

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>AMERICAN SOCIETY FOR TESTING AND MATERIALS d/b/a/ ASTM INTERNATIONAL;</p> <p>NATIONAL FIRE PROTECTION ASSOCIATION, INC.; and</p> <p>AMERICAN SOCIETY OF HEATING, REFRIGERATING, AND AIR CONDITIONING ENGINEERS,</p> <p style="text-align: center;">Plaintiffs/ Counter-Defendants,</p> <p>v.</p> <p>PUBLIC.RESOURCE.ORG, INC.,</p> <p style="text-align: center;">Defendant/ Counter-Plaintiff.</p>	<p>Case No. 1:13-cv-01215-TSC</p>
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SUPPLEMENTAL DECLARATION OF JORDANA S. RUBEL

Pursuant to 28 U.S.C. § 1746, I, Jordana S. Rubel, declare the following statements to be true under the penalties of perjury:

1. I am over the age of 18 years and am fully competent to testify to the matters stated in this Declaration.
2. This declaration is based on my personal knowledge. If called to do so, I would and could testify to the matters stated herein.
3. I am an associate at Morgan Lewis & Bockius LLP, which represents Plaintiff American Society for Testing and Materials in this matter.
4. Attached as Exhibit 1 are true and correct copies of excerpts from the transcript of the deposition of James Fruchterman, which took place on July 31, 2015.

5. Attached as Exhibit 2 is a true and correct copy of Exhibit 4006 to the deposition of James Fruchterman.
6. Attached as Exhibit 3 are true and correct copies of excerpts from the transcript of the deposition of Daniel Smith, which took place on July 24, 2015.
7. ASTM produced copies of tens of thousands of paper membership renewal forms to Defendant in this litigation. The Bates range for these documents was ASTM0345596-ASTM088302.
8. Attached as Exhibit 4 are true and correct copies of excerpts from the transcript of the deposition of Jeffrey Grove, which took place on March 4, 2015.
9. Attached as Exhibit 5 are true and correct copies of excerpts from the transcript of the deposition of Carl Malamud, which took place on February 27, 2015.
10. Attached as Exhibit 6 is a true and correct copy of a webpage that was accessed from the following URL on January 21, 2016: <https://www.acus.gov/contacts/emily-s-bremer>.
11. Attached as Exhibit 7 are true and correct copies of excerpts from the transcript of the deposition of Steven Comstock, which took place on March 5, 2015.
12. Attached as Exhibit 8 are true and correct copies of excerpts from the transcript of the deposition of Stephanie Reiniche, which took place on March 30, 2015.
13. Attached as Exhibit 9 are true and correct copies of excerpts from the transcript of the deposition of Bruce Mullen, which took place on March 31, 2015.

Dated: January 21, 2016

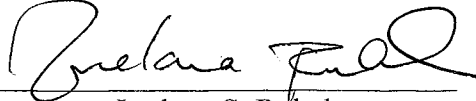

Jordana S. Rubel

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR
TESTING AND MATERIALS,
d/b/a ASTM INTERNATIONAL;
NATIONAL FIRE PROTECTION
ASSOCIATION, INC.; and
AMERICAN SOCIETY OF
HEATING, REFRIGERATION AND
AIR CONDITIONING ENGINEERS,

Plaintiffs and
Counter-Defendants,

v.

Civil Action No.
1:13-cv-01215-TSC

PUBLIC.RESOURCE.ORG, INC.,

Defendant and
Counter-Plaintiff.

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Videotaped Deposition of: JAMES FRUCHTERMAN

DATE: Friday, July 31, 2015

TIME: 9:34 a.m.

LOCATION: Morgan, Lewis & Brockius, LLP
Two Palo Alto Square, Suite 700
Palo Alto, California

REPORTED BY: Kelli Combs
Certified Shorthand Reporter
License 7705.

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1 Q And what type of entities are authorized
2 entities?

3 A I don't have the precise code cite, but
4 authorized entities have to meet some
5 qualifications, nonprofit or government agency,
6 primary mission to serve people with disabilities.
7 It has to be one of their -- one of their primary
8 missions. There may be some other qualifications,
9 but those are the big ones I think of.

10 Q So if you meet those two qualifications,
11 what exception are you provided?

12 MR. KAPLAN: Objection; vague, incomplete
13 hypothetical, calls for a legal conclusion.

14 THE WITNESS: So some of the provisions of
15 Chafee, as I recall, are that you can make an
16 accessible copy of a literary work with some
17 exceptions for people with qualifying print
18 disabilities.

19 BY MS. RUBEL:

20 Q And you're permitted to make accessible
21 copies exclusively for people with disabilities; is
22 that right?

23 MR. KAPLAN: Objection; argumentative,
24 calls for a legal conclusion, incomplete
25 hypothetical, vague.

1 THE WITNESS: The word "exclusively"
2 probably appears in the statute, but I'm not
3 100 percent sure.

4 BY MS. RUBEL:

5 Q Well, is it your understanding that under
6 the Chafee Amendment if you meet certain
7 requirements, you're permitted to make copies of the
8 literary work and distribute them to anyone?

9 MR. KAPLAN: Objection; calls for a legal
10 conclusion, argumentative, incomplete hypothetical,
11 vague.

12 THE WITNESS: As an organization that is
13 availing itself of the Chafee Amendment, among other
14 things, we go to some length to make sure that
15 people with print disabilities are the only people
16 that are eligible for our service.

17 BY MS. RUBEL:

18 Q And do you go to those lengths because
19 it's your understanding that the Chafee Amendment
20 requires you to only make the materials accessible
21 to people with print disabilities?

22 MR. KAPLAN: Objection; calls for a legal
23 conclusion, vague.

24 THE WITNESS: As someone who operates
25 under the Chafee Amendment to support that, we need

1 to ensure that we only distribute them to people who
2 have qualifying disabilities. Yes.

3 BY MS. RUBEL:

4 Q Why is that?

5 A Because --

6 MR. KAPLAN: Objection; calls for a legal
7 conclusion, calls for speculation, vague.

8 THE WITNESS: I -- I believe that's the
9 language of the statute, that it's -- that it's
10 making the materials available for people with
11 disabilities.

12 BY MS. RUBEL:

13 Q And I think you mentioned that Benetech
14 operates as a nonprofit that you would consider an
15 authorized entity under the Chafee Amendment?

16 MR. KAPLAN: Objection; misstates
17 testimony, calls for a legal conclusion, vague.

18 THE WITNESS: Yes.

19 BY MS. RUBEL:

20 Q Are there any other requirements that
21 Benetech must meet in order to provide copies of
22 literary works to people with print disabilities
23 under the Chafee Amendment?

24 MR. KAPLAN: Objection; calls for a legal
25 conclusion, vague.

1 Those are the three major ways that people
2 provide proof of disability.

3 Q Would that be some kind of doctor?

4 MR. KAPLAN: Objection; vague.

5 THE WITNESS: It varies by disability what
6 professional credential someone needs to have to
7 provide a certification of disability.

8 BY MS. RUBEL:

9 Q So to access materials from Bookshare that
10 are made pursuant to the Chafee Amendment, an
11 individual would have had to show some proof of
12 disability by one of the methods that you just
13 described; is that correct?

14 MR. KAPLAN: Objection; misstates
15 testimony, vague.

16 THE WITNESS: If the Chafee Amendment is
17 one of the mechanisms we're using to deliver the
18 book, then there has to be an association with a
19 person with a qualifying disability under the Chafee
20 Amendment to obtain a copyrighted work. Yes.

21 BY MS. RUBEL:

22 Q And you have that configured into the
23 software so that the person clicks to open that
24 work, you will have ensured that you have proof of
25 disability on file?

