoe 203:22
177:7,14 178:1,16	279:12 280:10	x 3:1,7	
179:3,23 180:13,15	281:10 286:21	xml 271:6	
180:20 181:11	287:11 288:11		
182:6 183:14,19	290:3,17,22 291:9	<u>y</u>	
184:4,15 185:1,13	291:11	yeah 59:4 82:11	
185:15 186:1,7,13	wondering 142:8	83:10 108:1 119:24	
186:18,24 187:16	word 72:23,24	120:4 125:4 128:8	
188:15 190:25	115:17 271:5	135:6 150:16	
191:12,21 192:9,18	work 14:5,6 25:16	153:12 154:15	
193:2,10,16,18,22	25:19,22,23 26:3,13	161:1 173:20,21	
194:5,11 195:3,8	26:16 28:1 81:16	175:22 198:1 254:7	
197:12 198:25	82:23 83:16,17	271:16 272:15	
199:3,13,20 200:18	91:12,18 102:19	280:18 283:14	

Commonwealth of Pennsylvania Rules of Civil

Procedure

Title 231, Chapter 4000

Depositions and Discovery

Rule 4017

(c) When the testimony is fully transcribed a copy of the deposition with the original signature page shall be submitted to the witness for inspection and signing and shall be read to or by the witness and shall be signed by the witness, unless the inspection, reading and signing are waived by the witness and by all parties who attended the taking of the deposition, or the witness is ill or cannot be found or refuses to sign. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the person before whom it was taken with a statement of the reasons given by the witness for making the changes. If the deposition is not signed by the witness within thirty days of its submission to the witness, the person before whom the deposition was taken shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the refusal to sign together with the reason, if Case 1:13-cv-01215-TSC Document 204-46 Filed 11/13/19 Page 114 of 114

any, given therefor; and the deposition may then be used as fully as though signed, unless the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1,

2014. PLEASE REFER TO THE APPLICABLE STATE RULES

OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 1 of 106

EXHIBIT 41

```
UNITED STATES DISTRICT COURT
1
 2
              FOR THE DISTRICT OF COLUMBIA
 3
     AMERICAN SOCIETY FOR
                                    )
     TESTING AND MATERIALS,
4
 5
     d/b/a ASTM INTERNATIONAL; ) Civil Action No.
     NATIONAL FIRE PROTECTION ) 1:13-cv-01215-TSC
 6
     ASSOCIATION, INC.; and
 7
     AMERICAN SOCIETY OF
8
     HEATING, REFRIGERATION AND
 9
     AIR CONDITIONING ENGINEERS,
                  Plaintiffs and
10
     Counter-Defendants,
11
     VS.
12
     PUBLIC.RESOURCE.ORG, INC.,
13
                  Defendant and
     Counter-Plaintiff.
14
15
      VIDEOTAPED 30(b)(6) DEPOSITION OF NATIONAL
16
17
      FIRE PROTECTION ASSOCIATION, INC., BY
      CHRISTIAN DUBAY, before Jeanette N. Maracas,
18
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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Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 3 of 106

1 APPEARANCES: 2	1 (Exhibits continued)	
3 MORGAN, LEWIS & BOCKIUS, LLP	3 No Description Page	
By: J Kevin Fee, Esq	4	
4 1111 Pennsylvania Avenue, NW	Exhibit 1239 ADS011280 128 5	
Washington, DC 20004 5 For ASTM	Exhibit 1240 ADS007361 130	
E-mail: Jkfee@morganlewis com	6	
6	Exhibit 1241 ADS008689 130	
7 MUNGER, TOLLES & OLSON, LLP	Exhibit 1242 ADS023243 to	
By: Thane Rehn, Esq 8 560 Mission Street	8 3244 131	
27th Floor	9 Exhibit 1243 ADS011118 134	
9 San Francisco, California 94105	10 Exhibit 1244 ADS011153 142 11 Exhibit 1245 ADS011232 143	
For NFPA and the Deponent 10 E-mail: Thane rehn@mto com	12 Exhibit 1246 ADS011250 to	
11	1254 143	
FENWICK & WEST, LLP	13 Exhibit 1247 ADS011265 145	
12 By: Andrew P Bridges, Esq	14	
555 California Street 13 San Francisco, California 94104	Exhibit 1248 ADS019171 146	
For Public Resource Org, Inc	15 Exhibit 1240 ADS010166 4-	
14 E-mail: Abridges@fenwick.com	Exhibit 1249 ADS019166 to 16 9167 146	
15	17 Exhibit 1250 ADS019249 to	
Anthony Piccirilli, Videographer 16	9259 147	
17	18 Exhibit 1251 ADS019270 149	
ALSO PRESENT:	19	
18 Sally P Everett, Esq , NFPA 19 Mitch Stolz, Esq , Electronic	Exhibit 1252 ADS020865 150	
Frontier Foundation	20 Exhibit 1253 ADS007551 to	
20 Carl Malamud, Public Resource Org,	21 7560 150	
Inc (via telephone)	22 Exhibit 1254 ADS002334 to	
21 22	2335 151	
23	Exhibit 1255 ADS000090 152	
24	24	
25	25	D 4
Page 2		Page 4
1 INDEX	1 (Exhibits continued)	
2	2	
2 Testimony of: Direct Cross		
2 Testimony of: Direct Cross 3	2 3 No Description Page	
2 Testimony of: Direct Cross	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153	
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Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS Read No Description Page	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to	
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Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use 12 document 93	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038697 to	
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2 Testimony of: Direct Cross 3 Christian Dubay 4 (by Mr Bridges) 9,247 5 (by Mr Rehn) 246 6 E X H I B I T S 7 8 No Description Page 9 Exhibit 1227 NFPA Regulations 10 and Procedures document 48 11 Exhibit 1228 NFPA Terms of Use 12 document 93 13 Exhibit 1229 NFPA Disclaimers document 94 14 Exhibit 1230 NFPA-PR0038497 to 15 8507 95 16 Exhibit 1231 NFPA-PR0038518 to	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038697 to	
2 Testimony of: Direct Cross 3 Christian Dubay 4 (by Mr Bridges) 9,247 5 (by Mr Rehn) 246 6 EXHIBITS 7 No Description Page 9 Exhibit 1227 NFPA Regulations 10 and Procedures document 48 11 Exhibit 1228 NFPA Terms of Use 12 document 93 13 Exhibit 1229 NFPA Disclaimers document 94 14 Exhibit 1230 NFPA-PR0038497 to 15 8507 95 16 Exhibit 1231 NFPA-PR0038518 to 8520 103	2 3 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038697 to 16 8698 171 17 Exhibit 1265 NFPA-PR0039043 185	
2 Testimony of: Direct Cross 3 Christian Dubay 4 (by Mr Bridges) 9,247 5 (by Mr Rehn) 246 6 E X H I B I T S 7 8 No Description Page 9 Exhibit 1227 NFPA Regulations 10 and Procedures document 48 11 Exhibit 1228 NFPA Terms of Use 12 document 93 13 Exhibit 1229 NFPA Disclaimers document 94 14 Exhibit 1230 NFPA-PR0038497 to 15 8507 95 16 Exhibit 1231 NFPA-PR0038518 to	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1265 NFPA-PR0039043 185 15 Exhibit 1266 NFPA-PR0039043 185 18 Exhibit 1266 NFPA-PR0038683 185 18 Exhibit 1266 NFPA-PR0038683 185 19 Exhibit 1267 NFPA-PR0096607 to 6608 187	
2 Testimony of: Direct Cross 3 Christian Dubay 4 (by Mr Bridges) 9,247 5 (by Mr Rehn) 246 6 E X H I B I T S 7 8 No Description Page 9 Exhibit 1227 NFPA Regulations 10 and Procedures document 48 11 Exhibit 1228 NFPA Terms of Use 12 document 93 13 Exhibit 1229 NFPA Disclaimers document 94 14 Exhibit 1230 NFPA-PR0038497 to 15 8507 95 16 Exhibit 1231 NFPA-PR0038518 to 8520 103 17 Exhibit 1232 NFPA-PR0020393 to 18 0402 117	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1265 NFPA-PR0039043 185 Exhibit 1266 NFPA-PR0038683 185 18 Exhibit 1267 NFPA-PR0036607 to 6608 187	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 E X H I B I T S No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94 Exhibit 1230 NFPA-PR0038497 to Exhibit 1231 NFPA-PR0038518 to 8520 103 Exhibit 1232 NFPA-PR0020393 to Exhibit 1232 NFPA-PR0020393 to Exhibit 1233 ADS011129 to 1130 125	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1265 NFPA-PR0039043 185 15 Exhibit 1266 NFPA-PR0039043 185 18 Exhibit 1266 NFPA-PR0038683 185 18 Exhibit 1266 NFPA-PR0038683 185 19 Exhibit 1267 NFPA-PR0096607 to 6608 187	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94 Exhibit 1230 NFPA-PR0038497 to Exhibit 1231 NFPA-PR0038518 to 8520 103 Exhibit 1232 NFPA-PR0020393 to Exhibit 1232 NFPA-PR0020393 to Exhibit 1233 ADS011129 to 1130 125 Exhibit 1234 ADS007008 126	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1265 NFPA-PR0038683 185 18 Exhibit 1266 NFPA-PR0038683 185 19 Exhibit 1267 NFPA-PR0096607 to 6608 187 20 Exhibit 1268 NFPA-PR0048992 191 21 Exhibit 1268 NFPA-PR0048992 191	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94 Exhibit 1230 NFPA-PR0038497 to Exhibit 1231 NFPA-PR0038518 to 8520 103 Exhibit 1232 NFPA-PR0020393 to Exhibit 1233 ADS011129 to 1130 125 Exhibit 1234 ADS007008 126 Exhibit 1234 ADS007008 126 Exhibit 1235 ADS001673 127	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1265 NFPA-PR0039043 185 18 Exhibit 1266 NFPA-PR0038683 185 18 Exhibit 1267 NFPA-PR0038683 185 19 Exhibit 1268 NFPA-PR0096607 to 6608 187 20 Exhibit 1268 NFPA-PR0048992 191 21 Exhibit 1269 NFPA-PR0066821 to 22 6822 192	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94 Exhibit 1230 NFPA-PR0038497 to September 15 8507 Exhibit 1231 NFPA-PR0038518 to 8520 103 Exhibit 1232 NFPA-PR0020393 to Exhibit 1233 ADS011129 to 1130 125 Exhibit 1234 ADS007008 126 Exhibit 1235 ADS001673 127 Exhibit 1235 ADS001673 127 Exhibit 1236 ADS011112 127	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1265 NFPA-PR0038683 185 18 Exhibit 1266 NFPA-PR0038683 185 18 Exhibit 1267 NFPA-PR0038683 185 19 Exhibit 1268 NFPA-PR0048992 191 21 Exhibit 1268 NFPA-PR0048992 191 22 Exhibit 1269 NFPA-PR0066821 to 22 6822 192 23 Exhibit 1270 NFPA-PR0066842 to	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 EXHIBITS No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94 Exhibit 1230 NFPA-PR0038497 to Exhibit 1231 NFPA-PR0038518 to 8520 103 Exhibit 1232 NFPA-PR0020393 to Exhibit 1233 ADS011129 to 1130 125 Exhibit 1234 ADS007008 126 Exhibit 1234 ADS007008 126 Exhibit 1235 ADS001673 127	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1265 NFPA-PR0039043 185 18 Exhibit 1266 NFPA-PR0038683 185 18 Exhibit 1267 NFPA-PR0038683 185 19 Exhibit 1268 NFPA-PR0096607 to 6608 187 20 Exhibit 1268 NFPA-PR0048992 191 21 Exhibit 1269 NFPA-PR0066821 to 22 6822 192	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 E X H I B I T S No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94 Exhibit 1230 NFPA-PR0038497 to Exhibit 1231 NFPA-PR0038518 to 8520 103 Exhibit 1232 NFPA-PR0020393 to Exhibit 1233 ADS011129 to 1130 125 Exhibit 1234 ADS007008 126 Exhibit 1235 ADS011112 to 127 Exhibit 1236 ADS011112 127 Exhibit 1237 ADS0111147 128 Exhibit 1238 ADS011264 128	2 No Description Page 4	
Testimony of: Direct Cross Christian Dubay (by Mr Bridges) 9,247 (by Mr Rehn) 246 E X H I B I T S No Description Page Exhibit 1227 NFPA Regulations and Procedures document 48 Exhibit 1228 NFPA Terms of Use document 93 Exhibit 1229 NFPA Disclaimers document 94 Exhibit 1230 NFPA-PR0038497 to South State	2 No Description Page 4 5 Exhibit 1256 ADS000175 to 0200 153 6 Exhibit 1257 ADS019172 to 7 9173 156 8 Exhibit 1258 ADS020867 to 0868 156 9 Exhibit 1259 ADS024931 to 10 5100 157 11 Exhibit 1260 ADS000089 to 0174 158 12 Exhibit 1261 NFPA-PR0048987 163 13 Exhibit 1262 NFPA-PR0049128 166 14 Exhibit 1263 NFPA-PR0038686 169 15 Exhibit 1264 NFPA-PR0038686 169 15 Exhibit 1267 NFPA-PR0038683 185 18 Exhibit 1266 NFPA-PR0038683 185 19 Exhibit 1267 NFPA-PR0096607 to 6608 187 20 Exhibit 1268 NFPA-PR0048992 191 21 Exhibit 1269 NFPA-PR0066821 to 22 6822 192 23 Exhibit 1270 NFPA-PR0066842 to 6843 195	Page 5

2 (Pages 2 - 5)

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 4 of 106

1			10 DD DD 010 V
	(Exhibits continued)	1	MR. BRIDGES: Yes. 10:01:12
2		2	THE WITNESS: Yes. 10:01:12
,	No Description Page	3	MR. REHN: Yes. 10:01:13
4 5	Exhibit 1271 NFPA-PR0042205 to	4	MR. FEE: Yes. 10:01:13
5	2208 203	5	VIDEOGRAPHER: At this time will 10:01:15
6	Exhibit 1272 NFPA-PR0042201 to	6	counsel and all present identify themselves 10:01:17
7	2202 208	7	for the record, after which our court 10:01:17
8	Exhibit 1273 NFPA-PR0055814 to 5815 222	8	reporter will swear in the witness and we 10:01:18
9	5815 222	9	can proceed. 10:01:19
10	Exhibit 1274 NFPA-PR0068261 to	10	MR. BRIDGES: This is Andrew Bridges 10:01:20
10 11	8262 223 Exhibit 1275 NFPA-PR0092785 224	11	from Fenwick & West, representing the 10:01:23
12	Exhibit 1276 NFPA-PR0050050 to	12	defendant, Public.Resource.org. With me 10:01:26
13	0052 226	13	is Mitch Stoltz from Electronic Frontier 10:01:31
	Exhibit 1277 NFPA-PR0049260 227	14	Foundation, also representing 10:01:32
14	Exhibit 1278 NFPA-PR0049264 228	15	Public.Resource.org. I believe that we 10:01:35
15		16	have listening in only on the telephone 10:01:36
16	Exhibit 1279 NFPA-PR0049521 to 9522 229	17	Carl Malamud of Public.Resource.org. 10:01:39
	Exhibit 1280 NFPA-PR0092773 to	18	MR. MALAMUD: Yes, I'm here. Thank 10:01:43
18	2775 231	19	you. 10:01:45
	Exhibit 1281 NFPA-PR0040625 to	20	MR. REHN: I'm Thane Rehn from 10:01:45
19	0627 232 Exhibit 1282 NFPA-PR0044700 232	21	Munger, Tolles & Olson, representing the 10:01:45
	Exhibit 1283 NFPA-PR0092763 to	22	National Fire Protection Association and the 10:01:49
22	2766 232	23	witness. 10:01:51
23		24	MS. EVERETT: I'm Sally Everett, 10:01:52
24 25		25	general counsel of National Fire Protection 10:01:53
23	Page 6	23	Page 8
1	PROCEEDINGS	1	Association. 10:01:56
2	VIDEOGRAPHER: Good morning. We	2	MR. FEE: Kevin Fee from Morgan 10:01:56
3	are now on the record at 10:00 a.m. on 10:00:18	3	Lewis, on behalf of ASTM International. 10:01:59
4	April 1st, 2015. This is the video-recorded 10:00:21	4	CHRISTIAN DUBAY 10:02:02
5	deposition of Christian Dubay. 10:00:25	5	A witness called for examination
6	My name is Anthony Piccirilli, here 10:00:28	6	by counsel for the Defendant and
7	with our court reporter, Jeanette Maracas. 10:00:30	7	Counter-Plaintiff, having been first duly
8	We are here from Veritext National Deposition 10:00:32	8	sworn, was examined and testified as follows:
9	and Litigation Services. 10:00:35	9	DIRECT EXAMINATION
10	This deposition is being held at 10:00:37	10	BY MR. BRIDGES: 10:02:09
11	G&M Court Reporters in Boston, Massachusetts. 10:00:39	11	Q. Good morning, Mr. Dubay. 10:02:10
12	The caption of this case is American Society 10:00:42	12	A. Good morning. 10:02:11
