

EXHIBIT 38

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR : NO.
TESTING AND MATERIALS : 1:13-cv-01215-TSC-
d/b/a ASTM : DAR
INTERNATIONAL; :
NATIONAL FIRE :
PROTECTION :
ASSOCIATION, INC.; :
and AMERICAN SOCIETY :
OF HEATING, :
REFRIGERATION, AND :
AIR CONDITIONING :
ENGINEERS, :
Plaintiffs :
vs. :
PUBLIC.RESOURCE.ORG, :
INC., :
Defendant :

Videotaped deposition of JOHN C.
JAROSZ taken at the law offices of Veritext
Legal Solutions, 1250 I Street NW,
Washington, DC, commencing at 10:09 a.m.
THURSDAY, AUGUST 27, 2015, before Debbie
Leonard, Registered Diplomate Reporter,
Certified Realtime Reporter.

PAGES 1 - 260

1 APPEARANCES:
 2
 3 KING & SPALDING
 4 By: J BLAKE CUNNINGHAM, ESQ
 5 101 Second Street
 6 Suite 2300
 7 San Francisco, California 94105
 8 (415) 318-1200
 9 bcunningham@kslaw.com
 10 Representing the Plaintiff American
 11 Society For Testing and Materials d/b/a
 12 ASTM International
 13
 14 MUNGER, TOLLES & OLSON LLP
 15 By: THANE REHN, ESQ
 16 560 Mission Street
 17 27th Floor
 18 San Francisco, California 94105
 19 (415) 512-4000
 20 thane.rehn@mto.com
 21 Representing the Plaintiff National Fire
 22 Protection Association, Inc
 23
 24 MORGAN LEWIS & BOCKIUS LLP
 25 By: J KEVIN FEE, ESQ
 1111 Pennsylvania Avenue NW
 Washington, DC 20004
 (202) 739-3000
 jkfee@morganlewis.com
 Representing the Plaintiff American
 Society of Heating, Refrigeration, and Air
 Conditioning Engineers
 (continued)

Page 2

1 APPEARANCES (continued):
 2
 3 FENWICK & WEST LLP
 4 By: ANDREW P. BRIDGES, ESQ.
 5 555 California Street
 6 12th Floor
 7 San Francisco, California 94104
 8 (415) 875-2300
 9 abridges@fenwick.com
 10 Representing the Defendant
 11
 12 FENWICK & WEST LLP
 13 By: MATTHEW BECKER, ESQ.
 14 801 California Street
 15 Mountain View, California 94041
 16 (650) 988-8500
 17 mbecker@fenwick.com
 18 Representing the Defendant
 19
 20 ALSO PRESENT:
 21
 22 Carl Malamud, Public Resource
 23
 24 Jonathan Perry, Videographer
 25

Page 3

1 INDEX TO WITNESSES
 2
 3 WITNESS: JOHN C. JAROSZ PAGE
 4
 5 BY MR. BRIDGES 8
 6
 7
 8
 9 INDEX TO EXHIBITS
 10 PAGE
 11 EXHIBIT DESCRIPTION MARKED
 12 Exhibit 1 Expert Report of John C. Jarosz 6
 13 June 5, 2015
 14 Exhibit 2 Handwritten notes 97
 15 Exhibit 3 Handwritten notes 97
 16 Exhibit 4 Spreadsheet 175
 17 "NFPA Publication Sales
 18 2009 to 2013"
 19 JAROSZ02443
 20 Exhibit 5 Article 210
 21 "ASHRAE Takes on Energy
 22 Standard"
 23
 24
 25

Page 4

1 DEPOSITION SUPPORT INDEX
 2
 3 INSTRUCTION NOT TO ANSWER:
 4
 5 Page Line
 6
 7 NONE
 8
 9
 10
 11 REQUEST FOR PRODUCTION OF DOCUMENTS:
 12
 13 Page Line
 14
 15 NONE
 16
 17
 18
 19
 20
 21 STIPULATIONS:
 22 Page Line
 23
 24 9 16
 25
 26
 27
 28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100

Page 5

1 * * *

2 (Jarosz Exhibit 1 marked for

3 identification.)

4 * * *

5 THE VIDEOGRAPHER: We are now

6 on the record.

7 Please note that the

8 microphones are sensitive and may pick

9 up whispering and private

10 conversations.

11 Please turn off all cell phones

12 or place them away from the

13 microphones, as they can interfere

14 with the deposition audio.

15 Recording will continue until

16 all parties agree to go off the

17 record.

18 My name is Jonathan Perry. I'm

19 here representing Veritext. Today's

20 date is August 27th, 2015. The time

21 is approximately 10:09 a.m.

22 We are at the offices of

23 Veritext, located at 1250 I Street

24 Northwest in Washington, D.C.

25 The caption on the case is the

Page 6

1 American Society for Testing and

2 Materials, et al., versus

3 Public.Resource.Org, Incorporated,

4 case filed in the US District Court

5 for the District of Columbia, Case

6 Number 1:13-cv-0215 [sic] TSC-DAR.

7 The name of the witness is

8 John C. Jarosz.

9 Would counsel present please

10 introduce themselves and state whom

11 they represent.

12 MR. BRIDGES: This is Andrew

13 Bridges of Fenwick & West for the

14 defendant, and with me is Matthew

15 Becker.

16 MR. FEE: Kevin Fee from Morgan

17 Lewis on behalf of ASTM.

18 MR. REHN: Thane Rehn from

19 Munger, Tolles & Olson on behalf of

20 the National Fire Protection

21 Association.

22 MR. CUNNINGHAM: Blake

23 Cunningham of King & Spalding on

24 behalf of the American Society for

25 Heating, Refrigerating, and

Page 7

1 Air-Conditioning Engineers.

2 THE VIDEOGRAPHER: Today our

3 court reporter is Debbie Leonard with

4 Veritext. Would you please swear in

5 the witness.

6 * * *

7 JOHN C. JAROSZ,

8 having been first duly sworn, testified as

9 follows:

10 * * *

11 EXAMINATION

12 * * *

13 BY MR. BRIDGES:

14 Q. Good morning, Mr. Jarosz.

15 A. Good morning, Mr. Bridges.

16 Q. What do you do for a living?

17 A. I'm an economist.

18 Q. What types of work do you do as

19 an economist?

20 A. I'm not exactly sure what

21 you're asking. I am employed at an economic

22 consulting firm, and I am involved in applied

23 microeconomics and industrial organization,

24 among other things.

25 I apply much of my expertise to

Page 8

1 the valuation and evaluation of intellectual

2 property rights. Some of that work is in the

3 context of damages assessments. Some of it

4 outside such contexts. Some of my work is in

5 litigation, and some of my work is not.

6 Q. Have you valued any of the

7 intellectual property at issue in this case?

8 MR. FEE: Objection. Form.

9 MR. REHN: And --

10 MR. FEE: Wait. Before we go

11 any further, should -- do you want to

12 get into a stipulation that they don't

13 have to join every objection that one

14 or the other plaintiffs makes, or do

15 you want us to make them all seriatim?

16 MR. BRIDGES: I'll stipulate to

17 that.

18 MR. FEE: Okay.

19 THE WITNESS: I'm not exactly

20 sure what you mean by "value," but I

21 haven't done a formal valuation of any

22 of the IP. I have evaluated the

23 intellectual property rights, and I

24 have done the assessment that you see

25 in my expert report.

Page 9

1 BY MR. BRIDGES:
 2 Q. Have you made any attempt to
 3 put a value on any of the intellectual
 4 property rights claimed by the plaintiffs in
 5 this case?
 6 MR. FEE: Objection to form.
 7 THE WITNESS: What do you mean
 8 by "value"?
 9 BY MR. BRIDGES:
 10 Q. I mean by "value" what you
 11 referred to earlier when you stated that
 12 among your activities is the valuation of
 13 intellectual property rights.
 14 A. I have not done a formal
 15 valuation, and I have not assigned a dollar
 16 amount to any of the intellectual property
 17 rights at issue here.
 18 I have evaluated the rights and
 19 determined issues associated with harm and
 20 irreparable harm. You see my results
 21 contained in my report.
 22 Q. What do you mean by "evaluating
 23 the intellectual property rights"?
 24 A. I have looked at, from an
 25 economist's perspective, the rights and the

Page 10

1 impact of having IP protection or not having
 2 IP protection for the subject matter at
 3 issue.
 4 Q. Have you done anything else to
 5 evaluate the intellectual property rights of
 6 the plaintiffs?
 7 MR. FEE: Objection to form.
 8 THE WITNESS: I've done the
 9 analyses underlying my report, but the
 10 summary of the work that I've done and
 11 the conclusions that I've drawn are
 12 contained in my report. I don't have
 13 other conclusions that are not
 14 contained in those -- in that report.
 15 BY MR. BRIDGES:
 16 Q. What intellectual property
 17 rights of plaintiffs have you evaluated?
 18 A. The copyrights at issue here.
 19 I'm sorry. Let me be -- let me
 20 alter that by saying I have evaluated the
 21 alleged copyrights at issue here, and I have
 22 evaluated the trademark rights at issue here.
 23 Q. Why did you change your
 24 testimony to refer to "alleged copyrights"
 25 instead of "copyrights"?

Page 11

1 A. I don't know that there -- I --
 2 let me start this over again.
 3 I believe there are fights
 4 about whether the plaintiffs are entitled to
 5 these copyrights. I don't know that there's
 6 been a conclusion by this Court that they are
 7 valid rights. I'm working under the
 8 assumption that they are, but I believe the
 9 defendant is disputing those rights.
 10 Q. What did you do to evaluate
 11 trademark rights in this case?
 12 A. What I've done is summarized in
 13 my report. I have an understanding that
 14 there are marks and logos at issue that are
 15 important to the plaintiffs and that Public
 16 Resource activities impair the rights of the
 17 plaintiffs in those trademarks and may
 18 possibly cause confusion in the marketplace.
 19 Q. What work did you do to
 20 determine whether any activities of the
 21 defendant does or may cause confusion in the
 22 marketplace?
 23 A. The work that you see is
 24 summarized in my report. I haven't done
 25 anything beyond that which is summarized

Page 12

1 here.
 2 Q. And by the "report," you're
 3 referring to Exhibit 1 that I've marked and
 4 placed before you?
 5 A. Yes.
 6 Q. Where did you state your
 7 conclusions in your report regarding
 8 trademark rights of the plaintiff -- of the
 9 plaintiffs?
 10 A. In part, I think it's covered
 11 in paragraphs 150 and 151. It may be covered
 12 in other sections.
 13 Q. Take the time and let me know
 14 what other sections trademark rights are
 15 covered in.
 16 MR. FEE: Objection. Are you
 17 asking him to read the whole report
 18 and answer that now?
 19 MR. BRIDGES: No. Presumably
 20 he's relatively familiar with it, so
 21 it wouldn't require him to read it and
 22 spend a great deal of time. I
 23 don't -- he's referred to his report
 24 in his answer, so I just want to make
 25 sure that I have a complete

Page 13

1 understanding.
 2 MR. FEE: All right. Well,
 3 take as long as you need to answer
 4 that, then.
 5 THE WITNESS: In part, you see
 6 it addressed in paragraph 30.
 7 Right now, those are the
 8 sections that I see that touch on that
 9 topic. There may be others that I'm
 10 overlooking right now.
 11 BY MR. BRIDGES:
 12 Q. And do you need more time?
 13 MR. FEE: Objection. Asked and
 14 answered.
 15 THE WITNESS: I don't think so.
 16 I've looked through at a fairly
 17 cursory level. If you want me to read
 18 the whole report to make absolutely
 19 sure, I will, but I'm not sure if
 20 you're asking me to do that, but --
 21 BY MR. BRIDGES:
 22 Q. No, I wouldn't want to take the
 23 time, unless counsel is willing to give me
 24 lots of extra time or if you want to do it
 25 during a break. But if you're confident that

Page 14

1 those are the paragraphs that cover the
 2 evaluation of trademark rights, then we can
 3 proceed.
 4 A. I'm not sure if there's a
 5 pending question, but I didn't say I was
 6 confident that those are the only places.
 7 Q. Oh, then take more time,
 8 please.
 9 A. I think --
 10 Q. Then please --
 11 A. -- that those are the three
 12 that address it.
 13 Q. Well, what else reflects your
 14 evaluation of trademark rights in this case?
 15 A. Okay. If you'd like, I'll take
 16 a little bit more time looking at the report.
 17 I think in paragraph 2, I
 18 believe part of the copying is the marks
 19 and/or logos.
 20 Q. And that paragraph 2 reflects
 21 your evaluation?
 22 MR. FEE: Objection to form.
 23 THE WITNESS: Yes. My
 24 evaluation includes understanding the
 25 issues and then drawing conclusions

Page 15

1 from the facts.
 2 BY MR. BRIDGES:
 3 Q. All right. I would like to
 4 know where in the report your report reveals
 5 any observations or conclusions by you about
 6 the evaluation of the trademark rights.
 7 MR. FEE: Just so the record is
 8 clear, you're withdrawing the previous
 9 question now?
 10 MR. BRIDGES: No. It's a new
 11 question.
 12 MR. FEE: Okay. Well, he
 13 didn't --
 14 Are you finished going through
 15 the entire report and identifying
 16 everywhere where you've evaluated the
 17 trademarks?
 18 Or do you not want him to keep
 19 doing that?
 20 MR. BRIDGES: I just -- I just
 21 asked him a question. I'd like an
 22 answer to the question.
 23 MR. FEE: Okay.
 24 BY MR. BRIDGES:
 25 Q. I'd like to know where in

Page 16

1 the -- in the report your report reveals any
 2 observations or conclusions by you about your
 3 evaluation of the trademark rights of the
 4 plaintiffs.
 5 MR. FEE: Objection. And I
 6 think it would be misleading if it's
 7 not stated for the record that he has
 8 not gotten past paragraph 2 in
 9 responding to the prior question, and
 10 you've instructed him not to further
 11 proceed with respect to that question.
 12 You can go ahead and answer the
 13 current question.
 14 THE WITNESS: So right now, I'm
 15 working under the assumption that
 16 there's only one pending question, and
 17 that is your most recent question.
 18 BY MR. BRIDGES:
 19 Q. Yes.
 20 A. Part of the implications of
 21 loss -- I'm sorry.
 22 Part of the implications of
 23 trademark infringement are reflected in
 24 paragraph 6, though they're not stated there.
 25 That is when I address harm. That

Page 17

1 encompasses both the harm of loss of
 2 copyright protection and the repercussions of
 3 trademark infringement.
 4 Same answer with regard to
 5 paragraph 7.
 6 There are also counterpart
 7 paragraphs at the end of the report that I
 8 think are identical to 6 and 7, so I won't
 9 identify those numbers.
 10 Though I didn't say it in a
 11 number of paragraphs, I make reference to
 12 conclusions with regard to the copyright
 13 infringement.
 14 I understand that the copyright
 15 infringement is associated with certain
 16 actions that, in part, encompass trademark
 17 infringement, though I don't think I
 18 explicitly said that in every section in
 19 which I discover -- in which I discussed the
 20 copyright protection and the conclusions
 21 flowing from that.
 22 I don't think I have anything
 23 else to add besides what I have discussed
 24 already.
 25 Q. What conclusions do you see

Page 18

1 about a likelihood of confusion in the
 2 marketplace arising from the defendant's use
 3 of the marks?
 4 A. I haven't drawn any conclusions
 5 with regard to that topic.
 6 Q. And what conclusions have you
 7 drawn about the economic value or dollar
 8 value of the plaintiffs' trademarks?
 9 A. I have not assigned a dollar
 10 value to the plaintiffs' trademarks.
 11 Q. What conclusions have you drawn
 12 about any harm to the plaintiffs arising from
 13 the defendant's alleged use of the
 14 plaintiffs' marks?
 15 A. I've drawn the conclusion that
 16 there could be harm if the materials, in
 17 fact, are inaccurate use -- inaccurate
 18 copies, therefore impacting the reputation of
 19 either the materials or the organizations in
 20 the marketplace.
 21 Q. What studies did you rely upon
 22 for that conclusion?
 23 MR. FEE: Objection. Vague.
 24 THE WITNESS: Nothing other
 25 than what you see reflected in my

Page 19

1 report.
 2 BY MR. BRIDGES:
 3 Q. What facts did you rely upon
 4 for that conclusion?
 5 A. Well, I understand that there
 6 has been some inaccurate copying and
 7 dissemination of plaintiff materials. I
 8 don't recall exactly where I got that
 9 information from, but I believe that there's
 10 some materials, for instance, that have been
 11 copied and disseminated that are upside-down.
 12 There are other materials that are difficult
 13 to read. There may be materials that are
 14 disseminated with the thought that those are
 15 the most recent standards when, in fact, they
 16 may not be.
 17 Q. You have no idea how you
 18 learned that information?
 19 A. I don't recall --
 20 MR. FEE: Objection. Vague.
 21 And form.
 22 THE WITNESS: I don't recall,
 23 sitting here right now. I may have
 24 seen representations in some of the
 25 written materials, but I don't recall

Page 20

1 what those written materials are.
 2 BY MR. BRIDGES:
 3 Q. Have you seen any upside-down
 4 pages in any of the defendant's materials?
 5 A. I don't recall seeing that
 6 personally, no.
 7 Q. Have you seen any
 8 difficult-to-read materials produced by the
 9 defendant?
 10 A. I don't recall that right now.
 11 Q. Do you know what rationale the
 12 defendant has for disseminating materials
 13 that are not the most recent standards?
 14 MR. FEE: Objection. Form.
 15 THE WITNESS: I'm not sure that
 16 I know, no.
 17 BY MR. BRIDGES:
 18 Q. On what information -- I'd like
 19 for you to recall all the information on
 20 which you relied for the determination that
 21 the defendant may have engaged in activities
 22 that may have caused any harms to the
 23 plaintiffs' reputation.
 24 MR. FEE: Could you read that
 25 back -- oh, I have it here. Forget

Page 21

1 it.
 2 Objection to form. You're
 3 asking him to recall, without having
 4 all the materials in front of him?
 5 MR. BRIDGES: Yeah.
 6 MR. FEE: Okay.
 7 THE WITNESS: It's all laid out
 8 in my report, and the sources are
 9 provided in my report. I've not
 10 memorized all those.
 11 BY MR. BRIDGES:
 12 Q. But I don't think your report
 13 refers to upside-down materials, does it?
 14 A. I don't recall for sure, but I
 15 thought some of the documents that I cited
 16 make reference to those materials. I'm not
 17 sure that I cited the, for instance,
 18 upside-down materials, but I think I have
 19 discussions about that phenomenon.
 20 Q. With whom?
 21 A. In written materials that I've
 22 cited.
 23 Q. Have you had oral discussions
 24 about what you have referred to as that
 25 phenomenon?

Page 22

1 A. Yes.
 2 Q. With whom?
 3 A. Counsel here.
 4 Q. With anybody else?
 5 A. I don't think so. It's
 6 possible, but I'm not recalling anything
 7 else.
 8 Q. And when you say discussions
 9 with "counsel here," you're referring to the
 10 counsel at the table here today at the
 11 deposition?
 12 A. Correct.
 13 And we should add to that
 14 Jordana Rubel, who's been a person that I've
 15 had conversations with over the last several
 16 months.
 17 Q. What did you do to verify any
 18 of the statements to you from counsel about
 19 these facts you've referred to about the
 20 materials that the defendant has
 21 disseminated?
 22 A. I don't think I did separate
 23 verification. I may have seen some documents
 24 that provide or provided confirmation of that
 25 fact, but I don't recall separately going out

Page 23

1 beyond the document production to verify that
 2 information.
 3 Q. But you don't recall seeing any
 4 defective materials yourself, correct?
 5 A. That's correct. I do not.
 6 Q. You just relied upon the word
 7 of others, correct?
 8 MR. FEE: Objection. Vague.
 9 Mischaracterizes his testimony.
 10 THE WITNESS: I relied upon
 11 written documents I saw and
 12 conversations that I had.
 13 BY MR. BRIDGES:
 14 Q. What written documents did you
 15 see that discussed these issues?
 16 MR. FEE: Objection. Asked and
 17 answered.
 18 THE WITNESS: And I'm sorry. I
 19 can't point you to the particular
 20 ones. Perhaps, through the course of
 21 the day, my memory will be refreshed
 22 on that.
 23 BY MR. BRIDGES:
 24 Q. If you relied upon those
 25 written documents, would you have cited to

Page 24

1 those written documents in your report?
 2 A. Perhaps.
 3 Q. Why do you say "perhaps"?
 4 A. I can't say with absolute
 5 certainty what I do. But often, if something
 6 is a direct support for a factual
 7 observation, I will often cite that source,
 8 but not always.
 9 Q. What previous -- strike that.
 10 What training or education have
 11 you ever received with respect to standards
 12 development organizations?
 13 MR. FEE: Objection to form.
 14 THE WITNESS: I don't recall if
 15 I've had a course in standard
 16 development. Probably it has been
 17 part of some of the economics courses
 18 that I've taken over the years.
 19 In my profession and the work
 20 that I've done in the last 30 years,
 21 I've had occasion to look at and
 22 evaluate standards organizations and
 23 the output from those organizations.
 24 So it is among the topics that
 25 I've investigated in the course of my

Page 25

1 consulting career.
 2 BY MR. BRIDGES:
 3 Q. In what context?
 4 A. There have been several matters
 5 I've had, litigations, that have involved
 6 standard setting organizations and the
 7 outputs from those organizations.
 8 Q. What organizations?
 9 A. Well, some that come to mind
 10 are ETSI, IEEE, the Blu-ray Association,
 11 MPEG, MPEG L.A., the Philips 6C and Philips
 12 3C organizations. Those are among the ones
 13 that come to mind.
 14 Q. And what types of litigation
 15 did your work relating to those standard
 16 setting organizations involve?
 17 MR. FEE: Objection to form.
 18 THE WITNESS: It was almost all
 19 intellectual property litigation, with
 20 probably the bulk of the analyses
 21 undertaken with regard to patent
 22 rights.
 23 BY MR. BRIDGES:
 24 Q. Do you recall --
 25 A. I guess I should -- there were

Page 26

1 probably some breach of contract matters as
 2 well.
 3 Q. Did you work on any matters
 4 involving copyright law where you became
 5 familiar with the work and outputs of
 6 standards setting organizations before this
 7 case?
 8 A. Probably, but I cannot say that
 9 with absolute certainty. I've been involved
 10 in several matters over a course of many
 11 years.
 12 Q. Can you name any copyright
 13 matter involving a standards development
 14 organization that you recall?
 15 A. Not now, without going back and
 16 looking at my records.
 17 Q. Would they be listed in the
 18 cases attached to Exhibit 1?
 19 A. That would summarize some of my
 20 records. The cases that are embodied in my
 21 tab 1 are those that led to deposition or
 22 trial testimony. I've been involved in many
 23 matters beyond those.
 24 Q. But sitting here, you cannot
 25 recall any copyright case involving a

Page 27

1 standards development organization that
 2 you've worked on?
 3 A. Again, I'd have to go back and
 4 look at my records. I can't right now recite
 5 any, but there very well could be one or
 6 more.
 7 Q. Did you review any of your work
 8 in -- from earlier copyright cases involving
 9 standards development organizations in
 10 connection with your work in this case?
 11 A. Not to the best of my memory,
 12 no.
 13 Q. What background do you have in
 14 the creation of standards by standard
 15 development organizations?
 16 MR. FEE: Objection to form.
 17 THE WITNESS: In the context of
 18 some of my consulting assignments, I
 19 have examined processes undertaken by
 20 SDOs.
 21 BY MR. BRIDGES:
 22 Q. Anything else?
 23 A. Nothing else comes to mind.
 24 I've certainly looked at the output
 25 associated with those processes, but there's

Page 28

1 nothing else that comes to mind.
 2 Q. What processes undertaken by
 3 standards development organizations did you
 4 examine?
 5 MR. FEE: Objection. Are you
 6 asking prior to the report still?
 7 MR. BRIDGES: Yes.
 8 MR. FEE: Okay.
 9 THE WITNESS: I'm not quite --
 10 MR. BRIDGES: Or other than in
 11 this case.
 12 MR. FEE: Okay.
 13 THE WITNESS: I'm not quite
 14 sure what you're asking. I've seen
 15 discussion of the some of the
 16 processes of various organizations.
 17 I'm not -- I'm not quite sure what
 18 you're asking. Perhaps you could ask
 19 it somewhat differently.
 20 BY MR. BRIDGES:
 21 Q. Well, no. You said, quote, "I
 22 have examined processes undertaken by SDOs."
 23 So my question is, what
 24 processes undertaken by standards development
 25 organizations did you examine?

Page 29

<p>1 A. It sounds like the same 2 question to me. 3 Q. Specifically, what processes 4 did you examine? 5 A. That still sounds like the same 6 question, but let me try to answer it by 7 saying I've looked, for instance, at the 8 mechanisms that ETSI undertook in developing 9 standards. So I am familiar generally with 10 the processes that it follows. Similarly 11 with regard to other standard setting 12 organizations. 13 Q. What other standard setting 14 organizations? 15 A. Well, I think I identified 16 those a few moments ago. Do you want me to 17 repeat those? 18 Q. Well, if -- are you saying 19 that, for all of those organizations, you 20 examined their processes? 21 A. In some dimension, probably for 22 most of the organizations, I had at least 23 some knowledge of the process. I can't say 24 that I investigated in depth all of the 25 processes for all of the organizations that</p> <p style="text-align: right;">Page 30</p>	<p>1 manufacturers only. Others include a wider 2 array of companies. 3 In all instances, though, the 4 companies are trying to -- the standards 5 setting organizations are trying to develop 6 at least some form of consensus -- sometimes 7 it's very broad consensus; sometimes it's 8 more narrow consensus -- about what would be 9 good for that standards setting organization. 10 Sometimes the SSOs are 11 interested in what's best for the 12 manufacturers and the ability for them to 13 supply in an interoperable environment. In 14 some cases, the SSOs are very alert to the 15 needs of consumers and users of products and 16 services that comply with standards. 17 Q. You've distinguished between 18 standards setting organizations and standard 19 development organizations. What is the 20 distinction that you -- that you identify 21 between the two? 22 A. I think I said I didn't know if 23 there is for sure a distinction, but I think 24 an SSO is perhaps a broader concept than an 25 SDO, but I might be wrong on that.</p> <p style="text-align: right;">Page 32</p>
<p>1 have been involved in my consulting 2 assignments that are standards oriented. 3 Q. What do you recall about your 4 investigation of the processes by which 5 standards development organizations create 6 their standards? 7 A. I should say I -- SDO is 8 probably not the right term to use. I should 9 probably say standards setting organizations. 10 There may be a distinction between an SSO and 11 an SDO. 12 But, generally, each SSO has a 13 process that's unique to its organization. 14 Some solicit input from a wide range of 15 constituents; some from a more narrow range. 16 The ones that I have examined 17 have all been fairly careful in the work that 18 they've done, seeking input at many steps 19 along the way. 20 Some organizations, like SDOs 21 at issue here, seek a broader array of inputs 22 than do others. 23 Some organizations, standards 24 setting organizations, include primarily or 25 only manufacturers and sometimes large</p> <p style="text-align: right;">Page 31</p>	<p>1 I know the companies -- I -- 2 the plaintiffs here are SDOs. The 3 associations are, among other things, in the 4 business of creating and developing 5 standards. 6 There could be other SSOs that 7 have different constituents that are of 8 interest to them. I don't know for sure that 9 an SSO is a broader concept than an SDO, but 10 it could be. 11 Q. What do you understand to be 12 the constituents of the plaintiffs in this 13 case? 14 MR. FEE: Objection to form. 15 THE WITNESS: I laid that out 16 in my report. In summary, I believe 17 they try to include in the process 18 both those -- both supply-side 19 entities and demand-side entities. 20 BY MR. BRIDGES: 21 Q. Who else are plaintiffs' 22 constituents? 23 MR. FEE: Same objection. 24 THE WITNESS: I can't think of 25 anything that doesn't fall within</p> <p style="text-align: right;">Page 33</p>

1 those two categories as the
 2 constituents of the plaintiffs.
 3 BY MR. BRIDGES:
 4 Q. Only entities are constituents
 5 of the plaintiffs?
 6 MR. FEE: Objection. Vague.
 7 THE WITNESS: An individual can
 8 be an entity, in my mind. It's not
 9 necessarily a company.
 10 BY MR. BRIDGES:
 11 Q. And what do you mean by a
 12 supply-side entity or person?
 13 A. Those companies or individuals
 14 that provide products or services that, among
 15 other things, comply with the standards.
 16 Q. Do you mean anything else by
 17 supply-side entities or individuals?
 18 MR. FEE: Objection to form.
 19 THE WITNESS: I don't think so.
 20 BY MR. BRIDGES:
 21 Q. What do you mean by demand-side
 22 entities or individuals?
 23 MR. FEE: Same objection.
 24 THE WITNESS: Just so that
 25 there's no confusion between us, I

Page 34

1 believe an entity can encompass an
 2 individual.
 3 BY MR. BRIDGES:
 4 Q. I understand, but I want the
 5 record to be clear. And since "entity" tends
 6 to suggest a non-breathing person, I would
 7 like to include both breathing persons and
 8 non-breathing legal persons in my question.
 9 A. I'm not sure if that's a
 10 question.
 11 Q. The pending question was, what
 12 do you mean by demand-side entities or
 13 individuals?
 14 MR. FEE: Objection to form.
 15 THE WITNESS: Okay. I'm not --
 16 I'm not sure I used the phrase
 17 "entities or individuals" when I
 18 talked about demand side.
 19 Regardless, it's companies or
 20 individuals that are the users or
 21 potential users of products or
 22 services that, in part, comply with
 23 the standards.
 24 BY MR. BRIDGES:
 25 Q. Are you aware of any other

Page 35

1 constituents of the plaintiffs?
 2 MR. FEE: Objection to form.
 3 THE WITNESS: Nothing else
 4 comes to mind, although I'm certainly
 5 open to learning that I have not
 6 included something that I should
 7 include.
 8 BY MR. BRIDGES:
 9 Q. What about regulators?
 10 A. I'm sorry. What's the
 11 question?
 12 Q. What about regulators?
 13 MR. FEE: Objection to form.
 14 THE WITNESS: I heard those
 15 words. I don't understand the
 16 question.
 17 BY MR. BRIDGES:
 18 Q. You don't understand the
 19 question?
 20 A. Correct.
 21 Q. You've referred to supply-side
 22 entities. You've referred to demand-side
 23 entities. I'm saying now what about
 24 government -- what about regulators? You
 25 don't understand that question --

Page 36

1 A. I don't.
 2 Q. -- in this context?
 3 A. Are you asking whether a
 4 regulator is on the demand side or supply
 5 side?
 6 Q. I'm asking whether regulators
 7 are constituents of the plaintiffs.
 8 MR. FEE: Objection to form.
 9 BY MR. BRIDGES:
 10 Q. Have you ever given that any
 11 thought?
 12 A. Which question --
 13 MR. FEE: Objection. Compound.
 14 THE WITNESS: -- should I
 15 answer?
 16 BY MR. BRIDGES:
 17 Q. Both.
 18 MR. FEE: Objection to form.
 19 THE WITNESS: The question of
 20 have I given that any thought,
 21 perhaps.
 22 To the question of are they a
 23 constituent of the plaintiffs here, I
 24 guess in some dimension they are.
 25 They are interested parties because

Page 37

1 they have both supply-side and
 2 demand-side interests that they
 3 consider.
 4 BY MR. BRIDGES:
 5 Q. Don't they also have regulatory
 6 interests aside from being supply side or
 7 demand side?
 8 MR. FEE: Objection to form.
 9 THE WITNESS: What do you mean
 10 by "regulatory interests"?
 11 BY MR. BRIDGES:
 12 Q. You don't understand the term?
 13 A. No, I don't know what you mean
 14 by that term.
 15 Q. Do they have public interests
 16 other than supply or demand side interests?
 17 MR. FEE: Objection to form.
 18 THE WITNESS: I don't know that
 19 it would be "other than," because I
 20 think of the public interest as being
 21 either demand or supply side. I don't
 22 know what might not be included.
 23 BY MR. BRIDGES:
 24 Q. What about somebody that has a
 25 safety interest? How do you classify them as

Page 38

1 a constituent of the plaintiffs?
 2 MR. FEE: Objection to form.
 3 THE WITNESS: It depends on who
 4 that is. I have an interest in my
 5 house being safe, for instance, and I
 6 consider myself as part of the
 7 demand-side constituency.
 8 I think that there could be
 9 companies that are in the business of
 10 manufacturing smoke detectors, for
 11 instance. I would think of them
 12 primarily as being on the supply side,
 13 although they're certainly alert to
 14 the demand-side considerations.
 15 BY MR. BRIDGES:
 16 Q. How do you understand the
 17 plaintiffs here -- strike that.
 18 What do you understand to be
 19 the process by which the plaintiffs develop
 20 standards?
 21 MR. FEE: Objection to form.
 22 THE WITNESS: I don't know all
 23 the steps. I've summarized some of
 24 the steps that I understand in the
 25 report.