1 MR. KAPLAN: Objection; argumentative,
2 vague, lacks foundation.

3 THE WITNESS: A user who's logged in who
4 chooses to download a copyrighted work where we're
5 using the Chafee Amendment as one of our
6 justifications for doing so, there is an electronic
7 indication in -- that that is something they're
8 permitted to do.

9 So someone who has not provided proof of
10 disability is not allowed to download a copyrighted
11 work under the Chafee Amendment, but they could
12 download a public domain or creative commons work.

13 BY MS. RUBEL:

14 Q If it was a copyrighted work and they
15 attempted to download it, they did not have proof of
16 disability on file, what would happen?

17 MR. KAPLAN: Objection; incomplete
18 hypothetical, lacks foundation.

19 THE WITNESS: My understanding is if they
20 have not provided proof of disability, the
21 "Download" button does not appear on the title page,
22 so they can find out that we have the work, but they
23 can't download it unless their account has that
24 enabled, and then there's a button that shows up
25 that says, How do you want to download it?

1 MR. KAPLAN: Objection; calls for
2 speculation, lacks foundation, vague.

3 THE WITNESS: My understanding was that
4 one of the uses of the scanned books was to make
5 books accessible to people with disabilities.

6 BY MS. RUBEL:

7 Q Do you know if that consortium had any
8 safeguards in place that ensured that only people
9 with print disabilities would be able to access the
10 copies of those books?

11 MR. KAPLAN: Objection; vague, lacks
12 foundation, calls for speculation.

13 THE WITNESS: I believe that only faculty,
14 students and staff of the research universities were
15 able to access information about the books so that
16 that access control was the primary access control.

17 I know less about the details of
18 disability-specific access, but I do believe that
19 there was some difference between regular,
20 nondisabled faculty, staff and students and disabled
21 faculty, staff and students.

22 BY MS. RUBEL:

23 Q Do you believe there was some sort of
24 certification required to show that the person had a
25 print disability to get access to certain of the --

1 of the books?

2 MR. KAPLAN: Objection; vague.

3 THE WITNESS: There are a lot of research
4 libraries that were involved in the case, and I
5 don't know what their process was beyond saying
6 these people have print disabilities so they'll get
7 more extensive access to the works than regular
8 faculty and staff and students.

9 BY MS. RUBEL:

10 Q Are you familiar with --

11 Aside from the consortium and the
12 HathiTrust and Benetech, are you familiar with other
13 organizations that provide access to copies of
14 copyrighted works under the Chafee Amendment?

15 MR. KAPLAN: Objection; vague.

16 THE WITNESS: There are some national
17 organizations that are well-known in the field: The
18 National Library Service for the Blind, Visually
19 Impaired and Physically Disabled of the Library of
20 Congress; NLS is the largest, Learning Ally,
21 formerly known as Recording for the Blind and
22 Dyslexic; the American Printing House for the Blind,
23 National Braille Press.

24 Those would probably be the four
25 organizations most often cited, along with -- sorry,

1 including Bookshare, which is the library that my
2 nonprofit, Benetech, operates.

3 But there are other organizations, many
4 other organizations, that I believe would assert
5 that they operate under the Chafee Amendment.

6 BY MS. RUBEL:

7 Q NLS, do they have some sort of requirement
8 that an individual provide proof of disability
9 before being able to access copyrighted materials
10 under the Chafee Amendment?

11 A Yes.

12 MR. KAPLAN: Objection; lacks foundation.

13 BY MS. RUBEL:

14 Q What are their requirements?

15 A They are stated on the NLS website, and
16 they're similar to those that we use, and we have a
17 agreement with NLS that if someone has submitted NLS
18 their qualifications, we accept that as proof of
19 disability for Bookshare services.

20 Q What about Learning Ally; do they have a
21 requirement that the person certify that they have a
22 print disability before being able to access the
23 materials?

24 MR. KAPLAN: Objection; vague, lacks
25 foundation.

1 THE WITNESS: Yes.

2 BY MS. RUBEL:

3 Q How about the American Printing House for
4 the Blind; do they have the same requirement?

5 MR. KAPLAN: Objection; vague, lacks
6 foundation.

7 THE WITNESS: Their requirement is
8 different because they're more narrowly focused on
9 blind and visually impaired students, and I'm not
10 sure that if they're providing a Braille copy of a
11 book, that they require people to prove that they're
12 disabled, because Braille is not -- hard copy
13 Braille is not easy to make copies of.

14 BY MS. RUBEL:

15 Q So they're not providing something, for
16 example, that could be read by a screen reader?

17 MR. KAPLAN: Objection; misstates the
18 testimony, argumentative, lacks foundation, vague.

19 THE WITNESS: They do. They have some
20 kind of registration system for students who have
21 the visual impairments that their organization
22 serves, and I believe that the visually impaired
23 students they serve would generally be understood as
24 qualifying under Chafee.

25

1 BY MS. RUBEL:

2 Q So they may not have a certification
3 requirement for people who are blind; is that your
4 understanding?

5 MR. KAPLAN: Objection; argumentative,
6 misstates testimony, vague.

7 THE WITNESS: I don't understand all of
8 their process, but I would say that their
9 identification of visually impaired students through
10 school systems and state education agencies is
11 comparable to our seeking a proof of disability from
12 the school systems, because the school systems are
13 legally obligated to serve blind and visually
14 impaired students.

15 But I did provide proviso that I could
16 imagine they might serve up Braille without a proof
17 of disability. It's not uncommon in our field that
18 hard copy Braille is circulated more broadly, and no
19 publisher has ever objected to that.

20 BY MS. RUBEL:

21 Q Okay. I understand.

22 And what about the National Braille Press;
23 are they providing things only in Braille?

24 MR. KAPLAN: Objection; lacks foundation,
25 vague.

1 THE WITNESS: It's my understanding they
2 primarily provide Braille books, but they may
3 provide other things. I think of them as The
4 Braille Press, so...

5 BY MS. RUBEL:

6 Q Do you know if they have a certification
7 requirement to show that you have a print
8 disability?

9 MR. KAPLAN: Objection; vague.

10 THE WITNESS: I don't -- sorry.

11 (Reporter clarification)

12 THE WITNESS: They might.

13 BY MS. RUBEL:

14 Q Prior to this case --

15 Prior to being retained as an expert in
16 this case, were you familiar with
17 Public.Resource.Org?

18 MR. KAPLAN: Objection; vague.

19 THE WITNESS: I had heard of them.

20 BY MS. RUBEL:

21 Q In what context had you heard of them?

22 A I had probably met Carl Malamud at some
23 point. I don't recall meeting him, but I was aware
24 of his organization and that he had done different
25 things around making things accessible, and this is

1 A I think we focused on the website that
2 didn't have an accessible sign-up process, and I'm
3 happy to find out which one of the three standards
4 bodies had that problem, just so I correctly testify
5 to that.

6 Q Sure.

7 A So I'm looking at my expert report. So we
8 focused our efforts on NFPA when we did our
9 in-person evaluation.

10 Q Is Rob Turner blind?

11 A Yes.

12 Q What is his background?

13 MR. KAPLAN: Objection; vague.

14 THE WITNESS: He's a blind engineer for my
15 nonprofit organization.

16 BY MS. RUBEL:

17 Q What -- what is his role --

18 Is he employed by Benetech?

19 A Yes, he's employed by Benetech as a -- as
20 a Quality Assurance Engineer.

21 Q So what does he do in that role?

22 A He tests the quality of our products,
23 including our websites, evaluates accessibility, but
24 his focus is on our products.

25 Q Why did you seek Rob Turner's assistance?

1 A He's one of our blind employees who
2 happens to be in the office regularly as opposed to
3 being located in other locations; so I could go down
4 and talk to him.