13	for Testing and Materials versus 10:00:45	13	Q. Have you ever been deposed before? 10:02:12
14		14	A. No. 10:02:13
15	Please note that audio and video 10:00:50	15	Q. Have you ever testified under oath before? 10:02:14
16	recording will take place unless all parties 10:00:51	16	A. No. 10:02:16
17	agree to go off the record. Microphones are 10:00:54	17	Q. Did you have a chance to meet with counsel 10:02:16
18	sensitive and may pick up whispers, private 10:00:56	18	to discuss how a deposition proceeds? 10:02:20
19	conversations and cellular interference. 10:00:58		A. Yes. 10:02:23
		19	
20		20	Q. How long did you spend either meeting with 10:02:23
21	an oath. I am not related to any party in 10:01:02	21	counsel or in other conversations with 10:02:26
22	this action, nor am I financially interested 10:01:05	22	counsel talking about depositions? 10:02:28
23	in the outcome in any way. May I please have 10:01:07	23	A. Approximately about four hours. 10:02:31
24	an agreement by all parties that we can 10:01:09	24	Q. When did you do that? 10:02:32
25	proceed? 10:01:11	25	A. Monday. 10:02:34
	Page 7		Page

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1	Q. Was anyone else present at that meeting? 10:02:34	1	technical questions relating to our codes and 10:05:17
2	A. No. 10:02:38	2	standards. 10:05:20
3	Q. Did they explain to you how a deposition 10:02:38	3	Q. Then what? 10:05:25
4	proceeds and how objections can be made and 10:02:45	4	A. Then I was given responsibility for a library 10:05:25
5	how there may be times for you to receive 10:02:48	5	of smaller documents as a new engineer to 10:05:31
6	instructions from counsel? 10:02:52	6	handle the committee process and the 10:05:35
7	A. Yes. 10:02:54	7	management of our technical committees. 10:05:37
8	Q. Do you have any physical or mental reason 10:02:54	8	Q. What did you mean by a library of smaller 10:05:39
9	why you can't testify accurately and 10:03:03	9	documents? 10:06:04
10	truthfully today? 10:03:06	10	A. As a staff liaison, I was given approximately 10:06:04
11	A. No. 10:03:06	11	on the order of maybe 10 or 12 different 10:06:09
12	Q. Will you please state your full name for 10:03:07	12	standards that I was responsible for with the 10:06:13
13	the record. 10:03:13	13	standards process around those documents. 10:06:17
14	A. Sure. My name is Christian Dubay. 10:03:13	14	Q. Did the 10 or 12 different standards that you 10:06:22
15	Q. What's your home address? 10:03:16	15	were responsible for have a common theme? 10:06:27
16	A. 32 Alvin Circle, Raynham, Massachusetts. 10:03:17	16	A. It was a long time ago, but the best I can 10:06:31
17	Q. What's your work address? 10:03:22	17	recall, yes, mostly around commercial 10:06:34
18	A. One Batterymarch Park, Quincy, Massachusetts. 10:03:23	18	cooking, chimneys, things like that. 10:06:39
19	Q. What is your job at NFPA? 10:03:27	19	Q. How long did you have that role? 10:06:51
20	A. I'm vice president and chief engineer. 10:03:33	20	A. To the best of my recollection, I had that 10:07:06
21	Q. When did you first begin working for NFPA? 10:03:36	21	smaller set of documents for about two to 10:07:09
22	A. 1995. 10:03:42	22	three years and then I took on a larger role, 10:07:12
23	Q. What work did you have before you joined 10:03:44	23	handling a smaller set of standards, but 10:07:16
24	NFPA? 10:03:51	24	larger documents around automatic fire 10:07:19
25	A. I was a college student and a co-op engineer 10:03:51	25	sprinkler systems. 10:07:22
	Page 10		Page 12
1	with the U.S. Navy. 10:03:54	1	Q. What were those documents? 10:07:26
1 2	with the U.S. Navy. 10:03:54 Q. Please take me through your college 10:03:58	1 2	Q. What were those documents? 10:07:26 A. Specifically NFPA 13, NFPA 13R, 13E, some of 10:07:31
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2	Q. Please take me through your college 10:03:58	2	A. Specifically NFPA 13, NFPA 13R, 13E, some of 10:07:31
2	Q. Please take me through your college 10:03:58 education. 10:04:02	2 3	A. Specifically NFPA 13, NFPA 13R, 13E, some of 10:07:31 them. There's a few more. 10:07:42
2 3 4	Q. Please take me through your college 10:03:58 education. 10:04:02 A. I have a Bachelor's degree in fire protection 10:04:02	2 3 4	A. Specifically NFPA 13, NFPA 13R, 13E, some of 10:07:31 them. There's a few more. 10:07:42 Q. That group had a common theme of sprinkler 10:07:47
2 3 4 5	Q. Please take me through your college 10:03:58 education. 10:04:02 A. I have a Bachelor's degree in fire protection 10:04:02 engineering with a co-op distinction due to 10:04:05	2 3 4 5	A. Specifically NFPA 13, NFPA 13R, 13E, some of 10:07:31 them. There's a few more. 10:07:42 Q. That group had a common theme of sprinkler 10:07:47 systems? 10:07:50
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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	Q. How do codes and standards improve safety 10:11:01	1	varies. 10:15:04
2	and reduce loss? 10:11:03	1	
		1 2	O What are some examples of groups to which you 10:15:00
3		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	A. Codes and standards are designed part of 10:11:05 them is to learn from losses, learn from 10:11:13	3 4	make these presentations? 10:15:08 A. For example, if there's an emerging technical 10:15:09
4 5	A. Codes and standards are designed part of 10:11:05 them is to learn from losses, learn from 10:11:13 incidents as such to ensure what protection 10:11:17	3 4 5	make these presentations? 10:15:08 A. For example, if there's an emerging technical 10:15:09 topic of safety or concern to the 10:15:13
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Codes and standards are designed part of 10:11:05 them is to learn from losses, learn from 10:11:13 incidents as such to ensure what protection 10:11:17 needs to be in place to account for that. 10:11:20 That's one of the ways. 10:11:23 Q. How else do codes and standards improve 10:11:27 safety and reduce losses? 10:11:30 MR. REHN: I'll just object that 10:11:35 these questions are outside the scope of the 10:11:36 topics for which this witness was designated, 10:11:38 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 10:11:48 interested parties which can determine, 10:11:51 through the consensus process, a best minimum 10:11:53 level of safety. 10:11:58 Q. Who determines what the best minimum level 10:12:14 of safety is in that process? 10:12:50	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	make these presentations? 10:15:08 A. For example, if there's an emerging technical 10:15:09 topic of safety or concern to the 10:15:13 association, I may meet with fire marshals or 10:15:16 local safety officials in a given 10:15:19 jurisdiction or state to present what we know 10:15:22 at that time. 10:15:26 Q. To your knowledge, what use do they make of 10:15:30 the information that you present to them? 10:15:42 MR. REHN: Objection as to form. 10:15:45 Calls for speculation. 10:15:47 A. It would really depend on the group. 10:15:49 Q. Let's say fire marshals. 10:15:56 MR. REHN: Same objection. 10:15:58 A. They often utilize that information as 10:16:01 information to make safety decisions within 10:16:05 their various jurisdictions or with the 10:16:07 situations that they're facing. 10:16:11 Q. What kind of safety decisions are you 10:16:12 referring to? 10:16:14
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Codes and standards are designed part of 10:11:05 them is to learn from losses, learn from 10:11:13 incidents as such to ensure what protection 10:11:17 needs to be in place to account for that. 10:11:20 That's one of the ways. 10:11:23 Q. How else do codes and standards improve 10:11:27 safety and reduce losses? 10:11:30 MR. REHN: I'll just object that 10:11:35 these questions are outside the scope of the 10:11:36 topics for which this witness was designated, 10:11:38 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 10:11:48 interested parties which can determine, 10:11:51 through the consensus process, a best minimum 10:11:53 level of safety. 10:11:58 Q. Who determines what the best minimum level 10:12:14 of safety is in that process? 10:12:50 MR. REHN: Objection as to form. 10:12:55	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	make these presentations? 10:15:08 A. For example, if there's an emerging technical 10:15:09 topic of safety or concern to the 10:15:13 association, I may meet with fire marshals or 10:15:16 local safety officials in a given 10:15:19 jurisdiction or state to present what we know 10:15:22 at that time. 10:15:26 Q. To your knowledge, what use do they make of 10:15:30 the information that you present to them? 10:15:42 MR. REHN: Objection as to form. 10:15:45 Calls for speculation. 10:15:47 A. It would really depend on the group. 10:15:49 Q. Let's say fire marshals. 10:15:56 MR. REHN: Same objection. 10:15:58 A. They often utilize that information as 10:16:01 information to make safety decisions within 10:16:05 their various jurisdictions or with the 10:16:07 situations that they're facing. 10:16:11 Q. What kind of safety decisions are you 10:16:12 referring to? 10:16:14 A. It could be, for example, how to understand a 10:16:19

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 7 of 106

1	or new application area. 10:16:37	1	Committee, NPC. 10:19:38
2	Q. When you say a new adoption, what do you 10:16:40	2	Q. What else? 10:19:42
3	mean? 10:16:44	3	A. I'm also co-chair, private sector co-chair of 10:19:44
4	A. For example, if a jurisdiction is looking to 10:16:44	4	the I apologize, I don't recall the exact 10:19:53
5	incorporate, say, residential sprinklers in 10:16:51	5	document, but it's HDSCC, I believe. 10:19:54
6	the jurisdiction, they may want to utilize an 10:16:54	6	Q. What does that stand for? 10:19:59
7	NFPA standard, an installation standard. And 10:16:57	7	A. It's a Homeland Security working group around 10:20:00
8	as part of their regulation, I will spend 10:17:01	8	different issues that the nation is facing 10:20:06
9	time with them explaining the standard, 10:17:03	9	around Homeland Security and Homeland 10:20:11
10	explain the requirements. 10:17:05	10	Security is the best way to describe it. 10:20:16
11	Q. To whom else do you make presentations as 10:17:10	11	Q. What else? 10:20:19
12	NFPA's primary technical spokesman? 10:17:23	12	A. To the best of my recollection, those are the 10:20:20
13	A. Industry groups is another example. 10:17:26	13	only specific ANSI activities that I have. 10:20:26
14	Q. Who else? 10:17:45	14	Q. How much of your time as an NFPA employee is 10:20:32
15	A. Peer standards developers is another example. 10:17:46	15	spent engaged in ANSI-related activities? 10:20:37
16	Q. Sorry? 10:17:53	16	MR. REHN: Objection as to form. 10:20:43
17	A. Peer standards developers, we refer to them 10:17:53	17	Lacks foundation. 10:20:46
18	as SDOs, standards development organizations. 10:17:58	18	A. Maybe ten days per year, approximately. 10:20:47
19	Q. Which ones do you have in mind when you say 10:18:01	19	Q. Is that ten days per year where the days are 10:20:56
20	that? 10:18:03	20	devoted to ANSI-related activities? 10:21:04
21	A. Again, there's a lot of them, so it depends. 10:18:03	21	MR. REHN: Objection as to form. 10:21:06
22	The most common example I would say is 10:18:10	22	A. It depends. Some days may be a one-hour call 10:21:09
23	working with ANSI, the American National 10:18:13	23	or some days may be a full-day meeting. 10:21:13
24	Standards Institute, which brings together a 10:18:16	24	Q. I'm just trying to get clear, you do 10:21:17
25	lot of standards developers. So that's the 10:18:17 Page 18	25	ANSI-related work on only ten days during the 10:21:21 Page 20
	1 age 10		1 age 20
1	best example I can give you of a place where 10:18:19	1	year or ten full days per year with other 10:21:23
2	we chat about standards operations. 10:18:23	2	activities? How do you divide it? How do 10:21:26
3	Q. Is ANSI a peer or an umbrella organization? 10:18:25	3	you mean ten days? 10:21:30
4	MR. REHN: Objection as to form. 10:18:28	4	A. The way I would describe it is approximately, 10:21:31
5	A. ANSI is a federation of membership 10:18:30	5	to the best of my recollection, I'm just 10:21:35
6	organization for standards developers as well 10:18:36	6	thinking now, is only ten days a year. 10:21:36
7	as organizations that are impacted by 10:18:40	7	Not I don't view it as ten full days, but 10:21:40
8	standards. 10:18:42	8	there's probably ten times per year where I'm 10:21:43
9	Q. Does NFPA belong to ANSI? 10:18:45	9	involved in ANSI activities. On a couple of 10:21:45
10	MR. REHN: Objection as to form. 10:18:48	10	occasions, they're full-day activities. 10:21:48
11	Q. Is it a member of ANSI? 10:18:49	11	Q. Does that include any type of activity 10:21:52
12	A. Yes. 10:18:51	12	whether you're sending e-mails to people at 10:21:55
13	Q. Do you have any position within ANSI? 10:18:51	13	ANSI and the like? 10:21:57
14	MR. REHN: Objection as to form. 10:19:01	14	MR. REHN: Objection as to form. 10:21:58
15	Vague and ambiguous. 10:19:02	15	A. Honestly, I don't keep track of each and 10:22:00
16	A. I am a member of a few of their equivalent, 10:19:04	16	every e-mail, so I wouldn't know. When you 10:22:03
17	something like a section. I'm a member of 10:19:11	17	asked me the question, I'm estimating how 10:22:06
18	their executive standards council as an 10:19:13	18	many days that I have I have an ANSI day, 10:22:09
19	example. 10:19:15	19	there's something going on, formal. 10:22:12
1 00	Q. What other memberships or committees or units 10:19:16	20	Q. What are your duties at NFPA as chief 10:22:22
20		21	engineer, apart from being the primary 10:22:46
21	within ANSI do you have? 10:19:21		
21 22	A. I'm also a member of the Organizational 10:19:23	22	technical spokesman? 10:22:48