Page 39

1 The Web sites and information
 2 that I looked at for each of the
 3 plaintiffs certainly give more detail.
 4 But, in essence, a need for a
 5 standard is brought to the attention
 6 of the group. That need can be
 7 identified from any number of places.
 8 And then a group is chartered
 9 with assessing what that need is and
 10 how best to respond to that need.
 11 That group often comes up with
 12 proposals to respond to the issue and
 13 adjusts that proposal as it gets more
 14 input and gives more thought.
 15 Ultimately consensus is arrived
 16 at for each of the organizations, and
 17 a standard is developed and published.
 18 The processes are slightly
 19 different for each of the
 20 organizations but generally follow
 21 that route.
 22 BY MR. BRIDGES:
 23 Q. How do the processes differ
 24 among the three plaintiff organizations?
 25 MR. FEE: Objection to form.

Page 40

1 THE WITNESS: I don't know all
 2 of the differences. They may have, in
 3 part, been summarized in my report. I
 4 see, for instance, on page 29,
 5 paragraph 70, I have identified the
 6 four steps that I saw that NFPA
 7 follows in developing standards.
 8 BY MR. BRIDGES:
 9 Q. I'm just asking you -- you
 10 don't need to spend time going through the
 11 report. I just want to know, sitting here
 12 today, how you understand the processes
 13 differ.
 14 MR. FEE: Object to form, to
 15 the extent you are asking him not to
 16 look at his report. I think he should
 17 be permitted to do that.
 18 THE WITNESS: Just by -- just
 19 going by memory, I don't recall
 20 substantial differences in the
 21 processes. I understand each one to
 22 follow the general scheme that I
 23 identified a few moments ago. I'm
 24 quite sure that there are differences
 25 in each plaintiff's implementation of

Page 41

1 that scheme.
 2 BY MR. BRIDGES:
 3 Q. You used the word "group"
 4 several times in discussing the process by
 5 which the standards -- the plaintiffs develop
 6 standards. What did you mean by "group"?
 7 A. I don't recall exactly what
 8 context I used it in, but I think of a set of
 9 individuals representing either themselves or
 10 companies that have interest in the topic and
 11 might have some thoughts as to how best to
 12 address that topic and develop a standard.
 13 The groups can be wide
 14 assortments. Sometimes they're individual
 15 users. Sometimes they're large company
 16 representatives. Sometimes they're small
 17 company representatives. Sometimes there
 18 are -- they are employees of the SDO.
 19 But each one of the SDOs tends
 20 to have a fairly wide and diverse set of
 21 groups that addresses these topics.
 22 Q. You say some members of the
 23 groups may be individuals, correct, and their
 24 own -- acting on their own interest; is that
 25 correct?

1 A. That's my understanding, yes.
 2 Q. Why is that your understanding?
 3 How -- what -- what's the basis of your
 4 understanding?
 5 A. I think I've probably seen that
 6 in some of the written materials, but I can't
 7 point you to particular materials that --
 8 that I relied on for that.
 9 Q. And you said that some
 10 individuals may participate in groups as
 11 representatives of large companies; is that
 12 correct?
 13 A. Yes.
 14 Q. Some individuals may
 15 participate as -- participate as
 16 representatives of small companies, correct?
 17 A. Yes.
 18 Q. And I don't think you mentioned
 19 that any individuals participate as
 20 representatives of government?
 21 A. That's probably also the case.
 22 Q. What types of governments?
 23 MR. FEE: Objection. Vague.
 24 Form.
 25 THE WITNESS: I don't know in

1 particular, but the -- the options are
 2 federal, state, and local.
 3 BY MR. BRIDGES:
 4 Q. Have you --
 5 A. But I don't know that each
 6 group assessing the need for a standard
 7 always has representations at each level of
 8 government.
 9 Q. What do you know about
 10 participation by employees of standards
 11 development organizations in what you call
 12 the "groups"?
 13 MR. FEE: Objection to form.
 14 THE WITNESS: My memory is that
 15 each one of the standard development
 16 organizations that are at issue here
 17 have at least one employee that's --
 18 that's involved in the process.
 19 Sometimes those employees are
 20 facilitators. Often that's the case.
 21 Sometimes they have substantive input.
 22 But they often help the process along.
 23 BY MR. BRIDGES:
 24 Q. And what do you mean by
 25 "substantive input"?

1 A. Some people may have particular
 2 knowledge about a particular industry or
 3 topic. They all have some knowledge about
 4 the standards development process.
 5 Q. Do you have any understanding
 6 as to why the various individuals in the
 7 groups participate in the standards
 8 development process?
 9 MR. FEE: Objection to form.
 10 THE WITNESS: Generally,
 11 they're interested in addressing a
 12 topic of some concern and coming to a
 13 resolution, one that's acceptable to,
 14 at the very least, the party that
 15 they're representing and one that
 16 is of -- has sufficient consensus
 17 support to be a practical and
 18 acceptable solution to a pending
 19 problem.
 20 BY MR. BRIDGES:
 21 Q. What do you mean by "a pending
 22 problem"?
 23 A. Typically, there's a need
 24 identified, and the SDO has decided a
 25 standard may help address that need. For

1 instance, the fire at the shirt factory in
2 New York a hundred years ago, it was
3 identified that we didn't want those
4 disasters to occur in the future and that we
5 would like to investigate avenues to minimize
6 such risks.
7 Q. What do you mean by "avenues to
8 minimize such risks"?
9 A. Well, consideration is given to
10 determining whether there should be quality
11 standards that manufacturers should comply
12 with in order to reduce the disastrous
13 outcomes that occur because of fires, for
14 instance.
15 Q. And what do you mean by
16 "quality standards"?
17 A. Just by way of example, to have
18 more ingress and egress available to
19 employees and to have that as a requirement
20 or have a standard that may eventually be
21 incorporated into law so that buildings are
22 erected in such a way to allow employees to
23 leave the building rather than be engulfed in
24 flames.
25 Q. And what do you mean by

1 "incorporated into law"?
2 MR. FEE: Objection. Calls for
3 a legal conclusion. Form.
4 THE WITNESS: As an economist,
5 I generally understand it to be that
6 there's some federal, state, and local
7 laws that make reference to certain
8 standards and have that reference as
9 part of the law.
10 The legal implications I am
11 certainly not an expert in, and I
12 hesitate to characterize any more than
13 I have.
14 BY MR. BRIDGES:
15 Q. Well, you, in fact, have a law
16 degree, correct?
17 A. I have a law degree. I am not
18 now, nor have I ever been a practicing
19 attorney.
20 Q. Okay. But you have a juris
21 doctor degree, correct?
22 A. Is that different from a law
23 degree?
24 Q. It's a type of law degree.
25 A. I -- I didn't know that, but I

1 do have a JD.
2 Q. You don't have a Ph.D. in
3 economics, correct?
4 A. Correct. I was in the Ph.D.
5 program and have completed most of the
6 requirements for my Ph.D. but not all.
7 Q. What interests do you
8 understand the plaintiffs to have -- strike
9 that.
10 What interests do you
11 understand the plaintiffs to have in having
12 standards incorporated into law?
13 MR. FEE: Objection to form.
14 THE WITNESS: I think that's
15 laid out in my report in a variety of
16 ways; but generally, the plaintiffs
17 are interested in effectuating their
18 charters, and that is they want to
19 address certain problems in an
20 effective way. And if those solutions
21 get incorporated into standards and
22 those standards get incorporated by
23 reference into law, that can be an
24 effective way for dissemination of a
25 solution.

1 BY MR. BRIDGES:
2 Q. What do you mean by
3 "effectuating" the plaintiffs' charters?
4 A. Well, each plaintiff has a goal
5 or set of goals it would like to achieve,
6 whether that's safety or interoperability.
7 But generally, they want to achieve a
8 socially good purpose and one that is good
9 for members of the industry.
10 Q. In your answer, you're
11 referring specifically to these plaintiffs?
12 A. Yes.
13 Q. Do these plaintiffs have an
14 interoperability goal?
15 A. I don't think explicitly, but I
16 think -- I don't think as part of the charter
17 for the plaintiff, but I think with regard to
18 certain topics that they address
19 interoperability helps achieve some of those
20 goals of the individual topics that help
21 achieve the overall goals of the
22 organization.
23 Q. What are some of the goals of
24 interoperability that you've identified for
25 plaintiffs?

1 A. That I've identified in my
 2 report?
 3 Q. In your work on -- in your work
 4 on this matter for the plaintiffs.
 5 A. I'm not exactly sure what
 6 you're asking, but I talked about the merits
 7 of interoperability and why these
 8 organizations -- why certain standards are
 9 oriented toward interoperability.
 10 I think one of the specific
 11 illustrations is -- of the need for and the
 12 achieving of interoperability goals is the
 13 NEC. That allows one to safely and
 14 effectively receive power across the world.
 15 That's good for manufacturers, and it's good
 16 for consumers.
 17 Q. You said that plaintiffs are
 18 interested, I believe, in addressing certain
 19 problems in an effective way. Do you recall
 20 that?
 21 A. Generally I recall that, yes.
 22 Q. And, generally speaking,
 23 referring to these plaintiffs, what are the
 24 problems you understand them to be trying to
 25 address?

Page 50

1 MR. FEE: Objection to form.
 2 THE WITNESS: I've laid that
 3 out in my report. In page 64 I've
 4 laid out, in essence, the ASTM
 5 mission, as I understand it.
 6 In paragraph 68 I've laid out
 7 the NFPA mission, as I understand it.
 8 And in paragraph 73 I've laid
 9 out the ASHRAE mission, as I
 10 understand it.
 11 BY MR. BRIDGES:
 12 Q. So now my question is, what are
 13 the problems that you understand the
 14 plaintiffs are trying to address in an
 15 effective way?
 16 MR. FEE: Objection to form.
 17 THE WITNESS: Well, generally,
 18 they're addressing the mission that
 19 they have here and their individual
 20 problems that are brought to the SDOs'
 21 attention that, if addressed
 22 effectively, would help each
 23 organization fulfill its mission.
 24 BY MR. BRIDGES:
 25 Q. So generally speaking, what are

Page 51

1 the problems that they are trying to address?
 2 MR. FEE: Same objection.
 3 THE WITNESS: Generally, ASTM
 4 is addressing problems associated with
 5 public health and safety; support --
 6 protection and sustainability of the
 7 environment; overall quality of life;
 8 the reliability of materials, product
 9 systems, and services; and
 10 facilitating international, regional,
 11 and national commerce.
 12 BY MR. BRIDGES:
 13 Q. Now, those are problems?
 14 A. They are trying to achieve
 15 their mission by addressing problems that may
 16 stand in the way of achieving those missions.
 17 Q. So please give me an example of
 18 some problems that the plaintiffs are trying
 19 to address. My questioning has been focused
 20 on problems. You've been responding about
 21 mission, but I -- I'd like for you to
 22 identify some of the problems, generally
 23 speaking, that you understand the plaintiffs
 24 are trying to address.
 25 MR. FEE: Objection to form.

Page 52

1 Compound.
 2 THE WITNESS: I thought I did,
 3 so I'll try with some different words.
 4 BY MR. BRIDGES:
 5 Q. Can you answer without
 6 reference to your report --
 7 A. I'd rather --
 8 Q. -- based on your general
 9 knowledge?
 10 A. I'd rather not.
 11 Q. Well, I'd rather that you tell
 12 us what you can recall about the -- about the
 13 problems that plaintiffs are trying to
 14 address.
 15 A. So you don't --
 16 MR. FEE: Objection.
 17 THE WITNESS: -- want me to
 18 look at my report? This is just a
 19 memory contest?
 20 BY MR. BRIDGES:
 21 Q. No, it's not a memory contest.
 22 I'd like to know what you happen to know,
 23 sitting here.
 24 A. I'd like to do that by looking
 25 at my report.

Page 53

1 Q. You may after I get your answer
 2 first.
 3 A. Okay.
 4 MR. FEE: Objection to making
 5 this a memory test and not allowing
 6 him to review materials he's indicated
 7 he needs to review to fully and
 8 accurately respond to the question.
 9 If you can answer without
 10 looking at your report, go ahead.
 11 THE WITNESS: By way of
 12 example, ASTM has addressed problems
 13 associated with the safety of
 14 amusement rides.
 15 By way of example, NFP [sic]
 16 has addressed problems associated with
 17 electrical fires in buildings.
 18 By way of example, ASHRAE is
 19 addressing -- but I'm not thinking of
 20 a good example for ASHRAE right now.
 21 I apologize. I'd have to look at my
 22 report.
 23 BY MR. BRIDGES:
 24 Q. Okay. And I believe that you
 25 testified -- bear with me just a second. Let

1 me get the exact testimony.
 2 You said earlier that the
 3 plaintiffs are interested in effectuating
 4 their charters, and that is they want to
 5 address certain problems in an effective way.
 6 And if those solutions get incorporated into
 7 standards and those standards get
 8 incorporated into law, that can be an
 9 effective way for dissemination of a
 10 solution.
 11 Do you recall that testimony?
 12 A. Yes, I do.
 13 Q. What did you mean by
 14 "solutions" in that context?
 15 A. Standards are a form of
 16 solution.
 17 Q. In what respect?
 18 A. They provide definition around
 19 what is a best practice, an advisable
 20 practice, and that practice is intended to
 21 address existing and potential problems.
 22 Q. And what do you mean by
 23 "practices" in that -- in your answer?
 24 A. Perhaps you could read it back,
 25 and that will help me answer the question.

1 Q. You said standards "provide
 2 definition around what is a best practice, an
 3 advisable practice, and that practice is
 4 intended to address existing and potential
 5 problems."
 6 What did you mean by "practice"
 7 in that answer?
 8 A. It was an example of what
 9 somebody should do.
 10 Q. And what do you mean by "what
 11 somebody should do"?
 12 MR. FEE: Objection. Vague.
 13 THE WITNESS: I don't know how
 14 to define it any more than that. I'm
 15 sorry.
 16 BY MR. BRIDGES:
 17 Q. Is it a course of action that
 18 somebody should take?
 19 A. That would be another way to
 20 say it. I don't think that's a definition.
 21 It's -- it's another presentation of what I
 22 said.
 23 Q. Is -- a suitable method for
 24 accomplishing a goal?
 25 MR. FEE: Objection to form.

1 THE WITNESS: That -- that
 2 could be an example, yes.
 3 BY MR. BRIDGES:
 4 Q. And would it be in terms of
 5 some of plaintiffs' standards?
 6 MR. FEE: Same objection.
 7 THE WITNESS: I think so.
 8 BY MR. BRIDGES:
 9 Q. Would it be optimal or best
 10 procedures for accomplishing a result?
 11 MR. FEE: Objection to form.
 12 THE WITNESS: That could be.
 13 I'm not sure that that's a definition,
 14 but it -- that's a possibility.
 15 BY MR. BRIDGES:
 16 Q. And does that apply to
 17 plaintiffs' standards?
 18 MR. FEE: Same objection.
 19 THE WITNESS: I'm sorry. What
 20 is the question?
 21 BY MR. BRIDGES:
 22 Q. That plaintiffs' standards
 23 articulate optimal procedures for
 24 accomplishing certain results.
 25 MR. FEE: Objection to form.

1 THE WITNESS: I don't know that
 2 I've seen that. I think that they are
 3 consensus based, and what one party
 4 may define as optimum may be different
 5 from what another party defines as
 6 optimal.
 7 But I think they're the result
 8 of a variety of parties coming
 9 together and sometimes balancing
 10 interests and opinions.
 11 BY MR. BRIDGES:
 12 Q. And recommending certain
 13 procedures for accomplishing certain
 14 outcomes?
 15 A. By way --
 16 MR. FEE: Objection to form.
 17 THE WITNESS: By way of
 18 example, yes.
 19 Are we at a point for a break?
 20 We've been going a little over an
 21 hour.
 22 BY MR. BRIDGES:
 23 Q. I'd like to go a little bit
 24 further to conclude a line of questioning.
 25 It will be about ten more minutes.

Page 58

1 incorporated into law, that can be an
 2 effective way for dissemination of a
 3 solution.
 4 What makes incorporation into
 5 law an effective way for dissemination of a
 6 solution with respect to the plaintiffs'
 7 activities?
 8 MR. FEE: Objection to form.
 9 THE WITNESS: I -- I'm
 10 certainly not --
 11 MR. FEE: It mischaracterizes
 12 his prior testimony.
 13 THE WITNESS: I -- I'm not a
 14 legal expert, and I'm not an expert of
 15 an -- on the topic of incorporation by
 16 reference into law.
 17 But if a particular statute
 18 lays out that legally someone must
 19 follow what's laid out in certain
 20 standards, I would expect that,
 21 because most people are interested in
 22 lawful rather than unlawful activity,
 23 that people would follow that dictate.
 24 BY MR. BRIDGES:
 25 Q. And that incorporation into law

Page 60

1 MR. FEE: Are you okay with
 2 that?
 3 THE WITNESS: I'm okay with
 4 that. I don't know what you mean by
 5 "a little bit further."
 6 BY MR. BRIDGES:
 7 Q. About ten more -- about ten
 8 more minutes.
 9 A. I'd rather keep it closer to
 10 now than ten minutes from now.
 11 Q. Well, let me just finish a
 12 couple of things here.
 13 MR. FEE: Well, you take a
 14 break whenever you want to take a
 15 break.
 16 MR. BRIDGES: Well, I -- I'm in
 17 the middle of a line of questioning.
 18 MR. FEE: There's no question
 19 pending. He can take a break now if
 20 he wants. If he's willing to give you
 21 a couple more minutes, then that's
 22 great, too.
 23 BY MR. BRIDGES:
 24 Q. You said that if solutions get
 25 incorporated into standards and standards get

Page 59

1 would be effective for dissemination of a
 2 standard?
 3 MR. FEE: Same objections.
 4 BY MR. BRIDGES:
 5 Q. Is that your testimony?
 6 A. It's not necessarily the most
 7 effective way, but it -- as -- as far as I
 8 know, it would be an effective way.
 9 Q. What are other effective ways
 10 for dissemination of a standard?
 11 A. I -- I haven't given that any
 12 thought. I would just be speculating.
 13 MR. BRIDGES: Okay. We can
 14 take a break.
 15 THE WITNESS: Thank you.
 16 THE VIDEOGRAPHER: Off the
 17 record at 11:12.
 18 * * *
 19 (Recess from 11:12 a.m. to
 20 11:23 a.m.)
 21 * * *
 22 THE VIDEOGRAPHER: On the
 23 record at 11:23.
 24 BY MR. BRIDGES:
 25 Q. Mr. Jarosz, have you evaluated

Page 61

1 any harms that the plaintiffs have actually
 2 suffered to date as a consequence of the
 3 defendant's activities?
 4 MR. FEE: Objection to form.
 5 THE WITNESS: To the extent I
 6 have, it's embodied in my report.
 7 You'll see there's a little bit of
 8 evidence of actual tangible harm to
 9 date, and there's certainly more
 10 discussion of harm. The tangible
 11 evidence I have is reflected in my
 12 report.
 13 BY MR. BRIDGES:
 14 Q. And what do you understand that
 15 evidence to be?
 16 A. I believe the number of
 17 downloads from the Public Resource
 18 dissemination have been fairly substantial.
 19 I believe that the purchase of publications
 20 has declined some at the plaintiffs -- at the
 21 various plaintiffs. It certainly has not
 22 risen. Those are among the things that come
 23 to mind.
 24 I think I discuss the topic in
 25 more depth in paragraph, among other thing --

Page 62

1 among other places, in paragraph 133 of my
 2 report.
 3 Q. Have you been able to quantify
 4 any financial losses to plaintiffs as a
 5 consequence of defendant's activities?
 6 A. No.
 7 Q. Why not?
 8 A. Not with any great certainty.
 9 Q. Why not?
 10 A. Well, I don't have the records
 11 that would allow me to do that. Moreover, I
 12 am not sure that the impact from the past
 13 will be close to the impact that will occur
 14 in the future if the Court finds that there
 15 has been no copyright or trademark
 16 infringement.
 17 Q. Why do you make the statement
 18 you just did? What's your basis for it?
 19 MR. FEE: Objection to form.
 20 THE WITNESS: I think there
 21 were a few things in my statement.
 22 Which would you like me to expound on?
 23 BY MR. BRIDGES:
 24 Q. Just that sentence. I'd like
 25 to know what the basis is for the sentence

Page 63

1 you just said, quote, "I am not sure that the
 2 impact from the past would be close to the
 3 impact that will occur in the future if the
 4 Court finds that there has been no copyright
 5 or trademark infringement."
 6 A. It's everything laid out in my
 7 report. I -- it's really the -- at the heart
 8 of what I did.
 9 Q. And please summarize for me
 10 what data you base that statement on.
 11 A. That's identified in my report.
 12 Q. Okay. Show me, please, in the
 13 report.
 14 A. It's all of what's in
 15 Exhibit 1.
 16 Q. No, I want -- I want the basis
 17 for your statement that the impact from
 18 conduct to date -- strike that -- that you're
 19 not sure that the impact from the conduct to
 20 date would be close to the impact that will
 21 occur in the future if the Court find --
 22 makes a certain finding, right?
 23 A. Correct.
 24 Q. So please identify for me
 25 something specific that forms the basis of

Page 64

1 that statement.
 2 MR. FEE: Objection. Asked and
 3 answered.
 4 THE WITNESS: Among other
 5 things, paragraphs 112 through 155.
 6 BY MR. BRIDGES:
 7 Q. So these are the "Costs of
 8 Losing Copyright Protection"; is that
 9 correct?
 10 A. That's the title of this
 11 section, and then there's some discussion of
 12 trademark protection as well.
 13 Q. And those would be the harms
 14 that you identify that would flow from a
 15 decision by the Court that the plaintiffs
 16 cannot enforce their copyrights against the
 17 defendant, correct?
 18 MR. FEE: Objection to form.
 19 THE WITNESS: What I can say --
 20 I'm sorry.
 21 MR. FEE: I just objected to
 22 form.
 23 THE WITNESS: What I can say
 24 with a reasonable degree of certainty.
 25 BY MR. BRIDGES:

Page 65

1 Q. So those would be harms caused
 2 by a court decision?
 3 MR. FEE: Same objection.
 4 THE WITNESS: By continuing
 5 activities by the defendant that are
 6 not halted by the Court.
 7 BY MR. BRIDGES:
 8 Q. Well, it comes across, frankly,
 9 in your report as though you're identifying
 10 harms that would flow from a court decision.
 11 MR. FEE: Objection.
 12 BY MR. BRIDGES:
 13 Q. Is that correct or not?
 14 A. No, I think you --
 15 MR. FEE: Mischaracterizes the
 16 report.
 17 THE WITNESS: -- you misread
 18 it. I don't think I said that or
 19 meant to say that.
 20 BY MR. BRIDGES:
 21 Q. So what harms have occurred
 22 from the -- from the defendant's conduct to
 23 date?
 24 A. At the risk of repeating
 25 myself, some of that is summarized in

Page 66

1 paragraph 133, with regard to tangible
 2 evidence on harm. With regard to other
 3 evidence, it's throughout the report.
 4 Q. So why would it make a
 5 difference to what the defendant's harms
 6 are -- strike -- strike that.
 7 Why would it make a defendants
 8 [sic] to the plaintiffs' harms if the
 9 plaintiffs' harms were continue with --
 10 strike that.
 11 Is it your testimony that harms
 12 to plaintiffs would be different depending on
 13 the particular basis of the Court's ruling?
 14 MR. FEE: Objection. Vague.
 15 THE WITNESS: I -- I don't
 16 understand your question.
 17 BY MR. BRIDGES:
 18 Q. It looks as though you're
 19 stating what the harms would be if the Court
 20 found that incorporation by reference would
 21 cause the plaintiffs to lose copyright
 22 protection; is that correct?
 23 A. I don't --
 24 MR. FEE: Objection. Vague.
 25 THE WITNESS: -- think so. I

Page 67

1 think basically what I'm saying is
 2 what would -- or addressing, is what
 3 would be the harm to the plaintiffs if
 4 there's no permanent injunction.
 5 BY MR. BRIDGES:
 6 Q. Well, what did you mean by
 7 "losing copyright protection" in the
 8 paragraph -- in the heading VI on page 48?
 9 A. In essence, you can think of it
 10 as what would happen if there's no permanent
 11 injunction. In other words, what the
 12 defendant has done in the past and what it's
 13 likely to do in the future is allowed to
 14 continue.
 15 Q. And you immediately go into
 16 paragraph 112 talking about Emily Bremer,
 17 correct?
 18 A. I don't know what you mean by
 19 "immediately." It's the first paragraph in
 20 Section VI.
 21 Q. Right. Was Emily Bremer in the
 22 passage you referred to referring to the
 23 presence or absence of a permanent injunction
 24 in this case?
 25 A. I don't think explicitly she

Page 68

1 was addressing that issue, no.
 2 Q. Do you think implicitly she was
 3 referring to this case?
 4 A. No. I thought you were asking
 5 about permanent injunction. I don't think
 6 she was addressing the -- an injunction
 7 issue. She was addressing the concept of
 8 copyright protection.
 9 Q. And that's what you quoted her
 10 for, right, was for the concept of copyright
 11 protection for standards?
 12 MR. FEE: Objection. You're
 13 referring just to paragraph 112?
 14 BY MR. BRIDGES:
 15 Q. You may answer.
 16 MR. FEE: Objection to form.
 17 THE WITNESS: I -- I don't
 18 understand the question.
 19 BY MR. BRIDGES:
 20 Q. You quoted her in
 21 paragraph 112, correct?
 22 A. Yes. From one of her two
 23 articles, yes.
 24 Q. Right. Regarding the concept
 25 of copyright protection?

Page 69

1 A. Generally. I think she's
 2 talking about standards development and
 3 incorporation by reference. I don't remember
 4 if she said at the very beginning of the
 5 article that it was about copyright
 6 protection, but she certainly talks about
 7 copyright protection.
 8 Q. And you're quoting her about
 9 losing copyright protection, and you're
 10 placing it in the context of harms of the
 11 loss of copyright protection, correct?
 12 MR. FEE: Objection to form.
 13 THE WITNESS: This excerpt
 14 doesn't specifically talk about losing
 15 copyright protection, but it talks
 16 about the concept of it. If there was
 17 no longer copyright protection granted
 18 to the SDOs, what would be the
 19 repercussions.
 20 BY MR. BRIDGES:
 21 Q. And that's the context that you
 22 identified in the first line of
 23 paragraph 112, correct?
 24 A. Yes.
 25 MR. FEE: Objection to form.