5 Q So you asked --

6 You asked Rob to try to access standards
7 from NFPA's website and see if he was able to do so?

8 MR. KAPLAN: Objection; vague.

9 Go ahead.

10 THE WITNESS: Correct. First, I asked him
11 to look at the sign-up process to see if he could
12 sign up for a free reading account without needing
13 assistance from a sighted person, and he wasn't able
14 to do that.

15 BY MS. RUBEL:

16 Q Was there anything else you asked him to
17 do?

18 A After I pushed the "I Agree" button and
19 got him through that, that roadblock, I also asked
20 him to try to read the standard in question.

21 Q Did you ask Rob to try to access any of
22 the Plaintiffs' standards that are posted on Public
23 Resource's website?

24 A No, I did not.

25 Q What are the Web content accessibility

1 MR. KAPLAN: It's okay. Got to give me a
2 breath here.

3 THE WITNESS: Okay. I will. I'll try.

4 BY MS. RUBEL:

5 Q As part of your analysis, did you analyze
6 whether the tables in the HTML were accessible --
7 the tables in HTML from Public Resource's website
8 were accessible to blind people?

9 A I don't recall evaluating tables in
10 detail.

11 Q Did you evaluate whether the graphics in
12 the standards -- in Plaintiffs' standards were
13 accessible to blind people from Public Resource's
14 website?

15 A No.

16 THE VIDEOGRAPHER: Is this a good place?

17 MS. RUBEL: Sure. We can take a break.
18 We ran out of tape.

19 THE VIDEOGRAPHER: This is end of Disk 2.
20 We're off the record at 3:37.

21 (Recess taken.)

22 THE VIDEOGRAPHER: This is beginning of
23 Disk 3. We're back on the record at 3:48.

24 BY MS. RUBEL:

25 Q Based on your analysis of the Plaintiffs'

1 standards that are available on Public Resource's
2 website in HTML format, do you have enough
3 information to determine whether an engineer who
4 wanted access to that standard would be able to
5 obtain all the necessary information from the
6 standard?

7 MR. KAPLAN: Objection; incomplete
8 hypothetical.

9 THE WITNESS: No.

10 BY MS. RUBEL:

11 Q Do you know how many of the standards on
12 Public Resource's website -- how many of Plaintiff's
13 standards that are available on Public Resource's
14 website are only available in PDF format?

15 A No.

16 Q Do you know how many of the standards that
17 are at issue in this case are only available on
18 Public Resource's website in PDF format?

19 A No.

20 Q Do you know if the number that is
21 available in PDF format is greater than the number
22 available in HTML format?

23 MR. KAPLAN: Objection; vague.

24 THE WITNESS: It would be likely from my
25 inspection of the directories that there would be

1 A (Reading):

2 "Having reviewed the
3 accessibility of the same standards
4 content rendered by
5 Public.Resource.Org and those of
6 the free access options provided by
7 the NFPA, ASHRAE and ASTM, it is my
8 opinion that Public.Resource.Org
9 currently provides the only
10 accessible option for
11 people/citizens with print
12 disabilities to access these
13 standards."

14 Q And in forming that opinion, you compared
15 the standards that were available on
16 Public.Resource.Org's website with the free access
17 options provided by Plaintiffs in forming that
18 opinion; is that correct?

19 A Correct.

20 Q Did you evaluate any PDFs being sold by
21 NFPA in forming that opinion?

22 A No.

23 Q Did you evaluate any PDFs being sold by
24 ASHRAE in forming that opinion?

25 A No.

1 Q Did you evaluate any PDFs sold by ASTM in
2 forming that opinion?

3 A No.

4 Q So when you say that Public.Resource.Org
5 currently provides the only accessible option for
6 people/citizens with print disabilities to access
7 these standards, you're excluding from that opinion
8 any PDFs that are being offered by the Plaintiffs?

9 MR. KAPLAN: Objection; misstates the
10 document and testimony, misleading and vague.

11 THE WITNESS: In that sentence I refer to
12 "free access options."

13 BY MR. REHN:

14 Q So when you said the only accessible
15 options, what you actually meant to say was the only
16 freely accessible options without charge?

17 MR. KAPLAN: Objection. Thane, you're
18 getting a little badgering here, but you can answer
19 the question.

20 THE WITNESS: Yes.

21 BY MR. REHN:

22 Q Is it possible that documents being sold
23 can be described as accessible to people with print
24 disabilities?

25 MR. KAPLAN: Objection; vague.

1 THE WITNESS: Yes.

2 BY MR. REHN:

3 Q Have you ever described a PDF for sale as
4 being accessible to someone with print disabilities?

5 A Let's see. I'm not sure I've described --
6 I'm sure I've described paid products in other
7 formats as accessible, and I'm sure that I've
8 described PDFs as accessible. I'm not sure I've
9 described a paid PDF product as accessible.

10 Q But it's fair to say that if the PDFs
11 being sold by Plaintiffs are accessible to people
12 with print disabilities, this sentence would be
13 potentially inaccurate?

14 MR. KAPLAN: Objection; misleading, vague,
15 argumentative.

16 THE WITNESS: I think it's accurate as I
17 wrote it, but I'm happy, as we have, to clarify what
18 I meant by that sentence.

19 BY MR. REHN:

20 Q Sure.

21 And to clarify what you meant was you were
22 comparing just the free access options provided by
23 the Plaintiffs on their websites with the content
24 rendered by Public.Resource.Org?

25 A Those were the content that I evaluated,

1 yes.

2 Q Are you aware that NFPA sells eBook
3 versions of some of its standards?

4 A I'm -- I'm not sure I'm aware of that.

5 Q And did you evaluate any eBook versions of
6 standards sold by NFPA or the other two Plaintiffs
7 in this case?

8 A No. I was not asked to.

9 Q So do you have an opinion on whether the
10 eBook versions sold by NFPA and the other two
11 Plaintiffs are accessible to persons with print
12 disabilities?

13 A I can't express an opinion without looking
14 at them.

15 Q Do you have opinion on whether the PDFs
16 being sold by NFPA and the other two Plaintiffs in
17 this case are accessible to persons with print
18 disabilities?

19 A No. But in my experience, most PDFs are
20 not accessible or are not -- let me correct that.
21 Not as accessible as, say, HTML versions of those
22 would be since accessibility is on a spectrum.

23 Q But you don't have an opinion as to these
24 specific PDFs that are sold by NFPA?

25 A I haven't examined them.

1 MR. KAPLAN: Do you want to take a break?

2 THE WITNESS: No, I'll keep going. I'll
3 get water next time.

4 MR. REHN: You can take a break whenever
5 you want.

6 THE WITNESS: No problem.

7 BY MR. REHN:

8 Q So you mentioned earlier that you were
9 aware of an NFPA standard that was available on
10 Bookshare?

11 A Uh-huh.

12 Q If I could just show you a document.

13 MR. REHN: What number are we up to?

14 THE REPORTER: We're at 4002.

15 (Plaintiffs' Exhibit 4002 marked
16 for identification.)

17 BY MR. REHN:

18 Q Do you recognize this as a printout of the
19 Bookshare Web page?

20 A Yes.

21 Q And you'll see here that this says "NFPA
22 70-2014 Electrical Code Book"?

23 A Yes.

24 Q And I believe you said earlier that your
25 understanding was that a partner of Bookshare had

1 submitted this to Bookshare?

2 A Correct.

3 Q Is that on the second page of this
4 exhibit, you see it says "Submitted by Daproim
5 Africa"?

6 A Yes.

7 Q Is that who you understand submitted this
8 document?

9 A Yes.

10 Q How does Bookshare enable certain persons
11 to share documents with Bookshare?

12 A So we're talking about essentially the
13 content intake mechanisms at Benetech, and you'd
14 like me to enumerate those different mechanisms?