21 22 23	A. I'm also a member of the Organizational 10:19:23 Member Forum or OMF. 10:19:26	22 23	technical spokesman? 10:22:48 MR. REHN: Objection to form. Asked 10:22:53
21 22 23 24	A. I'm also a member of the Organizational 10:19:23 Member Forum or OMF. 10:19:26 Q. Anything else? 10:19:32	22 23 24	technical spokesman? 10:22:48 MR. REHN: Objection to form. Asked 10:22:53 and answered. 10:22:54
21 22 23	A. I'm also a member of the Organizational 10:19:23 Member Forum or OMF. 10:19:26	22 23	technical spokesman? 10:22:48 MR. REHN: Objection to form. Asked 10:22:53

6 (Pages 18 - 21)

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 8 of 106

1 technical aspects. 10:23:03 1 A. Primarily around the media interviews. 10	
	0:26:12
2 Q. What do you do in your role as chief engineer 10:23:08 2 Q. Any other ways? 10:26:15	
3 internally within NFPA when you're not giving 10:23:18 3 A. The primary, from a public communications	10:26:21
	0:26:32
5 forums? 10:23:27 5 inquiries, media interviews and media 10:	26:37
6 A. The only thing I can think of is acting as 10:23:33 6 responses when I'm requested. 10:26	:40
7 part of the senior management team in 10:23:39 7 Q. How many media interviews have you given	10:26:41
8 day-to-day operations. 10:23:41 8 in the past year? 10:26:48	
9 Q. Do you provide technical input within NFPA? 10:23:47 9 A. I don't know. Approximately ten. 10:2	26:49
10 MR. REHN: Objection as to form. 10:24:03 10 Q. On what subjects? 10:27:02	
11 It's vague. 10:24:06 11 A. I don't recall. 10:27:06	
12 A. I'm not sure I understand the question. 10:24:07 12 Q. You don't recall any of the subjects? 10:24	27:09
13 Q. Do you provide technical information or 10:24:09 13 A. Not off the top of my head, no, I do not. 10	:27:19
14 technical assistance within NFPA as chief 10:24:14 14 Q. You say that NFPA brings together a multitude	10:27:22
15 engineer? 10:24:16 15 of interested parties who participate in a 10:2	28:09
MR. REHN: Same objection. 10:24:19 16 consensus process to determine the best level 1	0:28:15
17 A. Could you clarify your question? To me it's 10:24:19 17 of minimum safety; is that right? 10:28:	:18
18 just not connecting with providing technical 10:24:24 18 MR. REHN: Object to the form. 10:2	28:20
19 information internally. 10:24:27 19 A. NFPA has an open consensus standards	10:28:24
20 Q. Are you a resource for technical information 10:24:28 20 development process that brings together many	10:28:27
21 internally within NFPA in your role as chief 10:24:31 21 differing viewing points of interest, 10:28	:32
22 engineer at NFPA? 10:24:35 22 interest categories as well as the public in 10:2	28:35
23 MR. REHN: Same objection. 10:24:36 23 order to develop our codes and standards. 10):28:39
24 A. Yes, I view myself as a resource. 10:24:37 24 Q. How does NFPA bring them together?	10:28:43
	:28:51
Page 22	Page 24
1 for your engineering expertise? 10:24:44 1 A. One way is through our technical committee	10:28:53
2 MR. REHN: Object to the form. 10:24:48 2 meetings. 10:28:55	
3 A. I would view the senior management team as an 10:24:52 3 Q. How else does NFPA bring them together?	10:29:01
4 example of those that would call upon me. 10:24:59 4 A. Through our annual meeting. 10:24	9:07
5 Q. Who else within the organization calls upon 10:25:01 5 Q. How else? 10:29:10	
6 you for your technical expertise as chief 10:25:04 6 A. Through special, specially called topical 10):29:17
7 engineer? 10:25:08 7 meetings. 10:29:23	
8 MR. REHN: Same objection. 10:25:08 8 Q. How else? 10:29:28	
9 A. The standards codes and standards 10:25:09 9 A. Through technical forums and summits.	
10 0 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	10:29:29
10 operation team, which I'm responsible for. 10:25:15 10 Q. How else? 10:29:40	10:29:29
	29:41
11 Q. Who else? 10:25:18 11 A. That's all I can think of off the top of my 10:	29:41
11 Q. Who else? 10:25:18 11 A. That's all I can think of off the top of my 10: 12 MR. REHN: Same objection. 10:25:21 12 head. 10:29:57 13 A. At times marketing and such like that, things 10:25:27 14 like that. 10:25:35 14 MR. REHN: Object to the form. 10:3	29:41
11 Q. Who else? 10:25:18 11 A. That's all I can think of off the top of my 10: 12 MR. REHN: Same objection. 10:25:21 12 head. 10:29:57 13 A. At times marketing and such like that, things 10:25:27 13 Q. And what does NFPA do to bring them together	29:41 er? 10:29:57
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11 Q. Who else? 10:25:18 11 A. That's all I can think of off the top of my 10:29:57 12 MR. REHN: Same objection. 10:25:21 12 head. 10:29:57 13 A. At times marketing and such like that, things 10:25:27 13 Q. And what does NFPA do to bring them togethe 14 like that. 10:25:35 14 MR. REHN: Object to the form. 10:3 15 Q. Who else? 10:25:37 15 Vague. 10:30:07	29:41 er? 10:29:57 80:05 0:30:10
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11 Q. Who else? 10:25:18 11 A. That's all I can think of off the top of my 10: 12 MR. REHN: Same objection. 10:25:21 12 head. 10:29:57 13 A. At times marketing and such like that, things 10:25:27 13 Q. And what does NFPA do to bring them togethe 14 like that. 10:25:35 14 MR. REHN: Object to the form. 10:30:07 16 MR. REHN: Same objection. 10:25:39 16 A. With respect to our technical committee 17 A. I really can't think of another aspect of 10:25:41 17 meetings, we, through the committee, call the 18 meetings, we, through the committee, call the 19 meetings, we, through the committee, call the 19 meetings, we through the committee, call the 19 meetings, we through the committee, call the 19 meetings.	29:41 er? 10:29:57 30:05 0:30:10 10:30:12
11 Q. Who else? 10:25:18 12 MR. REHN: Same objection. 10:25:21 13 A. At times marketing and such like that, things 10:25:27 14 like that. 10:25:35 15 Q. Who else? 10:25:37 16 MR. REHN: Same objection. 10:25:39 17 A. I really can't think of another aspect of 10:25:41 18 that. 10:25:45 11 A. That's all I can think of off the top of my 10: 12 head. 10:29:57 13 Q. And what does NFPA do to bring them togethen	29:41 er? 10:29:57 30:05 0:30:10 10:30:12
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11 Q. Who else? 10:25:18 12 MR. REHN: Same objection. 10:25:21 13 A. At times marketing and such like that, things 10:25:27 14 like that. 10:25:35 15 Q. Who else? 10:25:37 16 MR. REHN: Same objection. 10:25:39 17 A. I really can't think of another aspect of 10:25:41 18 that. 10:25:45 19 Q. Do outreach public affairs personnel call 10:25:48 20 upon you for your technical expertise? 10:25:56 21 A. Yes, they're part of the senior management 10:25:59 21 MR. REHN: Same objection. 10:30:30 21 A. Yes, they're part of the senior management 10:25:59 21 MR. REHN: Same objection. 10:3	29:41 er? 10:29:57 30:05 0:30:10 10:30:12 0:30:16
11 Q. Who else? 10:25:18 12 MR. REHN: Same objection. 10:25:21 13 A. At times marketing and such like that, things 10:25:27 14 like that. 10:25:35 15 Q. Who else? 10:25:37 16 MR. REHN: Same objection. 10:25:39 17 A. I really can't think of another aspect of 10:25:41 18 that. 10:25:45 19 Q. Do outreach public affairs personnel call 10:25:48 19 Q. Do outreach public affairs personnel call 10:25:56 20 upon you for your technical expertise? 10:25:56 21 A. Yes, they're part of the senior management 10:25:59 22 team. 10:26:05 11 A. That's all I can think of off the top of my 10: 12 head. 10:29:57 13 Q. And what does NFPA do to bring them togethe 14 MR. REHN: Object to the form. 10:3 15 Vague. 10:30:07 16 A. With respect to our technical committee 14 meetings, we, through the committee, call the 14 meeting and book the meeting facility and 16 meeting and book the meeting facility and 16 meeting and book the meeting 10:30:30 21 A. Yes, they're part of the senior management 10:25:59 22 A. To clarify, with respect to committee 10:	29:41 er? 10:29:57 30:05 0:30:10 10:30:12 0:30:16
11 Q. Who else? 10:25:18 12 MR. REHN: Same objection. 10:25:21 13 A. At times marketing and such like that, things 10:25:27 14 like that. 10:25:35 15 Q. Who else? 10:25:37 16 MR. REHN: Same objection. 10:25:39 17 A. I really can't think of another aspect of 10:25:41 18 that. 10:25:45 19 Q. Do outreach public affairs personnel call 10:25:48 19 Q. Do outreach public affairs personnel call 10:25:56 20 upon you for your technical expertise? 10:25:56 21 A. Yes, they're part of the senior management 10:25:59 22 team. 10:26:05 23 MR. REHN: Objection. 10:26:06 24 Q. Yes. 10:30:38 11 A. That's all I can think of off the top of my 10: 12 head. 10:29:57 13 Q. And what does NFPA do to bring them togethe MR. REHN: Object to the form. 10:30:07 14 MR. REHN: Object to the form. 10:30:07 15 Vague. 10:30:07 16 A. With respect to our technical committee 10:10:10:10:10:10:10:10:10:10:10:10:10:1	29:41 er? 10:29:57 30:05 0:30:10 10:30:12 0:30:16

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 9 of 106

1	meetings are open to anyone who wishes to 10:30:44	1	portion of their job is to attend the 10:33:33
2	attend. 10:30:46	2	technical committee meetings. 10:33:36
3	Q. Anything else? 10:30:46	3	Q. What do the liaisons do at those meetings 10:33:39
4	A. No. I think that covers it. 10:30:49	4	when they attend them? 10:33:45
5	Q. What do you mean by call the meeting, NFPA 10:30:55	5	MR. REHN: Object to the form. 10:33:45
6	calls the meeting? 10:31:06	6	A. Their primary responsibility is to capture 10:33:46
7	A. We provide advance public notice when we call 10:31:08	7	all of the technical changes that the 10:33:51
8	the meeting, including on our website, social 10:31:12	8	committee is making to the document they're 10:33:54
9	media announcements to the committee members 10:31:16	9	working on or standard they're working on. 10:33:57
10	to make not only the committee but the public 10:31:20	10	Q. What do you mean by technical changes in that 10:34:02
11	aware of the next meeting date, location, 10:31:22	11	context? 10:34:24
12	et cetera. 10:31:26	12	A. Our technical committees are responsible for 10:34:27
13	Q. How does NFPA book the meeting? 10:31:29	13	developing changes to our codes and 10:34:31
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
16	meetings. 10:31:41	16	liaison is to capture those changes. 10:34:39
	6		1
17 18	Q. Does that mean to arrange the logistics, like 10:31:42	17	Q. In what respect are those changes technical 10:34:46
	the hotels and conferences rooms and things 10:31:47 like that? 10:31:50	18	changes? 10:34:50
19		19	A. Those changes are specific, technical being 10:34:53
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. 10:35:01
22	A. The meetings department is responsible for 10:31:56	22	Q. How do you distinguish between scientific 10:35:08
23	taking care of finding a proper hotel, large 10:32:02	23	changes and wording changes to the technical 10:35:11
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 Page 26	25	MR. REHN: Object to the form. 10:35:18 Page 28
	1 age 20		1 age 26
1	handle all the logistics around that meeting 10:32:09	1	Lacks foundation. Mischaracterizes the 10:35:19
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 10:35:22
4	MR. REHN: Object to the form. 10:32:20	4	changing a specific requirement. A wording 10:35:28
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
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	•	12	Q. Who determines what wording changes are 10:35:48
	So NFPA staff is there, technical 10:32:41		
13		13	appropriate in the technical committees? 10:35:52
13 14	staff is there facilitating and running the 10:32:46		** *
14	staff is there facilitating and running the 10:32:46 meeting along with the actual volunteer 10:32:48	13 14	MR. REHN: Object to the form. 10:35:55
14 15	staff is there facilitating and running the 10:32:46 meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50	13 14 15	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56
14 15 16	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54	13 14 15 16	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58
14 15 16 17	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56	13 14 15 16 17	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02
14 15 16 17 18	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57	13 14 15 16 17 18	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05
14 15 16 17 18 19	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57 the meetings along with the technical 10:33:15	13 14 15 16 17 18 19	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05 technical staff to land on the final wording, 10:36:09
14 15 16 17 18 19 20	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57 the meetings along with the technical 10:33:15 committee chairs? 10:33:17	13 14 15 16 17 18 19 20	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05 technical staff to land on the final wording, 10:36:09 which is ultimately decided by the technical 10:36:13
14 15 16 17 18 19 20 21	staff is there facilitating and running the 10:32:46 meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57 the meetings along with the technical 10:33:15 committee chairs? 10:33:17 A. Again, just to clarify, just focusing on 10:33:20	13 14 15 16 17 18 19 20 21	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05 technical staff to land on the final wording, 10:36:09 which is ultimately decided by the technical 10:36:13 committee. 10:36:15
14 15 16 17 18 19 20 21 22	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57 the meetings along with the technical 10:33:15 committee chairs? 10:33:17 A. Again, just to clarify, just focusing on 10:33:20 technical committee meetings? 10:33:23	13 14 15 16 17 18 19 20 21 22	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05 technical staff to land on the final wording, 10:36:09 which is ultimately decided by the technical 10:36:13 committee. 10:36:15 Q. What criteria do the members of the technical 10:36:23