Page 70

1 BY MR. BRIDGES:
 2 Q. Let me direct your attention to
 3 paragraph 35 of your report. It says, "With
 4 regard to expansion beyond the specific
 5 actions of Public Resource here, the
 6 'product' offerings of Public Resource -
 7 scans of paper copies of standards with some
 8 rekeying of text and some redrawing of
 9 diagrams (with some containing errors) -
 10 represent a rudimentary first step in the use
 11 of Plaintiffs' standards that is likely to
 12 become much more sophisticated if the Court
 13 holds that third parties are free to use
 14 Plaintiffs' standards with impunity after
 15 they are incorporated by reference into law."
 16 Do you see that?
 17 A. Yes, I do.
 18 Q. That is your statement,
 19 correct?
 20 A. Yes.
 21 Q. What are the steps that you're
 22 envisioning there beyond the rudimentary
 23 first step that you identify?
 24 A. I think they're laid out in the
 25 next sentence.

Page 71

1 Q. "Such products" --
 2 A. And in the next two sentences.
 3 Q. And these are other products
 4 that "could include more sophisticated
 5 Web-based availability, published
 6 compilations of incorporated standards, and
 7 other ancillary products that incorporate the
 8 standards"; isn't that correct?
 9 A. You didn't read that right. It
 10 starts "such products could include."
 11 Q. Okay. Otherwise, that reading
 12 is correct, correct?
 13 A. I think so.
 14 Q. You consider that to be harm to
 15 the plaintiffs?
 16 MR. FEE: Objection. Vague.
 17 THE WITNESS: It could be, yes.
 18 It's likely to be, if the copyright
 19 infringement or the assumption of a
 20 copyright infringement continues. It
 21 could broaden.
 22 BY MR. BRIDGES:
 23 Q. Right. But the fact that these
 24 other types of products would enter the
 25 marketplace is part of the harm that you

Page 72

1 envision from the defendant in this case?
 2 MR. FEE: Objection to form.
 3 THE WITNESS: It's potential --
 4 there's a potential that the defendant
 5 could do that. There's also the
 6 potential that other parties could do
 7 that.
 8 BY MR. BRIDGES:
 9 Q. What --
 10 A. I don't know for sure what the
 11 defendant has in mind.
 12 Q. Why did you take into account
 13 harms caused by other parties in this case?
 14 A. Because --
 15 MR. FEE: Objection. Lack of
 16 foundation.
 17 Go ahead.
 18 THE WITNESS: If no copyright
 19 protection is allowed here, in other
 20 words, there's no permanent
 21 injunction, Public Resource and other
 22 parties like it will have freedom to
 23 do what the plaintiffs believe they
 24 should not have freedom to do.
 25 BY MR. BRIDGES:

Page 73

1 Q. In other words, if the Court
2 makes a decision in a certain way, there will
3 be harms from persons or entities other than
4 Public.Resource.Org to the plaintiffs? Is
5 that your testimony?
6 MR. FEE: Objection to form.
7 THE WITNESS: You used the
8 phrase "in a certain way." I don't
9 know what you mean by that. I'm
10 addressing the issue of whether there
11 should be a permanent injunction or
12 not.
13 BY MR. BRIDGES:
14 Q. So your view is that, if the
15 Court does not enter a permanent injunction,
16 the plaintiffs will suffer harms from parties
17 other than Public.Resource.Org. Is that your
18 testimony?
19 A. That potential exists. I don't
20 know for sure. That's, in part, why the harm
21 is irreparable or very difficult to quantify.
22 Q. The -- what harm?
23 A. Continuing activity of Public
24 Resource and others. I don't know exactly
25 what will happen, but the potential is that

Page 74

1 there could be very broad dissemination of
2 the standards, which would impact these SDOs
3 tremendously.
4 Q. What harm would
5 Public.Resource.Org cause to plaintiffs if
6 there is no permanent injunction?
7 A. A permanent injunction would --
8 lack of a permanent injunction would harm the
9 SDOs.
10 Q. That wasn't my question. My
11 question was, what harm would
12 Public.Resource.Org cause to plaintiffs if
13 there is no permanent injunction?
14 A. At the very least, it's
15 associated with its historical dissemination
16 of these standards, and there would be, in
17 essence, a carte blanche for other
18 organizations or individuals to access those.
19 So my expectation is that the
20 dissemination of the materials that have
21 already been disseminated will expand.
22 It could also be the case that
23 Public Resource will undertake further
24 activities that would disseminate either
25 already disseminated standards or other

Page 75

1 standards.
2 Q. What further harm would
3 Public.Resource.Org cause to plaintiffs with
4 respect to the standards at issue in this
5 case if no -- if the Court does not
6 permanently enjoin Public.Resource.Org?
7 MR. FEE: Objection to form.
8 THE WITNESS: If there's no
9 permanent injunction, there will, in
10 essence, be a message sent to the
11 marketplace that the standards that
12 have already been disseminated are out
13 there and can be used by others.
14 So right now my expectation is
15 that some number of consumers of the
16 standards have been reluctant or
17 unknowing as to the standards
18 disseminated by Public Resource. Now
19 there will be more knowledge about
20 that and more approval of that
21 activity. That is if there's no
22 permanent injunction.
23 BY MR. BRIDGES:
24 Q. What harms will plaintiffs
25 suffer if the Court rules that the plaintiffs

Page 76

1 do not own the copyrights in this case?
2 MR. FEE: Objection. Calls for
3 speculation.
4 THE WITNESS: In essence,
5 you're asking if there's no copyright
6 infringement?
7 BY MR. BRIDGES:
8 Q. No. What harms -- have you
9 identified what harms the plaintiffs would
10 suffer if the Court rules that the plaintiffs
11 do not own the copyrights at issue, that
12 there are no copyrights that the plaintiffs
13 own --
14 MR. FEE: Objection to form.
15 BY MR. BRIDGES:
16 Q. -- at issue in this case?
17 A. I haven't addressed or thought
18 about that issue. There are also, don't
19 forget, trademark issues.
20 Q. I'm asking about copyright, so
21 I ask you to confine your answers to my
22 questions.
23 My question is, what -- you
24 assume for purposes of your analysis that
25 plaintiffs own valid copyrights, correct?

Page 77

1 A. I assume that there's copyright
2 infringement. I don't know that I've made an
3 explicit assumption with regard to ownership.
4 Q. And you assume infringement
5 without assuming ownership of the copyrights?
6 A. I haven't made any explicit
7 assumption with regard to ownership. I know
8 that's an issue in this case, but it's well
9 beyond my expertise.
10 Q. So if it turns out that -- do
11 you understand your testimony to have any
12 bearing on whether plaintiffs' standards are
13 copyrightable?
14 MR. FEE: Objection. Calls for
15 speculation.
16 I would instruct you to not
17 disclose any communications you had
18 with counsel that weren't the basis
19 for any of your opinions in this case.
20 You can otherwise answer.
21 THE WITNESS: Could you read
22 that back or ask it again, please?
23 BY MR. BRIDGES:
24 Q. Do you understand your
25 testimony and opinions in this case to have

Page 78

1 any bearing on whether plaintiffs' standards
2 are copyrightable?
3 MR. FEE: Same objection and
4 instruction. Plus objection, calls
5 for a legal conclusion.
6 THE WITNESS: I don't know one
7 way or the other. I've not taken on
8 that assignment.
9 BY MR. BRIDGES:
10 Q. Do you understand whether your
11 testimony and opinions in this case are
12 relevant to whether plaintiffs deserve
13 copyright protection in this case?
14 MR. FEE: Objection. Calls for
15 a legal conclusion.
16 And same objection with respect
17 to communications between you and
18 counsel that were not the bases for
19 your opinions or your report.
20 THE WITNESS: I don't know one
21 way or the other. I did not take on
22 that assignment.
23 BY MR. BRIDGES:
24 Q. Do you mean by your analysis
25 and opinions to suggest in any way that

Page 79

1 plaintiffs deserve copyright protection for
2 these standards?
3 MR. FEE: Objection to form.
4 THE WITNESS: I don't have an
5 opinion on that one way or the other.
6 I have not thought about that topic.
7 BY MR. BRIDGES:
8 Q. Do you have any expertise in
9 copyright law as a field of law?
10 MR. FEE: Objection. Vague.
11 THE WITNESS: No, I don't have
12 legal expertise. I have expertise in
13 looking at harm associated with
14 copyright infringement.
15 BY MR. BRIDGES:
16 Q. Do you have any expertise with
17 respect to harm caused by invalidation of
18 copyrights?
19 MR. FEE: Same objection.
20 THE WITNESS: I'm not quite
21 sure I'm fully appreciating your
22 question. Again, I'm an expert in the
23 economics of IP protection. One of
24 the areas in which I do work is harm
25 associated with copyright protection.

Page 80

1 BY MR. BRIDGES:
2 Q. Have you done any work in this
3 case to quantify what harms plaintiffs would
4 suffer if a court were to rule that they
5 lacked copyright rights in the standards at
6 issue in this case?
7 MR. FEE: Objection to form.
8 Go ahead.
9 THE WITNESS: Not explicitly,
10 to my knowledge.
11 BY MR. BRIDGES:
12 Q. Have you done anything
13 implicitly?
14 MR. FEE: Same objection.
15 THE WITNESS: Not to my
16 knowledge.
17 BY MR. BRIDGES:
18 Q. Have you done any work in this
19 case to analyze the incentives that
20 participants have in the standards
21 development process?
22 MR. FEE: Objection to form.
23 Vague.
24 THE WITNESS: I have in the
25 sense that I've examined the materials

Page 81

1 that I've cited, and some of those
 2 talk about the standard development
 3 process and why participants are
 4 active in the process. So in that
 5 regard, I've considered incentives.
 6 BY MR. BRIDGES:
 7 Q. What do you understand the
 8 incentives to be?
 9 A. Well, for the supply side
 10 constituents, they're interested in effective
 11 manufacturing and selling of products that
 12 will -- and services that will be well
 13 received in the marketplace; and on the
 14 demand side, the constituents are interested
 15 in products and services that address certain
 16 quality and compatibility issues or problems
 17 and help resolve those.
 18 Q. Do you know who actually
 19 creates the text of the standards?
 20 MR. FEE: Objection to form.
 21 THE WITNESS: Are you talking
 22 about who actually types in the words?
 23 BY MR. BRIDGES:
 24 Q. No.
 25 A. Because I don't know what you

Page 82

1 mean by "creates the text."
 2 Q. Who actually suggests the
 3 words?
 4 A. I think a number of
 5 constituents do, typically.
 6 Q. What types of constituents
 7 suggest the words of the standards?
 8 MR. FEE: Objection to form.
 9 THE WITNESS: I think it's
 10 sometimes SDO employees. I think,
 11 more times than not, it's industry
 12 participants, often supply-side
 13 people, sometimes demand-side people.
 14 Frequently those people are working
 15 from preexisting standards or similar
 16 standards and revising those as
 17 appropriate.
 18 So I think a number of people
 19 have input to the words.
 20 BY MR. BRIDGES:
 21 Q. Do you actually know of
 22 instances where SDO employees have proposed
 23 text as opposed to editing text?
 24 A. I can't --
 25 MR. FEE: Objection --

Page 83

1 THE WITNESS: -- point to --
 2 MR. FEE: -- form.
 3 THE WITNESS: -- any particular
 4 instances as I sit here now.
 5 BY MR. BRIDGES:
 6 Q. Can you think of any other
 7 motivations that the participants in the
 8 standards writing process have?
 9 A. I'm sorry. Other than what?
 10 Q. Other than the incentives you
 11 referred to earlier of the supply-side
 12 constituents and the demand-side
 13 constituents.
 14 A. Nothing else comes to mind,
 15 although I'm certainly open to the fact that
 16 I haven't thought of or expressed all the
 17 incentives.
 18 Q. Well, what other incentives can
 19 you think of as you sit here?
 20 A. As I just said, nothing else
 21 comes to mind.
 22 Q. What incentives do you
 23 understand the plaintiffs to have in
 24 developing standards?
 25 MR. FEE: Objection to form.

Page 84

1 THE WITNESS: I think,
 2 generally, they want consensus among
 3 interested parties in how to address a
 4 particular issue or problem that those
 5 constituents face.
 6 They are each non-profit
 7 organizations, so they're not
 8 intending to profit off their
 9 activities, but they're certainly
 10 intending to fund their activities
 11 going forward.
 12 BY MR. BRIDGES:
 13 Q. What do you understand the
 14 activities of the standards development
 15 organizations to be in creating the standards
 16 at issue in this case?
 17 MR. FEE: Objection to form.
 18 THE WITNESS: At the very
 19 least, they facilitate the process
 20 through arranging logistics. They do
 21 other things, including participate in
 22 discussions, and -- as I understand
 23 it, and create versions of proposed
 24 standards.
 25 They also serve as a

Page 85

1 clearinghouse for resources.
 2 BY MR. BRIDGES:
 3 Q. When you say they "create
 4 versions of the proposed standards," it's, in
 5 fact, the various groups, as you call them,
 6 that create versions, perhaps with a staff
 7 member from the organizations themselves,
 8 correct?
 9 MR. FEE: Objection to form.
 10 Vague.
 11 THE WITNESS: I think that's
 12 sometimes correct.
 13 BY MR. BRIDGES:
 14 Q. Do you know that --
 15 A. Perhaps often.
 16 Q. Or perhaps always?
 17 A. Perhaps always.
 18 MR. FEE: Objection.
 19 BY MR. BRIDGES:
 20 Q. How do the plaintiffs serve as
 21 clearinghouses for resources?
 22 A. They allow a forum for the
 23 various constituents to identify and address
 24 issues that those constituents face in a
 25 particular subject area.

Page 86

1 standards, print copies of standards,
 2 and disseminate copies of standards.
 3 They are involved in teaching
 4 and training sometimes associated with
 5 standards.
 6 They participate in advertising
 7 campaigns about the output of the SDO.
 8 Those are among the things that
 9 they contribute.
 10 BY MR. BRIDGES:
 11 Q. And when you say "providing
 12 people to be involved and pay salaries,"
 13 you're talking about the -- generally
 14 speaking, the staff members who may functions
 15 as liaisons to various committees and groups
 16 that draft the standards?
 17 MR. FEE: Objection to form.
 18 Lack of foundation.
 19 BY MR. BRIDGES:
 20 Q. Is that what you understand?
 21 A. Staff people that help
 22 facilitate. Some are purely helping in a
 23 logistics front. Others are helping on a
 24 more substantive front. They pay their
 25 salaries. They pay taxes, provide benefits.

Page 88

1 Q. What investments do you
 2 understand the plaintiffs to make in the
 3 standards development process?
 4 MR. FEE: Objection to form.
 5 THE WITNESS: Are you asking
 6 for dollar amounts, or are you asking
 7 for types of activities?
 8 BY MR. BRIDGES:
 9 Q. Types of -- types of
 10 expenditures.
 11 MR. FEE: Same objection.
 12 THE WITNESS: There are many
 13 types, as I understand it. One type
 14 is simply providing people to be
 15 involved in the process and paying the
 16 salaries of those people.
 17 I think they probably provide
 18 computing resources to help produce
 19 the standards.
 20 I think they probably provide
 21 meeting resources.
 22 I think they probably provide
 23 an e-mail exchange mechanism by which
 24 information is shared.
 25 I think they create copies of

Page 87

1 They provide travel expenses. Those are some
 2 of the things that are done.
 3 Q. On page 76 -- sorry -- page 33.
 4 Let me ask you to turn to paragraph 76 of
 5 your report. Are you there?
 6 A. I am, yes.
 7 Q. In the final sentence, it says,
 8 "In fiscal year 2014, ASHRAE spent more than
 9 \$1 million to cover the costs of developing
 10 or updating its standards."
 11 Do you see that?
 12 A. I do, yes.
 13 Q. Are -- on -- how many years is
 14 the typical cycle for revision of ASHRAE's
 15 90.1 standard?
 16 A. That is under continuous
 17 maintenance, and I think that's -- it's
 18 supplemented and updated automatically every
 19 three years. Perhaps they address it more
 20 frequently, but at least every three years.
 21 Q. So it would be fair to assume
 22 that, during one cycle, ASHRAE spent
 23 something over \$3 million to cover the costs
 24 of developing or updating its standards?
 25 A. You said at least \$3 million?

Page 89

1 Q. Right. Or approximately
2 \$3 million?
3 A. Are you limiting it just to
4 90.1 or all its standards?
5 Q. Well, that's a good question.
6 What -- what's -- what did you intend the
7 last sentence in paragraph 76 to refer to?
8 All of its standards or 90.1?
9 A. I think it's all of its
10 standards, but we could visit the screenshot
11 from the Web site to confirm that.
12 Q. Okay.
13 A. I -- I could be wrong. I don't
14 think I am, but I could be.
15 Q. Okay. In the previous
16 sentence, you say, "ASHRAE and its volunteer
17 members devoted more than 86,400 man-hours,
18 3,600 hotel nights, and 1,200 round-trip
19 flights as part of the process."
20 And that -- "the process"
21 appears to refer to updating the ASHRAE 90.1
22 standard, correct?
23 A. Yes.
24 Q. When you say "ASHRAE and its
25 volunteer members," and then you give those

Page 90

1 statistics, those statistics refer primarily
2 to the man-hours, hotel nights, and
3 round-trip flights of the volunteer members?
4 MR. FEE: Objection. Vague.
5 THE WITNESS: Probably. As
6 opposed to ASHRAE-employed staff.
7 BY MR. BRIDGES:
8 Q. Do you know how much ASHRAE's
9 volunteer members and their employers --
10 strike that.
11 Do you know how much ASHRAE's
12 volunteer members and their employers spent
13 in salaries and disbursements for the
14 man-hours, hotel nights, and round-trip
15 flights that were part of the process of
16 updating the ASHRAE 90.1 standard?
17 A. I don't know, but it -- I would
18 imagine it's a noticeable amount, but I don't
19 know the amount.
20 Q. What would be your best
21 estimate?
22 A. I don't have a best estimate.
23 Q. Would it be probably over
24 \$10 million?
25 MR. FEE: Objection to form.

Page 91

1 THE WITNESS: Again, I don't
2 have an estimate.
3 BY MR. BRIDGES:
4 Q. Do you know -- did ASHRAE pay
5 for the time, the hotel bills, and the plane
6 fares of its volunteer members in updating
7 the ASHRAE 90.1 standard?
8 A. I would expect rarely. It's
9 possible that there are certain instances in
10 which there was some set of out-of-pocket
11 expenses covered, but I would imagine the
12 bulk of the time it's the volunteer's
13 employer.
14 MR. BRIDGES: Sorry. How long
15 have we been going? I didn't get when
16 we went back on.
17 MR. FEE: 34 minutes.
18 BY MR. BRIDGES:
19 Q. Did you speak with Emily Bremer
20 at any point in this case?
21 A. No.
22 Q. How did you become acquainted
23 with her writings?
24 A. I think Kevin Fee and/or
25 Jordana Rubel brought to my attention that

Page 92

1 she had written on this topic. I don't
2 recall whether then we separately obtained
3 her two articles or Mr. Fee slash Ms. Rubel
4 provided those to us.
5 Q. What independent work did you
6 do to research writings regarding the
7 economics of standards development?
8 MR. FEE: Objection to form.
9 THE WITNESS: We did
10 independent research in the sense that
11 people that work with me did a
12 literature search to determine what
13 writings had been done in the area.
14 I was previously aware of some
15 amount of the scholarship to begin
16 with.
17 BY MR. BRIDGES:
18 Q. How is that literature search
19 reflected in any documents?
20 A. The results are shown in my
21 tab 2, and in particular it is page 2 of my
22 tab 2, at the bottom.
23 Q. And were these items found by
24 you or your team?
25 MR. FEE: Objection to form.

Page 93

<p>1 THE WITNESS: Yes, with the 2 exception that, in the first instance, 3 lawyers at Morgan Lewis brought to our 4 attention the Bremer -- the existence 5 of Bremer articles. 6 BY MR. BRIDGES: 7 Q. Did you study any of the 8 materials that Bremer -- strike that. 9 Bremer's articles are law 10 review articles, correct? 11 A. Yes. 12 Q. Did any plaintiff -- did your 13 team's research identify any articles that 14 you chose not to include in tab 2? 15 A. I don't think so. 16 Q. Did any plaintiff or its 17 counsel furnish you with correspondence 18 between the plaintiffs and Emily Bremer for 19 review? 20 A. No, not to my knowledge. 21 Q. How many conversations with 22 representatives of the plaintiffs did you 23 have? 24 MR. FEE: Objection. 25 I would instruct you not to</p> <p style="text-align: right;">Page 94</p>	<p>1 the various plaintiffs. 2 Q. With whom? 3 A. They are all identified in 4 paragraph 10 of my report. 5 Q. Which of those did you 6 personally have conversations with? 7 A. All of them, as I recall. It's 8 possible there's someone I did not, but I'm 9 not remembering that being the case. 10 Q. Approximately how long did you 11 spend with -- did you have conversations with 12 any of them together? 13 A. Yes, several of them were 14 together. 15 Q. Which ones? 16 A. I don't recall all 17 combinations. I can say with some confidence 18 that there was never more than one plaintiff 19 on a call. In other words, there were 20 several people from a particular plaintiff on 21 a call, but not more than one plaintiff. 22 So I had various combinations 23 of calls with ASTM that may have occurred on 24 three occasions; with NFPA, one or two 25 occasions; and with ASHRAE, one or two</p> <p style="text-align: right;">Page 96</p>
<p>1 answer questions regarding 2 communications with counsel, unless 3 they formed the basis of your 4 opinions, in which case you can answer 5 questions with respect to those 6 conversations. 7 BY MR. BRIDGES: 8 Q. So I -- I'll change my question 9 slightly. 10 How many -- how many 11 conversations did you have with non-lawyer 12 employees or former employees of the 13 plaintiffs? 14 A. None that the -- that did not 15 include the lawyers. 16 Q. Right. I'm -- so I'm asking 17 you to tell me what they were. If the 18 presence of lawyer -- if you had a 19 conversation with a -- with an employee or 20 former employee of the plaintiff, I'd like to 21 know what that was. So the fact that lawyers 22 may have been present wouldn't excuse it from 23 the scope of the answer. 24 A. I had somewhere between four 25 and six conversations with people who were at</p> <p style="text-align: right;">Page 95</p>	<p>1 occasions. 2 Q. And approximately how long 3 total did you spend in conversations with 4 representatives of each plaintiff? 5 MR. FEE: Objection to form. 6 THE WITNESS: Cumulatively, 7 somewhere between three and five hours 8 is my best guess right now. 9 BY MR. BRIDGES: 10 Q. When you say cumulative -- 11 "cumulatively," you mean for all plaintiffs? 12 A. Yes. Meaning I'm -- I've added 13 up the conversations I had across all three 14 plaintiffs. 15 Q. Right. What's your best 16 estimate as to the period of time you spent 17 with each plaintiff? 18 A. With ASTM, it may have been two 19 to three hours. For NFPA, one to two hours. 20 For ASHRAE, one to two hours. That's my best 21 guess right now. 22 * * * 23 (Jarosz Exhibit 2 and Jarosz-3 24 marked for identification.) 25 * * *</p> <p style="text-align: right;">Page 97</p>

1 BY MR. BRIDGES:
 2 Q. Mr. Jarosz, I'm handing you
 3 Exhibits 2 and 3. I'll represent that these
 4 were furnished to us by e-mail last night, I
 5 think around 6 p.m. Eastern or thereabouts.
 6 Can you please identify
 7 Exhibits 2 and 3?
 8 MR. FEE: Objection to form.
 9 THE WITNESS: To the best of my
 10 knowledge, Exhibit 2 is notes that
 11 Mr. Chapman took in conversations that
 12 we had with various people, and
 13 Exhibit 3 is notes that Mr. Hamasaki
 14 took in conversations with plaintiff
 15 personnel.
 16 BY MR. BRIDGES:
 17 Q. Did you take any notes of
 18 conversations with plaintiffs' personnel?
 19 A. I believe I did, but I did not
 20 keep those notes. Those were -- I followed
 21 my normal procedure. And by the time we got
 22 to the report, I had not kept those notes.
 23 Q. Did you have those -- did you
 24 refer to those notes in drafting your report?
 25 MR. FEE: Objection. Vague.

Page 98

1 THE WITNESS: Not that I
 2 recall.
 3 BY MR. BRIDGES:
 4 Q. In your report --
 5 A. Well, I guess I should say, I
 6 looked back at the notes at some time, and
 7 the report was done over a period of time.
 8 So I guess in some dimension I did, but as it
 9 came toward the final stages, I did not.
 10 Q. Well, I'm just curious, because
 11 your report indicates, among a number of the
 12 footnotes, there's citations to conversations
 13 with various persons. And I'm trying to
 14 figure out how -- on what you drew to cite
 15 specifically to various conversations in your
 16 report. And I'll give you examples.
 17 Footnotes 193, 194, and 196 through 200.
 18 On what were you relying in
 19 referring to those conversations?
 20 MR. FEE: Objection to form.
 21 THE WITNESS: Conversations
 22 with Mr. Chapman and/or Mr. Hamasaki.
 23 BY MR. BRIDGES:
 24 Q. So you were relying on
 25 conversations with Messrs. Chapman and

Page 99

1 Hamasaki?
 2 MR. FEE: Objection. Vague.
 3 THE WITNESS: Yes, in part.
 4 BY MR. BRIDGES:
 5 Q. What else, other than relying
 6 upon conversations with them?
 7 A. And the memory that I had of
 8 the conversations with the individuals.
 9 Q. And you -- but you didn't rely
 10 upon your own notes?
 11 A. Not at the point that I was
 12 drafting up footnotes, no.
 13 Q. Why would you take notes and
 14 then dispose of them before you wrote your
 15 report?
 16 A. Well, I find it -- I find it
 17 useful to follow along in a conversation by
 18 taking notes so that I can follow up with
 19 certain points. I find it useful to write
 20 things down. It helps in the memory process.
 21 But I did not keep those notes in the final
 22 drafting of the report.
 23 Q. Why would you -- when you had
 24 those conversations, did you anticipate that
 25 you were going to prepare a report?

Page 100

1 A. I thought that there was a very
 2 good possibility, yes.
 3 Q. Why did you not retain notes of
 4 conversations to have on hand for the
 5 preparation of your report?
 6 A. I followed my normal procedure.
 7 I don't typically take notes. I'm not a
 8 great note-taker, and my handwriting leaves
 9 much to be desired. So I tend to find my
 10 notes themselves to be of limited assistance.
 11 Q. And that's your normal
 12 procedure, is to throw away notes that
 13 reflect conversations that you rely on?
 14 A. No. My normal procedure is to
 15 keep materials that I do rely upon and not
 16 keep materials that I don't need to rely
 17 upon.
 18 Q. And you didn't need to rely
 19 upon any of your notes to recall your
 20 conversations, so you went and discussed the
 21 conversations with two other persons?
 22 A. Yes.
 23 Q. Did -- I see -- it's my
 24 understanding that your report sites
 25 conversations with Stephen Comstock 17 times,

Page 101

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?
 10 MR. FEE: Objection. Lack of
 11 foundation.
 12 THE WITNESS: In part, and I
 13 think in part the citations were put
 14 there based on the memory and
 15 knowledge of Mr. Chapman and
 16 Mr. Hamasaki.
 17 BY MR. BRIDGES:
 18 Q. Did you get any materials from
 19 Mr. Chapman and Mr. Hamasaki other than
 20 Exhibits 2 and 3 on which you relied in
 21 preparing this report?
 22 MR. FEE: Objection. Lack of
 23 foundation. Mischaracterizes his
 24 testimony.
 25 THE WITNESS: Actually, as a

Page 102

1 factual matter, this is the very first
 2 time I've seen these notes. I've
 3 never seen these before.
 4 BY MR. BRIDGES:
 5 Q. What did you rely upon in
 6 making all of the detailed references to
 7 conversations in the report?
 8 A. My --
 9 MR. FEE: Objection. Asked and
 10 answered.
 11 THE WITNESS: My memory of
 12 conversations with those individuals
 13 and conversations that I had with
 14 Mr. Hamasaki and Mr. Chapman.
 15 BY MR. BRIDGES:
 16 Q. Did anyone else prepare the
 17 language regarding that -- the information
 18 from those conversations that you relied upon
 19 in creating your report?
 20 A. No, not to my knowledge. Now,
 21 lawyers did look at draft of the report,
 22 although we're not going into the substance
 23 of it. But that was -- we could, in part, be
 24 refreshed if we were wrong as to any cite,
 25 but I don't think we were.

Page 103

1 Q. Did you rely upon the writing
 2 of the language by other people in deciding
 3 to include language regarding information
 4 learned from conversations in your report?
 5 MR. FEE: Objection. Vague.
 6 THE WITNESS: I can answer that
 7 by saying Mr. Hamasaki, Mr. Chapman,
 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
 11 writing of the words, though I was
 12 responsible for and directly
 13 supervised all of it.
 14 BY MR. BRIDGES:
 15 Q. And did you rely upon input
 16 from Mr. Hamasaki and Mr. Chapman in the form
 17 of written input, such as drafts?
 18 MR. FEE: Objection.
 19 THE WITNESS: As I --
 20 MR. FEE: Hold on a second.
 21 I don't believe that you're
 22 entitled to discovery regarding his
 23 drafts, and I'll instruct him not to
 24 answer that --
 25 MR. BRIDGES: I --

Page 104

1 MR. FEE: -- unless you have --
 2 unless there's something in there that
 3 makes this subject to an exception of
 4 Rule 26, as limitation on discovery
 5 from experts, which I'm not aware of.
 6 MR. BRIDGES: I am entitled to
 7 discovery about materials he relied
 8 upon --
 9 MR. FEE: Okay. That's fair.
 10 MR. BRIDGES: -- and that is my
 11 question.
 12 MR. FEE: Okay.
 13 BY MR. BRIDGES:
 14 Q. And I'd like to know if you
 15 relied upon drafts prepared by other persons
 16 regarding the statements and facts for which
 17 conversations are mentioned in the citations.
 18 MR. FEE: Objection to form.
 19 THE WITNESS: I don't know how
 20 to answer that besides what I said a
 21 moment ago, and let me perhaps say it
 22 a little bit differently and see if
 23 that's responsive.
 24 Mr. Hamasaki, Mr. Chapman, and
 25 I were all involved in this project

Page 105

1 and in this report. We were all
 2 involved in writing and rewriting and
 3 talking and questioning one another.
 4 BY MR. BRIDGES:
 5 Q. And were you relying, in part,
 6 upon the memories or recorded memories of
 7 Mr. Hamasaki and Mr. Chapman?
 8 MR. FEE: Objection. Vague as
 9 to "relying."
 10 And if you're asking him if
 11 he's relied upon those conversations
 12 as the basis for facts or assumptions,
 13 you can answer it. If you mean relied
 14 in any other context, you shouldn't
 15 answer it.
 16 THE WITNESS: I certainly
 17 didn't rely on any recordings of
 18 conversations. I had not seen any
 19 notes. This is the first I've seen
 20 notes from Mr. Chapman and
 21 Mr. Hamasaki.
 22 We talked about virtually all
 23 of these topics. I don't know if you
 24 would call that "relying" or not. But
 25 we worked together on this project.