15 Q Well, let's start with this Daproim
16 Africa. They're an adult educator; is that what you
17 said earlier?

18 A No.

19 Q What's your understanding --
20 Do you know who this submitter is?

21 A Yes.

22 Q And who are they?

23 A They're a subcontractor to Benetech for
24 books -- they do the proofreading services on books
25 we've been asked for by a student.

1 Q So a student would have submitted a
2 request and because it was educational, you would
3 have approved that request; is that what you
4 testified to earlier?

5 MR. KAPLAN: Objection; misstates
6 testimony, calls for speculation.

7 THE WITNESS: Yes.

8 BY MR. REHN:

9 Q And after you approved that request, you
10 would have had a subcontractor proofread the
11 document and then upload it to Bookshare?

12 MR. KAPLAN: Objection; vague, calls for
13 speculation.

14 THE WITNESS: Yes.

15 BY MR. REHN:

16 Q Do you allow anybody to submit documents,
17 other than subcontractors?

18 A Yes.

19 Q Do you engage in any quality control on
20 documents that persons, other than subcontractors,
21 submit?

22 A Yes.

23 Q And what is that quality control process?

24 A We run an automated quality evaluator that
25 scores the document on, for example, looking for OCR

1 errors, looking for swear words, looking for length;
2 it's supposed to be 100-page document and it's a
3 1-page document that's submitted or a thousand-page
4 document.

5 And we also have a human being take a
6 brief look at the document, kind of just do a check
7 also to make sure that it makes -- that it makes
8 sense.

9 Q Are those documents that are submitted
10 generally PDFs or Word documents or HTML? What
11 format do they usually come in?

12 MR. KAPLAN: Objection; lacks foundation,
13 calls for speculation, vague.

14 THE WITNESS: Bookshare has a detailed
15 description of how we want documents submitted to
16 us. In general, we prefer documents that are --
17 when they're coming from volunteers that are
18 scanning that are more Microsoft Word or RTF, which
19 is a related format. For those books that are
20 scanned, that's our preferred format, and we
21 wouldn't accept a PDF.

22 BY MR. REHN:

23 Q So you accept documents or books that are
24 scanned by volunteers?

25 MR. KAPLAN: Objection; misstates

1 testimony.

2 THE WITNESS: We accept books from quite a
3 number of sources of which volunteers is one source.

4 BY MR. REHN:

5 Q Can anybody sign up to be a volunteer to
6 submit books or documents?

7 A I think right now you have to be a U.S.
8 resident or organization.

9 Q So any U.S. resident could sign up to
10 submit books or documents to Bookshare?

11 A Yes, and they must agree to our volunteer
12 agreement that specifies the limitations on what
13 they can do and what they can't do.

14 Q So if a concerned citizen wanted to get
15 books or documents accessible to the visually
16 impaired, they could volunteer to scan those
17 documents, proofread them, ensure that they're free
18 of errors and then submit them to Bookshare, and if
19 they passed your quality control process, you would
20 make them available on your website?

21 MR. KAPLAN: Objection; incomplete
22 hypothetical, vague.

23 THE WITNESS: Yes.

24 BY MR. REHN:

25 Q Do you try to encourage volunteers to

1 and implementing the standard?

2 A No.

3 Q Did you see any graphical material in that
4 standard?

5 A I recall seeing graphical material in the
6 standards I evaluated.

7 Q Did you assess whether that graphical
8 material was accessible via a screen reader in the
9 HTML version of the Public Resource website?

10 MR. KAPLAN: Objection; vague.

11 THE WITNESS: I didn't check for
12 additional accessible metadata on the images.

13 BY MR. REHN:

14 Q So do you have an opinion on --
15 Do you have enough information to know
16 whether a visually impaired fire safety professional
17 could use the HTML version of NFPA 101 that is
18 available on Public Resource's website and safely
19 rely on that for professional purposes?

20 MR. KAPLAN: Objection; vague.

21 THE WITNESS: I am not a fire professional
22 expert, so I can't evaluate how this applies
23 specifically to that profession.

24 BY MR. REHN:

25 Q So the answer to my question is "no"?

1 FURTHER EXAMINATION

2 BY MR. REHN:

3 Q Good evening, Mr. Fruchterman.

4 A Hello.

5 Q And do you understand that you're still
6 under oath?

7 A Yes.

8 Q Has anything happened between now and the
9 last time we spoke that would affect your ability to
10 answer my questions fully and truthfully?

11 A No.

12 Q So I'd like to direct your attention to an
13 exhibit that we are marking as Exhibit Number 4006.

14 A Yes.

15 (Plaintiffs' Exhibit 4006 to be
16 marked for identification.)

17 BY MR. REHN:

18 Q Do you recognize this as an e-mail to
19 yourself from Rob Turner that was sent on April 10th
20 of this year at 10:56 a.m.?

21 A Yes.

22 Q And the subject line is "OCR Document"?

23 A Yes.

24 Q Do you recall receiving this e-mail?

25 A Yes.

1 Q And do you know what OCR document
2 Mr. Turner is referring to in the subject line?

3 A Is there, like, an immediately prior
4 document that actually mentions this? Sorry.
5 Sorry. I mean, can I look through the list of
6 produced documents?

7 MR. KAPLAN: You just got to answer his
8 question.

9 BY MR. REHN:

10 Q Based on this e-mail, do you know which
11 document he's referring to?

12 A I don't remember which one of the
13 image-based standards I shared with him, no. But it
14 was one of the image-based PDFs that I asked him to
15 look at.

16 Q So the image-based PDFs that you sent
17 Mr. Turner were -- those were PDFs you had taken
18 from Public Resource's website; is that correct?

19 MR. KAPLAN: Objection; argumentative,
20 misleading and vague.

21 THE WITNESS: It probably was an
22 image-based PDF from the Public.Resource.Org
23 website, and that's my -- that's my recollection.
24 Yes.

25

1 BY MR. REHN:

2 Q Did you make any image-based PDFs of
3 documents from any of Plaintiffs' websites?

4 A I didn't make any documents from
5 Plaintiffs' websites. I downloaded whatever
6 document -- no, I downloaded -- I viewed the
7 document, yes. So, no.

8 Q After you sent him a document, it would
9 have been one from Public Resource's website?

10 A That's correct. Thank you.

11 Q And if I could direct you to the last
12 sentence of the first paragraph of his e-mail, would
13 you read that sentence, please?

14 A The one "I don't think...".

15 Q Yes.

16 A Yes.

17 "I don't think this type of
18 document can be considered to be
19 accessible."

20 Q So based on your prior testimony, is it
21 your understanding that he is saying that the
22 image-based PDF from Public Resource's website that
23 you sent to Mr. Turner, in his opinion, cannot be
24 considered to be accessible?

25 MR. KAPLAN: Objection; misleading,

1 argumentative, vague.

2 THE WITNESS: I think Rob Turner doesn't
3 believe it meets our accessibility standards, which
4 is what his job is to primarily work on our library
5 for the blind. We would not post an image-based PDF
6 and call it accessible.

7 BY MR. REHN:

8 Q And do you agree with Mr. Turner's
9 assessment that this type of document cannot be
10 considered to be accessible?

11 A I think it's less accessible than many of
12 the other documents and more than others, as I wrote
13 in my expert report. I can probably quote from the
14 report.

15 Q There's no question pending. So...

16 A Okay. I would direct you to my last
17 sentence of my report --

18 MR. KAPLAN: Jim, there's no question
19 pending.

20 THE WITNESS: All right.

21 MR. REHN: I have no further questions.
22 And I believe that concludes Plaintiffs' questioning
23 of this witness.

24 MR. KAPLAN: I have no questions at this
25 time.

EXHIBIT 2

From: Rob Turner
Sent: Fri 4/10/2015 10:56 AM (GMT-07:00)
To: Jim Fruchterman
Cc:
Bcc:
Subject: OCR document

Hi Jim,

I was able to read part of the document using the JAWS Convenient OCR feature. However, it is not intended for a document that large, so only part of the document was processed before I stopped it. It would require Open Book or Kurzweil to read in its entirety. Too bad Adobe Reader wouldn't recognize the text. I don't think this type of document can be considered to be accessible.