14 15 16 17 18 19 20 21 22 23	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57 the meetings along with the technical 10:33:15 committee chairs? 10:33:17 A. Again, just to clarify, just focusing on 10:33:20 technical committee meetings? 10:33:23 Q. Yes. 10:33:24	13 14 15 16 17 18 19 20 21 22 23	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05 technical staff to land on the final wording, 10:36:09 which is ultimately decided by the technical 10:36:13 committee. 10:36:15 Q. What criteria do the members of the technical 10:36:23 committee use in choosing the wording of a 10:36:32
14 15 16 17 18 19 20 21 22 23 24	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57 the meetings along with the technical 10:33:15 committee chairs? 10:33:17 A. Again, just to clarify, just focusing on 10:33:20 technical committee meetings? 10:33:23 Q. Yes. 10:33:24 A. Okay. We have a technical staff liaison 10:33:25	13 14 15 16 17 18 19 20 21 22 23 24	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05 technical staff to land on the final wording, 10:36:09 which is ultimately decided by the technical 10:36:13 committee. 10:36:15 Q. What criteria do the members of the technical 10:36:23 committee use in choosing the wording of a 10:36:32 code or standard? 10:36:38
14 15 16 17 18 19 20 21 22 23	staff is there facilitating and running the meeting along with the actual volunteer 10:32:48 technical committee chair. So I think that 10:32:50 should clarify what I'm implying by 10:32:54 "hosting." 10:32:56 Q. How does the NFPA staff facilitate and run 10:32:57 the meetings along with the technical 10:33:15 committee chairs? 10:33:17 A. Again, just to clarify, just focusing on 10:33:20 technical committee meetings? 10:33:23 Q. Yes. 10:33:24	13 14 15 16 17 18 19 20 21 22 23	MR. REHN: Object to the form. 10:35:55 Ambiguous. 10:35:56 A. It's a combination of extensive public review 10:35:58 and comment, the committee's review of that 10:36:02 and their expertise and with the help of our 10:36:05 technical staff to land on the final wording, 10:36:09 which is ultimately decided by the technical 10:36:13 committee. 10:36:15 Q. What criteria do the members of the technical 10:36:23 committee use in choosing the wording of a 10:36:32

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 10 of 106

1	Lacks foundation. 10:36:41	1	development process. A piece of that is, for 10:39:45
2	A. Ultimately those decisions are based upon the 10:36:43	2	example, compliance with our manual of style. 10:39:50
3	technical committee members' expertise and 10:36:47	3	Q. What form does that support take? 10:39:57
4	knowledge within the field. 10:36:50	4	MR. REHN: Object to the form. 10:40:03
5	Q. And when you say that the technical staff 10:37:00	5	A. It takes several forms. First and foremost 10:40:07
6	liaison has a responsibility to capture all 10:37:18	6	is to capture the specific text or record the 10:40:10
7	of the technical changes that the committee 10:37:22	7	specific technical changes that occurred at 10:40:14
8	is making to the document, what do you mean 10:37:26	8	the meeting. 10:40:17
9	by capture? 10:37:28	9	Q. Anything else? 10:40:17
10	A. NFPA has a very robust standards development 10:37:29	10	A. Second is to ensure that the wording is in 10:40:26
11	platform that allows our committees to work 10:37:36	11	compliance with our manual style. 10:40:32
12	on the text within the document. And the 10:37:40	12	Q. Anything else? 10:40:39
13	technical staff captures those changes in the 10:37:43	13	A. Also the technical staff is there to ensure 10:40:40
14	system so that we can then support that staff 10:37:46	14	that the new or modified requirements align 10:40:47
15	with editorial changes and such before 10:37:51	15	with the remainder of the document. 10:40:51
16	publication. 10:37:54	16	Q. Anything else? 10:40:58
17	Q. I still don't understand what you mean by 10:38:00	17	A. They also spend time reviewing those 10:41:05
18	capture in that context. You said that the 10:38:02	18	requirements, the technical staff does, to 10:41:10
19	technical staff captures those changes. What 10:38:07	19	make sure they don't establish conflicting 10:41:12
20	do you mean by capture there? 10:38:12	20	requirements with other portions of that 10:41:14
21	MR. REHN: Object to the form. 10:38:13	21	document or other NFPA standards. 10:41:18
22	A. The committee makes a decision. It is the 10:38:15	22	Q. Anything else? 10:41:21
23	responsibility of the technical staff to not 10:38:18	23	A. Another responsibility is to come back to 10:41:25
24	only just record those changes, but 10:38:22	24	NFPA to their offices and ensure that our 10:41:32
25	understand the technical context that the 10:38:25	25	editorial production team has full knowledge 10:41:34
	Page 30		Page 32
1	committee is trying to accomplish to ensure 10:38:27	1	of those changes as they modify the 10:41:39
2	that when those changes go out for ballot to 10:38:29	2	develop the next edition of the standard. 10:41:43
3	our technical committees, it's accurate. 10:38:32	3	Q. Anything else? 10:41:48
4	Q. That it accurately reflects what the 10:38:35	4	A. There's an extensive amount of back and forth 10:42:08
5	technical committee intended to produce? 10:38:38	5	between the editorial and production staff 10:42:11
6	A. The primary job 10:38:41	6	and the technical staff to finalize the 10:42:14
7	MR. REHN: Object to the form. 10:38:43	7	language prior to balloting. 10:42:18
8	A. The primary job of the technical staff 10:38:44	8	Q. Anything else? 10:42:27
9	liaison is to ensure that any recorded 10:38:46	9	A. Once the language is finalized, the technical 10:42:31
10	actions accurately reflect that intent of the 10:38:48	10	staff works with our project administrators 10:42:37
11	technical committee. 10:38:51	11	to develop a technical committee ballot which 10:42:41
12	MR. REHN: If I can just remind the 10:38:52	12	is then circulated to that technical 10:42:44
13	witness to give me a chance to object after 10:38:53	13	committee. 10:42:44
14	the question is asked. Helps the court 10:38:56	14	Q. Anything else? 10:42:51
15	reporter out if we're not talking over each 10:39:03	15	A. Once the ballot is completed and approved, 10:43:16
16	other. 10:39:06	16	the technical staff, working with the project 10:43:22
17	A. Sorry. 10:39:07	17	administrators, then circulates the ballot of 10:43:23
18	Q. You mentioned some sort of the editorial 10:39:16	18	the proposed changes to that full technical 10:43:27
19	activity in support of the technical 10:39:30	19	committee. 10:43:30
20	committees; is that correct? 10:39:35	20	Q. Do they circulate the proposed ballot or 10:43:39
21	MR. REHN: Object to form. 10:39:35	21	the actual ballot to the full technical 10:43:39
22	Q. You used the word "editorial." I didn't 10:39:36	22	committee? 10:43:39
23	quite understand the context. 10:39:39	23	A. The actual ballot. The actual ballot is 10:44:03
24	A. There's an extensive amount of support that 10:39:41		submitted to the committee for formal voting. 10:44:07
25	NFPA staff provides to our standards 10:39:43	25	Q. Anything else? 10:44:15
L	Page 31	L	Page 33

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1	A. Once the initial ballot is complete, the 10:44:18	1	A. Through our online codes and standards 10:47:46
2	results are then recirculated to the 10:44:21	2	system. 10:47:49
3	committee to ensure to finalize the 10:44:23	3	Q. What happens after the public comment period? 10:47:55
4	results. 10:44:45	4	A. The technical committee meets and reviews 10:48:00
5	Q. When you say the results are recirculated 10:44:45	5	each public comment. 10:48:05
6	to the committee, does that mean the vote 10:44:47	6	Q. Then what happens? 10:48:08
7	tally or the text that was the subject of the 10:44:49	7	A. The technical committee determines if any 10:48:24
8	ballot for vote? 10:44:54	8	excuse me. The technical committee develops 10:48:29
9	MR. REHN: Object to form. 10:44:57	9	responses to each of those public comments. 10:48:31
10	A. Both. 10:45:00	10	Q. Then what happens? 10:48:40
11	Q. So when the initial ballot is complete, the 10:45:00	11	A. The technical committee determines if any 10:48:43
12	technical committee receives a report of the 10:45:03	12	further revisions or changes are required to 10:48:48
13	results and the presumptive final language of 10:45:07	13	address those public comments. 10:48:52
14	the change; is that correct? 10:45:12	14	Q. Then what happens when the technical 10:49:03
15	MR. REHN: Object to the form. 10:45:13	15	committee determines that further changes are 10:49:06
16	A. No. 10:45:17	16	required? 10:49:08
17	Q. How is that incorrect? 10:45:19	17	A. They would develop a second revision. 10:49:11
18	A. The final text is what's being balloted. 10:45:20	18	Q. And what would happen what would happen 10:49:18
19	Q. When you say the results are recirculated to 10:45:28	19	after a second revision? 10:49:22
20	the committee to finalize the results; is 10:45:32	20	MR. REHN: Objection as to form. 10:49:26
21	that what you said? 10:46:06	21	A. The technical staff liaison would then 10:49:28
22	A. Mm-hmm. 10:46:07	22	capture or record that change. 10:49:31
23	O. What does it mean to finalize the results? 10:46:08	23	Q. Then what would happen? 10:49:37
24	A. We have an initial ballot. Our committee 10:46:13	24	**
25	members vote, then we provide another 10:46:16	25	then integrate one or more changes, whatever 10:49:46
	Page 34		Page 36
1	opportunity for the committee members to see 10:46:19	1	was appropriate, into the draft document. 10:49:49
2	all the votes and the reasons the committee 10:46:21	2	Q. And then what happens? 10:49:57
3	voted a certain way to decide if they want to 10:46:24	3	A. The technical staff would then return to NFPA 10:49:59
4	either change their vote or keep their vote 10:46:26	4	and ensure that all of the technical changes 10:50:05
5	the same. 10:46:28	5	were properly captured and in compliance with 10:50:08
6	Q. And with that information is another copy of 10:46:31	6	our manual style. 10:50:12
7	the text that was the subject of the ballot? 10:46:37	7	Q. Then what happens? 10:50:24
8	A. No. 10:46:40	8	A. The technical staff would then work with the 10:50:25
9	Q. They just get the results and the 10:46:43	9	editorial and production team to ensure all 10:50:29
10	descriptions of the votes? 10:46:46	10	of the proposed technical changes are 10:50:34
11	A. Yes. 10:46:47	11	properly recorded and captured within the 10:50:37
12	Q. Then what happens? 10:46:48	12	draft document. 10:50:40
13	A. Once the ballot results are final, a first 10:46:51	13	Q. Then what happens? 10:50:46
14	draft report is published for public comment. 10:46:55	14	A. Once the editorial and production team has 10:50:56
15	Q. Then what happens? 10:47:10	15	finalized their work, the technical staff 10:51:01
16	A. There's a period of open public comment on 10:47:12	16	liaison again reviews all the changes to 10:51:04
17	that document. 10:47:17	17	ensure that they remain an accurate 10:51:06
18	Q. How long does that last? 10:47:19	18	reflection of the intent and the wording that 10:51:09
19	A. It varies, but approximately ten weeks long. 10:47:20	19	the technical committee established. 10:51:12
20	Q. How does the public have access to that 10:47:28	20	Q. Then what happens? 10:51:15
21	comment at the time? 10:47:35	21	A. The technical staff liaison then works with 10:51:23
22	MR. REHN: Objection to form. 10:47:36	22	the project administrators to develop a 10:51:26
23	Q. How does the public have access to the 10:47:37	23	ballot for the technical committee. 10:51:30
24		24	O There does the hellest account of an that 10.51.25
24	proposed changes at that time? 10:47:41	24	Q. Then does the ballot process, after that 10:51:35
25	MR. REHN: Objection as to form. 10:47:44	25	point, follow the same process you described 10:51:37
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Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 12 of 106

1	earlier? 10:51:39	1	of my recollection, the only other motions 10:55:24
2	MR. REHN: Objection as to form. 10:51:40	2	that are available are variations of those 10:55:26
3	A. For the second draft we repeat the same 10:51:43	3	main motions. 10:55:29
4	ballot process. 10:51:46	4	Q. How are the motions how are these various 10:55:34
5	Q. After the same ballot process, is the revised 10:51:47	5	motions you've referred to decided? 10:55:37
6	language again laid open for public comment? 10:51:54	6	MR. REHN: Objection as to form. 10:55:40
7	A. After the second draft meeting and ballot, we 10:52:00	7	A. It's a multistep process which starts with 10:55:42
8	produce a second draft report. 10:52:04	8	someone submitting a NITMAM, again, a notice 10:55:49
9	Q. And what happens with that second draft 10:52:08	9	of intent to make a motion. 10:55:52
10	report? 10:52:12	10	Q. Take me through the rest of the process, 10:55:55
11	A. The second draft report is open for what we 10:52:12	11	please. 10:55:57
12	term as NITMAM's, N I T M A M, apostrophe S. 10:52:16	12	MR. REHN: Objection as to form, 10:55:58
13	Q. What does that mean? 10:52:24	13	vague, compound. 10:56:01
14	A. It's a notice for an intent to make a motion. 10:52:28	14	A. The first part of that process is that a 10:56:02
15	Q. What does that mean? 10:52:38	15	person who wishes to submit a NITMAM would, 10:56:07
16	A. If someone continues to or is not happy with 10:52:39	16	through our online system, fill out a form 10:56:10
17	the results of the process at this point, 10:52:48	17	and say what motion they wish to make. 10:56:13
18	they can file a motion to continue the 10:52:53	18	Q. Keep going. 10:56:16
19	debate. 10:52:55	19	A. The next step is that motion is captured by 10:56:17