Page 106

1 BY MR. BRIDGES:
 2 Q. Did they prepare draft language
 3 referring to information from those
 4 conversations with citations to those
 5 conversations that you relied upon in
 6 completing the report?
 7 MR. FEE: Objection. Vague as
 8 to "relied."
 9 To the extent that should be
 10 interpreted as meaning relied upon for
 11 reaching any conclusions in your
 12 report or relied upon for assumptions,
 13 you can answer it. You shouldn't
 14 answer it otherwise.
 15 THE WITNESS: I just don't know
 16 how to answer that question besides
 17 saying, at various points in time, one
 18 or the other -- others of us were
 19 involved in the Word document that we
 20 created. So it was almost never the
 21 case that the three of us were in the
 22 Word document at the same time.
 23 So there were times that, for
 24 instance, Mr. Hamasaki was doing some
 25 work in the document and then I would

Page 107

1 go behind him or vice versa.
 2 So I don't know if that answers
 3 your question, but that's the process
 4 that we followed.
 5 BY MR. BRIDGES:
 6 Q. And did the process include
 7 their writing the facts that corresponded to
 8 the conversations with plaintiffs' employees
 9 and your reviewing and revising what they had
 10 written?
 11 MR. FEE: Objection.
 12 To the extent that question
 13 calls for responsive information that
 14 is unrelated to bases that form your
 15 opinions or conclusions or assumptions
 16 that you made, I would instruct you
 17 not to answer that portion of the
 18 question. You can otherwise respond.
 19 THE WITNESS: We all reviewed
 20 and revised the document. I don't
 21 think that there were any facts that
 22 came only from one of them that I
 23 wasn't aware of.
 24 BY MR. BRIDGES:
 25 Q. Were there recollections that

Page 108

1 came from them that you relied upon in
 2 creating your report?
 3 MR. FEE: Same objection and
 4 same instruction.
 5 THE WITNESS: There may have
 6 been confirmations of things that I
 7 recalled or knew, but I don't think
 8 that they brought to my attention
 9 things that I didn't previously know.
 10 BY MR. BRIDGES:
 11 Q. And what types of confirmations
 12 were there things that you relied upon in
 13 approving this report?
 14 MR. FEE: Same objection and
 15 instruction.
 16 THE WITNESS: Virtually
 17 everything you see in the report, all
 18 three of us were involved in it, and
 19 all three of us were confirming and
 20 denying things or evaluating things
 21 along the way.
 22 MR. BRIDGES: I think we have
 23 to pause for a change of media, so why
 24 don't we take a break.
 25 THE VIDEOGRAPHER: Off the

Page 109

1 record at 12:17. This is the end of
 2 media unit number 1.
 3 * * *
 4 (Recess from 12:17 p.m. to
 5 12:32 p.m.)
 6 * * *
 7 THE VIDEOGRAPHER: On the
 8 record at 12:32. This is the
 9 beginning of media unit 2 in the
 10 deposition of John Jarosz.
 11 BY MR. BRIDGES:
 12 Q. Mr. Jarosz, your report, as I
 13 referred to earlier, cites a number of
 14 conversations with employees of the
 15 plaintiffs. For what purpose did you have
 16 conversations with the plaintiffs' employees?
 17 A. To learn more about the
 18 organization and their view as to the impact
 19 of continued copyright protection --
 20 continued copyright infringement and
 21 trademark infringement.
 22 Q. What view did you learn from
 23 them?
 24 MR. FEE: Objection to form.
 25 THE WITNESS: Well, I solicited

Page 110

1 and learned many facts about the
 2 organizations. I also learned that
 3 each one of them viewed continued
 4 copyright infringement and trademark
 5 infringement as quite detrimental to
 6 their organizations, detrimental to
 7 the members, detrimental to the
 8 public.
 9 They viewed continued IP
 10 infringement as potentially
 11 devastating to their organizations.
 12 BY MR. BRIDGES:
 13 Q. These were their views?
 14 A. Yes. I'm just paraphrasing, of
 15 course.
 16 Q. What members did you interview?
 17 A. None, other than the employees.
 18 I don't know if you call those "members" or
 19 not. But the volunteer membership, I didn't
 20 go to.
 21 THE VIDEOGRAPHER: Excuse me.
 22 Counsel, could you move your
 23 microphone to your lapel? Thank you.
 24 BY MR. BRIDGES:
 25 Q. What members of the public did

Page 111

1 you interview?
 2 A. I don't think I interviewed any
 3 members of the public either.
 4 Q. What steps did you do to
 5 ascertain the views of the members of the
 6 organizations, other than the employees?
 7 A. I read the materials that were
 8 produced here. I read the deposition
 9 testimony of the various individuals. I read
 10 the articles published by Ms. Bremer. And I
 11 read the other academic literature and
 12 practical literature that I had.
 13 Q. Which of those sources stated
 14 the views of the non-employee members of the
 15 various organizations?
 16 A. I don't know that views of --
 17 that their views were explicitly addressed in
 18 my report or represented. I understood what
 19 the impacts of the lack of honoring the
 20 copyrights and trademarks would have, but I
 21 don't know that I saw non-employee member
 22 views explicitly summarized.
 23 Q. So what steps did you do to
 24 ascertain the views of the members of the
 25 organizations --

Page 112

1 MR. FEE: Objection.
 2 BY MR. BRIDGES:
 3 Q. -- other than their employees?
 4 MR. FEE: Asked and answered.
 5 THE WITNESS: Well, I talked to
 6 the employees, and they interact with
 7 the members on a very regular basis,
 8 so they gave me some sense of what the
 9 views of the members were.
 10 It also could be that some of
 11 the perspectives of the members are
 12 reflected in some of the documents I
 13 identified in tab 2.
 14 BY MR. BRIDGES:
 15 Q. Well, I'm just trying to find
 16 out where -- it sounds as though -- strike
 17 that.
 18 It sounds as though a minute
 19 ago you said you couldn't recall anything
 20 specifically calling out views of
 21 non-employee members, correct?
 22 A. Correct. I think that's right.
 23 Q. What did you do to verify the
 24 statements that employees of the plaintiffs
 25 made about the views of the non-employee

Page 113

1 members of their organizations?
 2 A. I did what I normally do in an
 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 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.
 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

Page 114

1 that. I think some of the federal
 2 government's circulars that I
 3 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
 10 A-119 personally?
 11 A. Yes. As I recall, I did.
 12 Q. Did you review any materials
 13 pertaining to the discussions or
 14 deliberations of the Administrative
 15 Conference of the United States in connection
 16 with your research or analysis?
 17 A. What particular materials or
 18 meetings are you referring to?
 19 Q. Any.
 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

Page 115

1 States other than law review articles by
 2 Emily Bremer?
 3 A. As I sit here right now, I'm
 4 not aware of any documents that discuss the
 5 deliberations, but my memory is not perfect.
 6 Q. Do you know if there was a
 7 consensus in any relevant committee of the
 8 Administrative Conference of the United
 9 States regarding the conclusions that
 10 Ms. Bremer states in her law review articles?
 11 A. I don't.
 12 MR. FEE: Objection. Vague.
 13 BY MR. BRIDGES:
 14 Q. Do you know whether there was
 15 any dissent in any relevant committee of the
 16 Administrative Conference of the United
 17 States regarding the conclusions that
 18 Ms. Bremer states in her law review articles?
 19 MR. FEE: Objection to form.
 20 THE WITNESS: I don't.
 21 BY MR. BRIDGES:
 22 Q. Do you know why persons get
 23 appointed to the Administrative Conference of
 24 the United States?
 25 A. I may have known that, but I

Page 116

1 don't recall that sitting here now.
 2 Q. Do you know whether
 3 Ms. Bremer's articles -- strike that.
 4 Do you know whether
 5 Ms. Bremer's law review articles reflect a
 6 view of the Administrative Conference of the
 7 United States --
 8 MR. FEE: Objection to form.
 9 BY MR. BRIDGES:
 10 Q. -- or of any of its committees?
 11 MR. FEE: Objection to form.
 12 THE WITNESS: I'm not aware
 13 that they officially reflect that. I
 14 believe she gathered information, and
 15 they may, in fact, represent the views
 16 of some or all members, but I don't
 17 think that's -- that either article is
 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

Page 117

1 that they are her personal views?
 2 A. I wouldn't be surprised and
 3 may -- I may have read that, but I would
 4 expect that that would be in the first
 5 footnote of one or both articles.
 6 Q. What did you do to examine the
 7 alleged facts that the representatives of
 8 plaintiffs stated to you in their
 9 conversations with you?
 10 MR. FEE: Objection to form.
 11 THE WITNESS: I looked at --
 12 MR. FEE: Asked and answered.
 13 THE WITNESS: I'm sorry. I
 14 looked at the document production and
 15 the other materials shown in tab 2.
 16 BY MR. BRIDGES:
 17 Q. You looked at the document
 18 production that the plaintiffs' counsel
 19 furnished you?
 20 A. In part. There were other
 21 things in tab 2 that were not provided to me
 22 by plaintiffs' counsel.
 23 Q. What other materials in
 24 tab 2 -- strike that.
 25 Please identify for me in tab 2

Page 118

1 the materials that plaintiffs' counsel
 2 furnished you.
 3 A. I don't know with absolute
 4 certainty, but let me give you my best guess.
 5 I believe all the depositions that are shown
 6 on page 1. I believe the Bates ranges at the
 7 very top of the page were provided by
 8 counsel.
 9 The deposition transcripts and
 10 exhibits were provided by counsel. I believe
 11 the financial statements and plans were
 12 provided by counsel. I believe the legal
 13 documents were provided by counsel. I
 14 believe the miscellaneous items were provided
 15 by counsel.
 16 I don't know about the cases
 17 and laws. I just don't remember if we
 18 separately gathered those or were provided
 19 those.
 20 The analyst reports, articles,
 21 books, and presentations, I think we gathered
 22 all of those, with the possible exception of
 23 the two Bremer articles. I don't recall if
 24 counsel provided that or we obtained those
 25 separately.

Page 119

1 I believe counsel did not
 2 provide the Web site screenshots, but I might
 3 be wrong on that.
 4 Q. And did you do anything --
 5 what, if anything, did you do to test the
 6 validity of the factual assertions that the
 7 plaintiffs made to you in your conversations
 8 with their employees?
 9 MR. FEE: Objection to form.
 10 Asked and answered.
 11 THE WITNESS: Well, we looked
 12 at materials. If we found things that
 13 conflicted with what we learned, that
 14 would prompt us to investigate
 15 further. But I don't recall seeing
 16 any documentary evidence that
 17 conflicted with facts that were
 18 provided by plaintiff personnel, but I
 19 might be wrong.
 20 BY MR. BRIDGES:
 21 Q. Did you investigate
 22 independently whether documents existed that
 23 contradicted plaintiffs' statements of facts?
 24 A. Not with that in mind. We
 25 looked at the documents and were mindful of

Page 120

1 whether there were conflicts within documents
 2 or conflicts between documents and other
 3 information, but I don't recall that we saw
 4 anything that gave us substantial pause.
 5 There were probably some things
 6 where there were some uncertainties whether
 7 there was a conflict or not and some where
 8 there were insignificant conflicts, but I
 9 think mostly the information we saw did not
 10 conflict with the information we learned from
 11 plaintiff personnel.
 12 Q. Did you investigate
 13 independently whether other documents, apart
 14 from the documents plaintiffs furnished you,
 15 existed that contradicted plaintiffs'
 16 statements of facts --
 17 MR. FEE: Objection to form.
 18 BY MR. BRIDGES:
 19 Q. -- in conversations with you?
 20 A. Yes, in the sense that we
 21 gathered some information that we did not
 22 receive from plaintiffs' counsel, but all of
 23 that is identified in tab 2.
 24 Q. Which part of tab 2?
 25 A. Well, as I said, I think the

Page 121

1 Web sites we gathered ourselves, and I think
2 the reports and articles, with the exception
3 of the Bremer articles, we gathered
4 ourselves.
5 Q. Do you know why you got no
6 documents from NFPA, no Bates range documents
7 from NFPA?
8 MR. REHN: Object to form --
9 THE WITNESS: I don't know why
10 we did not receive Bates documents --
11 THE REPORTER: Wait.
12 MR. REHN: Sorry. Object to
13 the form. Lacks foundation.
14 THE WITNESS: I don't know for
15 sure that we didn't receive
16 Bates-stamped documents, but I believe
17 some of the documents we received were
18 NFPA documents.
19 BY MR. BRIDGES:
20 Q. Do you recall seeing any NFPA
21 documents that -- in which NFPA personnel
22 stated that they could not show any harm from
23 the defendant's activities?
24 A. Received any documents that
25 said that?

Page 122

1 Q. Uh-huh.
2 A. Perhaps you would have
3 something that would refresh my memory. I
4 don't recall, sitting here right now, but
5 it's possible.
6 Are you talking about
7 historical -- historically no harm, or are
8 you talking about prospectively?
9 Q. Either one. Did you -- do you
10 recall seeing any internal NFPA documents
11 that call into question where NF -- whether
12 NFPA has suffered any harm from the
13 defendant's activities?
14 A. I don't recall documents on it.
15 There may have been some deposition testimony
16 about past activities, but I don't know if it
17 was activities prior to Public Resource
18 actions here or after.
19 Q. Do you recall learning about
20 any litigation that NFPA had engaged in
21 pertaining to standards and copyright?
22 A. I think I heard that there's
23 some overseas litigation involving Public
24 Resource. Whether that involves NFPA, I
25 don't know.

Page 123

1 Q. What did you hear about
2 overseas litigation involving Public
3 Resource?
4 A. I think I heard that there was
5 a German -- or a suit in Germany, but I'm not
6 sure that I learned much more than that. I
7 don't recall what status that suit -- what
8 the status of that suit is.
9 Q. Do you recall anyone disclosing
10 to you litigation involving NFPA in the
11 United States that pertained to standards and
12 copyright?
13 A. It's possible, but I don't
14 recall any, sitting here right now.
15 Q. Do you recall inquiring about
16 public statements of fact that NFPA has made
17 regarding copyright and standards in
18 litigation other than this litigation in the
19 United States?
20 MR. FEE: Objection to form.
21 THE WITNESS: I do not.
22 BY MR. BRIDGES:
23 Q. Are you familiar with a case
24 called Veeck, V-E-E-C-K?
25 A. I'm familiar with an opinion in

Page 124

1 the Veeck case.
2 Q. What do you know about that
3 opinion?
4 MR. FEE: Objection.
5 I would instruct you not to
6 disclose anything you know about that
7 opinion that was a result of
8 communications with counsel and that
9 did not form the basis of any of the
10 opinions in your report or any of the
11 assumptions that you relied upon in
12 reaching your conclusions.
13 THE WITNESS: I did talk with
14 counsel about that case, and that case
15 didn't form any basis for any of my
16 observations or conclusions here.
17 BY MR. BRIDGES:
18 Q. Why did the Veeck case not form
19 any basis for any of your observations or
20 conclusions here?
21 A. I don't know how to answer that
22 question. I -- it didn't present any facts
23 that were specific to this case, as far as I
24 recall.
25 Q. What do you recall of the facts

Page 125

<p>1 of that case? 2 A. I recall generally it had to do 3 with activities of certain municipalities 4 using what was copyrighted or what was 5 claimed to be copyrighted material by a group 6 that developed materials explicitly to be put 7 into the law. 8 Q. Do you recall what the decision 9 was in the opinion you seem to be familiar 10 with? 11 MR. FEE: Objection to form. 12 THE WITNESS: I think, 13 generally, that copyright protection 14 was not available. I'm sure there was 15 more to it, but that's my general 16 opinion, my general memory. 17 BY MR. BRIDGES: 18 Q. And copyright protection was 19 not available for what? 20 A. Well, the asserted copyrights 21 in that matter. 22 Q. And do you recall what the 23 matter was that was at issue in Veeck? 24 A. Well, as I said, I think it was 25 certain municipalities were using certain</p> <p style="text-align: right;">Page 126</p>	<p>1 a court rules that those codes are not 2 subject to copyright? 3 MR. FEE: Objection to form. 4 Vague. Lack of foundation. 5 THE WITNESS: What case 6 studies? Are you talking about 7 something akin to a business school 8 case study? I don't know what you 9 mean by that term. 10 BY MR. BRIDGES: 11 Q. I'm just -- what opportunities 12 do you -- have you identified for finding 13 comparable circumstances where a court has 14 made a ruling that building codes are not 15 subject to copyright in order to study what 16 the consequences were -- 17 MR. FEE: Objection. 18 BY MR. BRIDGES: 19 Q. -- what the economic 20 consequences were of the Court's decision? 21 MR. FEE: Objection to form. 22 Vague as to "comparable." Lack of 23 foundation. 24 You can answer. 25 THE WITNESS: I don't know that</p> <p style="text-align: right;">Page 128</p>
<p>1 standards and using the materials from 2 certain standards and perhaps disseminating 3 it. I -- I forget the facts. 4 Q. Do you recall what kind of 5 standards they were? 6 MR. FEE: Objection. Vague. 7 THE WITNESS: They may 8 generally have had to deal with 9 building codes, but I could be wrong 10 on that. 11 BY MR. BRIDGES: 12 Q. What analysis did you do of 13 harms suffered by the code developers of 14 those building codes as a consequence of the 15 Veeck decision? 16 A. I didn't do any analysis 17 associated with the facts of that case. 18 Q. Why not? 19 A. Because those facts are 20 different than the facts here, including what 21 the organization was. 22 Q. Are the facts -- what -- what 23 case studies are you familiar of -- are you 24 familiar with regarding measurements of harms 25 suffered by entities that develop codes when</p> <p style="text-align: right;">Page 127</p>	<p>1 I can answer. I don't -- I don't 2 under -- I don't know how to answer 3 your question. I read that court 4 case. 5 BY MR. BRIDGES: 6 Q. And did you stop to say at some 7 point -- strike that. 8 Why did you read the court 9 case? 10 A. Because I understand that 11 Public Resource believes it's of some 12 significance to this case. 13 Q. Do you believe that that -- do 14 you have an understanding as to whether the 15 Veeck case is of any significance to this 16 case? 17 MR. FEE: Objection. Calls for 18 a legal conclusion. 19 THE WITNESS: I don't know. 20 I'm not a legal expert. 21 BY MR. BRIDGES: 22 Q. What steps did you take to 23 ascertain what economic harms flowed from the 24 Court's decision in the Veeck case? 25 MR. FEE: Objection. Asked and</p> <p style="text-align: right;">Page 129</p>

1 answered.
 2 THE WITNESS: Again, I read the
 3 case. I didn't do any analysis beyond
 4 that of that particular case.
 5 BY MR. BRIDGES:
 6 Q. What steps did you take to
 7 ascertain what public harms flowed from the
 8 Court's decision in the Veeck case?
 9 A. Other than reading the case,
 10 the opinion in the case, I didn't do anything
 11 beyond that to understand the implications of
 12 that holding.
 13 Q. You didn't do any investigation
 14 as to the economic consequences to any
 15 entity, industry, or person as a consequence
 16 of the decision in the Veeck case, correct?
 17 MR. FEE: Objection to form.
 18 THE WITNESS: I think that's
 19 correct, yes.
 20 BY MR. BRIDGES:
 21 Q. How has the process of
 22 standards development changed in the last 100
 23 years, to your knowledge?
 24 A. I don't know the specifics, and
 25 I don't know that there is one standards

Page 130

1 development process. I think there are a
 2 variety of processes pursued by a number of
 3 SSOs or SDOs. I'm sure that there have been
 4 changes on the margin. There may have been
 5 larger changes. I just don't know. I have
 6 not studied the trend in the standard
 7 development process over time.
 8 Q. What changes are you aware of
 9 in the standards development process of NFPA
 10 over the past 100 years?
 11 A. I don't know. I've not studied
 12 that topic.
 13 Q. What changes are you aware of
 14 in the standards development process of the
 15 ASHRAE 90.1 standard?
 16 A. I don't know. I've not studied
 17 that.
 18 Q. How did ASHRAE come to develop
 19 the 90.1 standard?
 20 A. I think, generally, a need was
 21 identified and a group of constituents
 22 convened to derive a standard, but I don't
 23 know the specifics beyond that.
 24 Q. Do you know who identified the
 25 need?

Page 131

1 A. Not sitting here right now, I
 2 don't.
 3 Q. Do you know whether ASHRAE took
 4 over development of what became standard 90.1
 5 from any other group or entity?
 6 A. No, I do not.
 7 Q. Have you ever quantified the
 8 value of the contributions made by the
 9 volunteers of the various organizations to
 10 the standards at issue in this case?
 11 MR. FEE: Objection to form.
 12 THE WITNESS: Not other than
 13 having some sense of hours or a
 14 limited sense of dollars, but not
 15 beyond that, no.
 16 BY MR. BRIDGES:
 17 Q. Can you put a rough dollar
 18 value on the time and expenses of the
 19 volunteers with respect to any of the
 20 standards in this case?
 21 MR. FEE: Objection to form.
 22 THE WITNESS: Not sitting here
 23 right now. That would entail a little
 24 bit of a study. I have not done that.
 25 BY MR. BRIDGES:

Page 132

1 Q. What -- what would be required?
 2 A. To understand basically the
 3 out-of-pocket expenses incurred and the
 4 opportunity costs incurred. So among other
 5 things, one would want to look at time
 6 records, have an understanding of
 7 compensation, have an understanding of the
 8 activities of those individuals. Those
 9 are -- would be among the inputs.
 10 Q. What changes are you aware of
 11 in the distribution of standards in the past
 12 100 years by the plaintiffs?
 13 MR. FEE: Objection to form.
 14 THE WITNESS: I haven't
 15 investigated that particular issue,
 16 but I understand that some of the
 17 standards today are distributed
 18 through the Internet that certainly
 19 didn't exist 100 years ago.
 20 Some of the standards are
 21 distributed for free with limitations.
 22 I don't know if that was true 100
 23 years ago, but it might have been.
 24 I would expect some of the
 25 copying and dissemination capabilities

Page 133

1 are much greater today than they were
 2 in 1915, but I don't know that the
 3 general methods of -- I don't know how
 4 the general methods of distribution
 5 have changed.
 6 BY MR. BRIDGES:
 7 Q. What changes are you aware of
 8 in sales trends over the past 20 years?
 9 MR. FEE: Objection to form.
 10 THE WITNESS: I don't have data
 11 going back as far as 20 years ago. I
 12 have some information on publication
 13 sales, for instance, in tabs 3, 4, and
 14 5. They only -- that information only
 15 goes back a few years, however.
 16 BY MR. BRIDGES:
 17 Q. Did you review any information
 18 earlier than the dates shown in the documents
 19 at tabs 3, 4, and 5?
 20 MR. FEE: Objection. Vague.
 21 THE WITNESS: It's possible
 22 that some of the source documents had
 23 earlier information, but I don't
 24 recall that. I would need to look at
 25 those source documents.

1 BY MR. BRIDGES:
 2 Q. And those source documents
 3 would be within the Bates ranges identified
 4 in tab 2 of your report?
 5 A. Within the Bates ranges or
 6 identified elsewhere in tab 2. For instance,
 7 the AS team -- ASTM audited -- audited
 8 consolidated financial statements, I think,
 9 may not all be Bates-stamped. I could be
 10 wrong on that. But I would look in that set
 11 of financial documents.
 12 Q. What do you know about what you
 13 said -- strike that.
 14 You said earlier that some
 15 standards are distributed for free with some
 16 limitations; is that correct?
 17 A. Yes, that's my understanding.
 18 Q. What do you know about that?
 19 MR. FEE: Objection. Vague.
 20 THE WITNESS: I've written
 21 about that in my report. I believe
 22 that each one of the plaintiffs has
 23 provided what is sometimes called a
 24 "reading room" so that people can look
 25 at those standards but are not given

1 the right to reproduce, copy, or
 2 disseminate those standards but can
 3 look at them online.
 4 BY MR. BRIDGES:
 5 Q. Have you used the reading rooms
 6 of any of the plaintiffs?
 7 A. No, I have not.
 8 Q. Have you reviewed the interface
 9 that the -- have you reviewed the interfaces
 10 that the plaintiffs offer to persons wishing
 11 to view materials for free online?
 12 A. No, I don't think so.
 13 Q. Do you know what effect, if
 14 any, the presence of those free materials on
 15 the plaintiffs' Web sites has had on the
 16 plaintiffs' revenues?
 17 MR. FEE: Objection to form.
 18 THE WITNESS: No, I don't.
 19 BY MR. BRIDGES:
 20 Q. Have you -- have you
 21 investigated that?
 22 MR. FEE: Same objection.
 23 THE WITNESS: I've been
 24 opening -- I've been open to learning
 25 about that, but I haven't learned that

1 there's a direct or indirect effect.
 2 There might be, but I haven't seen
 3 evidence of that.
 4 BY MR. BRIDGES:
 5 Q. My question was, have you
 6 investigated that?
 7 MR. FEE: Same objection.
 8 THE WITNESS: Perhaps you could
 9 read back my answer.
 10 BY MR. BRIDGES:
 11 Q. I've heard the answer. It was
 12 not responsive to my question. The -- you
 13 said you did not know what effect, if any,
 14 the presence of those free materials on the
 15 plaintiffs' Web sites has had on the
 16 plaintiffs' revenues.
 17 And my question is, have you
 18 investigated that?
 19 MR. FEE: Same objection.
 20 THE WITNESS: No, I've not
 21 undertaken a separate investigation.
 22 I've been alert to that topic, but I
 23 haven't assigned myself that
 24 investigation.
 25 BY MR. BRIDGES:

<p>1 Q. Was something that was -- 2 remained pending at the time you wrote this 3 report as something that you expected to do 4 in the future? 5 A. No. 6 MR. FEE: Objection. Vague. 7 THE WITNESS: I'm sorry. 8 No. 9 BY MR. BRIDGES: 10 Q. Did you study the practices of 11 any standards development organizations, 12 other than the plaintiffs, for purposes of 13 your work in this case? 14 MR. FEE: Objection. Vague. 15 THE WITNESS: Not that I 16 recall. I saw reference to other SDOs 17 in the Bremer articles, for instance, 18 but I didn't undertake a separate 19 investigation of the practices of any 20 other SDOs for purposes of my 21 assignment here. 22 BY MR. BRIDGES: 23 Q. Are you aware of practices or 24 policies of other SDOs with reference to 25 either copyright or free availability of</p> <p style="text-align: right;">Page 138</p>	<p>1 SDOs, but the standard setting organizations 2 that are the candidates are the ones that I 3 identified earlier today. 4 Q. Which SDOs do you recall 5 treating copyright protection of their 6 standards as very important? 7 A. I just don't recall right now. 8 I -- I have some vague recollection that 9 copyright considerations are addressed by 10 ETSI, but I could be wrong on that. 11 Q. What do you know about policies 12 or practices of the Blu-ray organization with 13 respect to copyright protection? 14 A. I assume you're talking about 15 the Blu-ray Association? I may have known 16 when I was involved in that matter. I do not 17 remember, sitting here now. 18 Q. Do you recall that your report 19 actually refers to the Blu-ray Association? 20 A. I think I refer to Blu-ray 21 standards. I don't recall if I refer to the 22 Blu-ray Association, but perhaps you could 23 refresh my memory. 24 Q. I believe you point it out at 25 the bottom of page 62. "While certain SDOs</p> <p style="text-align: right;">Page 140</p>
<p>1 their materials? 2 MR. FEE: Objection to form. 3 THE WITNESS: I may have been 4 aware through other assignments I've 5 undertaken in the past, but I didn't 6 undertake any separate investigation 7 for purposes of this matter. 8 BY MR. BRIDGES: 9 Q. What awareness do you have of 10 the practices or policies of other SDOs 11 through other assignments you've undertaken 12 in the past? 13 MR. FEE: Objection to form. 14 THE WITNESS: I can only recall 15 most generally that they view 16 intellectual property protection as 17 being very important, but I can't be 18 any more specific than that. 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</p> <p style="text-align: right;">Page 139</p>	<p>1 (e.g., the Blu-ray disc association) provide 2 unrestricted access to their standard 3 publications for free, the Plaintiffs here do 4 not." 5 Do you recall that? 6 A. Now I do. Thank you for 7 refreshing my memory. 8 Q. What economic effects are you 9 aware of the fact that the Blu-ray Disc 10 Association provides unrestricted access to 11 its standard publications for free? 12 A. I have not investigated that 13 issue, so I don't know. 14 Q. What other SDOs have you 15 identified that provide unrestricted access 16 to their standards for free? 17 A. I don't think I've identified 18 any others in my report. 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.</p> <p style="text-align: right;">Page 141</p>

1 Q. Why did you not consider the
 2 economic effects of free distribution of
 3 standards with respect to other
 4 organizations?
 5 A. I didn't quite see the
 6 relevance to this matter.
 7 Q. Why?
 8 A. I don't know how to prove a
 9 negative.
 10 Q. What's the negative you were
 11 thinking of that would need to be proved or
 12 disproved?
 13 A. That something is not relevant.
 14 Q. You just didn't see the
 15 relevance?
 16 A. I don't understand how that
 17 would be helpful in the assignment that I had
 18 here.
 19 Q. And what was the assignment you
 20 had here?
 21 A. Well, I've laid it out --
 22 Q. I can read the report. I'm not
 23 asking you to read -- read the report. I'd
 24 like your own words now, sitting here.
 25 MR. FEE: Objection.