OK enough, back to work.

Rob



EXHIBIT 3

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

- - -

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

Videotaped 30(b)(6) deposition
of American Society for Testing & Materials,
through DANIEL SMITH, held in the offices of
Veritext Philadelphia, 1801 Market Street,
Ten Penn Center, Suite 1800, Philadelphia,
Pennsylvania 19103, commencing at 10:43 a.m.,
July 24, 2015, before Linda Rossi Rios, a
Federally Approved RPR, CCR and Notary
Public.

PAGES 1 - 292

1 A. I think she started back in
2 1984, I think she may have said.

3 Q. Do you know who was filling out
4 ASTM Certificate of Copyright Registration
5 forms prior to Kathe Hooper?

6 A. A name was mentioned yesterday,
7 but I don't recall the name.

8 Q. Was that individual Robert L.
9 Meltzer?

10 A. I recognize that name, but I
11 don't know if Robert Meltzer was the one that
12 was filling out this form.

13 Q. Do you know who Robert Meltzer
14 is?

15 A. He was a former vice president
16 of publications.

17 Q. Did Kathe Hooper say what
18 communications with the copyright office led
19 to her decision to check box 2a of the
20 copyright registrations?

21 A. What led her to fill out this
22 form that way?

23 Q. Did she say what communications
24 she had with the copyright office that led
25 her to fill out the forms to check box 2a?

1 A. She had said that her
2 predecessor had a conversation with the
3 copyright office, and they had informed her
4 that it should be filled out that way.

5 Q. Do you know if Kathe Hooper had
6 any interactions with the copyright office in
7 which the copyright office told her to fill
8 out the registrations by checking box 2a?

9 A. I don't believe she did.

10 Q. What is Kathe Hooper's role at
11 ASTM?

12 A. She assists the vice president
13 of publications.

14 Q. How long has Kathe Hooper held
15 that role for at ASTM?

16 A. I can't say for certain, but I
17 think she said yesterday, since about 1984
18 she was in that role.

19 Q. And currently the vice
20 president of publications is John Pace.
21 Correct?

22 A. Correct.

23 Q. Do you know how long John Pace
24 has held that role for?

25 A. It's been about 11 years.

EXHIBIT 4

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

 AMERICAN SOCIETY FOR TESTING AND) Case No.
 MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS
)
 NATIONAL FIRE PROTECTION)
 ASSOCIATION, INC.; and)
)
 AMERICAN SOCIETY OF HEATING,)
 REFRIGERATING, AND)
 AIR-CONDITIONING ENGINEERS, INC.,)
)
 Plaintiffs,)
 vs.)
)
 PUBLIC.RESOURCE.ORG, INC.,)
)
 Defendant.)
 -----)
 AND RELATED COUNTERCLAIMS.)
 -----)

RULE 30(B)(6) VIDEOTAPED DEPOSITION OF AMERICAN
 STANDARDS SOCIETY FOR TESTING AND MATERIALS, BY AND
 THROUGH ITS DESIGNEE,
 JEFFREY GROVE
 WASHINGTON, D.C.
 WEDNESDAY, MARCH 4, 2015

Reported by:
 NANCY J. MARTIN, CSR No. 9504, RMR
 Job No. 2010158
 PAGES 1 - 284

1 their codes, and I wouldn't be able to tell you what 12:31:09
2 codes, but I believe it goes all the way back to 2004, 12:31:11
3 2005. 12:31:18
4 Q. In the answer you just gave, you referred to 12:31:19
5 when you started working with NFPA and exchanged 12:31:23
6 information with them. When do you date that? 12:31:23
7 A. That would be, I think I've met -- the 12:31:25
8 standards community in Washington is a small 12:31:31
9 community. So I've met the various Washington 12:31:34
10 representatives for agencies. Excuse me. For SDO's, 12:31:35
11 standards development organizations, many times in my 12:31:39
12 career. And I would say I've worked cooperatively and 12:31:41
13 individually whenever necessary throughout my career 12:31:45
14 at ASTM. So... 12:31:48
15 Q. Well, I think that doesn't quite answer my 12:31:56
16 question. I think you said you developed this 12:31:59
17 interest when you began to hear -- sorry. When you 12:32:02
18 began to -- when you started working with them on 12:32:06
19 exchanging information. I'm just trying to find out 12:32:10
20 what year you're referring to when you said that. 12:32:12
21 MR. FEE: Objection. Mischaracterizes his 12:32:14
22 testimony. 12:32:15
23 THE WITNESS: I wouldn't be able to give you 12:32:19
24 an exact year except for I know when we began the APCO 12:32:20
25 related work, that was 2011 time frame. 12:32:25

1 BY MR. BRIDGES: 12:32:29

2 Q. And did your interest in providing a reading 12:32:31

3 room arise about the same time as the APCO engagement 12:32:32

4 arose? 12:32:38

5 A. Similar time line. I believe it began to -- 12:32:40

6 I began to introduce the idea and socialize it before 12:32:43

7 then. Maybe a year or so before then. 12:32:45

8 Q. You introduced the idea of a reading room? 12:32:48

9 A. The idea of figuring out a way to strike the 12:32:51

10 right balance. I think another idea we had at the 12:32:53

11 time that I introduced was perhaps figuring out if 12:32:57

12 there was a way we could provide better summaries of 12:33:01

13 our standards to the public rather than relying on 12:33:04

14 abstracts. So there was various ideas that I began to 12:33:07

15 socialize with ASTM staff about how to strike this 12:33:13

16 delicate balance between providing the public with 12:33:17

17 greater access to our documents while still preserving 12:33:20

18 what we need to preserve in order to meet -- continue 12:33:25

19 the enterprise of developing standards, keeping the 12:33:28

20 barriers to participation low, and ensuring that would 12:33:31

21 continue to provide the important value that we do in 12:33:35

22 high-quality market-relevant standards that protect 12:33:39

23 the public. 12:33:42

24 Q. How did you introduce the idea of providing a 12:33:44

25 reading room in the discussion you were referring to? 12:33:46

1 specifically. Using the NIST database as a guideline, 12:49:53
2 we've incorporated, you know, as much of that as 12:50:02
3 possible in the reading room. At times I believe we 12:50:04
4 also tried to add a little bit more intelligence to it 12:50:06
5 to determine if an agency was undertaking a subsequent 12:50:09
6 rule-making, and we became aware that the agency had 12:50:18
7 published a new final rule which either changed the 12:50:24
8 reference to an ASTM standard that we had placed in 12:50:27
9 the reading room or added a new ASTM standard to the 12:50:31
10 reading room. 12:50:38
11 Then we took steps to add that to the reading 12:50:39
12 room. It's not an exact science. We don't pay a 12:50:42
13 vendor to perform the service for us. We rely either 12:50:48
14 exclusively on the NIST database or we -- it's based 12:50:55
15 on intelligence that we've gathered about new 12:50:58
16 rulemakings. 12:51:01
17 Q. How do you gather intelligence about 12:51:03
18 incorporations of ASTM standards by reference? 12:51:08
19 A. Well, as much as possible we read the federal 12:51:14
20 register. I'd like to think we read it on a regular 12:51:17
21 basis, but sometimes it's more infrequent than that. 12:51:20
22 So we will search key terms in the federal register to 12:51:24
23 see if it's mentioning ASTM and if there's a rule that 12:51:30
24 has resulted in the publication of standards. And 12:51:34
25 sometimes we're ahead of it because ASTM has a policy 12:51:38