20	Q. Who can make such a motion? 10:53:01	20	our standards administration staff. 10:56:24
21	A. It depends on the type of motion they're 10:53:04	21	Q. Is that all? 10:56:32
22	making. 10:53:11	22	A. No. 10:56:34
23	Q. What are the different types of motions? 10:53:12	23	Q. Take me through the whole process, please. 10:56:34
24	A. For example, one example is to overturn a 10:53:17	24	MR. REHN: Objection as to form. 10:56:38
25	change the committee has proposed at the 10:53:23	25	A. The next step is our standard administration 10:56:40
	Page 38		Page 40
1	second draft stage. In that case, anyone can 10:53:25	1	staff provides an initial review to make sure 10:56:46
2	make that motion. 10:53:31	2	the motion is in order. 10:56:48
3	Q. What other types of motions can continue the 10:53:35	3	Q. I've asked you to take me through the whole 10:56:56
4	debate? 10:53:51	4	process. Please continue, and continue until 10:56:59
5	MR. REHN: Objection as to form. 10:53:51	5	the end of the process. 10:57:02
6	A. Another motion is to accept a public comment. 10:53:53	6	MR. REHN: Objection as to form. 10:57:03
7	Q. Who can make that kind of motion? 10:54:00	7	It's compound. 10:57:05
8	A. The submitter of that public comment. 10:54:07	8	A. The next step of the process, after standards 10:57:07
9	Q. What other types of motions can occur after 10:54:13	9	administration review, is to then provide a 10:57:11
10	the second draft report? 10:54:21	10	report to a motions committee of our 10:57:14
11	A. In some cases you can make a motion to return 10:54:24	11	standards council. 10:57:17
1 -		1 -	
12	the entire document. 10:54:28	12	Q. Is that your complete answer to my question? 10:57:22
	the entire document. 10:54:28	12 13	Q. Is that your complete answer to my question? 10:57:22 A. No. 10:57:24
13	the entire document. 10:54:28 Q. Does that mean return the entire document to 10:54:30		A. No. 10:57:24
	the entire document. 10:54:28 Q. Does that mean return the entire document to 10:54:30 the technical committee to start all over 10:54:38	13	A. No. 10:57:24 Q. Please continue your answer till you've 10:57:25
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Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 13 of 106

1	complete process is? 10:58:09	1	there's many, many steps. Each one has 11:00:23
2	A. No. 10:58:10	2	multiple points. 11:00:25
3	Q. My question was please describe the complete 10:58:11	3	Q. Please take me through it. 11:00:28
4	process. 10:58:14	4	MR. REHN: Same objections. 11:00:30
5	MR. REHN: Same objection. 10:58:15	5	Q. Please tell me what the steps are and the 11:00:31
6	Q. Can you please answer my questions. 10:58:16	6	multiple points are in that process and tell 11:00:35
7	MR. REHN: It calls for a narrative 10:58:19	7	me when your answer is complete. 11:00:37
8	answer. It's a compound question. I'm 10:58:21	8	MR. REHN: Same objections. 11:00:38
9	objecting on that basis. 10:58:22	9	Compound question. 11:00:39
10	MR. BRIDGES: You can make that 10:58:22	10	A. For clarification, I'd like you to state 11:00:41
11	objection, but that's not an instruction not 10:58:23	11	where you would like me to start. 11:00:44
12	to answer the question as I've asked. 10:58:25	12	Q. Where you left off. 11:00:45
13	Q. So I'm not sure why you have a hard time 10:58:28	13	A. After the appeal process, if there's none, 11:00:48
14	answering the question I have given you. I'm 10:58:31	14	then that would be the motions committee 11:00:57
15	asking you to lay out the rest of the 10:58:33	15	report, which would be the agenda for our 11:00:59
16	complete process. 10:58:35	16	technical committee session. 11:01:01
17	MR. REHN: Same objections. 10:58:36	17	Q. Tell me when you're answer is complete. 11:01:1-
18	A. The next step of the process after the 10:58:39	18	MR. REHN: Objection as to form. If 11:01:17
19	motions committee reviews it, there is a vote 10:58:42	19	there's a specific question pending 11:01:20
20	of the motions committee to determine what 10:58:44	20	MR. BRIDGES: There is a specific 11:01:25
21	motions are in order or not in order and a 10:58:47	21	question pending. 11:01:25
22	motions committee report is published. 10:58:50	22	MR. REHN: The question is extremely 11:01:25
23	Q. Do you have anything further to say in answer 10:58:54	23	broad. It's calling for a long narrative 11:01:28
24	to the question? 10:58:57	24	answer and it's compound. It's vague. And 11:01:31
25	MR. REHN: Same objection. It's 10:58:58	25	he's answering the question. 11:01:33
	Page 4	2	Page 44
1	vague now, in addition. 10:59:01	1	MR. BRIDGES: Your objections are 11:01:35
2	A. To the point that we have come to in the 10:59:06	2	noted. 11:01:36
3	process, my answer is complete. 10:59:08	3	MR. REHN: Is there a question 11:01:37
4	Q. I'm asking you to tell me about the complete 10:59:09	4	pending? 11:01:38
5	process. For some reason you're resisting 10:59:12	5	MR. BRIDGES: Yes, there is. 11:01:39
6	giving an answer to the question I've made. 10:59:14	6	MR. REHN: I'm not aware of it. 11:01:40
6 7	giving an answer to the question I've made. 10:59:14 I'm asking you for a complete answer to 10:59:17	6 7	A. Can you please restate the question for me. 11:01:44
	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19		A. Can you please restate the question for me. 11:01:44 Q. Please tell me what the steps are and the 11:01:52
7	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19 MR. REHN: Objection as to form. 10:59:21	7	A. Can you please restate the question for me. 11:01:44
7 8	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19	7 8	A. Can you please restate the question for me. 11:01:44 Q. Please tell me what the steps are and the 11:01:52
7 8 9	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19 MR. REHN: Objection as to form. 10:59:21	7 8 9	A. Can you please restate the question for me. 11:01:44 Q. Please tell me what the steps are and the 11:01:52 multiple points that are in that process and 11:02:03 tell me when your answer is complete. 11:02:07 A. Again, for clarification. 11:02:11
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7 8 9 10 11 12 13 14 15	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19 MR. REHN: Objection as to form. 10:59:21 Argumentative, calls for a compound. It's a 10:59:22 compound question, calls for a narrative. 10:59:25 You're now pretty vague about what we're even 10:59:27 talking about. 10:59:30 Q. You may answer. 10:59:33 A. Once the motions committee report is 10:59:37	7 8 9 10 11 12 13 14 15	A. Can you please restate the question for me. 11:01:44 Q. Please tell me what the steps are and the 11:01:52 multiple points that are in that process and 11:02:03 tell me when your answer is complete. 11:02:07 A. Again, for clarification. 11:02:11 MR. REHN: Objection as to form. 11:02:13 It's clearly a compound question, and I 11:02:15 object on that basis in addition to the form 11:02:19 of the question and the other objections that 11:02:23
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19 MR. REHN: Objection as to form. 10:59:21 Argumentative, calls for a compound. It's a 10:59:22 compound question, calls for a narrative. 10:59:25 You're now pretty vague about what we're even 10:59:27 talking about. 10:59:30 Q. You may answer. 10:59:33 A. Once the motions committee report is 10:59:37 published, there is an opportunity for appeal 10:59:40 or challenge of that motions committee 10:59:43 report. 10:59:47 Q. So is your answer now complete? 10:59:50 A. No. 10:59:52 MR. REHN: Objection as to form. 11:00:06	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Can you please restate the question for me. 11:01:44 Q. Please tell me what the steps are and the 11:01:52 multiple points that are in that process and 11:02:03 tell me when your answer is complete. 11:02:07 A. Again, for clarification. 11:02:11 MR. REHN: Objection as to form. 11:02:13 It's clearly a compound question, and I 11:02:15 object on that basis in addition to the form 11:02:19 of the question and the other objections that 11:02:23 we've noted. 11:02:27 A. Again, for clarification, you picked one 11:02:29 point in our process and my answer is not 11:02:34 complete. If you have a specific question 11:02:40 related to our process, I'd be happy to 11:02:41 answer that. 11:02:45 Q. I want you to complete describing the process 11:02:45
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19 MR. REHN: Objection as to form. 10:59:21 Argumentative, calls for a compound. It's a 10:59:22 compound question, calls for a narrative. 10:59:25 You're now pretty vague about what we're even 10:59:27 talking about. 10:59:30 Q. You may answer. 10:59:33 A. Once the motions committee report is 10:59:37 published, there is an opportunity for appeal 10:59:40 or challenge of that motions committee 10:59:43 report. 10:59:47 Q. So is your answer now complete? 10:59:50 A. No. 10:59:52 Q. Tell me when your answer is complete, please. 10:59:52 MR. REHN: Objection as to form. 11:00:06 Argumentative. It's a compound question. 11:00:07	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. Can you please restate the question for me. 11:01:44 Q. Please tell me what the steps are and the 11:01:52 multiple points that are in that process and 11:02:03 tell me when your answer is complete. 11:02:07 A. Again, for clarification. 11:02:11 MR. REHN: Objection as to form. 11:02:13 It's clearly a compound question, and I 11:02:15 object on that basis in addition to the form 11:02:19 of the question and the other objections that 11:02:23 we've noted. 11:02:27 A. Again, for clarification, you picked one 11:02:29 point in our process and my answer is not 11:02:34 complete. If you have a specific question 11:02:40 related to our process, I'd be happy to 11:02:41 answer that. 11:02:45 Q. I want you to complete describing the process 11:02:45 that I asked you about. I asked you to take 11:02:48
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	I'm asking you for a complete answer to 10:59:17 describe the entire process. 10:59:19 MR. REHN: Objection as to form. 10:59:21 Argumentative, calls for a compound. It's a 10:59:22 compound question, calls for a narrative. 10:59:25 You're now pretty vague about what we're even 10:59:27 talking about. 10:59:30 Q. You may answer. 10:59:33 A. Once the motions committee report is 10:59:37 published, there is an opportunity for appeal 10:59:40 or challenge of that motions committee 10:59:43 report. 10:59:47 Q. So is your answer now complete? 10:59:50 A. No. 10:59:52 Q. Tell me when your answer is complete, please. 10:59:52 MR. REHN: Objection as to form. 11:00:06 Argumentative. It's a compound question. 11:00:07	7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. Can you please restate the question for me. 11:01:44 Q. Please tell me what the steps are and the 11:01:52 multiple points that are in that process and 11:02:03 tell me when your answer is complete. 11:02:07 A. Again, for clarification. 11:02:11 MR. REHN: Objection as to form. 11:02:13 It's clearly a compound question, and I 11:02:15 object on that basis in addition to the form 11:02:19 of the question and the other objections that 11:02:23 we've noted. 11:02:27 A. Again, for clarification, you picked one 11:02:29 point in our process and my answer is not 11:02:34 complete. If you have a specific question 11:02:40 related to our process, I'd be happy to 11:02:41 answer that. 11:02:45 Q. I want you to complete describing the process 11:02:45

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 14 of 106

1	description. 11:02:58	1	all you want. And if he's not answering, 11:04:20
2	MR. REHN: Same objection. 11:03:00	2	the record will show that. We can take a 11:04:22
3	Q. That's a fair question and if you're refusing 11:03:01	3	break. If he wants to look back through the 11:04:23
4	to answer, that's fine. Are you saying 11:03:03	4	transcript and understand what the question 11:04:25
5	you're refusing to answer my question? 11:03:05	5	is, fine. Let's go off the record. 11:04:26
6	MR. REHN: Same objection. 11:03:07	6	MR. REHN: Okay. We can go off the 11:04:29
7	Argumentative. Mischaracterizes what the 11:03:08	7	record. 11:04:31
8	witness has said. And if you have a specific 11:03:12	8	VIDEOGRAPHER: The time is 11:04. 11:04:31
9	question about the process, please ask that 11:03:16	9	We are now off the record. 11:04:33
10	question. 11:03:18	10	(Break taken) 11:04:34
11	MR. BRIDGES: No, I have a general 11:03:18	11	VIDEOGRAPHER: The time is 11:14. 11:14:13
12	question about the process that I'm asking 11:03:20	12	We are now back on the record. 11:14:26
13	him to give me a complete answer to. 11:03:22	13	(Exhibit 1227 marked for 11:14:32
14	Q. So please keep going. 11:03:23	14	identification.) 11:14:32
15	MR. REHN: We registered our 11:03:24	15	BY MR. BRIDGES: 11:14:36
16	objections to that question. 11:03:26	16	Q. Mr. Dubay, I've handed you Exhibit 1227, I 11:14:36
17	MR. BRIDGES: Many times. 11:03:26	17	believe that is. What is that document? 11:14:42
18	MR. REHN: It's vague. It's 11:03:27	18	A. To me it appears to be a portion of our 11:14:45
19	compound. 11:03:28	19	regulations governing committee projects, our 11:14:51
20	MR. BRIDGES: And you've not 11:03:28	20	actual standards directory. 11:14:55
21	instructed him not to answer. 11:03:30	21	Q. You say it's a portion of the regulations? 11:14:57
22	MR. FEE: It's obvious the witness 11:03:31	22	A. I'll correct that slightly, that I believe 11:14:59
23	doesn't understand what you're asking. 11:03:33	23	it's a portion of our directory which 11:15:02
24	MR. BRIDGES: No, he understands 11:03:34	24	includes our regulations. And it appears to 11:15:04
25	what I'm asking. 11:03:35	25	be, to the best of my quick review, a set of 11:15:09
	Page 46		Page 48
1	Q. Please proceed. 11:03:36	1	our current regulations. 11:15:11