Page 142

1 BY MR. BRIDGES:
 2 Q. How do you -- how do you
 3 view --
 4 A. I'd like to answer it by
 5 looking at my report.
 6 Q. No, I'd like for you to give me
 7 a straight answer, because if you're just
 8 going to refer to the report, the report will
 9 speak for itself, and I don't need you to
 10 read it to me.
 11 I'd like for you to tell me
 12 what you understand, sitting here, to have
 13 been your assignment in this case.
 14 MR. FEE: Objection.
 15 You can answer the question
 16 however you deem appropriate.
 17 THE WITNESS: I've aptly laid
 18 it out in my report, so I defer to the
 19 words in my report.
 20 But I've, in essence, looked at
 21 the topic of the impact of copyright
 22 and trademark infringement here, and
 23 asked myself the question whether a
 24 permanent injunction would be
 25 appropriate from an economic

Page 143

1 perspective.
 2 BY MR. BRIDGES:
 3 Q. And what is the relevance of
 4 economic analysis to that question, as you
 5 understand it?
 6 MR. FEE: Objection to form.
 7 Vague. Might also be construed to
 8 require a legal conclusion.
 9 THE WITNESS: Economists have a
 10 view and perspective at looking at
 11 issues that some courts have found to
 12 be useful.
 13 BY MR. BRIDGES:
 14 Q. Well, I'm asking, with specific
 15 relevance to this case, what do you
 16 understand the importance of economic
 17 analysis to be in this case --
 18 MR. FEE: Objection. Calls --
 19 BY MR. BRIDGES:
 20 Q. -- as you have purported to
 21 practice it?
 22 MR. FEE: Calls for a legal
 23 conclusion.
 24 Also, to the extent that
 25 responding to that would require you

Page 144

1 to disclose communications with
 2 counsel that did not form the basis
 3 for any of your opinions or
 4 conclusions and did not provide any
 5 assumptions that were the basis for
 6 your opinions or conclusions, you
 7 should not answer that portion of the
 8 question.
 9 THE WITNESS: I understand
 10 that, generally, economists like me
 11 are quite helpful in determining
 12 questions of harm, particularly harm
 13 as it relates to infringement of IP
 14 rights.
 15 BY MR. BRIDGES:
 16 Q. How do you distinguish between
 17 harms that are caused by an infringement by
 18 the defendant versus harms that might be
 19 caused by a court decision that plaintiffs
 20 lack copyrights?
 21 MR. FEE: Objection to the
 22 extent it calls for a legal
 23 conclusion.
 24 THE WITNESS: I don't know how
 25 to answer that question. I didn't ask

Page 145

1 myself the question of ownership or
 2 impact of ownership. I asked myself
 3 the question here of impact of
 4 infringement.
 5 BY MR. BRIDGES:
 6 Q. If it turns out that the Court
 7 rules that the plaintiff -- sorry. Strike
 8 that.
 9 If it turns out the Court rules
 10 here that the defendant has engaged in fair
 11 use, is it your understanding that none of
 12 your harms analysis is relevant --
 13 MR. FEE: Objection.
 14 BY MR. BRIDGES:
 15 Q. -- because of a finding of
 16 non-infringement?
 17 MR. FEE: Calls for a legal
 18 conclusion.
 19 To the extent answering that
 20 question would require you to disclose
 21 communications you had with counsel
 22 that don't form the basis for any of
 23 your opinions or conclusions and don't
 24 provide any assumptions that you
 25 relied upon, you shouldn't disclose

Page 146

1 those communications.
 2 THE WITNESS: You're asking for
 3 a legal conclusion. I'm not an expert
 4 on that.
 5 BY MR. BRIDGES:
 6 Q. I'm understanding your
 7 understanding -- I'm asking for your
 8 understanding of the relevance of your
 9 contributions to this case.
 10 MR. FEE: Objection. Asked and
 11 answered. Plus all the prior
 12 objections and instructions.
 13 THE WITNESS: I believe my
 14 testimony and report are relevant to
 15 the issue of harm and potential harm.
 16 BY MR. BRIDGES:
 17 Q. From what?
 18 A. From continuing -- the
 19 continuing activities and possible expanded
 20 activities of the defendant here.
 21 Q. From activities or from
 22 violations of law?
 23 MR. FEE: Objection. Vague.
 24 Calls for a legal conclusion.
 25 THE WITNESS: I -- I'm working

Page 147

1 under the assumption that the
 2 activities violate the law.
 3 BY MR. BRIDGES:
 4 Q. If the activities -- do you
 5 believe -- do you understand that your
 6 analysis is relevant to a determination of
 7 whether the defendant has violated the law?
 8 MR. FEE: Objection. Calls for
 9 a legal conclusion.
 10 To the extent that your
 11 understanding is based upon
 12 communications with counsel, you
 13 shouldn't disclose them, unless they
 14 formed the basis for your opinions or
 15 conclusions or provided assumptions
 16 that you relied upon in reaching your
 17 conclusions.
 18 THE WITNESS: I don't know.
 19 BY MR. BRIDGES:
 20 Q. Do you have any view as to
 21 whether the defendant has violated copyright
 22 law?
 23 MR. FEE: Objection. Calls for
 24 a legal conclusion.
 25 THE WITNESS: No, I've not

Page 148

1 taken on that assignment.
 2 BY MR. BRIDGES:
 3 Q. Do you have any view as to
 4 whether the defendant's activities constitute
 5 fair use?
 6 MR. FEE: Objection. Calls for
 7 a legal conclusion.
 8 THE WITNESS: No, I've not
 9 taken on that assignment.
 10 BY MR. BRIDGES:
 11 Q. If a court determines that the
 12 defendant has not infringed upon plaintiffs'
 13 copyrights, do you understand that the
 14 decision would result in economic harm to the
 15 plaintiffs?
 16 MR. FEE: Objection to the
 17 extent it calls for a legal
 18 conclusion.
 19 THE WITNESS: I'm not following
 20 your question. Could you ask it a
 21 little bit differently, please?
 22 BY MR. BRIDGES:
 23 Q. No, I'll restate it if you just
 24 need to rehear it.
 25 A. No, I don't need to rehear it.

Page 149

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
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
20 to the plaintiffs?
21 MR. FEE: Objection to the
22 extent it calls for a legal
23 conclusion. Plus asked and answered.
24 THE WITNESS: It sounds like
25 exactly the same words, so I'm not

Page 150

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?
7 MR. FEE: Objection. Calls for
8 a legal conclusion.
9 THE WITNESS: I'm just not
10 following. I under -- I'm worked --
11 I'm working under the assumption that
12 the activity here represents a
13 copyright infringement. I'm -- and
14 I'm being asked and answering the
15 question of the impact of that and
16 whether there would be harm and what
17 kind of harm and whether that's
18 reparable harm.
19 So I'm focusing on what has
20 been done and what may continue to be
21 done by the defendant.
22 BY MR. BRIDGES:
23 Q. That's non-responsive. I'll
24 ask you to answer my question. And if you
25 just don't want to answer the question,

Page 151

1 that's fine.
2 A. I want to, but I cannot.
3 Q. Well --
4 A. I do not understand the
5 question.
6 Q. I'll say it again.
7 Would a decision by the Court
8 that the defendant has not infringed upon the
9 plaintiffs' copyrights result in economic
10 harm to the plaintiffs?
11 MR. FEE: Objection. Calls for
12 a legal conclusion. Asked and
13 answered.
14 THE WITNESS: I --
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

Page 152

1 2:12 p.m.)
2 * * *
3 THE VIDEOGRAPHER: On the
4 record at 2:12.
5 BY MR. BRIDGES:
6 Q. Good afternoon, Mr. Jarosz.
7 A. Good afternoon.
8 Q. Could you outline for me,
9 please, what steps you took in your
10 engagement in this case? What are the
11 different activities you engaged in?
12 A. Generally, I had a discussion
13 with counsel about the matter. Then we
14 examined documents that would -- were
15 provided to us to give us background. We
16 then proceeded to gather our own information
17 from third-party sources, primarily through
18 Internet searches.
19 We obtained information that
20 had been produced as part of discovery. We
21 had conversations with people at the various
22 plaintiff organizations.
23 We outlined the report and
24 summarized some of the information that you
25 see in the tabs. We had discussions with

Page 153

1 counsel. And then we finalized the report,
 2 submitting it to counsel on June 5th, 2015.
 3 Q. Do you know how many standards
 4 of each plaintiff are at issue in this case?
 5 A. How many -- I'm sorry --
 6 standards are at issue?
 7 Q. Yes.
 8 A. I have that number written
 9 down. It's in the hundreds, and I forget, as
 10 I sit here right now, precisely the number.
 11 I will look it up. And I was giving you an
 12 answer that was a cumulation across the three
 13 plaintiffs.
 14 I am not seeing that number
 15 right now. I'll keep looking.
 16 Q. Do you know what --
 17 A. You may be able to point me
 18 quicker than I recall where it was.
 19 Q. Do you -- do you know what
 20 proportion of plaintiffs -- of each
 21 plaintiffs' standards is at issue in this
 22 case?
 23 A. Are you asking me the ratio of
 24 the standards at issue versus the total
 25 standards developed by the organizations?

Page 154

1 Q. Yes.
 2 A. I think it's less than a
 3 majority for each organization. I'm fairly
 4 certain of that with regard to ASTM. I think
 5 that's true with regard to NFPA. I think
 6 it's true with regard to ASHRAE.
 7 Q. Do you have any better
 8 information than less than a majority --
 9 A. Well, I --
 10 Q. -- for each of them?
 11 A. The precise numbers are in the
 12 report. Let's see here. One can figure that
 13 out. You may remember where I summarized the
 14 number of standards. I just don't remember.
 15 It's easy to determine because the data are
 16 all here.
 17 Q. Have you analyzed differences
 18 in sales trends between standards that are at
 19 issue in this case and plaintiffs' other
 20 standards?
 21 A. No, I don't think I have those
 22 data at my disposal.
 23 Q. Did you ever ask for those
 24 data?
 25 A. I don't recall.

Page 155

1 Q. Have you analyzed any
 2 differences in sales trends between those of
 3 plaintiffs' standards that have been
 4 incorporated into law and those of
 5 plaintiffs' standards that have not been
 6 incorporated into law?
 7 A. I don't think so. I don't
 8 think I have those data, and I'm not sure
 9 that each plaintiff knows precisely how many
 10 have been incorporated into law.
 11 Q. Did you ask for any data
 12 regarding the distinction between standards
 13 incorporated by reference and standards not
 14 incorporated by reference in the law?
 15 A. I don't --
 16 MR. FEE: Objection to form.
 17 THE WITNESS: I'm sorry. I
 18 don't recall.
 19 BY MR. BRIDGES:
 20 Q. You made observations about
 21 sales trends earlier in your deposition. I
 22 think you said that there's been a reduction
 23 in sales of certain of plaintiffs' standards;
 24 is that correct?
 25 A. I'm not quite sure what the

Page 156

1 earlier testimony was, but I think I was
 2 pointing you to paragraph 133 with regard to
 3 downloads of -- and other measures of
 4 activity, as I had at my disposal.
 5 Q. Well, I'm trying to find out
 6 what changes you have studied in plaintiffs'
 7 economics that you attribute to defendant's
 8 activities.
 9 A. I'm not quite sure what your
 10 question is.
 11 Q. Well, I'm trying to find out
 12 what information you have studied to
 13 determine what changes in the finances of
 14 each of the plaintiffs have occurred as a
 15 consequence of the defendant's activities.
 16 MR. FEE: Objection to form.
 17 THE WITNESS: I'm still not
 18 sure that I'm hearing a question. But
 19 to the extent that I had information
 20 on changes in activity level, I
 21 summarized that in paragraph 133.
 22 BY MR. BRIDGES:
 23 Q. My question is, what
 24 information did you study to determine any
 25 changes in finances of each of the

Page 157

<p>1 plaintiffs? 2 MR. FEE: Same objection. 3 THE WITNESS: It's reflected in 4 paragraph 133 and in the tabs, 5 particularly 3, 4, and 5. But the 6 tabs are not at the granular level 7 that I think are of interest to you. 8 BY MR. BRIDGES: 9 Q. What do you mean by the 10 "granular level" that would be of interest to 11 me? 12 A. I don't think it breaks out 13 publications by standard, for instance. 14 Q. Does it break out publications 15 by whether a standard has been incorporated 16 by reference or not? 17 A. I don't think so. 18 Q. Does it break out by whether a 19 standard has been publicly made available by 20 defendant or not? 21 A. I don't think so. Not in 22 tabs 3, 4, and 5. 23 Q. How do you establish causation 24 between defendant's activities and any of the 25 data that you provide in section -- in</p> <p style="text-align: right;">Page 158</p>	<p>1 of certain of the standards. I've 2 presented that. 3 I don't have direct evidence of 4 the precise impact historically of 5 defendant's activities on plaintiffs' 6 financials. 7 BY MR. BRIDGES: 8 Q. What evidence of any kind do 9 you have of any kind of impact historically 10 of the defendant's activities on plaintiffs' 11 financials? 12 MR. FEE: Objection to form. 13 THE WITNESS: That which is 14 reported in paragraph 133, that of 15 which is contained in deposition 16 testimony, and that of which I 17 summarized in other parts of the 18 report. 19 BY MR. BRIDGES: 20 Q. So when you're referring to 21 deposition testimony, you're referring to the 22 citations to the footnotes in paragraph 133? 23 A. No, I don't think it's just 24 limited to that. I think there's some other 25 deposition transcripts that talk about the</p> <p style="text-align: right;">Page 160</p>
<p>1 paragraph 133? 2 MR. FEE: Objection. Calls for 3 a legal conclusion. Form. 4 THE WITNESS: One can and 5 should look at all evidence available, 6 including circumstantial evidence. I 7 don't have direct information about 8 the precise impact of defendant's 9 activities, but I have important 10 information that bears on that issue, 11 including information that's in 12 deposition transcripts. 13 BY MR. BRIDGES: 14 Q. So my question is, how do 15 you -- do you -- strike that. 16 Are your conclusion -- are you 17 making conclusions in paragraph 133 about the 18 cause of changes in sales of the plaintiffs' 19 products? 20 MR. FEE: Objection to form. 21 THE WITNESS: Not definitively. 22 I have observations about the 23 magnitude and trend of the downloads 24 of -- through defendant's sites. I 25 have some information on the downloads</p> <p style="text-align: right;">Page 159</p>	<p>1 impact or potential impact of defendant's 2 activities on each one of the plaintiffs. 3 Q. Did you make any independent 4 assessment of causation of any financial 5 effects on plaintiffs by the defendant's 6 activities? 7 MR. FEE: Objection to form. 8 Calls for a legal conclusion. 9 THE WITNESS: What do you mean 10 by the term of "independent assessment 11 of causation"? 12 BY MR. BRIDGES: 13 Q. You, as an expert, not relying 14 just on what other people have said or 15 speculated or thought. 16 MR. FEE: Same objections. 17 Plus compound. 18 THE WITNESS: We experts rely 19 on other information to draw the 20 conclusions that we do, and then we 21 bring our training to it. So our 22 observations shouldn't be in a vacuum. 23 BY MR. BRIDGES: 24 Q. But they should be objective, 25 correct?</p> <p style="text-align: right;">Page 161</p>

<p>1 A. Yes. 2 Q. And that means perhaps not 3 relying upon the views of the parties to the 4 lawsuit alone, but doing independent analysis 5 and research, correct? 6 MR. FEE: Objection to form. 7 THE WITNESS: I think one can 8 and should evaluate and consider the 9 views of the parties, but not limited 10 investigation to that. 11 BY MR. BRIDGES: 12 Q. So what independent analysis 13 and research did you do other than reviewing 14 the views and statements of the parties in 15 this case? 16 MR. FEE: Objection. Vague. 17 THE WITNESS: I reviewed and 18 summarized the data, as you see in 19 133, that I had at my disposal. I 20 reviewed writings about the impacts. 21 And I took important 22 information from the fact that the 23 plaintiffs have brought this lawsuit. 24 The plaintiffs don't want this 25 activity to continue. That is</p> <p style="text-align: right;">Page 162</p>	<p>1 A. I took all the data -- 2 MR. FEE: Objection. Form. 3 Objection to form. 4 THE WITNESS: I took all this 5 data into account. That's why I 6 reported it here. 7 BY MR. BRIDGES: 8 Q. And the data that you 9 identified in the footnotes in 10 paragraph 134 -- sorry -- 133? 11 A. Yes, I considered that 12 information. 13 Q. Do you know in what year the 14 defendant posted the 2008 version of the 15 National Electrical Code on its Web site? 16 A. I don't know with absolute 17 certainty. I do know a number of the alleged 18 activities occurred in late 2012. I don't 19 know if it's specific to that code or not. 20 Q. Does it matter to your analysis 21 exactly when the defendant posted the 2008 22 National Electrical Code on its Web site or 23 to Internet Archive? 24 A. I would -- 25 MR. FEE: Objection to form.</p> <p style="text-align: right;">Page 164</p>
<p>1 revealed preference information that's 2 quite important. 3 BY MR. BRIDGES: 4 Q. Tell me about what you mean by 5 repealed -- sorry. Strike that. 6 Tell me what you mean by 7 "revealed preference." 8 A. What people do often provides 9 information on what their preferences are. 10 Q. And so the fact that plaintiffs 11 brought this lawsuit has revealed to you that 12 they prefer to bring the lawsuit, correct? 13 MR. FEE: Objection. Vague. 14 THE WITNESS: Given the cost, 15 they prefer to bring the lawsuit 16 rather than not bring it, yes. 17 BY MR. BRIDGES: 18 Q. What else -- strike that. 19 What are the data you're 20 referring to in page -- strike that. 21 What are the data you're 22 referring to in paragraph 133 that you took 23 into account in discussing or analyzing 24 effects of defendant's activities on 25 plaintiffs?</p> <p style="text-align: right;">Page 163</p>	<p>1 THE WITNESS: I would consider 2 that information if I had it, but I 3 don't have any reason to think that it 4 would change any of the conclusions 5 that I drew. 6 BY MR. BRIDGES: 7 Q. The timing of when the 8 defendant posted certain matters wouldn't 9 change your conclusions? 10 A. Not based on what I know right 11 now. My understanding is that much of the 12 activity occurred in 2012, the later half of 13 2012, and I still have the whole body of 14 evidence that I have considered. So I'm not 15 sure if the precise timing would change, but 16 I certainly would consider that. 17 Q. Do you know in what year 18 Public.Resource.Org posted the 2011 version 19 of the National Electrical Code? 20 A. Same answer to the question 21 that you had with regard to the 2008 code. 22 Q. Can you look at the data in 23 your -- the tables attached to your report 24 and see if that helps refresh your memory as 25 to when the defendant posted NEC 2008 and</p> <p style="text-align: right;">Page 165</p>

1 NEC -- NEC 2011?
 2 A. I can look, and I will.
 3 No, it doesn't answer that
 4 question, I don't think.
 5 Q. Can you make a prediction as to
 6 when the defendant posted NEC 2008 and
 7 NEC 2011, based on the data attached to your
 8 report in Exhibit 1?
 9 MR. FEE: Objection to form.
 10 THE WITNESS: No, I don't
 11 think, based on just those data.
 12 BY MR. BRIDGES:
 13 Q. Can you make -- give an
 14 estimate as to when the defendant posted
 15 NEC 2008 and NEC 2011, based on the data
 16 attached to your report as Exhibit 1?
 17 MR. FEE: Same objection.
 18 THE WITNESS: No, I don't
 19 think, based on just that information.
 20 BY MR. BRIDGES:
 21 Q. Well, just looking at your
 22 report, can you tell when defendant posted
 23 NEC 2008 and NEC 2011?
 24 A. My answer hasn't changed. I
 25 still don't know precisely when those were

Page 166

1 posted.
 2 Q. But that doesn't make a
 3 difference to your economic analysis of the
 4 effects of defendant's activities on the
 5 plaintiffs?
 6 A. Well, I would be curious --
 7 MR. FEE: Objection to form.
 8 THE WITNESS: -- curious about
 9 that information, but I don't have any
 10 reason to think it would change the
 11 conclusions that I drew, and that is
 12 that a permanent injunction is
 13 appropriate here.
 14 BY MR. BRIDGES:
 15 Q. Is it your job to determine
 16 whether a permanent injunction is
 17 appropriate? Is that what you were hired to
 18 do?
 19 A. No.
 20 MR. FEE: Objection. Calls for
 21 a legal conclusion. Form. Compound.
 22 THE WITNESS: I think it's
 23 ultimately the Court's decision to
 24 make, but I've been asked what my
 25 economic view is as to the

Page 167

1 appropriateness of a permanent
 2 injunction here.
 3 BY MR. BRIDGES:
 4 Q. Is the appropriate of -- is the
 5 appropriateness of a permanent injunction an
 6 economic question?
 7 A. I think, in part, economic
 8 considerations can be and often are taken
 9 into account in answering that question.
 10 Q. Is it an economic question?
 11 MR. FEE: Objection.
 12 BY MR. BRIDGES:
 13 Q. That was my question.
 14 MR. FEE: Asked and answered.
 15 THE WITNESS: Again, in part.
 16 BY MR. BRIDGES:
 17 Q. The propriety of
 18 a preliminary -- of a -- strike that.
 19 It's your testimony that the
 20 propriety of a permanent injunction is, in
 21 part, an economic question?
 22 MR. FEE: Objection. Asked and
 23 answered. Form. Calls for a legal
 24 conclusion.
 25 THE WITNESS: Yes. As I

Page 168

1 understand it, one factor to consider
 2 is the reparability or irreparability
 3 of harm. I believe, at its core,
 4 that's an economic question.
 5 BY MR. BRIDGES:
 6 Q. And what economic theories did
 7 you rely upon to conclude that, as an
 8 economic matter, a preliminary -- strike
 9 that.
 10 What economic theories did you
 11 rely upon to conclude that, as an economic
 12 matter, a permanent injunction is appropriate
 13 in this case?
 14 MR. FEE: Same objections.
 15 THE WITNESS: I don't know what
 16 candidates you have in mind for
 17 economic theories.
 18 BY MR. BRIDGES:
 19 Q. Whichever ones you relied upon.
 20 A. I --
 21 MR. FEE: Same objections.
 22 THE WITNESS: -- used all of my
 23 training and applied it to the facts
 24 of this case and drew the conclusions
 25 that I did.

Page 169

1 BY MR. BRIDGES:
 2 Q. And are there any particular
 3 aspects of training that you have beyond what
 4 a first-year college student would have
 5 gotten in a first-year economics course that
 6 you have brought to bear by applying
 7 particular economic theories to this case?
 8 A. I think my training makes me
 9 who I am and has helped me in assignments
 10 like this. I have beyond a first-year-in-
 11 college understanding of basic economics, but
 12 they're very important concepts that are
 13 taught and learned in first-year economics.
 14 Q. Well, I want to know if there
 15 are any economic concepts beyond first-year
 16 economics that you have brought to bear in
 17 rendering your conclusions in this case.
 18 MR. FEE: Objection to form.
 19 Asked and answered.
 20 THE WITNESS: Generally, there
 21 are, yes.
 22 BY MR. BRIDGES:
 23 Q. What economic concepts have you
 24 brought to bear in your report and analysis
 25 in this case?

Page 170

1 A. I'm sorry, because I don't know
 2 what you mean by "economic concepts." We get
 3 trained in things like quantitative methods
 4 and intermediate microeconomics, in price
 5 theory, in econometrics, in consumer
 6 behavior. All those things are beyond the
 7 first year. I don't know if you're calling
 8 those economic theories. Your -- your
 9 questioning confuses me.
 10 Q. Well, you referred to the
 11 important concepts in response to my question
 12 to you about particular aspects of training
 13 that you have beyond what a first-year
 14 college student would have gotten in a
 15 first-year economics course that you brought
 16 to bear by applying economic theories to this
 17 case, and your answer refers to very
 18 important concepts that are taught and
 19 learned.
 20 And so I'm asking you, what
 21 very important economic concepts have you
 22 brought to bear in your analysis of this
 23 case?
 24 MR. FEE: Objection to form.
 25 Lack of foundation.

Page 171

1 THE WITNESS: We learn about
 2 price theory. We learn about consumer
 3 behavior. We talk -- we learn about
 4 manufacturer and supplier actions. We
 5 learn about game theory. We learn
 6 about econometrics. We learn more
 7 broadly about quantitative methods.
 8 We learn about a variety of aspects of
 9 industrial organization. There are
 10 many things that we learn beyond the
 11 first year of economics training.
 12 BY MR. BRIDGES:
 13 Q. No, I'm asking what you brought
 14 to bear in your analysis in this case.
 15 A. All those.
 16 Q. Okay. What aspect of price
 17 theory did you bring to bear in this case?
 18 A. I don't know how to answer that
 19 question besides I understand basic price
 20 theory and have researched it much and
 21 applied that to the facts here.
 22 Q. What was the specific
 23 application of price theory that you brought
 24 to bear in this case?
 25 A. I can't be any more specific

Page 172

1 than that. I don't understand your question.
 2 Q. What aspect of training about
 3 consumer behavior did you bring to bear in
 4 this case?
 5 A. I can't be any more specific
 6 than saying that.
 7 Q. What aspects of your training
 8 about game theory have you brought to bear in
 9 your work on this case?
 10 A. I can't be any more specific
 11 than that.
 12 Q. What aspects of econometrics in
 13 your training have you brought to bear on
 14 this case?
 15 A. I can't be any more specific
 16 than that.
 17 Q. What inform -- what aspects of
 18 training in qualitative methods have you
 19 brought to bear on this case?
 20 A. I didn't say "qualitative
 21 methods," and so it may have been mis-keyed
 22 in. I said "quantitative methods."
 23 Q. All right. What aspects of
 24 quantitative methods of your training did you
 25 bring to bear on this case?

Page 173

1 A. I can't be any more specific
 2 than that.
 3 Q. What aspect of your training
 4 regarding aspects of industrial organization
 5 have you brought to bear on this case?
 6 A. I can't be any more specific
 7 than that.
 8 Q. But you did bring the theory of
 9 reveal -- revealed preferences to bear on
 10 this case, correct?
 11 A. Yes.
 12 Q. What other economic theories do
 13 you recall bringing to bear on this case?
 14 MR. FEE: Objection. Asked and
 15 answered.
 16 THE WITNESS: Everything that
 17 I've --
 18 MR. FEE: And vague.
 19 Go ahead.
 20 THE WITNESS: -- I've learned
 21 in my training, both educational
 22 training and career training.
 23 BY MR. BRIDGES:
 24 Q. Can you be more specific than
 25 that?

Page 174

1 A. No.
 2 * * *
 3 (Jarosz Exhibit 4 marked for
 4 identification.)
 5 * * *
 6 BY MR. BRIDGES:
 7 Q. Mr. Jarosz, do you recognize
 8 Exhibit 4 as a document that you produced in
 9 response to a subpoena in this case?
 10 A. Yes.
 11 Q. What is this document?
 12 A. It appears to be a summary over
 13 the years 2009 through 2013 of dollars and
 14 quantity of NFPA standards that were sold in
 15 the marketplace.
 16 Q. Based upon the trends that you
 17 see in this exhibit, can you estimate when
 18 you believe it is most likely that the
 19 defendant first published -- strike that.
 20 Based upon the trends that you
 21 see in this Exhibit 4, can you estimate when
 22 you believe it is most likely that the
 23 defendant first posted each of the standards
 24 identified here?
 25 A. I don't think so, not based

Page 175

1 just on this information.
 2 Q. What else would you need?
 3 A. I don't know, because I think
 4 it's probably a very easy factual question to
 5 determine when the downloading first
 6 occurred, so I don't know why one would need
 7 to back into it.
 8 Q. Well, when -- would one be able
 9 to use sales trends as a way of identifying
 10 likely effects of a posting of each standard
 11 by the defendant?
 12 MR. FEE: Objection. Vague.
 13 Compound.
 14 THE WITNESS: Maybe; maybe not.
 15 BY MR. BRIDGES:
 16 Q. Why do you say "maybe; maybe
 17 not"?
 18 A. I just wouldn't think to do it
 19 that way, so I don't know what you exactly
 20 have in mind.
 21 Q. Do you associate the posting of
 22 standards by defendant with changes in sales
 23 volume of the standards that the defendant
 24 has posted?
 25 MR. FEE: Objection to form.

Page 176

1 THE WITNESS: I don't know what
 2 you mean by that question.
 3 BY MR. BRIDGES:
 4 Q. You don't understand the
 5 question?
 6 A. I do not.
 7 Q. Can you correlate the posting
 8 of standards by defendant with any changes in
 9 sales volumes of the standards that the
 10 defendant has posted?
 11 MR. FEE: Objection to form.
 12 THE WITNESS: I don't think
 13 I've attempted to compute the
 14 correlation coefficient here
 15 associated with postings.
 16 BY MR. BRIDGES:
 17 Q. I'm not asking for a specific
 18 correlation coefficient. I'm just asking,
 19 generally, can you correlate the posting of
 20 standards by defendant with any changes in
 21 sales volumes of the standards that
 22 defendants has -- that the defendant has
 23 posted with reference to Exhibit 4?
 24 A. I don't know --
 25 MR. FEE: Objection. Form.