1 of working with agencies during the notice of proposed 12:51:41
2 rule-making process. 12:51:45
3 Any agency that comes to us and asks us to 12:51:46
4 put a standard up for public review during the public 12:51:50
5 review period of a rule, we work with them to make 12:51:53
6 that possible. So at times we know that a certain 12:51:57
7 number of ASTM standards have been in a notice to 12:52:01
8 proposed rulemaking and that the new rule's expected 12:52:04
9 to come out, so we can look for it. 12:52:08
10 Q. Does ASTM provide assistance to the 12:52:16
11 government in any way when the government is 12:52:18
12 considering whether to incorporate an ASTM standard by 12:52:20
13 reference? 12:52:23
14 MR. FEE: Objection. Vague. 12:52:24
15 THE WITNESS: So we do -- I'm familiar with a 12:52:29
16 couple things that either I do or a member of my staff 12:52:31
17 does. We look to see -- when we're aware that an ASTM 12:52:34
18 standard is going to be used and incorporated by 12:52:39
19 reference in some type of an action, we look to see 12:52:43
20 what version of the standard and what designation of 12:52:46
21 the standard is being used, and I believe on occasion 12:52:50
22 if they're using -- proposing to use an outdated 12:52:54
23 version of a standard, or, quite frankly, we've seen 12:52:59
24 errors where they've attempted to use an ASTM biofuel 12:53:02
25 standard, and rather than referencing D6751 they've 12:53:06

1 A. I believe close to the full collection. So 15:31:36
2 as many as 1,300 ASTM documents. 15:31:38
3 Q. What announcements to the press did ASTM make 15:31:43
4 about its reading room going live? 15:31:48
5 A. I don't recall if we made a lot of 15:31:54
6 announcements when it went live in January. I believe 15:31:55
7 we were concerned about if it would function and work, 15:31:58
8 and I think we wanted to get a little experience with 15:32:05
9 it before we broadcast it too widely. 15:32:08
10 Q. Did ASTM ever make announcements to the press 15:32:12
11 about the availability of its reading room? 15:32:15
12 MR. FEE: Objection. Vague. 15:32:17
13 THE WITNESS: Yes. Through our flagship 15:32:19
14 communication, Standardization News, which we 15:32:21
15 delivered to all of our members and stakeholders. I 15:32:25
16 believe 30,000 individuals receive it six times a 15:32:27
17 year. Mention of it was made in the magazine. 15:32:33
18 BY MR. BRIDGES: 15:32:36
19 Q. When was that? 15:32:36
20 A. I'm sorry. I don't know specifically. 15:32:37
21 Q. How long after the launch of the reading room 15:32:39
22 did that occur? 15:32:45
23 A. I'm sorry. I don't recall. It was in 2013. 15:32:53
24 Q. Did ASTM ever make an announcement to the 15:32:59
25 press about the availability of its reading room 15:33:03

1 beyond the announcement in Standardization News? 15:33:08

2 MR. FEE: Objection to form. 15:33:13

3 THE WITNESS: I believe it was also announced 15:33:15

4 at the ASTM annual business meeting in 2013. 15:33:16

5 BY MR. BRIDGES: 15:33:22

6 Q. The "ASTM business meeting" being a meeting 15:33:22

7 of ASTM members and stakeholders? 15:33:25

8 A. Yes. 15:33:28

9 Q. What other public announcements did ASTM make 15:33:32

10 about the availability of its reading room beyond 15:33:36

11 announcements to its own members and stakeholders? 15:33:40

12 A. I also believe that there was a reference to 15:33:44

13 it in the ASTM annual report in 2013, which was 15:33:46

14 published in 2014. 15:33:50

15 Q. What else? 15:33:52

16 A. I make it part of my message, when I'm 15:33:58

17 visiting with stakeholders that I interact with, that 15:34:01

18 ASTM has this reading room. 15:34:05

19 Q. What else? 15:34:07

20 A. Jim Thomas, our president, mentions it in his 15:34:08

21 interactions on a worldwide basis. 15:34:12

22 Q. With whom? 15:34:16

23 A. Jim Thomas is a popular figure in the 15:34:19

24 standards community, a well-known expert, and he 15:34:22

25 speaks to many groups. So I wouldn't be able to give 15:34:25

1 you specifics without reviewing his calendar. 15:34:30

2 Q. What else? 15:34:34

3 A. ASTM has an electronic newsletter. I believe 15:34:40

4 we mentioned it in the newsletter in 2013. 15:34:45

5 Q. To ASTM's members and stakeholders? 15:34:49

6 A. Yes. To anyone interested in subscribing. 15:34:52

7 Q. What else? 15:34:54

8 A. We previously discussed some efforts to 15:35:02

9 educate policy makers and stakeholders in Washington 15:35:07

10 through an APCO public relations campaign. I believe 15:35:10

11 the reading room was part of that messaging as well in 15:35:14

12 2013. 15:35:17

13 Q. What else? 15:35:19

14 A. That's all I can recall at this time. It had 15:35:28

15 a place on our website as well. 15:35:34

16 Q. Of all the persons who had access to -- 15:35:40

17 sorry. Were you about to mention another? 15:35:43

18 A. I'm sorry. We also sent a few letters to 15:35:46

19 agencies informing them of the creation of the reading 15:35:49

20 room. 15:35:54

21 Q. By "agencies," do you mean government 15:35:57

22 agencies? 15:35:58

23 A. To government agencies, to the office of 15:35:58

24 management and budget, and to the office of the 15:36:01

25 federal register at NARA, the National Archives 15:36:04

EXHIBIT 5

Capital Reporting Company
Malamud, Carl (Confidential) 02-27-2015

1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING AND
MATERIALS D/B/A ASTM INTERNATIONAL;
NATIONAL FIRE PROTECTION, INC.;
AND AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR-CONDITIONING
ENGINEERS, INC.

Plaintiffs, /
Counter-Defendants, Case No.:

vs. 1:13-cv-01215-EGS

PUBLIC.RESOURCE.ORG, INC.

Defendant/
Counter-Plaintiff

----- /
-HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY-
VIDEOTAPED DEPOSITION OF CARL MALAMUD

DATE: Thursday, February 27, 2015

TIME: 9:11 a.m.

LOCATION: 1 Market Street, Spear Tower, Suite
2000, San Francisco, California

Reported by: Ashley Soevyn
Certified Shorthand Reporter
License Number 12019

Capital Reporting Company
Malamud, Carl (Confidential) 02-27-2015

47

1 other plaintiffs' standards, you expect the viewers
2 of those standards at your website to understand
3 that the language or text that you're posting as
4 standard is, in fact, the standard that you purport
5 it to be?

6 MR. BRIDGES: Objection, lacks
7 argumentative, may be hypothetical, vague and
8 ambiguous.

9 THE WITNESS: Yes.

10 BY MR. FEE:

11 Q And that's the whole point of your
12 website, right, is to provide access to the
13 standards?

14 MR. BRIDGES: Objection, argumentative,
15 misstates testimony, lacks foundation, vague
16 and ambiguous.

17 THE WITNESS: The purpose of our service
18 is to make the law available to citizens.

19 BY MR. FEE:

20 Q Including standards incorporated by
21 reference, correct?

22 A Yes.

23 Q Now, Public Resource solicits donations
24 its website, doesn't it?

25 A We have -- yes.

EXHIBIT 6



Contacts:

- ▶ Chairman
- ▶ Council
- ▶ Members
- ▶ Staff
- ▶ Advanced Search

Home > Contacts > Emily S. Bremer

Emily S. Bremer

External Contact



Email: ebremer@uwyo.edu [LinkedIn Profile](#)

Tags: Administrative Procedure Act (APA), Code of Federal Regulations (CFR), E-Rulemaking, Federalism, Freedom of Information Act (FOIA), Health and Safety Regulation, Hybrid Rulemaking, Incorporation by Reference, Midnight Rules, Paperwork Reduction Act, Publication, Rulemaking, Technical Standards

Professor Bremer joined the University of Wyoming College of Law in August 2015. She was previously the Research Chief of the Administrative Conference of the United States (ACUS), a small, free standing federal agency charged with improving government processes, procedures, and performance. She joined the agency in 2010, when it was reconstituted under the leadership of Chairman Paul R. Verkuil.