2	MR. REHN: Please proceed? Is there 11:03:38	2	Q. This is a complete set of the current 11:15:13
3	a question pending? Can you please ask a 11:03:40	3	regulations, correct? 11:15:15
4	question. 11:03:42	4	A. The best I can tell just flipping through, it 11:15:17
5	MR. BRIDGES: The question is 11:03:42	5	looks complete. 11:15:20
6	pending. 11:03:43	6	Q. These are the regulations that set forth 11:15:21
7	MR. REHN: Can you repeat the 11:03:45	7	the process that we were discussing before 11:15:23
8	question. 11:03:46	8	the break in the deposition; is that correct? 11:15:24
9	MR. BRIDGES: We'll go off the 11:03:46	9	A. Yes. 11:15:27
10	record and then I can repeat it to him and 11:03:48	10	MR. REHN: Objection as to form. 11:15:28
11	let him soak it in as long as he wants, but 11:03:51	11	Q. Do they contain a complete set of the 11:15:29
12	he's wasted so much time in this fashion 11:03:55	12	procedures used in the development of NFPA 11:15:35
13	and you've wasted time with the objections. 11:03:56	13	standards? 11:15:41
14	I'm trying to get a straightforward answer 11:03:58	14	A. Yes, these are our regulations which define 11:15:43
15	about the process. Let's go off the record 11:04:01	15	how our standards process works. 11:15:46
16	and he can 11:04:02	16	Q. And it defines the various entities such as 11:15:48
17	MR. REHN: Andrew, we're not going 11:04:02	17	committees and councils that participate in 11:15:54
18	off the record quite yet. Your points are 11:04:03	18	that process; is that correct? 11:15:57
19	poorly taken. Your question is improper, and 11:04:06		MR. REHN: Objection as to form. 11:16:01
	you're the one wasting time by not asking 11:04:08	20	A. The regulations actually cover our operations 11:16:03
20	you're the one wasting time by not asking 11.04.00		, ,
20 21		21	from our standards council through the 11:16:08
21	specific questions to invoke specific answers 11:04:11		_
	specific questions to invoke specific answers 11:04:11 rather than improper, general, compound and 11:04:14		committees, through the development of the 11:16:10
21 22 23	specific questions to invoke specific answers 11:04:11 rather than improper, general, compound and vague questions. 11:04:16	1 22	committees, through the development of the 11:16:10
21 22 23 24	specific questions to invoke specific answers 11:04:11 rather than improper, general, compound and 11:04:14 vague questions. 11:04:16 MR. BRIDGES: They're not 11:04:16	22 23 24	committees, through the development of the 11:16:10 standards as well as through such things as 11:16:12 tentative interim amendments and formal 11:16:16
21 22 23	specific questions to invoke specific answers 11:04:11 rather than improper, general, compound and 11:04:14 vague questions. 11:04:16 MR. BRIDGES: They're not 11:04:16	22 23 24	committees, through the development of the 11:16:10 standards as well as through such things as 11:16:12

1		1	A. There are, I believe, nine interest 11:20:27
2	standards that the regulations do not cover? 11:16:21	2	categories, including one example is 11:20:31
3	A. Our regulations cover the specific accredited 11:16:27	3	research and testing is an example. Another 11:20:37
4	rules and hence, its regulations. We also 11:16:33	4	example is enforcer, which includes 11:20:40
5	have our committee officers guide which 11:16:35	5	government officials, both, sometimes federal 11:20:44
6	provides guidance to our technical committee 11:16:37	6	but state and local jurisdictions, as well as 11:20:48
7	members as well as our chairs and our manual 11:16:41	7	special expert, which is consultants as an 11:20:52
8	style. 11:16:46	8	example. 11:20:56
9	Q. What other documents govern or regulate the 11:16:46	9	Users, installer maintainers which 11:20:56
10	development of standards within NFPA? 11:17:44	10	are those who install the systems, consumers, 11:21:02
11	A. Off the top of my head I can't think of 11:17:56	11	and that's all I can think of. I'm not sure 11:21:13
12	anything else. 11:17:59	12	if I said it, but consumer is another one 11:21:30
13	Q. Who participates in strike that. 11:18:09	13	that can represent a special have a 11:21:34
14	Who are the members, generally 11:18:17	14	specific slot. Oh, I'm sorry, one other slot 11:21:35
15	speaking, the category of NFPA's technical 11:18:20	15	is labor, is another slot. 11:21:38
16	committees? 11:18:26	16	Q. Thank you. Are all NFPA employees members of 11:21:51
17	A. Just for clarification, the representation or 11:18:29	17	the technical committees? 11:22:16
18	are they members of NFPA? We have 11:18:36	18	MR. REHN: Objection as to form. 11:22:20
19	categories we have interest categories of 11:18:39	19	A. NFPA employees are not cannot be members 11:22:23
20	our committee members. 11:18:43	20	of our technical committees. However, as I 11:22:27
21	Q. Who what persons are entitled to be 11:18:43	21	stated previously, it's important there's 11:22:30
22		22	
23			an important role that NFPA staff plays in 11:22:32 guiding, advising the committee, coordinating 11:22:35
	MR. REHN: Objection as to form. 11:18:51	23	
24	A. Anyone can apply to be a member of an NFPA 11:18:55	24	the activities and providing their technical 11:22:37
25	technical committee, and based upon their 11:18:59 Page 50	25	expertise, especially technical staff liaison 11:22:40 Page 52
1	expertise and their background, they're 11:19:01	1	into this committee process. But they do not 11:22:43
2	evaluated through a process that ultimately 11:19:04	2	have they're not members of the committee, 11:22:46
3	involves standards council appointing them 11:19:07	3	and they do not carry a vote in the decisions 11:22:48
4	to, or not appointing, depending on their 11:19:10	4	of the committees. 11:22:51
5	credentials, to the various technical 11:19:12	5	Q. Who constitutes by category of employment 11:23:01
6	committees. 11:19:14	6	is strike that. 11:23:08
7	Q. So the standards council determines who gains 11:19:17	7	By category of employment, who 11:23:09
8	admission to membership in the technical 11:19:21	8	constitutes the members of the standards 11:23:11
9	committees? 11:19:23	9	council? 11:23:15
10	A. That's correct. 11:19:24	10	MR. REHN: Objection as to form. 11:23:15
11	Q. What criteria does the standards council 11:19:27	11	It's vague. 11:23:17
12	apply in determining who should gain 11:19:35	12	A. I'd like to provide just a quick comment to 11:23:19
13	membership to the technical committees? 11:19:39	13	help you clarify the question from my 11:23:26
14	MR. REHN: Objection as to form. 11:19:42	14	understanding. Oftentimes our council 11:23:27
15	A. It's a multipart criteria. First is 11:19:46	15	members and our committee members are not 11:23:29
16	technical expertise within that subject 11:19:51	16	appointed based upon employment. It's based 11:23:31
17	matter. Second is balance; is the committee 11:19:54	17	
18	an appropriate balance. And third is the 11:20:01	18	Q. Thank you, yes. By interest category 11:23:37
19	ability to participate. 11:20:02	19	strike that. 11:23:43
20	Q. What do you mean by balance? 11:20:06	20	You mentioned interest categories 11:23:44
21	A. By our regulations, NFPA technical committees 11:20:12	21	for technical committee membership, correct? 11:23:47
22	are required to have a balance of interest 11:20:16	22	A. Yes. 11:23:49
23	categories to ensure that no one party or one 11:20:18	23	Q. Do the same interest categories apply for 11:23:49
24	interest category can dominate the process. 11:20:21	24	appointments or election to strike that. 11:23:53
	O What are the interest acts arises 11,20,24	25	How is the standards council strike that. 11:23:58
25	Q. What are the interest categories? 11:20:24 Page 51	25	Page 53

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 16 of 106

1			
1	How are persons chosen to serve on 11:24:06	1	It's ambiguous. 11:26:54
2	the standards council? 11:24:08	2	A. The final decision is accomplished through 11:26:56
3	MR. REHN: Object to the form. 11:24:12	3	that ballot of the technical committee, but 11:26:58
4	A. Because the standards council is the 11:24:15	4	the wording itself is that combination of the 11:27:01
5	overarching body over our entire standards 11:24:18	5	technical staff and the committee working to 11:27:05
6	development process, they are appointed 11:24:21	6	capture the requirement and get it worded 11:27:07
7	through a process that involves the NFPA 11:24:24	7	properly in the right context, in the right 11:27:09
8	president making recommendations to the NFPA 11:24:27	8	order within a document so that when the 11:27:12
9	board of directors. Ultimately the standards 11:24:29	9	final specific words are balloted, the 11:27:14
10	council members are appointed by our board of 11:24:33	10	committee has it in context of the whole 11:27:18
11	directors. 11:24:35	11	standards and they can make that decision, 11:27:20
12	Q. Are any NFPA employees members of the 11:24:40	12	seeing it within the body of the standard. 11:27:22
13	standards council? 11:24:43	13	Q. When the text is balloted, is there any 11:27:24
14	MR. REHN: Objection as to form. 11:24:45	14	indication to the members of the committee 11:27:27
15	A. Specifically, no. However, similar to the 11:24:49	15	what variations have occurred as a 11:27:32
16	technical committees, there is staff assigned 11:24:51	16	consequence of staff input from the text that 11:27:38
17	to support the standards council, their 11:24:55	17	the committee itself was proposing? 11:27:43
18	activities and their decisions. 11:24:58	18	MR. REHN: Objection as to form. 11:27:47
19	Q. I'd like to go back for a moment to the 11:25:11	19	Vague. Lacks foundation. Assumes facts not 11:27:48
20	process after the technical committee has 11:25:19	20	in evidence. 11:27:51
21	decided on changes to a standard. 11:25:26	21	A. There are really two types of changes the 11:27:53
22	And you say that a staff 11:25:31	22	committee is balloted on. One is the a 11:27:57
23	representative, NFPA staff representative 11:25:38	23	plain first revision or second revision, 11:28:01
24	will capture those changes from the technical 11:25:41	24	which may have been edited to comply with our 11:28:04
25	committee, correct? 11:25:44	25	manual style, get the wording right. That is 11:28:07
	Page 54		Page 56
1	MR. REHN: Object to the form. 11:25:48	1	connected directly to the work of the 11:28:09
2	A. The NFPA technical staff that serves as, the 11:25:50	2	committee. The second is a revision that's 11:28:11
3	term we use is a staff liaison to a technical 11:25:54	3	
3			tied to a pure editorial change. 11:28:15
4	committee, they do more than just capture the 11:25:56	3	tied to a pure editorial change. 11:28:15
4 5	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00	3 4 5	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24
4 5 6	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01	3 4 5 6	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28
4 5 6 7	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03	3 4 5 6 7	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31
4 5 6 7 8	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03 only capture or record those changes, but 11:26:06	3 4 5 6 7 8	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31 staff contributed? 11:28:35
4 5 6 7 8 9	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03 only capture or record those changes, but 11:26:06 they provide their expertise to the 11:26:09	3 4 5 6 7 8 9	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31 staff contributed? 11:28:35 MR. REHN: Objection as to form. 11:28:41
4 5 6 7 8 9	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03 only capture or record those changes, but 11:26:06 they provide their expertise to the 11:26:09 committee, their field experience, what they 11:26:11	3 4 5 6 7 8 9	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31 staff contributed? 11:28:35 MR. REHN: Objection as to form. 11:28:41 A. Yes, they all do. All changes are indicated 11:28:44
4 5 6 7 8 9 10	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03 only capture or record those changes, but 11:26:06 they provide their expertise to the 11:26:09 committee, their field experience, what they 11:26:11 have, the information that they're bringing 11:26:14	3 4 5 6 7 8 9 10	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31 staff contributed? 11:28:35 MR. REHN: Objection as to form. 11:28:41 A. Yes, they all do. All changes are indicated 11:28:44 to the technical committees for balloting. 11:28:48
4 5 6 7 8 9 10 11 12	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03 only capture or record those changes, but 11:26:06 they provide their expertise to the 11:26:09 committee, their field experience, what they 11:26:11 have, the information that they're bringing 11:26:14 in through questions on the standards and 11:26:16	3 4 5 6 7 8 9 10 11 12	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31 staff contributed? 11:28:35 MR. REHN: Objection as to form. 11:28:41 A. Yes, they all do. All changes are indicated 11:28:44 to the technical committees for balloting. 11:28:48 And if there is, in the sense of an editorial 11:28:50
4 5 6 7 8 9 10 11 12 13	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03 only capture or record those changes, but 11:26:06 they provide their expertise to the 11:26:09 committee, their field experience, what they 11:26:11 have, the information that they're bringing 11:26:14 in through questions on the standards and 11:26:16 such. 11:26:18	3 4 5 6 7 8 9 10 11 12 13	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31 staff contributed? 11:28:35 MR. REHN: Objection as to form. 11:28:41 A. Yes, they all do. All changes are indicated 11:28:44 to the technical committees for balloting. 11:28:48 And if there is, in the sense of an editorial 11:28:50 revision, it's indicated that this was 11:28:54