Page 177

1 THE WITNESS: I don't recall
 2 attempting to do that. And I wouldn't
 3 necessarily think that the historical
 4 impact would -- is the end of the
 5 story as to the harm here.
 6 BY MR. BRIDGES:
 7 Q. Is historical impact part of
 8 the story as to the harm here?
 9 A. Yes.
 10 Q. What -- what can you say by
 11 looking at Exhibit 4 about the historical
 12 impact of the posting of the defendant -- of
 13 the plaintiffs' standards by the defendant?
 14 A. I don't know that I can say
 15 much, because I believe the postings largely
 16 occurred in late 2012, and I only have one
 17 period after that.
 18 Q. If it turns out that
 19 defendant's postings were well before 2012,
 20 would that affect your analysis of the trends
 21 in sales data of the plaintiffs'
 22 publications?
 23 MR. FEE: Objection to form.
 24 Compound. Vague.
 25 THE WITNESS: Maybe. I would

Page 178

1 consider that information in
 2 conjunction with these data if you
 3 wanted me to.
 4 BY MR. BRIDGES:
 5 Q. How -- what -- what would
 6 change?
 7 A. I don't know. I haven't done
 8 that analysis.
 9 Q. Have you verified the dates on
 10 which plaintiffs -- strike that.
 11 Have you verified the dates at
 12 which defendant posted the various standards
 13 to its Web site or to Internet Archive?
 14 A. I don't --
 15 MR. FEE: Objection. Vague.
 16 THE WITNESS: I don't recall
 17 verifying it.
 18 And are you asking did I
 19 separately go out and determine what
 20 that date is and see if that was the
 21 same as what was represented in the
 22 Complaint, for instance?
 23 BY MR. BRIDGES:
 24 Q. Yes.
 25 A. No, I don't recall doing that.

Page 179

1 Q. Have you determined in any way
 2 the dates at which defendant posted various
 3 standards to its Web site or to the Internet
 4 Archive?
 5 A. I don't recall doing a separate
 6 analysis of that, no.
 7 Q. How did you learn about the
 8 dates at which defendant posted various
 9 standards to its Web site or to Internet
 10 Archive?
 11 A. I had conversations with
 12 counsel on that topic, and I may have seen
 13 that information contained in certain
 14 documents like the Complaint, but I don't
 15 recall.
 16 Q. Did you rely upon information
 17 regarding those dates from conversations with
 18 counsel?
 19 MR. FEE: In arriving at his
 20 opinions, you're asking?
 21 MR. BRIDGES: Arriving at his
 22 understanding of the facts.
 23 THE WITNESS: I don't know that
 24 I did, because I don't recall
 25 reporting those specific dates

Page 180

1 anywhere in my report.
 2 BY MR. BRIDGES:
 3 Q. Do you recall taking specific
 4 dates into account in analyzing the effect of
 5 defendant's actions?
 6 MR. FEE: Objection to form.
 7 Vague.
 8 THE WITNESS: I don't recall
 9 one way or the other.
 10 BY MR. BRIDGES:
 11 Q. Do you know how -- strike that.
 12 Do you know how much revenue
 13 each plaintiff derives from the standards at
 14 issue in this case?
 15 A. I don't think I know that
 16 precise number.
 17 Q. Did you -- did you ever know
 18 that number?
 19 A. I don't think so.
 20 Q. Did you ever know how much
 21 revenue each plaintiff derives from standards
 22 that have been incorporated into law?
 23 A. As opposed to those that have
 24 not been incorporated? Is that --
 25 Q. Well, I'm -- I'm asking about

Page 181

1 those standards that have been incorporated
2 in the law. I'm asking if you know how much
3 revenue each plaintiffs derives -- each
4 plaintiff derives from those standards.
5 A. I don't --
6 MR. FEE: Objection. Form.
7 THE WITNESS: -- think I know
8 that number, and I'm not sure the
9 plaintiffs know that number.
10 BY MR. BRIDGES:
11 Q. Do you know the percentage of
12 revenue that each plaintiff derives from
13 standards that have been incorporated into
14 law?
15 MR. FEE: Objection to form.
16 THE WITNESS: I don't think I
17 do, and I don't believe the plaintiffs
18 do.
19 BY MR. BRIDGES:
20 Q. Are you aware of any difference
21 in profitability to plaintiffs between those
22 standards that have been incorporated into
23 law and those standards that have not been
24 incorporated into law?
25 MR. FEE: Objection to form.

Page 182

1 THE WITNESS: I don't believe
2 so.
3 BY MR. BRIDGES:
4 Q. Do you know -- strike that.
5 Are you aware of any difference
6 in profitability to plaintiffs between those
7 standards that defendant has posted to the
8 Internet and those standards that defendant
9 has not posted to the Internet?
10 MR. FEE: Objection to form.
11 THE WITNESS: I don't believe
12 so. And as with the previous
13 question, I don't think the plaintiffs
14 have that information at their
15 disposal.
16 BY MR. BRIDGES:
17 Q. For each plaintiff, what do you
18 understand to be the percentage of gross
19 revenue from the sale of standards?
20 MR. FEE: Objection to form.
21 THE WITNESS: I -- I've
22 reported that in my report. My memory
23 is that it's something on the order of
24 66 percent for ASTM and for NFPA. And
25 if you add in memberships, it's

Page 183

1 something just north of 50 percent for
2 ASHRAE.
3 BY MR. BRIDGES:
4 Q. What do you mean by "if you add
5 in memberships"?
6 A. I'm not -- I'm not quite sure
7 what you're asking me to define.
8 Q. I'm asking you to explain the
9 phrase that you just used, "if you add in
10 memberships." What did that mean?
11 A. I talked about that in my
12 report. Membership fees are a fairly good
13 recollect -- a fairly good reflection of
14 amount that would have been paid for
15 publications. In other words, publication
16 fees -- it -- let me start this over again.
17 It makes about as much sense to
18 become a member of ASHRAE as it is to buy
19 some of the individual publications. As a
20 result, many people choose to become members
21 rather than just buying the publication, as I
22 understand it.
23 Q. How did you learn that?
24 A. Having knowledge of the -- of
25 the price difference and through discussions

Page 184

1 with people at ASHRAE.
2 Q. How did you learn about the
3 price difference?
4 A. I don't recall how I learned
5 it, but I report it in my report based on
6 certain documents I've seen. Perhaps I
7 learned it from their Web site.
8 Q. Did you do any surveys of
9 ASHRAE members to validate that assumption?
10 A. I'm sorry. Validate what
11 assumption?
12 Q. About purchase of a membership
13 instead of buying the publication.
14 A. I'm not sure that there's an
15 assumption in there. My understanding is
16 that ASHRAE people are of the belief that
17 many people buy membership rather than
18 individual publications.
19 Q. And in your work, did you
20 assume that?
21 A. I didn't assume that. I worked
22 on that -- under that understanding.
23 Q. Oh, it's an understanding, but
24 not an assumption?
25 A. Yes.

Page 185

<p>1 Q. Did that understanding make a 2 difference to your analysis? 3 A. It was a factual underpinning. 4 Q. An underpinning, but not an 5 assumption? 6 A. It was not an explicit 7 assumption. 8 Q. But it was an underpinning, not 9 an assumption, is your testimony? 10 MR. FEE: Objection. Asked and 11 answered. 12 THE WITNESS: Yes. I don't 13 know what or why you're arguing with 14 me on this. 15 BY MR. BRIDGES: 16 Q. I'm not arguing. 17 A. I don't understand. 18 Q. I'm just trying to understand 19 your testimony. That's all. So I'm asking 20 some follow-up questions. 21 You stated earlier some 22 percentages of revenue from the sale of 23 standards. Did you mean to be identifying 24 what you thought were the percentages of 25 revenue from the sale of standards or from</p> <p style="text-align: right;">Page 186</p>	<p>1 are to copyrighted publications, correct? 2 A. With the exception of number 3, 3 which refers to copyrighted publications and 4 memberships. 5 Q. Okay. So my question wasn't 6 about copyrighted publications. My question 7 is, what percentage do you understand of 8 plaintiffs' revenues comes from the sale of 9 standards at issue in this case? 10 A. Thank you for that reminder of 11 what the question is. 12 I don't think I know that 13 precise percentage. 14 Q. What percentage of plaintiffs' 15 revenues, to your knowledge, comes from the 16 sale of standards incorporated into law? 17 A. I don't know that number. 18 Q. What percentage of plaintiffs' 19 revenues, to your understanding, comes from 20 the sale of all standards? 21 A. I'm sorry. I thought you asked 22 that question. I thought the immediate one 23 before that was standards. 24 Q. No. It was standards at issue 25 in this case. Then --</p> <p style="text-align: right;">Page 188</p>
<p>1 the sale of all publications? 2 A. Let me -- let me double-check 3 that. 4 Well, in the case of ASTM, for 5 instance, I believe it's copyrighted 6 publications. 7 Q. What page are you referring to 8 in your report? 9 A. Right now I'm looking at 10 page 36, but I think I talk about it at other 11 areas. 12 Q. So page 36, you're talking 13 about which paragraph? 14 A. Well, right now I was -- 15 Q. 83? 16 A. -- I was looking at 83, but I'm 17 turning back to, for more reliable 18 information, to paragraph 15, for instance, 19 which says in 2014, 67.1 percent of the 20 revenue was generated by the sale of 21 copyrighted publications. For NFPA, that 22 information is shown in paragraph 18. And 23 for ASHRAE, that information is shown in 24 paragraph 22. 25 Q. All three of those references</p> <p style="text-align: right;">Page 187</p>	<p>1 A. The one before that. 2 Q. -- standards incorporated into 3 law. And now it's all standards. 4 A. Right. Thank you. 5 I don't know that number 6 either. 7 Q. What percentage of 8 plaintiffs' -- strike that. 9 What dollar value do you 10 associate with the investments that each 11 plaintiff has made in the development of the 12 standards at issue in this case? 13 A. I don't think I attributed a 14 dollar amount to that precise activity, 15 because I don't know that amount. 16 Q. What percentage of plaintiffs' 17 operating expenses do you associate with the 18 plaintiffs' development of the standards at 19 issue in this case? 20 A. I don't think I know that 21 number. 22 Q. What percentage of plaintiffs' 23 operating expenses do you associate with the 24 plaintiffs' development of standards 25 incorporated into law?</p> <p style="text-align: right;">Page 189</p>

1 A. I don't think I know that
2 number.
3 Q. What percentage of plaintiffs'
4 operating expenses do you associate with the
5 plaintiffs' development of standards
6 generally?
7 A. I don't think I know that
8 number.
9 Q. Do you have any estimates of
10 any of those numbers that you just said you
11 don't think you know?
12 MR. FEE: Objection to form.
13 THE WITNESS: Not sitting here
14 right now.
15 BY MR. BRIDGES:
16 Q. Did you at one point ever
17 determine those numbers?
18 A. Not that I recall.
19 Q. Do you know what percentage of
20 the staff or employees of each plaintiff has
21 worked on the development of standards at
22 issue in this case?
23 MR. FEE: Objection to form.
24 THE WITNESS: I don't think I
25 know that number.

Page 190

1 BY MR. BRIDGES:
2 Q. Do you know what percentage --
3 do you have an estimate?
4 A. No.
5 MR. FEE: Objection to form.
6 THE WITNESS: Not as I sit
7 here, no.
8 BY MR. BRIDGES:
9 Q. Do you know what percentage of
10 the staff or employees of each plaintiff has
11 worked on the development of standards
12 incorporated into law?
13 MR. FEE: Objection to form.
14 THE WITNESS: Not as I sit here
15 right now.
16 BY MR. BRIDGES:
17 Q. Do you have an estimate?
18 A. Not as I sit here right now.
19 Q. Do you know what percentage of
20 the staff or employees of each plaintiff has
21 worked on the development of standards in
22 general?
23 A. Not as I sit here right now.
24 Q. Do you have an estimate?
25 A. Not as I sit here right now.

Page 191

1 Q. Have you ever had access to any
2 information that I've asked in the last
3 several questions?
4 MR. FEE: Objection to form.
5 THE WITNESS: I don't believe
6 so.
7 BY MR. BRIDGES:
8 Q. Do you know whether plaintiffs
9 prepare standards through joint sponsorship
10 with any other organizations?
11 MR. FEE: Objection. Vague.
12 THE WITNESS: I think I may
13 have seen a reference to that. I
14 don't know the extent to which it
15 occurs, but I wouldn't be surprised to
16 be reminded that it does occur.
17 BY MR. BRIDGES:
18 Q. Are you aware of any, as you
19 sit here?
20 A. Not as I sit here right now,
21 but I think I'm aware that it has occurred.
22 Q. Do you know whether plaintiffs
23 receive grants, revenue, or stipends from
24 governments that use, reference, or adopt
25 their standards?

Page 192

1 MR. FEE: Objection to form.
2 THE WITNESS: There are grant
3 monies that go to NFPA. I don't know
4 the source of those grants. I don't
5 see a line for grant revenues for the
6 other two organizations.
7 BY MR. BRIDGES:
8 Q. Did you ask any of the
9 plaintiffs about the revenues or expenses
10 they have specifically attributable to the
11 standards that defendant has posted to the
12 Internet?
13 MR. FEE: Objection to form.
14 THE WITNESS: We generally
15 talked about that topic with each
16 plaintiff, and I don't think the
17 plaintiffs know that amount. They
18 undertake activities that are
19 standards oriented. They don't know
20 which of those standards will be
21 incorporated by reference.
22 BY MR. BRIDGES:
23 Q. Did you --
24 A. Or which have been. I don't
25 think they systematically track those.

Page 193

1 Q. I guess my question didn't have
 2 anything to do with incorporated by
 3 reference. My question is, did you ask any
 4 of the plaintiffs about the revenues or
 5 expenses that they have had that are
 6 specifically attributable to the standards
 7 that the defendant has posted to the
 8 Internet?
 9 MR. FEE: Objection to form.
 10 THE WITNESS: I think we
 11 generally talked about that topic, and
 12 I don't believe they have information
 13 at that level.
 14 BY MR. BRIDGES:
 15 Q. Did you ask the plaintiffs to
 16 estimate revenues or expenses specifically
 17 attributable to the standards at issue in
 18 this case?
 19 MR. FEE: Objection to form.
 20 THE WITNESS: Not that I
 21 recall. We may have asked whether
 22 they are collected, but we didn't ask
 23 for the plaintiffs to separately
 24 estimate those numbers, as I recall.
 25 BY MR. BRIDGES:

Page 194

1 Q. In paragraph 49, you state that
 2 ASHRAE standard 90.1 was first published in
 3 1974. What's your basis for that statement?
 4 A. I don't recall. It may have
 5 been in a produced document. It may have
 6 been in conversations. I just don't recall.
 7 Q. Did you attempt to verify that
 8 information independently?
 9 A. Not that I recall.
 10 Q. Do you know if ASHRAE standard
 11 90-75 was first published in 1975?
 12 A. I don't happen to know, sitting
 13 here now.
 14 Q. You cite to an article in
 15 footnotes 73, 74 of your report. Did you
 16 review that article?
 17 A. Yes.
 18 Q. Did you independently verify
 19 the information in it?
 20 A. Not that I recall.
 21 Q. You just took it at face value?
 22 A. I think so. I didn't have
 23 reason to question any of the facts there.
 24 Q. Did you ever have reason to
 25 question any of the facts that anybody from

Page 195

1 the plaintiffs told you in this case?
 2 MR. FEE: Objection to form.
 3 THE WITNESS: Well, I kept an
 4 open mind to the facts that I was
 5 given over the phone and sought to
 6 determine if I learned things that
 7 conflicted or not with that
 8 information.
 9 BY MR. BRIDGES:
 10 Q. Where did you --
 11 A. But --
 12 Q. I'm sorry. I didn't realize
 13 you were still --
 14 A. But I didn't separately go out
 15 and write down the facts and attempt to get
 16 separate verification of each fact.
 17 Q. So you were looking for
 18 internal inconsistencies in the
 19 communications that plaintiffs had with you
 20 in order to determine whether to question any
 21 of the facts that the plaintiffs' employees
 22 related to you?
 23 MR. FEE: Objection to form.
 24 BY MR. BRIDGES:
 25 Q. Is that your testimony?

Page 196

1 MR. FEE: Mischaracterizes the
 2 testimony.
 3 THE WITNESS: I'm not sure if
 4 it is. Let me try and answer and see
 5 if that's responsive.
 6 I was aware of the information
 7 we received over the telephone, and in
 8 the process of looking through the
 9 documents that we had, I kept an open
 10 eye toward learning things that
 11 conflicted with those oral
 12 conversations.
 13 BY MR. BRIDGES:
 14 Q. And the documents -- what
 15 are -- what were the documents that you're
 16 saying you had?
 17 A. Everything that's in tab 2.
 18 Q. Most of which, apart from the
 19 Web-based resources and the articles other
 20 than Ms. Bremer's law review articles, the
 21 plaintiffs' counsel furnished to you,
 22 correct?
 23 MR. FEE: Objection to form.
 24 THE WITNESS: I think that's
 25 right. They didn't author those

Page 197

1 documents, but they provided them as
 2 part of the discovery process.
 3 BY MR. BRIDGES:
 4 Q. Did you ask them for any
 5 documents that they had not provided?
 6 A. I think we generally described
 7 the kinds of information that we find useful
 8 or typically find useful in matters like
 9 this.
 10 Q. After you received documents
 11 from plaintiffs' counsel, did you ask them
 12 for any more?
 13 A. That -- that's possible. I
 14 don't recall that.
 15 Q. You don't recall. Did you --
 16 do you have any understanding as to the
 17 dollar value of staff time and expenses that
 18 the plaintiffs have incurred in promoting
 19 incorporation of their standards into law?
 20 MR. FEE: Objection to form.
 21 Lack of foundation.
 22 THE WITNESS: I don't think I
 23 have that number, no.
 24 BY MR. BRIDGES:
 25 Q. Do you have an estimate?

Page 198

1 MR. FEE: Same objections.
 2 THE WITNESS: Not as I sit here
 3 now, no.
 4 BY MR. BRIDGES:
 5 Q. Did you discuss that issue with
 6 anyone representing the plaintiffs?
 7 MR. FEE: Same objections.
 8 THE WITNESS: It's possible,
 9 but I don't recall having that
 10 discussion.
 11 BY MR. BRIDGES:
 12 Q. In paragraph 57 of your report,
 13 you refer to "thousands of private-sector
 14 standards." Was your sole support for the
 15 statement in paragraph 57 the Bremer article
 16 you cited in footnote 88?
 17 A. No. You see I discuss and
 18 provide support for that in subsequent
 19 paragraphs in that section.
 20 Q. And that includes in
 21 paragraph 58?
 22 A. Yes.
 23 Q. And did you review the
 24 Standards Incorporated by Reference Database
 25 that you refer to in paragraph 58?

Page 199

1 A. I looked at some parts of it.
 2 I don't recall that I looked at all aspects
 3 of the database.
 4 Q. Did you verify how many
 5 standards were incorporated by reference
 6 according to that database?
 7 A. No, I did not.
 8 Q. What do you mean by, "This
 9 database reports nearly 13,000 instances of
 10 incorporation by reference"?
 11 A. I don't know what you're asking
 12 me to define.
 13 Q. I'm not asking you to define
 14 anything. I'm asking you to explain what you
 15 meant by that clause, "This database
 16 reports" --
 17 A. I'm sorry. I'm just -- I'm
 18 going to be just rearranging words a little
 19 bit. There were 13,000 times that there was
 20 incorporation by reference of a standard.
 21 I -- I don't -- I'm sorry. I
 22 don't understand what your confusion is.
 23 Q. I'm not confused. I'm just
 24 asking you questions. Okay? So please don't
 25 understand -- please don't assume that I'm

Page 200

1 confused. I'm trying to understand what you
 2 meant by that.
 3 You mean separate instances?
 4 You mean separate laws? What do you mean?
 5 A. Yes. Separate instances slash
 6 separate laws.
 7 Q. What did you count as an
 8 instance?
 9 A. Mention in a particular law of
 10 a standard.
 11 Q. Did you or anybody working with
 12 you attempt to determine the number of
 13 standards that those 13,000 instances of
 14 incorporation by reference referred to?
 15 A. Not entirely. But if you read
 16 on that -- in that same section, it talks
 17 about the number of ASTM standards, the
 18 numbers of -- the number of NFPA standards,
 19 and the number of ASHRAE standards.
 20 Q. Well, please tell me where it
 21 refers to the number of standards.
 22 A. It says, "Including more than
 23 2,400 instances involving ASTM standards."
 24 So you're right. It doesn't
 25 have the number of standards. It just has

Page 201

1 mentions of standard. You're absolutely
 2 right.
 3 Q. And the same thing is true of
 4 the NFPA standards and ASHRAE standards?
 5 A. You're absolutely right, yes.
 6 Q. Do you know how many standards
 7 that database shows as having been
 8 incorporated by reference?
 9 A. Not sitting here right now.
 10 One could perhaps look at what I cited to
 11 answer that question, but I don't know right
 12 now.
 13 Q. Do you know whether anyone
 14 working for you ever did that work to make
 15 that determination?
 16 A. I don't recall that being done.
 17 Q. Paragraph 59, you say, "At the
 18 state level, privately-developed standards
 19 are incorporated by reference as part of the
 20 exercise of a range of governmental
 21 functions."
 22 Do you see that?
 23 A. Yes.
 24 Q. What do you mean by
 25 "governmental functions" in that statement?
 Page 202

1 A. Things that government agencies
 2 do.
 3 Q. And you give a couple of
 4 examples, but speaking broadly, what are
 5 governmental functions that involve
 6 incorporation by reference of privately
 7 developed standards at the state level?
 8 MR. FEE: Objection to form.
 9 THE WITNESS: I can only answer
 10 generally. Health and human services,
 11 things that are related to that,
 12 safety, driving rules and regulation.
 13 Those are among the things that come
 14 to mind.
 15 BY MR. BRIDGES:
 16 Q. What are the governmental
 17 functions related to health and human
 18 services that you have in mind?
 19 A. I don't have any particular
 20 ones in mind.
 21 Q. What are the governmental
 22 functions relating to safety that you have in
 23 mind?
 24 A. I don't have any particular
 25 ones in mind.
 Page 203

1 Q. What are the governmental
 2 functions with respect to driving that you
 3 have in mind?
 4 A. I don't have any particular
 5 ones in mind.
 6 Q. In paragraph 59, you say, "At
 7 least 44 states and territories have adopted
 8 ASHRAE 90.1 as part of the commercial
 9 building energy code."
 10 Do you see that?
 11 A. Yes, I do.
 12 Q. And that also has footnote 95
 13 associated with that as well, correct?
 14 A. Yes, that's correct.
 15 Q. How do you explain the fact
 16 that that reference in footnote 95 shows that
 17 those 44 states, in fact, adopted the
 18 International Energy Conservation Code that
 19 merely has a reference to an option to use
 20 ASHRAE 90.1?
 21 MR. FEE: Objection. Lack of
 22 foundation.
 23 THE WITNESS: I don't have any
 24 explanation for that.
 25 BY MR. BRIDGES:
 Page 204

1 Q. Did you verify that?
 2 A. I did not, no.
 3 Q. Who did?
 4 A. I'm sorry. Who verified what?
 5 Q. On what -- on what did you rely
 6 to make that statement with that footnote?
 7 A. I may not understand your
 8 question. I relied on what's identified in
 9 footnote 95.
 10 Q. But you didn't review foot --
 11 what's in footnote 95, right?
 12 MR. FEE: Objection. Lack of
 13 foundation.
 14 THE WITNESS: I did.
 15 BY MR. BRIDGES:
 16 Q. You -- you reviewed that Web
 17 site?
 18 A. Yes.
 19 Q. Personally?
 20 A. Yes, I believe so.
 21 Q. Do you have an explanation as
 22 to why the resource cited in footnote 95
 23 actually shows that the 44 states adopted the
 24 International Energy Conservation Code?
 25 MR. FEE: Objection. Lack of
 Page 205

<p>1 foundation. 2 THE WITNESS: I would like to 3 understand the facts that you're 4 positing right now. 5 BY MR. BRIDGES: 6 Q. Well, we're not going to take 7 time to go look at a Web site right now, so 8 I'm asking you based on what you know. 9 Do you have an explanation as 10 to why the resource cited in footnote 95 11 actually shows that 44 state -- the 44 states 12 adopted the International Energy Conservation 13 Code? 14 MR. FEE: Objection. Lack of 15 foundation. 16 THE WITNESS: I don't know if 17 your factual representation is 18 accurate or not, and I don't recall 19 investigating that particular issue. 20 BY MR. BRIDGES: 21 Q. Have you made any effort to 22 determine what resources were expended, 23 incurred, or contributed by parties other 24 than ASHRAE in the development of standard 25 90.1?</p> <p style="text-align: right;">Page 206</p>	<p>1 change in membership sales by ASHRAE over the 2 past ten years? 3 A. I don't think I have data that 4 goes as far as ten years ago. I do have 5 information on ASHRAE membership revenue back 6 to 2012. That's summarized in tab 5. 7 Q. And that membership figure has 8 risen each year since 2012, correct? 9 A. Yes. Slightly each year, it 10 has risen. 11 Q. Do you draw any conclusions 12 with respect to this case from that trend? 13 A. I don't think so. 14 Q. Have you calculated the 15 effects -- the financial effect on the 16 plaintiffs of the incorporation into law of 17 their standards? 18 MR. FEE: Objection to form. 19 THE WITNESS: No, I don't think 20 I've independently -- I don't think 21 I've separately done that. 22 BY MR. BRIDGES: 23 Q. Are you aware of any data 24 regarding the financial effect on the 25 plaintiffs of the incorporation into law of</p> <p style="text-align: right;">Page 208</p>
<p>1 MR. FEE: Objection to form. 2 THE WITNESS: I generally 3 understand that there were many 4 members who participated in that. I 5 think I reported earlier in the report 6 the number of hours and other 7 indications of activity undertaken by 8 members. 9 BY MR. BRIDGES: 10 Q. My question is, have you made 11 any effort to determine what resources were 12 expended, incurred, or contributed by parties 13 other than ASHRAE and ASHRAE members in the 14 development of standard 90.1? 15 MR. FEE: Same objection. 16 THE WITNESS: I didn't realize 17 that you had in your original question 18 "and other than ASHRAE members." 19 BY MR. BRIDGES: 20 Q. I didn't. Now I -- now my 21 question does. 22 A. Beyond that, I don't recall 23 undertaking that investigation, meaning 24 beyond ASHRAE and its members. 25 Q. Have -- are you aware of any</p> <p style="text-align: right;">Page 207</p>	<p>1 their standards? 2 MR. FEE: Same objection. 3 THE WITNESS: I'm aware that 4 the plaintiffs benefit greatly by 5 incorporation by reference, but I 6 don't know that I've seen a 7 quantitative study of that topic. 8 BY MR. BRIDGES: 9 Q. What do you understand about 10 the benefits that accrue to plaintiffs by 11 incorporation by reference? 12 A. Some of those are laid out in 13 my report on pages 19 through 26. I have a 14 particular section called "Benefits of 15 Incorporation" that starts at page 20. 16 Q. Well, I'm asking you, what 17 benefits accrue to the plaintiffs from 18 incorporation by reference? 19 A. Generally, it allows each one 20 to satisfy its mandate of providing services 21 to the entirety of the industry that it 22 focuses its attention on. And so it allows 23 for the collection and then dissemination of 24 standards that allow and achieve outcomes 25 that are good for the industry.</p> <p style="text-align: right;">Page 209</p>

1 Q. What other benefits do
 2 plaintiffs gain from incorporation by
 3 reference of their standards?
 4 A. I think that generally covers
 5 it. I may be forgetting things that are laid
 6 out in my report, but that's what covers it,
 7 to the best of my memory right now.
 8 Are we at a good point for a
 9 break?
 10 Q. If you want. Sure.
 11 A. Thanks.
 12 THE VIDEOGRAPHER: Off the
 13 record at 3:12. This is the end of
 14 media unit number 2.
 15 * * *
 16 (Recess from 3:12 p.m. to
 17 3:41 p.m.)
 18 * * *
 19 THE VIDEOGRAPHER: On the
 20 record at 3:41. This is the beginning
 21 of media unit number 3 in the
 22 deposition of John Jarosz.
 23 * * *
 24 (Jarosz Exhibit 5 marked for
 25 identification.)