A graduate of New York University School of Law, Professor Bremer previously served as an associate in the telecommunications and appellate litigation group at Wiley Rein LLP in Washington, DC and as a law clerk for Hon. Andrew J. Kleinfeld on the U.S. Court of Appeals for the Ninth Circuit. During law school, she was the Executive Notes Editor for the NYU Journal of Law & Liberty and a student editor for the International Journal of Constitutional Law.

Experience

Assistant Professor of Law, University of Wyoming
College of Law

Education

2006, J.D., New York University School of Law
2003, B.A., New York University, Honors Politics

EXHIBIT 7

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR TESTING
AND MATERIALS d/b/a ASTM
INTERNATIONAL; NATIONAL FIRE
PROTECTION ASSOCIATION, INC., ;
and AMERICAN SOCIETY OF HEATING,
REFRIGERATING, AND AIR-CONDITIONING
ENGINEERS, INC.

Plaintiffs, CIVIL ACTION FILE
vs. NO. 1:13-CV-01215-EGS
PUBLIC.RESOURCE.ORG, INC.,
Defendant.

30(b)(6) VIDEOTAPED DEPOSITION OF
STEVEN COMSTOCK
March 5, 2015
10:20 a.m.
1075 Peachtree Street
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Atlanta, Georgia 30309
Lee Ann Barnes, CCR-1852, RPR, CRR

PAGES 1 - 199

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APPEARANCES OF COUNSEL (Continued)

On behalf of the Defendant Public.Resource.Org:

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Also Present:
Carl Malamud (via telephone)
Spencer Bush, Videographer

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INDEX OF EXAMINATION

WITNESS: STEVEN COMSTOCK

EXAMINATION

PAGE

By Mr. Bridges

8

1 A. Yeah, about 12 years ago I had one taken.

2 Q. Is that the only deposition?

3 A. That's the only one.

4 Q. What kind of case did that involve?

5 A. That was a personnel matter for our
6 organization.

7 Q. Did you testify at trial?

8 A. No, I did not.

9 Q. Did you have a chance to meet with
10 Mr. Lewis or other counsel before this deposition to
11 prepare for the deposition?

12 A. Yes, I did.

13 Q. I'll ask you to look at Exhibit 1076 --
14 (Defendant's Exhibit 1076 was marked for
15 identification.)

16 Q. (By Mr. Bridges) -- which is Defendant's
17 Notice of 30(b)(6) deposition of ASHRAE. Please take
18 a look at it, Mr. Comstock.

19 Do you understand that you are here today
20 testifying as a representative of ASHRAE on Topics 4,
21 5, 7, 8, 9, 10, 12, 13, 14, 18, 23, 24, 30, and 31?

22 A. Yes, that's my understanding.

23 Q. When did ASHRAE start providing a reading
24 room for public access to ASHRAE's standards?

25 A. We made selected standards available for

1 read-only access, and I believe that was about 15
2 years ago. I don't have the exact date. It was in
3 that -- that range of time.

4 Q. How did ASHRAE select what standards to
5 make available?

6 A. These are our -- our most popular
7 standards, the ones for which there was the greatest
8 demand.

9 Q. How many standards -- strike that.
10 How many current standards does ASHRAE
11 publish?

12 A. I don't have the exact number. My
13 recollection would be in the neighborhood of -- of
14 75.

15 Q. How many of those standards are on ASHRAE's
16 reading room available to the public now?

17 A. At the current time, I believe there are 10
18 of those standards available.

19 Q. Does ASHRAE also make available through its
20 reading room earlier versions of those 10 standards?

21 A. We provide -- we provide the current
22 versions of those standards.

23 Q. But not the earlier versions?

24 A. I believe that's the case.

25 Q. Do you know why ASHRAE began providing

1 public access to some of its standards?

2 A. We were actually hoping to increase our
3 sales of those standards. It would be to the -- to
4 allow somebody to view those standards, but not be
5 able to download those standards or print those
6 standards. So that would drive demand for those --
7 for those standards.

8 Q. What was ASHRAE's experience in that
9 regard?

10 A. It was -- our experience was that it was
11 relatively flat. It didn't have -- seem to have much
12 of a positive impact, nor in -- in that case did it
13 seem to have a negative impact.

14 Q. Does ASHRAE have information about how many
15 persons have accessed the standards in its reading
16 room?

17 A. We did. We changed the -- the -- the
18 software platform from which they were made available
19 for viewing. We originally used -- we originally
20 used a RealRead vendor-supplied system and then we
21 went -- they went out of business, I believe, and
22 then we switched to iWrapper.

23 But I -- I know for certain when we were
24 with RealRead, we would track the views. There was
25 no registration so we wouldn't know who those people

1 So I -- I would -- I would assume that
2 the -- the largest -- the most substantial revenue
3 stream that they provide to us in royalty comes from
4 network licenses.

5 Q. And how much would you estimate that to be
6 on an annual basis?

7 A. Do you mean the -- the -- the total revenue
8 or the part from -- or the part from network
9 licenses?

10 Q. Let's say the total revenue from
11 value-added resellers to begin with and then
12 understanding whether you can break out network --

13 A. Yeah.

14 Q. -- licenses.

15 A. Our -- our total royalty revenue would be
16 roughly 1.2 million to 1.4 million.

17 Q. And when you identify your total royalty
18 revenue, that revenue number is separate from the
19 revenue number you gave me earlier about publications
20 revenue; is that correct?

21 A. Yes, that's correct.

22 Q. So to understand the total -- I hate to use
23 the word, but monetization value of publications, one
24 would have to add in the publications revenue and the
25 royalty revenue; correct?

1 A. That is correct.

2 Q. What other components would be missing if I
3 had just the publication revenue and the royalty
4 revenue?

5 A. Now, we are speaking just -- of just
6 publications?

7 Q. Right, and really specifically standards.

8 A. Standards. Just running through our
9 financial statements in my mind. That -- that's it.
10 Again, there's educational components that
11 we may use standards in which -- but there's no --
12 but sometimes like we include a standard in a
13 registration fee for a conference, so there's no
14 direct revenue from that standard.

15 But if you added together the royalty sales
16 and you added together our direct sales of
17 publications, that would represent our -- our total
18 publication revenue.

19 Q. Do you have an estimate as to what
20 percentage of that total revenue is attributable, in
21 your mind -- or in ASHRAE's mind, to all versions of
22 90.1?

23 MR. LEWIS: Objection.

24 THE WITNESS: So what percentage of our
25 total publications revenue, if that total

1 revenue is both what we sell and the royalties,
2 what's the component of that that is
3 attributable to --

4 Q. (By Mr. Bridges) 90.1 --

5 A. -- 90.1?

6 Q. -- all versions.

7 A. Yeah. And let me just go through some math
8 as I'm -- as I'm speaking.

9 And this would not be any of the kind of
10 indirect educational or, you know, credibility and
11 other -- other ways that that may impact us.

12 Q. Right.

13 A. Yes, just give me -- okay. Now let me just
14 run through those numbers now.

15 Well, when it gets to the royal- -- the
16 problem is for the royalty part I'm really making
17 guesses, because it's -- because I don't have -- you
18 know, it -- it -- I -- I don't have those numbers,
19 you know, broken down as such.