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4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	committee, they do more than just capture the 11:25:56 specific wordings. 11:26:00 What they do is they are each 11:26:01 technical experts in their field and they not 11:26:03 only capture or record those changes, but 11:26:06 they provide their expertise to the 11:26:09 committee, their field experience, what they 11:26:11 have, the information that they're bringing 11:26:14 in through questions on the standards and 11:26:16 such. 11:26:18 And they provide that technical 11:26:19 expertise to the committee so the committee 11:26:21 can utilize that, a complete combination with 11:26:24 all the public input or comments, to land on 11:26:27 a final set of proposed language. In 11:26:32 summary, it's more than just recording. 11:26:37 They're not really recording secretaries, per 11:26:39 se. 11:26:43 Q. But who ultimately determines the language of 11:26:43 the technical committee's proposed changes to 11:26:47	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	tied to a pure editorial change. 11:28:15 Q. Do either of these sets of revisions get 11:28:19 identified to technical committee members so 11:28:24 that they can understand what input or 11:28:28 changes, if any, the technical committee 11:28:31 staff contributed? 11:28:35 MR. REHN: Objection as to form. 11:28:41 A. Yes, they all do. All changes are indicated 11:28:44 to the technical committees for balloting. 11:28:48 And if there is, in the sense of an editorial 11:28:50 revision, it's indicated that this was 11:28:54 identified by staff as a potential editorial 11:28:57 revision. The committee can then, in their 11:29:01 voting, decide whether that change moves 11:29:05 forward or not. 11:29:10 Q. Where in the records of the development of 11:29:10 each standard does one find the indications 11:29:12 of those changes? 11:29:17 MR. REHN: Objection to the form. 11:29:25 and/or, depending, the second draft report. 11:29:29

1	Q. Where does one find the first draft report 11:29:36	1	MR. REHN: Same objection. 11:32:34
2	and the second draft report? 11:29:38	2	A. What I can say about when you look at the 11:32:36
3	A. On our document information pages. We call 11:29:40	3	wording of a standard, what's been added or 11:32:39
4	them doc info pages. It's our website. 11:29:46	4	worked on by technical staff is, any changes, 11:32:42
5	Q. Are any of the those changes identified in 11:29:52	5	any text that has been modified in the 11:32:45
6	any publicly available document? 11:30:05	6	document has been worked on by technical 11:32:47
7	A. Our process is completely open to the public. 11:30:14	7	staff, has been modified, been adjusted to 11:32:49
8	All of those changes, documents, reports are 11:30:18	8	fit the form of our manual style as well as 11:32:54
9	publicly available to anyone on our website. 11:30:21	9	to be consistently worded with the technical 11:32:57
10	Q. So I can go find the first draft report and 11:30:25	10	body of the standard. 11:32:59
11	the second draft of any code or standard on 11:30:27	11	So each and every change has been 11:33:01
12	an NFPA's website? 11:30:30	12	clarified or worked on by technical staff to 11:33:06
13	MR. REHN: Object to the form. It's 11:30:34	13	get it ready for committee ballot. So 11:33:09
14	vague as to time. 11:30:37	14	there's an extensive amount of time. The NEC 11:33:11
15	A. I would say provided there is a first or 11:30:40	15	is an excellent example of the NFPA staff get 11:33:15
16	second draft report. Some documents at the 11:30:43	16	it worded correctly and in proper format, 11:33:18
17	stage may not have one. So if there's a 11:30:46	17	style and technical comments to be balloted 11:33:23
18	5		
	•	18	by the technical committee. 11:33:28
19	first or second report, it would be 11:30:51	19	Q. Where can one detect what changes you used 11:33:28
20	available, absolutely. 11:30:53	20	the word "worked on," for example. That's a 11:33:33
21	Q. Are the first or second draft reports 11:30:54	21	little vague in this context. I would like 11:33:36
22	publicly available of the 2008 NEC? 11:30:57	22	to know how one can identify any text 11:33:38
23	MR. REHN: Objection as to form. 11:31:04	23	contributed by technical committee staff 11:33:42
24	A. The 2008 NEC was published under our old, 11:31:07	24	liaison in any NFPA code or standard. 11:33:48
25	excuse me, our old standards development 11:31:14 Page 58	25	MR. REHN: Objection as to form. 11:33:54 Page 60
1	system, so there would not be a first or 11:31:14	1	It's ambiguous. It's compound. 11:33:55
2	second draft report. There would be a report 11:31:17	2	A. Because how can I explain. Because 11:34:03
3	on proposals and a report on comments. 11:31:23	3	ultimately the final text, the changes are 11:34:06
4	Q. Does either of those reports show what 11:31:26	4	balloted by the technical committee, 11:34:10
5	changes in text may have been contributed by 11:31:30) 5	oftentimes the staff's work on that text is 11:34:12
6	technical staff, technical committee 11:31:33	6	contained within the same wording that's 11:34:15
7	liaisons? 11:31:38	7	being balloted, the ultimate wording that's 11:34:17
8	A. All of the changes in our old system were 11:31:41	8	balloted by the committee. 11:34:20
9	contained within the proposals and action on 11:31:45	9	So in our old system, that was 11:34:21
10	proposals and comment and actions on 11:31:48	10	all when you see a change in the document, 11:34:22
11	comments, so, in some cases, they may have 11:31:50	11	you can know, and that's why I had my 11:34:24
12	been called out on the report and in some 11:31:53	12	previous answer, that staff was involved in 11:34:26
13	cases not. 11:31:56	13	that process. 11:34:28
14	Ultimately, all of them had been 11:31:57	14	In the new process that happens with 11:34:30
15	balloted through the technical committees. 11:31:58	15	every revision, every revision staff is 11:34:31
16	Whatever you see in the report on proposals 11:32:01	16	involved in and worked on and more or less 11:34:35
17	are comments that had gone through the 11:32:03	17	touched, modified, cleaned up to get it ready 11:34:37
18	committee process. 11:32:05	18	for balloting. 11:34:40
19	Q. I'm trying to understand how one can 11:32:05	19	There's also an additional level in 11:34:41
20	ascertain what, if any, text in any code or 11:32:08	20	our new process of editorial revisions so 11:34:42
21	standard has been contributed by NFPA 11:32:17	21	that it's clear to the committee that this is 11:34:47
22	technical staff. 11:32:21	22	something that is not directly tied but it is 11:34:48
23	MR. REHN: Objection as to form, and 11:32:26	l	because of another technical change. So it's 11:34:52
24	the compound nature of the question. 11:32:29	24	just slightly different. 11:34:54
25	Q. Please tell me how one can ascertain that. 11:32:31	25	But I can say clearly, if you see a 11:34:56
	Page 59		Page 61
	<u> </u>		<u> </u>

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3 worked on by editorial production, technical 1135:05 4 expertise of the shaff lisisons on that 1135:07 5 project. That's their job. 1135:11 5 0, But I'm not asking about what the technical 1135:14 6 0, But I'm not asking about what the technical or mirror 1135:14 8 worked on language that may have come from 1135:20 9 the 2005 NEC that has survived into the 2008, 1135:22 10 2011, 2014. I'm asking how does not elentify 1135:34 11 2 staff liaison in any code or standard of NEC? 1135:41 12 staff liaison in any code or standard of NEC? 1135:41 13 MR REHN: Objection as to form. 1135:48 14 That's ambiguous. It's compound. 1135:48 15 A. Again, to further try to clarify this is if 1135:52 16 the text was in a previous edition of the 1135:57 17 document and moved forward, it would not 1136:09 19 wherever there is new text added, deleted 1136:04 9 wherever there is new text added, deleted 1136:01 19 wherever there is new text added, deleted 1136:05 10 or modified, there's an indication in the 1136:01 21 staff listion in the constitute meeting as 1136:24 22 shows that text has been modified, worked 1136:32 23 or, whatteer. 1136:18 24 And those words can come from lots 1136:12 25 of places. And the technical staff is 1136:27 27 opposals, comments optibilise input or 1136:32 28 public comments, which is all developed 1136:33 29 public comments, which is all developed 1136:32 30 liliaison or other NFPA staff as opposed to 1136:45 4 public comments of the technical committee members or the 1136:45 5 utilizately to be balloted by the technical 1136:45 6 committee. 1136:65 7 Q. So my question is, when all of these changes 1136:43 7 Q. So my question is, when all of these changes 1136:43 8 are highlighted, how do we know which changes 1136:43 9 reference the material is a submittee members or the 1136:55 10 liliaison or other NFPA staff as opposed to 1136:63 10 liliaison or other NFPA staff as opposed to 1136:64 10 liliaison or other NFPA staff as opposed to 1136:45 11 from the technical committee staff is 1137:17 16 cach and	1	revision to the document or a change, for 11:34:57	1	understanding in the process all goes around 11:37:37
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8	6	Q. But I'm not asking about what the technical 11:35:14	6	extent he lacks competence and draws legal 11:37:50
9	7	staff have worked on because they may have 11:35:16	7	conclusions. 11:37:55
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11	9	the 2005 NEC that has survived into the 2008, 11:35:22	9	comments and proposals may show proposed 11:38:07
13	10	2011, 2014. I'm asking how does one identify 11:35:29	10	language, correct? 11:38:12
13	11	any text contributed by a technical committee 11:35:34	11	MR. REHN: Objection as to form. 11:38:16
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15	13	MR. REHN: Objection as to form. 11:35:45	13	again, is our old system, and in that case, 11:38:22
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23	21	margin or shading, in the case of NEC, that 11:36:11	21	proposals, which is part of our copyright and 11:38:42
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Page 63 Page 65	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	ultimately to be balloted by the technical 11:36:35 committee. 11:36:37 Q. So my question is, when all of these changes 11:36:38 are highlighted, how do we know which changes 11:36:41 came from the technical committee staff 11:36:45 liaison or other NFPA staff as opposed to 11:36:49 from the technical committee members or the 11:36:55 public? 11:36:58 MR. REHN: Same objections as to 11:36:59 the form. It's ambiguous. It's compound. 11:37:01 A. One way to determine that is you could review 11:37:07 each and every of our proposal and comment 11:37:13 forms where the material is submitted and 11:37:17 copyright is signed over to us as NFPA and 11:37:29 our committees act from that. 11:37:22 So you could review each and every 11:37:24 one of those, see what words were submitted, 11:37:28 ultimately compare that to the final balloted 11:37:31	5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. Let me ask you this: Do NFPA staff members 11:39:15 submit forms with their proposed changes 11:39:19 apart from the proposed changes that come 11:39:23 through the technical committee process? 11:39:28 MR. REHN: Objection as to form. 11:39:36 Ambiguous. May call for speculation. 11:39:38 A. NFPA staff are prohibited from submitting 11:39:43 forms, public proposals, comments in the old 11:39:48 system, public input, public comments into 11:39:53 the new system. 11:39:54 Q. Why are they prohibited from doing so? 11:39:57 MR. REHN: Objection as to form. 11:40:01 A. Because the reason NFPA staff are prohibited 11:40:06 from participation at that level of our 11:40:10 process is to ensure that they are acting as 11:40:12 neutral facilitators as well as focusing on 11:40:16 capturing and working with the committee and 11:40:19 using their expertise to accomplish the goals 11:40:21 of the technical committee. 11:40:23 Q. So if you need to identify language that NFPA 11:40:28
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Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 19 of 106

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	O. With the direction of the committee, meaning 11:44:18
22	Q. Is proposing new text? 11:42:04	22	, ,
23		23	with the approval of the committee members? 11:44:29 MR. REHN: Objection as to form. 11:44:31
	1		
24	committee is trying to accomplish. The 11:42:13	24	, and the second
25	technical staff of NFPA are experts in their 11:42:15 Page 66	25	Q. What do you mean by with the direction of the 11:44:36 Page 68
	1 450 00		145000
1	field, and the committee may want to 11:42:20	1	committee? 11:44:38
1 2	field, and the committee may want to 11:42:20 establish a requirement for X and the 11:42:23	2	A. So a committee could want to establish a 11:44:40
	•		A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45
2	establish a requirement for X and the 11:42:23	2	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48
2 3	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24	2 3	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45
2 3 4	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27	2 3 4	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48
2 3 4 5	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29	2 3 4 5	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51
2 3 4 5 6	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30	2 3 4 5 6	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55
2 3 4 5 6 7	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32	2 3 4 5 6 7	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57