Page 210

1 * * *
 2 BY MR. BRIDGES:
 3 Q. Mr. Jarosz, I've handed you
 4 Exhibit 5. This is an article that you cited
 5 in your report, correct?
 6 A. Yes, I believe so.
 7 Q. Do you recall how this article
 8 came to your attention?
 9 A. I do not.
 10 Q. Is this an article that you
 11 understand to have been published by
 12 plaintiff ASHRAE in its journal?
 13 A. Yes, that's my understanding.
 14 Q. And this is an article you
 15 relied upon with respect to the development
 16 of standard 90, which became standard 90.1,
 17 correct?
 18 A. Yes.
 19 Q. In paragraph 133 of your
 20 report, you talk about a number of
 21 downloads -- strike that -- you talk about a
 22 number of documents accessed through Public
 23 Resource's Web site. Do you see that?
 24 A. I talk about the number of ASTM
 25 documents that are -- that were accessed over

Page 211

1 a particular period.
 2 Q. And then you do the same for
 3 NFPA documents, correct?
 4 A. Yes.
 5 Q. What do you calculate as the
 6 dollar value of harm to the -- to ASTM from
 7 the accesses and downloads that you refer to
 8 in paragraph 133?
 9 A. I haven't calculated that harm.
 10 Q. Why not?
 11 A. I'm not sure if I can at this
 12 stage. One estimate would be those number of
 13 downloads times the -- well, actually, no,
 14 let me take that back. I just don't know how
 15 to do it.
 16 Q. Can you be certain that these
 17 accesses or down -- and downloads referred to
 18 in paragraph 133, in fact, resulted in
 19 economic loss to ASTM?
 20 MR. FEE: Objection to form.
 21 THE WITNESS: Not with absolute
 22 certainty, but with reasonable
 23 certainty I can say some -- in some
 24 number of these instances, it's likely
 25 the case that the -- that the

Page 212

1 information would have been obtained
 2 from ASHRAE in -- or ASTM, rather,
 3 in -- through legal means.
 4 BY MR. BRIDGES:
 5 Q. Would that -- in those
 6 instances where you say that the information
 7 would have been obtained from ASTM through
 8 legal means, can you put a dollar value on --
 9 or even an estimate of the increased revenue
 10 that ASTM would have gotten from those
 11 instances where people obtained the
 12 information from ASHRAE -- sorry -- from
 13 AST --
 14 MR. FEE: Object --
 15 BY MR. BRIDGES:
 16 Q. -- from ASTM?
 17 MR. FEE: Objection to form.
 18 THE WITNESS: No, not based on
 19 the information I have. I don't think
 20 I have any indication of who was doing
 21 the downloading and why.
 22 BY MR. BRIDGES:
 23 Q. And do you know what
 24 alternatives persons who were doing the
 25 downloading may have had for obtaining the

Page 213

1 information?
2 A. Not with certainty, because I
3 don't know who those persons were, but I
4 would expect one alternative would be to
5 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
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
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?
2 Q. Right.
3 A. That's a possibility, yes.
4 Q. Do you have an understanding as
5 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
10 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
19 and access to a standard through a reading
20 room?
21 A. Well, I think that a download
22 typically has a document that's in hard-copy
23 form. Copies can made -- be made of that and
24 distributed. Reading things just online
25 doesn't allow for the wide distribution and

Page 215

1 more extended use of that document.
2 Q. Do you have any evidence about
3 wide distribution of plaintiffs' standards as
4 a consequence of defendant's actions?
5 A. I do not.
6 Q. Have you reviewed any studies
7 that would allow you to establish any
8 connection between the number of accesses or
9 downloads that Public Resource made possible
10 and any financial harms to the plaintiffs?
11 MR. FEE: Objection to form.
12 THE WITNESS: I don't think
13 I've seen any study on that, no.
14 BY MR. BRIDGES:
15 Q. Have you conducted any studies
16 that would have allowed you to establish any
17 connection between the number of accesses or
18 downloads that Public Resource made possible
19 and any financial harms to the plaintiffs?
20 MR. FEE: Objection to form.
21 THE WITNESS: Not other than
22 what's contained in my report.
23 BY MR. BRIDGES:
24 Q. Please turn to page 45,
25 paragraph 107, which spills into page 108.

Page 216

1 MR. FEE: Page 108?
2 THE WITNESS: I'm sorry.
3 Page 108 or paragraph?
4 BY MR. BRIDGES:
5 Q. I'm sorry. Paragraph -- strike
6 that.
7 Let me ask you to turn
8 paragraph 107 on pages 45 to 46.
9 A. Okay. I'm there.
10 Q. I just want to make sure I
11 understand your language correctly at the
12 bottom of page 45 and the top of page 46.
13 Is it your opinion that the
14 copyright that the plaintiffs assert in their
15 standards drives sales of other publications
16 other than the standards themselves?
17 MR. FEE: Objection. Form.
18 Vague.
19 THE WITNESS: I think they're
20 important for driving sales of
21 publications that embody those
22 standards. I don't know that I've
23 drawn a conclusion that it drives the
24 sale of other products, but that makes
25 some sense.

Page 217

1 BY MR. BRIDGES:
 2 Q. Well, doesn't that sentence at
 3 the bottom of 45 and going on to 46 say that
 4 copyright on plaintiffs' standards drive
 5 sales of "handbooks that provide commentary
 6 on the standards by referring to them"?
 7 A. You haven't read --
 8 MR. FEE: Objection.
 9 Mischaracterizes the document.
 10 THE WITNESS: You haven't read
 11 the whole sentence. I see that
 12 sentence to which you refer.
 13 BY MR. BRIDGES:
 14 Q. Right. I know I haven't read
 15 the whole sentence, but didn't I fairly
 16 capture one part of it, which is the sales
 17 of -- strike that -- that copyright on
 18 plaintiffs' standards drives sales of, among
 19 other things, "handbooks that provide
 20 commentary on standards by referring to
 21 them"?
 22 MR. FEE: Same objection.
 23 THE WITNESS: I think you have
 24 generally paraphrased it accurately,
 25 yes.

Page 218

1 BY MR. BRIDGES:
 2 Q. And that plaintiffs' copyright
 3 protection -- this is the top of -- strike
 4 that.
 5 And turning to the top of
 6 page 46, plaintiffs' copyright protection on
 7 their standards provides plaintiff with a
 8 competitive advantage with respect to what
 9 you call value-added publications, correct?
 10 A. You've read part of a sentence,
 11 but I do see that sentence, yes.
 12 Q. And I've fairly paraphrased it
 13 correctly, correct?
 14 MR. FEE: Objection to form.
 15 THE WITNESS: I think,
 16 generally, yes.
 17 BY MR. BRIDGES:
 18 Q. Do plaintiffs, to your
 19 understanding, have separate copyrights in
 20 those value-added publications, such as
 21 commentaries and handbooks?
 22 A. I don't know.
 23 Q. You don't know?
 24 A. Correct. I do not know.
 25 Q. Is it important to you to know

Page 219

1 whether plaintiffs have copyright in --
 2 rights in their value-added publications?
 3 MR. FEE: Objection. Vague.
 4 THE WITNESS: I would be
 5 curious to know that, but I'm not sure
 6 of the significance. I don't think it
 7 would change my conclusions, but I
 8 would be curious to know that.
 9 BY MR. BRIDGES:
 10 Q. Do you know whether
 11 incorporation into law drives -- strike that.
 12 Do you know whether
 13 incorporation into law of plaintiffs'
 14 standards drives sales of plaintiffs'
 15 standards?
 16 MR. FEE: Objection to form.
 17 Vague.
 18 THE WITNESS: I don't know with
 19 absolute certainty, but it would make
 20 some sense to me.
 21 BY MR. BRIDGES:
 22 Q. Is it your understanding that
 23 it does?
 24 MR. FEE: Same objection.
 25 THE WITNESS: It would make

Page 220

1 some sense to me, yes.
 2 BY MR. BRIDGES:
 3 Q. Are you aware that, in some
 4 instances, at least one plaintiff uses the
 5 legal status of its code to promote the sale
 6 of handbooks?
 7 MR. FEE: Objection to form.
 8 THE WITNESS: I don't know one
 9 way or the other. I don't have reason
 10 to dispute it, but there's not a
 11 particular instance that comes to mind
 12 right now. Maybe you have something
 13 to refresh my memory.
 14 BY MR. BRIDGES:
 15 Q. Can you provide a dollar value
 16 benefit that plaintiffs receive economically
 17 from the incorporation of their standards by
 18 reference?
 19 MR. FEE: Objection. Vague.
 20 Form.
 21 THE WITNESS: I want to make
 22 sure that I'm understanding. Could
 23 you read that back, please?
 24 BY MR. BRIDGES:
 25 Q. I'll restate it.

Page 221

1 Can you provide a -- can you
 2 put a dollar value, even an estimate, on the
 3 economic benefit that plaintiffs receive from
 4 incorporation of their standards into law?
 5 MR. FEE: Objection to form.
 6 THE WITNESS: I have not. And
 7 I'm not sure how one would do that,
 8 subject to thinking more about it.
 9 BY MR. BRIDGES:
 10 Q. At the top of page 46, you say,
 11 "The Plaintiffs' copyright protection on
 12 their privately-developed standards provides
 13 a competitive advantage with regard to the
 14 sale of these value-added publications as the
 15 copyright protection limits the ability of
 16 others to sell those publications unless they
 17 are unwilling [sic] to compensate the
 18 Plaintiffs for such use."
 19 MR. FEE: Objection.
 20 Mischaracterizes the statement.
 21 BY MR. BRIDGES:
 22 Q. Is there something unfair about
 23 my characterization of that statement?
 24 A. I think you read it wrong. You
 25 read "willing" to read "unwilling" for some

Page 222

1 reason.
 2 Q. Oh, I'm sorry. Thank you.
 3 I'll restate the sentence.
 4 "In particular, the Plaintiffs'
 5 copyright protection on their
 6 privately-developed standards provides a
 7 competitive advantage with regard to the sale
 8 of these value-added publications as the
 9 copyright protection limits the ability of
 10 others to sell those publications unless they
 11 are willing to compensate the Plaintiffs for
 12 such use."
 13 Do you see that statement?
 14 A. I do, yes.
 15 Q. And the competitive advantage
 16 you've identified there, whom do you
 17 understand to be the competition?
 18 A. Other potential providers of
 19 these so-called value-added publications.
 20 Q. And what -- when you say
 21 "value-added publications," please give me
 22 more examples of what types of things fall
 23 into that category, as you use the term.
 24 A. Examples would be handbooks
 25 that provide commentary on the standards.

Page 223

1 Q. What else?
 2 A. That's what comes to mind.
 3 Q. Anything else?
 4 A. Not this moment, no. I guess,
 5 potentially, when I think some more about it,
 6 training and seminars, for instance.
 7 Q. Providers of training and
 8 seminars?
 9 A. Yes. So that's broader than
 10 value-added publications, but there are
 11 potentially alternative providers of training
 12 and seminars.
 13 Q. In paragraph 109, you say, "In
 14 addition to direct sales of copyrighted
 15 materials, the Plaintiffs' materials
 16 associated with their privately-developed
 17 standards provide a competitive advantage
 18 with regard to the sale of downstream
 19 ancillary/complementary services and
 20 products."
 21 Do you see that?
 22 A. Yes. That's what I had in
 23 mind.
 24 Q. And who are the competitors you
 25 have in mind in paragraph 109?

Page 224

1 A. I don't know particular names,
 2 but -- at least I don't recall any sitting
 3 right now -- sitting here right now, but I
 4 think there are other providers of these
 5 downstream services and products.
 6 Q. And please give me examples of
 7 what you're calling "downstream services and
 8 products."
 9 A. Again, seminars and training,
 10 for instance.
 11 Q. Anything else?
 12 A. That's what comes to mind right
 13 now.
 14 Q. Turning to paragraph 110, you
 15 state, "I understand that the ability to
 16 control these downstream products and
 17 services is particularly important to the
 18 Plaintiffs here because the barriers to entry
 19 in the marketplace for downstream products,
 20 such as training and user manuals, are
 21 relatively low. For example, according to
 22 Mr. Comstock of ASHRAE, it is relatively easy
 23 for unauthorized instructors to read a
 24 standard and become (or think that they have
 25 become) qualified to provide training or

Page 225

1 guidance on that standard."
 2 Do you see that?
 3 A. I do, yes.
 4 Q. What do you understand -- what
 5 did you mean by "unauthorized instructors"?
 6 A. People that have provided or
 7 trying to provide services to the marketplace
 8 that have not been explicitly approved by,
 9 for instance, ASHRAE.
 10 Q. What do you understand the --
 11 the nature of -- strike that.
 12 You called them "instructors,"
 13 correct?
 14 A. Yes.
 15 Q. Does that mean that you
 16 envision that these persons are providing
 17 some kind of instruction?
 18 A. Yes.
 19 Q. What instruction do you
 20 understand -- what instruction did you have
 21 in mind when you referred to "unauthorized
 22 instructors"?
 23 A. Generally, how best to
 24 implement standards or provisions of certain
 25 standards.

Page 226

1 Q. What else?
 2 A. Nothing else comes to mind
 3 right now.
 4 Q. Would your understanding of
 5 "unauthorized instructors" include persons
 6 who were instructing the public as to what
 7 the standards require?
 8 MR. FEE: Objection to form.
 9 Vague.
 10 THE WITNESS: I didn't have
 11 that in mind. I guess that's a
 12 possibility.
 13 BY MR. BRIDGES:
 14 Q. And would it be relatively easy
 15 for unauthorized persons like that to read a
 16 standard and think that they have become
 17 qualified to provide training or guidance on
 18 that standard?
 19 MR. FEE: Objection. Vague.
 20 BY MR. BRIDGES:
 21 Q. Is that your understanding?
 22 A. According to Mr. Comstock, I
 23 believe that's correct.
 24 Q. What do you believe?
 25 A. I have no reason to doubt him.

Page 227

1 Q. You're just parroting what
 2 Mr. Comstock said, or did you have an
 3 independent view?
 4 A. No, I heard what he said, and
 5 it made sense to me.
 6 Q. So you put it in your report?
 7 A. Yes.
 8 Q. What independent thought or
 9 investigation did you do before you put that
 10 in your report?
 11 MR. FEE: Objection. Vague.
 12 Compound.
 13 THE WITNESS: I can't point to
 14 anything in particular.
 15 BY MR. BRIDGES:
 16 Q. Would a law-school course on
 17 the law and regulation of building
 18 construction provide instruction to law
 19 students?
 20 MR. FEE: Objection. Vague.
 21 Calls for speculation.
 22 THE WITNESS: I guess it could.
 23 I have a hard time imagining there
 24 would be much demand for such a
 25 course, but I'm in general agreement

Page 228

1 that that, in concept, could occur.
 2 BY MR. BRIDGES:
 3 Q. Would it be possible to
 4 envision that, in the course of such
 5 teaching, a teacher may wish to analyze some
 6 of plaintiffs' standards that have been
 7 incorporated into law as law and as
 8 regulation?
 9 MR. FEE: Objection. Calls for
 10 speculation. Vague. Form.
 11 THE WITNESS: I guess that's
 12 possible, but I would expect a law
 13 professor would be talking about legal
 14 implications, not the technical
 15 aspects of a standard. I think they
 16 might talk about the implication in a
 17 business that's different from a
 18 vendor business.
 19 BY MR. BRIDGES:
 20 Q. Well, what about the legal
 21 implications of a code for contractors?
 22 MR. FEE: Objection.
 23 BY MR. BRIDGES:
 24 Q. Is that -- is that fair ground
 25 for a law professor to discuss with law

Page 229

1 students?
 2 MR. FEE: Objection. Compound.
 3 Form. Vague.
 4 THE WITNESS: I guess, in -- in
 5 concept. I'm having a hard time
 6 imagining that that would, in fact,
 7 occur at any law school, but it might.
 8 I somehow doubt that the law professor
 9 would be talking about the substance
 10 of the standard as opposed to the
 11 process or implications of a standard.
 12 BY MR. BRIDGES:
 13 Q. You're not familiar with
 14 courses in construction law?
 15 A. I'm generally aware that there
 16 are courses in construction law.
 17 Q. Is it your view that, for a law
 18 professor to provide a copy of, let's say,
 19 the National Electrical Code to students for
 20 their study would require permission of the
 21 National Fire Protection Association?
 22 MR. FEE: Objection. Calls for
 23 a legal conclusion.
 24 THE WITNESS: I don't know.
 25 That seems to be a legal question. I

Page 230

1 do not know.
 2 BY MR. BRIDGES:
 3 Q. Is it your view that a law
 4 professor who does not get any permission
 5 from NFPA or who does not purchase a copy of
 6 the National Electrical Code would be an
 7 unauthorized instructor --
 8 MR. FEE: Objection.
 9 BY MR. BRIDGES:
 10 Q. -- by using that code with his
 11 or her students as part of a law-school
 12 course?
 13 MR. FEE: Objection to form.
 14 Compound. Calls for a legal
 15 conclusion.
 16 THE WITNESS: Again, that seems
 17 to be a legal question. I'm not sure
 18 it would be authorized, but I'm also
 19 not sure that it would be improper.
 20 BY MR. BRIDGES:
 21 Q. Well, you've used the term
 22 "unauthorized" in your report, so I'm asking
 23 you, given the term "unauthorized" as used --
 24 you have used it in the report, would the
 25 scenario I have described mean that the law

Page 231

1 professor was an unauthorized instructor?
 2 MR. FEE: Objection. Form.
 3 Compound. Calls for a legal
 4 conclusion. Vague.
 5 THE WITNESS: That seems to be
 6 a legal question. Just as an economic
 7 proposition or just as a matter of the
 8 English language, I would think that
 9 they might be an unauthorized user but
 10 not an improper user.
 11 I don't think they've gotten
 12 explicit authorization; therefore,
 13 they're unauthorized. But I'm not
 14 sure if it's illegal for them to refer
 15 to a standard.
 16 BY MR. BRIDGES:
 17 Q. What about making copies of the
 18 standard and furnishing it to students?
 19 MR. FEE: Same objections.
 20 THE WITNESS: Same answer.
 21 BY MR. BRIDGES:
 22 Q. Do you have any opinion about
 23 the economic harms that plaintiffs would
 24 suffer if a law professor were to provide
 25 an -- a copy of the National Electrical Code

Page 232

1 to each student in a construction law class
 2 without having purchased those copies?
 3 MR. FEE: Objection.
 4 Incomplete hypothetical. Form.
 5 You can answer, if you know.
 6 THE WITNESS: I don't know. I
 7 have not investigated or even thought
 8 about that issue.
 9 BY MR. BRIDGES:
 10 Q. In paragraphs 117 through 119,
 11 I see no footnotes referencing sources of
 12 your conclusions or referencing facts on
 13 which your conclusions are based.
 14 What studies, if any, did you
 15 rely on for your assertions in paragraphs 117
 16 to 119?
 17 MR. FEE: Objection to form.
 18 Lack of foundation.
 19 THE WITNESS: The study that's
 20 summarized in Exhibit 1.
 21 BY MR. BRIDGES:
 22 Q. I'm referring specifically to
 23 paragraphs 117 to 119.
 24 A. I thought you were. I was
 25 answering that question.

Page 233

1 Q. You can't point to any
 2 particular investigation or fact that you're
 3 relying on in paragraphs 117 to 119?
 4 MR. FEE: Objection to form.
 5 Asked and answered.
 6 THE WITNESS: Everything that's
 7 embedded in Exhibit 1 is, in part, a
 8 basis for the observations that I draw
 9 in those paragraphs.
 10 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,

Page 234

1 but I don't have a basis to provide a
 2 quantitative estimate of my level of
 3 confidence.
 4 Q. You refer to "uncertainties" in
 5 the second sentence of paragraph 119,
 6 correct?
 7 A. I do, yes.
 8 Q. What probability do you assign
 9 to the likelihood that you refer to with the
 10 word "likely" in the first sentence of
 11 paragraph 120?
 12 MR. FEE: Objection. Form.
 13 Lack of foundation.
 14 THE WITNESS: I don't have a
 15 particular quantitative measure of
 16 that. And are you referring to my use
 17 of the term "likely"?
 18 BY MR. BRIDGES:
 19 Q. Yes.
 20 A. Yes, I don't have a particular
 21 quantification of that.
 22 Q. What particular facts are you
 23 relying on for that paragraph?
 24 A. Everything that you see
 25 reported in Exhibit 1.

Page 235

1 Q. What probability do you assign
 2 to the likelihood that you refer to in the
 3 first sentence of paragraph 121?
 4 MR. FEE: Objection to form.
 5 Lack of foundation.
 6 THE WITNESS: I don't have a
 7 particular quantitative likelihood
 8 measure.
 9 BY MR. BRIDGES:
 10 Q. Can you give an estimate?
 11 MR. FEE: Same objection.
 12 THE WITNESS: No.
 13 BY MR. BRIDGES:
 14 Q. Turning to paragraph 126, you
 15 refer to an "option available to Plaintiffs
 16 to respond to the loss of protection for
 17 incorporated standards."
 18 Is it your belief that, if the
 19 plaintiffs lose this case, they will shut
 20 down their creation of new standards?
 21 A. I think that's a possibility.
 22 Q. What probability do you assign
 23 to that?
 24 MR. FEE: Objection to form.
 25 Lack of foundation.

Page 236

1 THE WITNESS: I don't have a
 2 particular quantitative measure of
 3 probability for that.
 4 BY MR. BRIDGES:
 5 Q. What's your best estimate?
 6 MR. FEE: Same objection.
 7 THE WITNESS: I don't have a
 8 quantitative best estimate.
 9 BY MR. BRIDGES:
 10 Q. Is it more or less than
 11 50 percent?
 12 MR. FEE: Same objections.
 13 THE WITNESS: I still don't
 14 have a quantitative estimate.
 15 BY MR. BRIDGES:
 16 Q. Is it more or less than
 17 80 percent?
 18 MR. FEE: Same objections.
 19 THE WITNESS: Still don't have
 20 a quantitative estimate.
 21 BY MR. BRIDGES:
 22 Q. Is it more or less than
 23 5 percent?
 24 MR. FEE: Same objections.
 25 THE WITNESS: Still don't have

Page 237

1 a quantitative estimate. I think that
 2 there -- with reasonable probability I
 3 can draw this conclusion, but I can't
 4 be any more precise than that.
 5 BY MR. BRIDGES:
 6 Q. What do you mean, "with
 7 reasonable probability"?
 8 A. Based on the information that I
 9 have and the training and logic I bring to
 10 it, I think there is a -- I say with some
 11 confidence what I have said here.
 12 Q. And when you say "likely," do
 13 you mean more than 50 percent likely?
 14 A. Not necessarily, no.
 15 Q. Are you aware of other
 16 standards development organizations active in
 17 the same field as the plaintiffs?
 18 MR. FEE: Objection. Vague.
 19 Form.
 20 THE WITNESS: Perhaps you could
 21 tell me what you have in mind with
 22 your use of the term "fields."
 23 BY MR. BRIDGES:
 24 Q. Well, are you familiar with
 25 AHRI?

Page 238

1 A. I have perhaps seen reference
 2 to that.
 3 Q. Do you know with which of these
 4 plaintiffs it -- do you -- do you know what
 5 field it's in?
 6 A. I don't recall, sitting here
 7 right now, no.
 8 Q. Are you familiar with NFRC?
 9 A. I may have seen reference to
 10 that acronym.
 11 Q. Do you know what field it's in?
 12 A. Not sitting here right now.
 13 Q. Are you familiar with ICC?
 14 A. I have seen reference to that.
 15 I don't recall what it is, sitting here now.
 16 Q. Do you know whether other
 17 standards developments organizations would be
 18 in a position to step forward and to continue
 19 the maintenance and preservation and further
 20 development of the standards of plaintiffs
 21 here if plaintiffs lose this case?
 22 MR. FEE: Objection to form.
 23 THE WITNESS: I don't know.
 24 BY MR. BRIDGES:
 25 Q. Have you done any investigation

Page 239

1 to see what alternatives there are among
 2 standards development organizations currently
 3 in existence to carry forward the work of
 4 plaintiffs if plaintiffs chose to stop
 5 standards development as a result of the loss
 6 of this case?
 7 MR. FEE: Same objection.
 8 THE WITNESS: Not that I
 9 recall, but I am of the understanding
 10 that each SDO has a different charter,
 11 so I don't know that any SDO has an
 12 identical charter to that of any of
 13 the three plaintiffs.
 14 BY MR. BRIDGES:
 15 Q. Are you aware that these
 16 plaintiffs compete with other SDOs in the
 17 creation of standards in particular fields?
 18 MR. FEE: Objection to form.
 19 Vague.
 20 THE WITNESS: What do you mean
 21 by the term "compete with" in this
 22 context?
 23 BY MR. BRIDGES:
 24 Q. That they consider others
 25 rivals for the same market, in part.

Page 240

1 MR. FEE: Objection to form.
 2 Vague.
 3 THE WITNESS: I don't recall
 4 seeing reference to that, but my
 5 memory is not perfect.
 6 BY MR. BRIDGES:
 7 Q. The -- in paragraph 131, you
 8 say, "Simply put, freely-distributed,
 9 unrestricted versions of Plaintiffs'
 10 standards that are or could be incorporated
 11 by reference can be expected to adversely
 12 impact the market for Plaintiffs' standards
 13 that are incorporated by reference and to
 14 displace sales of these standards by the
 15 Plaintiffs - which can be expected to have a
 16 material adverse effect on Plaintiffs'
 17 revenues."
 18 Do you see that?
 19 A. Yes.
 20 Q. By "expected," do you mean more
 21 than 50 percent likely?
 22 A. Not necessarily. I don't have
 23 a quantitative assessment of what I mean by
 24 "expected."
 25 Q. Do you mean more than 5 percent

Page 241

1 likely?
 2 A. I haven't quantified that, but
 3 I would expect that it's -- more than
 4 5 percent would be a reasonable definition of
 5 "expected."
 6 Q. More than 10 percent?
 7 A. I don't know. I've not
 8 quantified that number.
 9 Q. And what amount of an effect on
 10 plaintiffs' revenues have you identified as
 11 "material"?
 12 A. I haven't --
 13 MR. FEE: Objection to form.
 14 THE WITNESS: -- been able to
 15 quantify the specific effects, so I
 16 don't know the amount.
 17 BY MR. BRIDGES:
 18 Q. Well, what -- I'm not asking
 19 for your quantification of a specific effect,
 20 but how large would an effect have to be for
 21 to you consider it "a material adverse effect
 22 on Plaintiffs' remedies"?
 23 MR. FEE: Objection to form.
 24 THE WITNESS: I don't know that
 25 I have a particular quantitative

Page 242

1 guideline in mind.
 2 BY MR. BRIDGES:
 3 Q. Have you ever -- are you
 4 familiar with audit inquiry letters regarding
 5 litigation?
 6 A. Generally, yes.
 7 Q. And you're familiar with the
 8 fact that auditors will often specify to
 9 those they send the letters to what amounts
 10 would be material for purposes of the audit
 11 response?
 12 A. Yes.
 13 Q. So you understand the concept
 14 of certain amounts being material to certain
 15 companies or entities?
 16 A. Yes, for certain purposes.
 17 Q. So I'd like to know what amount
 18 you have identified as being material as an
 19 adverse effect on plaintiffs' revenues for
 20 each of the three plaintiffs, please.
 21 MR. FEE: Objection. Compound.
 22 Asked and answered.
 23 THE WITNESS: I have not
 24 considered a particular amount.
 25 BY MR. BRIDGES:

Page 243

1 Q. Do you consider \$100,000 to be
 2 material as an adverse effect on plaintiffs'
 3 revenues?
 4 MR. FEE: Objection to form.
 5 Compound.
 6 THE WITNESS: I haven't
 7 considered that question. I don't
 8 know the answer to it.
 9 BY MR. BRIDGES:
 10 Q. Have you considered whether
 11 50,000 is a material amount as an adverse
 12 effect on plaintiffs' revenues?
 13 MR. FEE: Same objections.
 14 THE WITNESS: Same answer.
 15 BY MR. BRIDGES:
 16 Q. Starting at page -- sorry.
 17 Strike that.
 18 Starting at paragraph 139, you
 19 make several references to Mr. Malamud's
 20 theory.
 21 A. I'm sorry. To -- I missed a
 22 word that you said. References to his what?
 23 Q. To Mr. Malamud's theory --
 24 A. Okay.
 25 Q. -- T-H-E-O-R-Y. You refer to

Page 244

1 it in paragraph 139; 140; 144, with the word
 2 "theorized"; 145, "theory"; 146, "theory."
 3 What facts do you have that
 4 have disproved the theory in paragraph 139?
 5 A. Perhaps most important is the
 6 revealed preference information. If the
 7 plaintiffs believed they were better off by
 8 lack of copyright protection, they would have
 9 pursued such a model.
 10 They don't believe they're
 11 better off. Moreover, they're expending
 12 tremendous resources in bringing and pursuing
 13 this litigation to halt the activity at
 14 issue.
 15 Q. What other facts, if any, do
 16 you have that have disproved Mr. Malamud's
 17 theory in paragraph 139?
 18 A. That's what comes to mind right
 19 now.
 20 Q. What facts do you have or are
 21 you aware of that have disproved
 22 Mr. Malamud's theory as you refer to it in
 23 paragraph 140?
 24 A. That's the same theory that's
 25 being referenced in 139, so there's nothing

Page 245

1 new in terms of a theory.
 2 Q. Do you have the same answer
 3 with respect to -- strike that.
 4 What facts do you have --
 5 strike that.
 6 What facts are you aware of to
 7 disprove -- to disprove Mr. Malamud's theory
 8 that you refer to in paragraph 144?
 9 A. Again, it's the same theory
 10 that's being referenced, but there's
 11 additional facts; and that is, the downstream
 12 products and services aren't particularly
 13 substantial to these plaintiffs and don't
 14 appear to be enhanced by a lack of copyright
 15 protection; that is, the plaintiffs have had
 16 copyright protection and have said -- had
 17 some downstream products and services. It's
 18 hard to imagine that elimination of that
 19 copyright protection will enhance that
 20 business.
 21 Q. It's hard to imagine, but are
 22 you aware of any studies to disprove
 23 Mr. Malamud's theory?
 24 A. No.
 25 MR. FEE: Objection. Vague.

Page 246

1 rest of that paragraph?
 2 MR. FEE: Objection. Vague.
 3 THE WITNESS: I looked at the
 4 financial information, and I talked to
 5 people at the various plaintiffs.
 6 BY MR. BRIDGES:
 7 Q. You talked to people at the
 8 various plaintiffs?
 9 A. Yes.
 10 Q. What did you do to verify the
 11 truth and accuracy of the things that various
 12 plaintiffs said to you in their
 13 conversations?
 14 MR. FEE: Objection to form.
 15 THE WITNESS: I looked at the
 16 financial information, and I kept my
 17 eyes and mind open to the information
 18 in the rest of the record to determine
 19 if it conflicted with what I learned
 20 from the company personnel.
 21 BY MR. BRIDGES:
 22 Q. Whose financial information did
 23 you look at?
 24 A. All three of the plaintiffs.
 25 It's summarized in tabs 3, 4, and 5.