2 3 4 5 6 7 8	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33	2 3 4 5 6 7 8	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00
2 3 4 5 6 7 8 9	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35	2 3 4 5 6 7 8 9	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03
2 3 4 5 6 7 8 9	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 accomplish their mission of developing those 11:42:38	2 3 4 5 6 7 8 9 10	A. So a committee could want to establish a 11:44:40 requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 drafting of documents to present to the 11:45:12
2 3 4 5 6 7 8 9 10	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 accomplish their mission of developing those 11:42:38 words that become ultimately the final words 11:42:40	2 3 4 5 6 7 8 9 10 11	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 drafting of documents to present to the 11:45:12 committee to consider. 11:45:14
2 3 4 5 6 7 8 9 10 11 12	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 drafting of documents to present to the 11:45:12 committee to consider. 11:45:14
2 3 4 5 6 7 8 9 10 11 12 13	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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
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2 3 4 5 6 7 8 9 10 11 12 13 14 15	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:48 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 11:45:24 staff's job is to turn that into a ballot and 11:45:28
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:45 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24 make sure it fits to our manual style and 11:45:28 ballot with the technical committee on the 11:45:28 final language. 11:45:31
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:45 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24 make sure it fits to our manual style and 11:45:28 final language. 11:45:31
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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 11:42:55 word, the committee approves it. At the 11:42:58	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. So a committee could want to establish a requirement again for X for something and 11:44:45 they may say, we want the requirement to read 11:44:45 12 and the staff liaison would have to put 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24 make sure it fits to our manual style and 11:45:28 ballot with the technical committee on the 11:45:31 Q. What criteria do technical committees use 11:45:31 to determine what text moves forward to a 11:45:34
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. So a committee could want to establish a requirement again for X for something and they may say, we want the requirement to read 11:44:45 they may say, we want the requirement to read 11:44:45 text around that to get it to read in context 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24 make sure it fits to our manual style and 11:45:28 ballot with the technical committee on the 11:45:31 Q. What criteria do technical committees use 11:45:31 to determine what text moves forward to a 11:45:34 ballot? 11:45:37
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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 11:42:55 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. So a committee could want to establish a requirement again for X for something and they are a draft chapter on something, technical through a meeting of documents to present to the additional draft through a meeting vote what text is going to through a meeting vote what text is going to through a meeting vote what text is going to the staff is so turn that into a ballot and the staff lianguage. Q. What criteria do technical committees use the staff or the value of the text around that to get it to read in context the staff of the document. Or they may say we want to the three to the three to the three to the three to the staff of the documents to present to the three three to consider. The staff of three three to consider. The three thr
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. So a committee could want to establish a requirement again for X for something and they may say, we want the requirement to read 11:44:45 they may say, we want the requirement to read 11:44:45 text around that to get it to read in context 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24 make sure it fits to our manual style and 11:45:28 ballot with the technical committee on the 11:45:21 to determine what text moves forward to a 11:45:31 Q. What criteria do technical committees use 11:45:31 to determine what text moves forward to a 11:45:34 ballot? 11:45:37 MR. REHN: Objection as to form. 11:45:38 A. It's their expertise. It's their 11:45:42
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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, 11:42:54 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 committee at that time. 11:43:07	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. So a committee could want to establish a requirement again for X for something and they may say, we want the requirement to read 11:44:45 they may say, we want the requirement to read 11:44:51 text around that to get it to read in context 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24 make sure it fits to our manual style and 11:45:28 ballot with the technical committee on the 11:45:28 final language. 11:45:31 Q. What criteria do technical committees use 11:45:31 to determine what text moves forward to a 11:45:34 ballot? 11:45:37 MR. REHN: Objection as to form. 11:45:38 A. It's their expertise. It's their 11:45:42 professional opinion in a balanced way 11:45:46
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	establish a requirement for X and the 11:42:23 technical staff is there saying, well, we can 11:42:24 word it this way and that way, does this meet 11:42:27 your intent, how about we do this, I can 11:42:29 research some information, get back to you at 11:42:30 the next meeting. 11:42:32 The technical staff provides a vital 11:42:33 role in helping the technical committee 11:42:35 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	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	A. So a committee could want to establish a requirement again for X for something and they may say, we want the requirement to read 11:44:45 they may say, we want the requirement to read 11:44:45 text around that to get it to read in context 11:44:51 text around that to get it to read in context 11:44:55 of the document. Or they may say we want to 11:44:57 have a draft chapter on something, technical 11:45:00 staff can you do research, pull together 11:45:03 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 staff's job is to turn that into a ballot and 11:45:24 make sure it fits to our manual style and 11:45:28 ballot with the technical committee on the 11:45:21 to determine what text moves forward to a 11:45:31 Q. What criteria do technical committees use 11:45:31 to determine what text moves forward to a 11:45:34 ballot? 11:45:37 MR. REHN: Objection as to form. 11:45:38 A. It's their expertise. It's their 11:45:42

18 (Pages 66 - 69)

Case 1:13-cv-01215-TSC Document 204-47 Filed 11/13/19 Page 20 of 106

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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
23	Page 70	23	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
2 3	text to move forward to a ballot? 11:47:02 MR. REHN: Objection as to form. 11:47:04	2 3	A. Again, I think it would be difficult, without 11:49:25 speculating, I'm not sure what each person 11:49:29
2 3 4	text to move forward to a ballot? 11:47:02 MR. REHN: Objection as to form. 11:47:04 It's vague. 11:47:06	2 3 4	A. Again, I think it would be difficult, without 11:49:25 speculating, I'm not sure what each person 11:49:29 would use for criteria, and that's why my 11:49:31
2 3 4 5	text to move forward to a ballot? 11:47:02 MR. REHN: Objection as to form. 11:47:04 It's vague. 11:47:06 A. I don't think there's a single answer to 11:47:09	2 3 4 5	A. Again, I think it would be difficult, without 11:49:25 speculating, I'm not sure what each person 11:49:29 would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34
2 3 4	text to move forward to a ballot? 11:47:02 MR. REHN: Objection as to form. 11:47:04 It's vague. 11:47:06 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	2 3 4	A. Again, I think it would be difficult, without 11:49:25 speculating, I'm not sure what each person 11:49:29 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
2 3 4 5	text to move forward to a ballot? 11:47:02 MR. REHN: Objection as to form. 11:47:04 It's vague. 11:47:06 A. I don't think there's a single answer to 11:47:09	2 3 4 5	A. Again, I think it would be difficult, without 11:49:25 speculating, I'm not sure what each person 11:49:29 would use for criteria, and that's why my 11:49:31 answer previously focused on having a 11:49:34
2 3 4 5 6	text to move forward to a ballot? 11:47:02 MR. REHN: Objection as to form. 11:47:04 It's vague. 11:47:06 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	2 3 4 5 6 7 8	A. Again, I think it would be difficult, without 11:49:25 speculating, I'm not sure what each person 11:49:29 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
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2 not sure you're responding to my question 11:50:29 3 about criteria. What are the different 11:50:31 4 reasons, not what background information are 11:50:34 5 they acting on, but what are the different 11:50:38 6 goals that, to your knowledge, technical 11:50:40 2 committee meetings. 11:53:48 3 Q. Do any does NFPA pay any persons for their time in participation in the technical 11:53:40 5 committee work? 11:54:02 6 A. NFPA does not pay for time, but what we do	53:46 3
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6 goals that, to your knowledge, technical 11:50:40 6 A. NFPA does not pay for time, but what we do 7 committee members have in deciding whether to 11:50:45 7 for public sector officials who we classify 11 8 progress certain text to a ballot? 11:50:49 8 as enforcers, we have an enforcer fund which	3:57
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8 progress certain text to a ballot? 11:50:49 8 as enforcers, we have an enforcer fund which	11:54:06
	:54:09
9 MR. REHN: Objection as to form. 11:50:54 9 we pay 80 percent of their associated travel 11	11:54:12
	1:54:15
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	
want to ultimately reduce life loss, injury, 11:51:04 12 Q. What is the motivation of persons, as you	11:54:20
property loss, economic loss due to fire and 11:51:09 13 understand it, to participate in technical 11:5	54:23
14 other related hazards.	
15 Q. How do decisions regarding progressing 11:51:13 15 MR. REHN: Object to the form. 11:51:13	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 overwhelmingly the number one motivation, in	11:54:35
	1:54:37
19 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 11:5	4:47
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 11:5	4:54
25 safety, better protection of our nation's 11:51:48 25 the primary motivation. 11:54:56	
Page 74	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
3 Q. Does it would you say that a general 11:51:59 3 reward for participation in the technical 11:51:59	55:10
4 question that technical committees address in 11:52:05 4 committee process? 11:55:13	
4 question that technical committees address in 11:52:05 4 committee process? 11:55:13 5 deciding whether to progress certain text to 11:52:18 5 A. I'm not aware of an individual, per se, but I 1	
	1:55:21
5 deciding whether to progress certain text to 11:52:18 5 A. I'm not aware of an individual, per se, but I 1	1:55:21 11:55:26
5 deciding whether to progress certain text to 11:52:18 5 A. I'm not aware of an individual, per se, but I 1 6 a ballot is whether the proposed change will 11:52:22 6 would speculate that these people are experts	1:55:21 11:55:26 5:28
5 deciding whether to progress certain text to 11:52:18 5 A. I'm not aware of an individual, per se, but I 1 6 a ballot is whether the proposed change will 11:52:22 6 would speculate that these people are experts 1 7 improve outcomes? 11:52:29 7 in their fields, and there's professional 11:55 8 MR. REHN: Object to the form of the 11:52:34 8 recognition and acknowledgment for being on	1:55:21 11:55:26 5:28
5 deciding whether to progress certain text to 11:52:18 6 a ballot is whether the proposed change will 11:52:22 7 improve outcomes? 11:52:29 8 MR. REHN: Object to the form of the 11:52:34 9 question. 11:52:37 5 A. I'm not aware of an individual, per se, but I 1 6 would speculate that these people are experts 1 7 in their fields, and there's professional 11:55 8 recognition and acknowledgment for being on 9 an NFPA technical committee. 11:5	1:55:21 11:55:26 5:28 11:55:32
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5 deciding whether to progress certain text to 11:52:18 6 a ballot is whether the proposed change will 11:52:22 7 improve outcomes? 11:52:29 8 MR. REHN: Object to the form of the 11:52:34 9 question. 11:52:37 10 A. I would speculate that each decision would be 11:52:41 11 in guidance or in alignment with improving 11:52:47 12 safety. And those would be the outcomes, 11:52:53 5 A. I'm not aware of an individual, per se, but I 1 6 would speculate that these people are experts 1 7 in their fields, and there's professional 11:55 8 recognition and acknowledgment for being on an NFPA technical committee. 11:5 10 MR. BRIDGES: Why don't we take a 11 break. We've been going for a while. What 12 time is it? 11:55:51	1:55:21 11:55:26 5:28 11:55:32 5:36 11:55:46
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