Page 248

1 THE WITNESS: I'm sorry.
 2 BY MR. BRIDGES:
 3 Q. Have you conducted any studies
 4 to disprove Mr. Malamud's theory?
 5 MR. FEE: Same objection.
 6 THE WITNESS: Not other than
 7 what's reflected here in Exhibit 1.
 8 BY MR. BRIDGES:
 9 Q. What academic literature have
 10 you relied upon to criticize Mr. Malamud's
 11 theory in paragraph 144?
 12 A. Nothing specific comes to mind.
 13 Q. In paragraph 145, you state
 14 that, "Mr. Malamud's suggestion that the sale
 15 of downstream products and services
 16 represents an untapped and undeveloped
 17 opportunity for the Plaintiffs is incorrect."
 18 Do you see that?
 19 A. Yes, I do.
 20 Q. And then you go on and make
 21 some statements for the rest of the
 22 paragraph, correct?
 23 A. Yes.
 24 Q. What studies did you engage in
 25 to determine the facts that you stated in the

Page 247

1 Q. Did you look at the financial
 2 information of any entities other than the
 3 plaintiffs?
 4 A. I looked at Public Resource
 5 financial information.
 6 Q. Apart from Public Resource and
 7 the plaintiffs, did you look at the financial
 8 information of any other entities in making
 9 the assertions that you made in
 10 paragraph 145?
 11 A. Not in undertaking my
 12 assignment here.
 13 Q. Did you consider the business
 14 models of any entities other than the
 15 plaintiffs and the defendant in making the
 16 statements criticizing Mr. Malamud's theory
 17 in paragraph 145?
 18 A. Nothing in particular comes to
 19 mind. I understand that there are
 20 front-loaded business models, but -- at DIN,
 21 for instance, but I don't recall undertaking
 22 an investigation of the downstream activities
 23 that they have.
 24 Q. Did you undertake any
 25 investigation of downstream activities of

Page 249

1 other US-based standards development
 2 organizations that make their standards
 3 freely available to the public?
 4 A. Not that I recall.
 5 Q. Would that have been relevant
 6 to your analysis?
 7 A. It wasn't necessary to do my
 8 analysis, but I would be curious if I had
 9 that information. If I -- if I had the
 10 ability to examine that information, I would
 11 be curious as to what that shows.
 12 Q. In paragraph 146, you state,
 13 "The loss of publications here will likely
 14 reduce the Plaintiffs' sales of those
 15 downstream products and services."
 16 Do you see that?
 17 MR. FEE: That's in 146?
 18 THE WITNESS: Is that the last
 19 sentence you were reading from?
 20 BY MR. BRIDGES:
 21 Q. Yes.
 22 A. Yeah.
 23 Q. Paragraph 146.
 24 A. Yes, I do see that.
 25 Q. Did you mean the loss of

Page 250

1 copyright in the publications here?
 2 A. Certainly the loss of
 3 publications, but I believe it would probably
 4 be better to put the loss of copyright in the
 5 publications as more reflective of the
 6 assignment that I undertook here.
 7 Q. What probability do you assign
 8 to the likelihood that you refer to in that
 9 sentence?
 10 MR. FEE: Objection to form.
 11 Lack of foundation.
 12 THE WITNESS: I haven't
 13 assigned a quantitative probability to
 14 that.
 15 BY MR. BRIDGES:
 16 Q. Have you any estimate?
 17 MR. FEE: Same objections.
 18 THE WITNESS: I do not.
 19 BY MR. BRIDGES:
 20 Q. Have you any estimate as to the
 21 magnitude of the likely reduction of
 22 plaintiffs' sales of downstream products and
 23 services?
 24 MR. FEE: Same objections.
 25 THE WITNESS: No, I have been

Page 251

1 unable to quantify that with great
 2 accuracy.
 3 BY MR. BRIDGES:
 4 Q. Have you considered any
 5 comparable circumstances apart from this case
 6 that would provide guidance for your
 7 prediction in the last sentence of
 8 paragraph 146?
 9 MR. FEE: Objection to form.
 10 Vague.
 11 THE WITNESS: I kept my mind
 12 and eyes open to that, but I didn't
 13 see information of a good comparator.
 14 BY MR. BRIDGES:
 15 Q. Did you research whether there
 16 might be good comparators?
 17 A. I --
 18 MR. FEE: Same objection.
 19 THE WITNESS: I did in the
 20 sense of reading through the
 21 literature and information to see if I
 22 could learn of something that would be
 23 a good comparator, but I didn't learn
 24 of such comparator.
 25 BY MR. BRIDGES:

Page 252

1 Q. You looked only at the
 2 information shown in tab 2 to Exhibit 1?
 3 A. Yes, I think that's right.
 4 Q. What economic effect are you
 5 aware of to the Blu-ray Disc Association from
 6 its providing unrestricted access to its
 7 standard publications for free?
 8 A. I don't know. I thought you
 9 had asked that earlier. If not, I apologize.
 10 Nonetheless, I don't recall knowing the
 11 answer to that question or undertaking that
 12 evaluation.
 13 Q. Did Blu-ray Disc Association go
 14 out of business?
 15 A. I don't think it's out of
 16 business, no.
 17 Q. Has it suffered material harm,
 18 to your knowledge, because of unrestricted
 19 access to its standard publications for free?
 20 A. I don't know.
 21 Q. Do you believe that, on the
 22 theory of revealed preference, Blu-ray Disc
 23 Association has determined that unrestricted
 24 access to its standard publications for free
 25 is in its interest?

Page 253

1 A. Yes. It's a different entity
 2 than the SDOs here; but for its purposes, it
 3 would appear that it's of the belief that
 4 that's the optimal path to follow.
 5 MR. BRIDGES: I think -- I
 6 think we may pause things now and
 7 reserve the remainder of our time.
 8 Just a second. Oh, yes.
 9 BY MR. BRIDGES:
 10 Q. Do you believe that the
 11 plaintiffs are harmed when the defendant
 12 posts a standard that has been incorporated
 13 by reference -- let me strike that.
 14 Do you believe that plaintiffs
 15 suffer harm from defendant posting a standard
 16 that is not the latest version of the
 17 standard?
 18 MR. FEE: Objection. Form.
 19 Compound.
 20 THE WITNESS: Potentially, it
 21 could cause confusion in the
 22 marketplace as to what's the latest
 23 standard, and there may be some
 24 entities out there that are interested
 25 in obtaining an earlier standard that

Page 254

1 would be obtaining it free rather than
 2 through the legal routes established
 3 by the plaintiffs.
 4 BY MR. BRIDGES:
 5 Q. Have you done any studies to
 6 determine what confusion may be likely in the
 7 marketplace in that regard?
 8 MR. FEE: Objection to form.
 9 THE WITNESS: I have not done a
 10 likelihood of confusion study, no.
 11 BY MR. BRIDGES:
 12 Q. What research have you done as
 13 to whether -- strike that.
 14 What information do you have
 15 about what market there is for earlier
 16 versions of standards when there is a newer
 17 version in the market?
 18 MR. FEE: Objection to form.
 19 THE WITNESS: I don't recall
 20 undertaking specific research on that
 21 topic.
 22 BY MR. BRIDGES:
 23 Q. What harm do you understand
 24 plaintiffs would suffer if defendants post a
 25 standard that is out of print?

Page 255

1 MR. FEE: Objection. Lack of
 2 foundation. Vague.
 3 THE WITNESS: I'm not -- I'm
 4 not sure that I understand the concept
 5 of a standard being out of print, so
 6 maybe you could help me with that.
 7 BY MR. BRIDGES:
 8 Q. Do you know the term "out of
 9 print"?
 10 A. Generally, I do, yes.
 11 Q. What do you understand it to
 12 mean?
 13 A. That it's no longer provided in
 14 print form.
 15 Q. All right. So what harm do you
 16 understand plaintiffs would suffer if
 17 defendants posted a standard that is out of
 18 print?
 19 MR. FEE: Objection to form.
 20 THE WITNESS: Potentially, it
 21 could be the harm similar to outdated
 22 standards.
 23 BY MR. BRIDGES:
 24 Q. In other words, confusion in
 25 the marketplace?

Page 256

1 A. Potential confusion in the
 2 marketplace and potentially providing -- yes,
 3 that -- that would be one form of it.
 4 Q. What other harms do -- would
 5 you identify from the defendants posting a
 6 standard that is out of print?
 7 A. Nothing else comes to mind this
 8 moment, but there could be other things
 9 that -- that I'm not thinking of right now.
 10 Q. What harms do you understand
 11 plaintiffs would suffer if a condition of a
 12 standard being incorporated into law is that
 13 plaintiffs could not forbid other entities
 14 from making that law available widely and
 15 freely to the public?
 16 MR. FEE: Objection to form.
 17 Incomplete hypothetical. Compound.
 18 Calls for speculation.
 19 THE WITNESS: I don't know.
 20 I've not undertaken that assignment.
 21 I've not given that particular
 22 question any thought.
 23 It seems economically to be
 24 quite similar to the actions that have
 25 occurred here, but I don't know. I've

Page 257

1 not thought about that particular
2 topic.
3 MR. BRIDGES: Okay. I think
4 we'll pause here and reserve the rest
5 of the time for a later visit with
6 you, Mr. Jarosz.
7 Kevin, this is in reliance on
8 an exchange of correspondence between
9 Matt and you, I believe. If, for some
10 reason -- well, no. I think that's
11 all.
12 Anything else?
13 MR. FEE: Well, I don't have
14 any questions.
15 Do you guys have any questions?
16 MR. REHN: Not at this time.
17 MR. CUNNINGHAM: No.
18 MR. BRIDGES: Great. Thank
19 you.
20 THE WITNESS: Thank you.
21 THE VIDEOGRAPHER: All right.
22 Off the record at 4:31. This ends
23 media unit number 3 and ends testimony
24 for August 27th, 2015.
25 * * *

Page 258

1 (Witness excused.)
2 * * *
3 (Off the record at 4:31 p.m.)
4 * * *
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 259

1 CERTIFICATE
2
3 I do hereby certify that I am a Notary
4 Public in good standing, that the aforesaid
5 testimony was taken before me, pursuant to
6 notice, at the time and place indicated; that
7 said deponent was by me duly sworn to tell
8 the truth, the whole truth, and nothing but
9 the truth; that the testimony of said
10 deponent was correctly recorded in machine
11 shorthand by me and thereafter transcribed
12 under my supervision with computer-aided
13 transcription; that the deposition is a true
14 and correct record of the testimony given by
15 the witness; and that I am neither of counsel
16 nor kin to any party in said action, nor
17 interested in the outcome thereof
18
19 WITNESS my hand and official seal this
20 11th day of September, 2015
21
22
23
24
25

<%signature%>
Debbie Howard
 Debbie Howard, NDR, CRR
 Notary Public

Page 260

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

[& - 6]

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

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

[allows - aspects]

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

[assert - best]

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

[best - california]

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

[call - comes]

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

[coming - containing]

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

[contest - curious]

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

[current - differently]

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

[differently - economics]

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

[economics - exhibits]

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

[exist - fee]

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

[fee - foundation]

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

[foundation - harm]

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

[harm - index]

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

[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]

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

[lawyer - materials]

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

[matt - never]

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

[new - offerings]

<p>new 16:10 46:2 236:20 246:1</p> <p>newer 255:16</p> <p>nf 123:11</p> <p>nfp 54:15</p> <p>nfpa 4:16 41:6 51:7 96:24 97:19 122:6,7 122:18,20,21 123:10,12,20,24 124:10,16 131:9 155:5 175:14 183:24 187:21 193:3 201:18 202:4 212:3 231:5</p> <p>nfr 239:8</p> <p>night 98:4</p> <p>nights 90:18 91:2,14</p> <p>non 35:6,8 85:6 95:11 112:14,21 113:21,25 114:7 146:16 151:23</p> <p>normal 98:21 101:6 101:11,14</p> <p>normally 114:2</p> <p>north 184:1</p> <p>northwest 6:24</p> <p>notary 260:2,15</p> <p>note 6:7 101:8</p> <p>notes 4:14,15 98:10 98:13,17,20,22,24 99:6 100:10,13,18 100:21 101:3,7,10 101:12,19 103:2 106:19,20</p> <p>notice 260:4</p> <p>noticeable 91:18</p> <p>nttaa 115:4</p> <p>number 7:6 18:11 40:7 62:16 76:15 83:4,18 99:11 110:2 110:13 131:2 154:8 154:10,14 155:14 164:17 181:16,18 182:8,9 188:2,17 189:5,21 190:2,8,25</p>	<p>198:23 201:12,17 201:18,19,21,25 207:6 210:14,21 211:20,22,24 212:12,24 216:8,17 242:8 258:23</p> <p>numbers 18:9 155:11 190:10,17 194:24 201:18</p> <p>nw 1:19 2:15</p> <p style="text-align: center;">o</p> <p>o 244:25</p> <p>object 41:14 122:8 122:12 213:14</p> <p>objected 65:21</p> <p>objection 9:8,13 10:6 11:7 13:16 14:13 15:22 17:5 19:23 20:20 21:14 22:2 24:8,16 25:13 26:17 28:16 29:5 33:14,23 34:6,18,23 35:14 36:2,13 37:8 37:13,18 38:8,17 39:2,21 40:25 43:23 44:13 45:9 47:2 48:13 51:1,16 52:2 52:25 53:16 54:4 56:12,25 57:6,11,18 57:25 58:16 60:8 62:4 63:19 65:2,18 66:3,11 67:14,24 69:12,16 70:12,25 72:16 73:2,15 74:6 76:7 77:2,14 78:14 79:3,4,14,16 80:3 80:10,19 81:7,14,22 82:20 83:8,25 84:25 85:17 86:9,18 87:4 87:11 88:17 91:4,25 93:8,25 94:24 97:5 98:8,25 99:20 100:2 102:10,22 103:9 104:5,18 105:18</p>	<p>106:8 107:7 108:11 109:3,14 110:24 113:1 114:23 116:12,19 117:8,11 118:10 120:9 121:17 124:20 125:4 126:11 127:6 128:3,17,21 129:17 129:25 130:17 132:11,21 133:13 134:9,20 135:19 136:17,22 137:7,19 138:6,14 139:2,13 142:25 143:14 144:6,18 145:21 146:13 147:10,23 148:8,23 149:6,16 150:4,21 151:7 152:11 156:16 157:16 158:2 159:2 159:20 160:12 161:7 162:6,16 163:13 164:2,3,25 166:9,17 167:7,20 168:11,22 170:18 171:24 174:14 176:12,25 177:11 177:25 178:23 179:15 181:6 182:6 182:15,25 183:10 183:20 186:10 190:12,23 191:5,13 192:4,11 193:1,13 194:9,19 196:2,23 197:23 198:20 203:8 204:21 205:12,25 206:14 207:1,15 208:18 209:2 212:20 213:17 216:11,20 217:17 218:8,22 219:14 220:3,16,24 221:7,19 222:5,19 227:8,19 228:11,20 229:9,22 230:2,22</p>	<p>231:8,13 232:2 233:3,17 234:4,14 235:12 236:4,11,24 237:6 238:18 239:22 240:7,18 241:1 242:13,23 243:21 244:4 246:25 247:5 248:2 248:14 251:10 252:9,18 254:18 255:8,18 256:1,19 257:16</p> <p>objections 61:3 147:12 161:16 169:14,21 199:1,7 232:19 237:12,18 237:24 244:13 251:17,24</p> <p>objective 161:24</p> <p>observation 25:7</p> <p>observations 16:5 17:2 125:16,19 156:20 159:22 161:22 234:8</p> <p>obtain 214:5</p> <p>obtained 93:2 119:24 153:19 213:1,7,11 214:13</p> <p>obtaining 213:25 254:25 255:1</p> <p>occasion 25:21</p> <p>occasions 96:24,25 97:1</p> <p>occur 46:4,13 63:13 64:3,21 192:16 229:1 230:7</p> <p>occurred 66:21 96:23 157:14 164:18 165:12 176:6 178:16 192:21 257:25</p> <p>occurs 192:15</p> <p>offer 136:10</p> <p>offerings 71:6</p>
---	---	---	---

[offices - particular]

offices 1:18 6:22 official 117:18 260:10 officially 117:13 oh 15:7 21:25 185:23 223:2 254:8 okay 9:18 15:15 16:12,23 22:6 29:8 29:12 35:15 47:20 54:3,24 59:1,3 61:13 64:12 72:11 90:12,15 105:9,12 172:16 188:5 200:24 217:9 244:24 258:3 olson 2:8 7:19 omb 115:5,9 ones 24:20 26:12 31:16 96:15 140:2 169:19 203:20,25 204:5 online 136:3,11 215:24 open 36:5 84:15 136:24 196:4 197:9 248:17 252:12 opening 136:24 operating 189:17,23 190:4 opinion 80:5 124:25 125:3,7 126:9,16 130:10 217:13 232:22 opinions 58:10 78:19,25 79:11,19 79:25 95:4 108:15 125:10 145:3,6 146:23 148:14 180:20 opportunities 128:11 opportunity 133:4 247:17 opposed 83:23 91:6 181:23 230:10	optimal 57:9,23 58:6 254:4 optimum 58:4 option 204:19 236:15 options 44:1 oral 22:23 197:11 order 46:12 128:15 183:23 196:20 organization 8:23 27:14 28:1 31:13 32:9 49:22 51:23 110:18 127:21 140:12 155:3 172:9 174:4 organizations 19:19 25:12,22,23 26:6,7 26:8,12,16 27:6 28:9,15 29:3,16,25 30:12,14,19,22,25 31:5,9,20,23,24 32:5,18,19 40:16,20 40:24 44:11,16 50:8 75:18 85:7,15 86:7 111:2,6,11 112:6,15 112:25 114:1,8 132:9 138:11 139:24 140:1 142:4 153:22 154:25 192:10 193:6 238:16 239:17 240:2 250:2 oriented 31:2 50:9 193:19 original 207:17 outcome 260:9 outcomes 46:13 58:14 209:24 outdated 256:21 outline 153:8 outlined 153:23 output 25:23 28:24 88:7 outputs 26:7 27:5	outside 9:4 overall 49:21 52:7 overlooking 14:10 overseas 123:23 124:2 owen 102:5 ownership 78:3,5,7 146:1,2 <p style="text-align:center">p</p> p 3:3 p.m. 98:5 110:4,5 152:25 153:1 210:16,17 259:3 pace 102:3 page 4:3,10 5:3,7,12 5:16 41:4 51:3 68:8 89:3,3 93:21 119:6 119:7 140:25 163:20 187:7,10,12 209:15 216:24,25 217:1,3,12,12 219:6 222:10 244:16 pages 1:25 21:4 209:13 217:8 paid 184:14 214:10 214:14 paper 71:7 paragraph 14:6 15:17,20 17:8,24 18:5 41:5 51:6,8 62:25 63:1 67:1 68:8,16,19 69:13,21 70:23 71:3 89:4 90:7 96:4 157:2,21 158:4 159:1,17 160:14,22 163:22 164:10 187:13,18 187:22,24 195:1 199:12,15,21,25 202:17 204:6 211:19 212:8,18 216:25 217:3,5,8 224:13,25 225:14 234:13 235:5,11,23	236:3,14 241:7 244:18 245:1,4,17 245:23 246:8 247:11,13,22 248:1 249:10,17 250:12 250:23 252:8 paragraphs 13:11 15:1 18:7,11 65:5 199:19 233:10,15 233:23 234:3,9 paraphrased 218:24 219:12 paraphrasing 111:14 parroting 228:1 part 13:10 14:5 15:18 17:20,22 18:16 25:17 35:22 39:6 41:3 47:9 49:16 72:25 74:20 90:19 91:15 100:3 102:12,13 103:23 106:5 114:25 115:3 115:6 118:20 121:24 153:20 168:7,15,21 178:7 198:2 202:19 204:8 218:16 219:10 231:11 234:7 240:25 participants 81:20 82:3 83:12 84:7 participate 43:10,15 43:15,19 45:7 85:21 88:6 participated 207:4 participation 44:10 particular 24:19 43:7 44:1 45:1,2 60:17 67:13 84:3 85:4 86:25 93:21 96:20 115:4,17 130:4 133:15 170:2 170:7 171:12 201:9 203:19,24 204:4
---	--	--	--

[particular - plaintiffs]

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

[plaintiffs - products]

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

[products - questions]

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

[questions - refresh]

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

[refresh - resource]

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

[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		240:10,11
125:7 149:14	90:1 95:16 97:8,15	s	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	seal 260:10
reveal 174:9	192:20 197:25	sale 183:19 186:22	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 see 9:24 10:20 12:23 14:5,8 18:25 19:25 24:15 41:4 62:7 71:16 89:11 101:23 105:22 109:17 142:5,14 153:25 155:12 162:18 165:24 175:17,21 179:20 193:5 197:4 199:17 202:22 204:10 211:23 218:11 219:11 223:13 224:21 226:2 233:11 235:24 240:1 241:18 247:18 250:16,24 252:13 252:21 seeing 21:5 24:3 120:15 122:20 123:10 154:14 241:4 seek 31:21 seeking 31:18 seen 20:24 21:3,7 23:23 29:14 43:5 58:2 103:2,3 106:18 106:19 137:2 180:12 185:6 192:13 209:6 216:13 239:1,9,14 sell 222:16 223:10 selling 82:11 seminars 224:6,8,12 225:9 send 243:9 sense 81:25 93:10 113:8 121:20 132:13,14 184:17 217:25 220:20 221:1 228:5 252:20 sensitive 6:8 sent 76:10	sentence 63:24,25 71:25 89:7 90:7,16 218:2,11,12,15 219:10,11 223:3 234:12 235:5,10 236:3 250:19 251:9 252:7 sentences 72:2 separate 23:22 137:21 138:18 139:6 180:5 196:16 201:3,4,5,6 219:19 separately 23:25 93:2 119:18,25 179:19 194:23 196:14 208:21 september 260:11 seriatim 9:15 serve 85:25 86:20 services 32:16 34:14 35:22 52:9 82:12,15 203:10,18 209:20 224:19 225:5,7,17 226:7 246:12,17 247:15 250:15 251:23 set 42:8,20 49:5 92:10 135:10 setting 26:6,16 27:6 30:11,13 31:9,24 32:5,9,18 139:24 140:1 seven 102:2 shared 87:24 sharing 215:11 shirt 46:1 shorthand 260:6 show 64:12 122:22 shown 93:20 118:15 119:5 134:18 187:22,23 253:2 shows 202:7 204:16 205:23 206:11 250:11	shut 236:19 sic 7:6 54:15 67:8 222:17 side 33:18,19 34:12 34:17,21 35:12,18 36:21,22 37:4,5 38:1,2,6,7,16,21 39:7,12,14 82:9,14 83:12,13 84:11,12 signature 260:14 significance 129:12 129:15 220:6 similar 83:15 256:21 257:24 similarly 30:10 simply 87:14 241:8 sit 84:4,19 116:3 154:10 191:6,14,18 191:23,25 192:19 192:20 199:2 site 90:11 120:2 164:15,22 179:13 180:3,9 185:7 205:17 206:7 211:23 215:13 sites 40:1 101:24 122:1 136:15 137:15 159:24 sitting 20:23 27:24 41:11 53:23 117:1 123:4 124:14 132:1 132:22 140:17 142:24 143:12 190:13 195:12 202:9 225:2,3 239:6 239:12,15 six 95:25 slash 93:3 201:5 slightly 40:18 95:9 208:9 small 42:16 43:16 smoke 39:10 socially 49:8 society 1:3,9 2:6,17 7:1,24	sold 175:14 sole 199:14 solicit 31:14 solicited 110:25 solution 45:18 48:25 55:10,16 60:3,6 solutions 1:19 48:20 55:6,14 59:24 somebody 38:24 56:9,11,18 somewhat 29:19 215:13 sophisticated 71:12 72:4 sorry 11:19 17:21 24:18 36:10 56:15 57:19 65:20 84:9 89:3 92:14 118:13 122:12 138:7 146:7 152:17 154:5 156:17 163:5 164:10 171:1 185:10 188:21 196:12 200:17,21 205:4 213:12 217:2 217:5 223:2 244:16 244:21 247:1 sought 196:5 sounds 30:1,5 113:16,18 150:24 source 25:7 134:22 134:25 135:2 193:4 sources 22:8 112:13 153:17 233:11 spalding 2:2 7:23 speak 92:19 143:9 speaking 50:22 51:25 52:23 88:14 203:4 specific 50:10 64:25 71:4 114:9 125:23 139:18 144:14 164:19 172:22,25 173:5,10,15 174:1,6 174:24 177:17
--	---	--	---

[specific - strike]

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

[strike - testimony]

218:17 219:3 220:11 226:11 244:17 246:3,5 254:13 255:13 student 170:4 171:14 233:1 students 228:19 230:1,19 231:11 232:18 studied 131:6,11,16 157:6,12 studies 19:21 127:23 128:6 216:6,15 233:14 246:22 247:3,24 255:5 study 94:7 128:8,15 132:24 138:10 157:24 209:7 216:13 230:20 233:19 255:10 subject 11:2 86:25 105:3 128:2,15 222:8 submitting 154:2 subpoena 175:9 subsequent 199:18 substance 103:22 230:9 substantial 41:20 62:18 121:4 246:13 substantive 44:21 44:25 88:24 suffer 74:16 76:25 77:10 81:4 232:24 254:15 255:24 256:16 257:11 suffered 62:2 123:12 127:13,25 253:17 sufficient 45:16 suggest 35:6 79:25 83:7 suggestion 247:14 suggests 83:2	suit 124:5,7,8 suitable 56:23 suite 2:4 summarize 27:19 64:9 summarized 12:12 12:24,25 39:23 41:3 66:25 112:22 114:10 153:24 155:13 157:21 160:17 162:18 208:6 233:20 248:25 summary 11:10 33:16 175:12 supervised 104:13 supervision 260:7 supplemented 89:18 supplier 172:4 supply 32:13 33:18 34:12,17 36:21 37:4 38:1,6,16,21 39:12 82:9 83:12 84:11 support 5:1 25:6 45:17 52:5 199:14 199:18 sure 8:20 9:20 13:25 14:19,19 15:4 21:15 22:14,17 29:14,17 32:23 33:8 35:9,16 41:24 50:5 57:13 63:12 64:1,19 73:10 74:20 80:21 122:15 124:6 126:14 131:3 151:1 152:20 156:8 156:25 157:9,18 165:15 182:8 184:6 185:14 197:3 210:10 212:11 217:10 220:5 221:22 222:7 231:17,19 232:14 234:16 256:4 surprised 118:2 192:15	surveys 185:8 sustainability 52:6 swear 8:4 sworn 8:8 260:4 systematically 193:25 systems 52:9 <hr/> t <hr/> t 244:25 260:1,1 tab 27:21 93:21,22 94:14 113:13 114:18,19,20 115:22 118:15,21 118:24,25 121:23 121:24 135:4,6 197:17 208:6 253:2 table 23:10 tables 165:23 tabs 134:13,19 153:25 158:4,6,22 248:25 take 13:13 14:3,22 15:7,15 56:18 59:13 59:14,19 61:14 73:12 79:21 98:17 100:13 101:7 109:24 129:22 130:6 152:21 206:6 212:14 taken 1:18 25:18 79:7 149:1,9 168:8 214:9 260:3 taker 101:8 takes 4:19 talk 70:14 82:2 125:13 160:25 172:3 187:10 211:20,21,24 229:16 talked 35:18 50:6 106:22 113:5 184:11 193:15 194:11 248:4,7	talking 68:16 70:2 82:21 88:13 106:3 123:6,8 128:6 140:14 187:12 229:13 230:9 talks 70:6,15 201:16 tangible 62:8,10 67:1 taught 170:13 171:18 taxes 88:25 teacher 229:5 teaching 88:3 229:5 team 93:24 135:7 team's 94:13 technical 229:14 technically 139:25 telephone 197:7 tell 53:11 95:17 143:11 163:4,6 166:22 201:20 238:21 260:4 ten 58:25 59:7,7,10 208:2,4 tend 101:9 tends 35:5 42:19 term 31:8 38:12,14 128:9 161:10 223:23 231:21,23 234:17 235:17 238:22 240:21 256:8 terms 57:4 246:1 territories 204:7 test 54:5 120:5 testified 8:8 54:25 testimony 11:24 24:9 27:22 55:1,11 60:12 61:5 67:11 74:5,18 78:11,25 79:11 102:24 112:9 123:15 147:14 157:1 160:16,21 168:19 186:9,19 196:25 197:2
---	---	--	---

[testimony - trend]

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

[trends - value]

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

[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		wish 229:5	139:3,14 143:17
165:18 254:16	w	wishing 136:10	144:9 145:9,24
255:17	wait 9:10 122:11	withdrawing 16:8	147:2,13,25 148:18
versions 85:23 86:4	want 9:11,15 13:24	witness 4:3 7:7 8:5	148:25 149:8,19
86:6 241:9 255:16	14:17,22,24 16:18	9:19 10:7 11:8 14:5	150:9,24 151:9
versus 7:2 145:18	30:16 35:4 41:11	14:15 15:23 17:14	152:14,16 156:17
154:24	46:3 48:18 49:7	19:24 20:22 21:15	157:17 158:3 159:4
vi 68:8,20	53:17 55:4 59:14	22:7 24:10,18 25:14	159:21 160:13
vice 108:1	64:16,16 85:2 133:5	26:18 28:17 29:9,13	161:9,18 162:7,17
videographer 3:15	151:25 152:2,19,21	33:15,24 34:7,19,24	163:14 164:4 165:1
6:5 8:2 61:16,22	162:24 170:14	35:15 36:3,14 37:14	166:10,18 167:8,22
109:25 110:7	210:10 215:5	37:19 38:9,18 39:3	168:15,25 169:15
111:21 152:22	217:10 221:21	39:22 41:1,18 43:25	169:22 170:20
153:3 210:12,19	wanted 179:3	44:14 45:10 47:4	172:1 174:16,20
258:21	wants 59:20	48:14 51:2,17 52:3	176:14 177:1,12
videotaped 1:17	washington 1:20	53:2,17 54:11 56:13	178:1,25 179:16
view 3:9 74:14	2:15 6:24	57:1,7,12,19 58:1	180:23 181:8 182:7
110:18,22 117:6	way 31:19 46:17,22	58:17 59:3 60:9,13	182:16 183:1,11,21
136:11 139:15	48:20,24 50:19	61:15 62:5 63:20	186:12 190:13,24

[witness - york]

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

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.