20 Q. I'll just ask you for your best estimate.

21 A. Best estimate.

22 MR. LEWIS: Objection.

23 THE WITNESS: So the best estimate, if the
24 total was \$450,000 --

25 Q. (By Mr. Bridges) Out of the total.

1 A. Out of the total as an estimate, just
2 conjecturing.

3 Q. Is -- excuse me, I may have -- I don't
4 think I asked the exact same question. I may have
5 asked a similar question earlier. Forgive me if I
6 repeat myself because I'm working on one hour of
7 sleep.

8 Is 90.1 ASHRAE's -- I think -- strike that.
9 I think you said it was ASHRAE's most
10 popular standard; is that correct?

11 A. (Witness nodded head affirmatively.)

12 MR. LEWIS: Objection.

13 Q. (By Mr. Bridges) What would you consider
14 the second most popular standard to be?

15 A. Second I would consider Standard 62.1,
16 which is ventilation requirements for buildings.

17 Q. What would round out the rest of the top
18 five, in your view?

19 A. Top five. Standard 55, which is a thermal
20 comfort standard; Standards 15 and 34, which relate
21 to refrigerant use and -- in air-conditioning and
22 refrigeration systems.

23 Q. I think, based on the number of years
24 you've been at ASHRAE, is it correct that you started
25 at ASHRAE before ASHRAE first published 90.1?

1 context. You nodded, but the court reporter can't
2 take nods down.

3 Do you understand, broadly speaking,
4 monetization of publications through revenue sources
5 like purchasing and licensing and the like?

6 A. Yes.

7 Q. And royalties?

8 A. Yes.

9 Q. What proportion of ASHRAE's yearly revenues
10 comes from the monetization of its standards as
11 publications?

12 A. I'm making sure I'm doing the math right.

13 Q. That's fair. That's fair.

14 A. Let's see. It would be -- directly
15 attributable to standards would be approximately
16 10 percent.

17 Q. How else does ASHRAE earn revenue, other
18 than through the monetization of its standards?

19 A. Membership dues, conference registrations,
20 advertising, subscription sales, educational course
21 registrations, certification, exposition income.

22 And when you said "publications," if -- so
23 in addition to publications, we have books. So
24 books, if -- if -- if -- if that's -- if you
25 distinguish between standards in your questions, then

1 there would be books. And I believe that -- that --
2 that covers it.

3 Q. Roughly what percentage of ASHRAE's
4 expenses pertain to the organization and supervision
5 of the standards development process and the costs of
6 publication and the costs of administering the
7 permissions and distributions and the like?

8 MR. LEWIS: Objection.

9 THE WITNESS: I can speak to the side of
10 that process that deals with the -- the -- the
11 publications part. I do not know what the --
12 the costs would be to support the development of
13 the product. My role begins when we push that
14 standard out to the -- to -- to the marketplace.

15 What would be -- I -- I'd probably say
16 there are staff salaries that would be
17 attributable to standards activities from the
18 publication side of things, production, so on.
19 If you add portions of people's time together,
20 we're probably speaking of four people from the
21 publications side.

22 And then the -- the cost of the
23 infrastructure for the book- -- for the
24 bookstore, the on-line process, and warehousing,
25 and finally the -- the -- the work that may be

1 what a subvention is of a publication?

2 A. I do not.

3 Q. Has ASHRAE ever received any grants to
4 support the publication of any particular standards?

5 A. I have no knowledge of ASHRAE receiving
6 funds for that.

7 Q. Is ASHRAE aware of any monetary losses that
8 it has suffered as a consequence of the defendant's
9 conduct in this case?

10 A. I can't speak to any -- any tracking of --
11 of losses. And anecdotally, people say if -- they've
12 asked me if a standard is available on the Internet,
13 is that -- is that allowed, is that permissible, so
14 we -- in those cases, we will seek to remove them.

15 But we don't -- we -- I don't have any
16 record of tracking such loss of -- of revenue.

17 Q. Apart from tracking it, does ASHRAE have
18 any information regarding monetary losses it has
19 suffered as a consequence of defendant's conduct?

20 A. I -- I do recall there was one message we
21 got from somebody who refer- -- I think it was
22 somebody with Carrier Corporation, if I recall, who
23 referred to -- who referred to that. I don't know if
24 they had intended to purchase or not, but that was
25 one specific case I do recall.

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

 AMERICAN SOCIETY FOR TESTING AND) Case No.
 MATERIALS d/b/a ASTM INTERNATIONAL;) 1:13-cv-01215-EGS
 NATIONAL FIRE PROTECTION)
 ASSOCIATION, INC.; and)
 AMERICAN SOCIETY OF HEATING,)
 REFRIGERATING, AND)
 AIR-CONDITIONING ENGINEERS, INC.,)
 Plaintiffs,)
 vs.)
 PUBLIC.RESOURCE.ORG, INC.,)
 Defendant.)
 -----)
 AND RELATED COUNTERCLAIMS.)
 -----)

RULE 30(B)(6) VIDEOTAPED DEPOSITION OF AMERICAN
SOCIETY OF HEATING, REFRIGERATING, AND AIR-CONDITIONING
ENGINEERS, INC.

BY AND THROUGH ITS DESIGNEE,

STEPHANIE REINICHE

MONDAY, MARCH 30, 2015
9:10 a.m.

VERITEXT LEGAL SOLUTIONS
1075 PEACHTREE STREET
SUITE 3625
ATLANTA, GEORGIA

Reported By:
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20
21 --oOo--
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1 A I moved from Michigan to Georgia. 09:21
2 **Q And what was your first job that you took** 09:29
3 **once you moved to Georgia?** 09:23
4 A ASHRAE. 09:25
5 **Q Okay. Did you move to Georgia to work at** 09:26
6 **ASHRAE?** 09:28
7 A No. 09:29
8 **Q Okay. And when was it that you started** 09:29
9 **working at ASHRAE?** 09:21
10 A November 2003. 09:23
11 **Q Okay. How was it that you came to start** 09:23
12 **working at ASHRAE?** 09:24
13 A I applied online. I -- I saw a job posting, 09:27
14 at that time it was for a procedures administrator, and 09:21
15 I submitted a résumé. 09:23
16 **Q Had you ever heard of ASHRAE before that** 09:21
17 **point?** 09:23
18 A No. 09:23
19 **Q Were you familiar with the air-conditioning,** 09:24
20 **heating and cooling industry prior to that point?** 09:26
21 A No. 09:21
22 **Q What was it that made you qualified for the** 09:22
23 **job at ASHRAE?** 09:26
24 A I suppose because it was -- at that time, it 09:20
25 was about procedures and process, and so just legal 09:23

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1 background and ability to -- to write and things like 09:27
2 that. 09:29
3 **Q And what -- how long were you a procedures** 09:24
4 **administrator at ASHRAE for?** 09:20
5 A I want to say until December 2004. 09:27
6 **Q And were you promoted at that time?** 09:24
7 A Yes. 09:25
8 **Q And what was -- what position were you** 09:26
9 **promoted to?** 09:29
10 A Standards administrator. 09:20
11 **Q And how long did you hold the title of** 09:26
12 **standards administrator for?** 09:22
13 A I think it was about three years. 09:24
14 **Q And were you promoted after three years?** 09:21
15 A Yes. 09:23
16 **Q And what title were you promoted to?** 09:24
17 A Assistant manager of standards 09:27
18 administration. 09:28
19 **Q And how long did you hold that position for?** 09:27
20 A A year or two. 09:20
21 **Q And were you promoted again after that point?** 09:26
22 A Yes. 09:29
23 **Q And what title were you promoted to?** 09:20
24 A Manager of standards. 09:22
25 **Q And how long did you hold that position for?** 09:29

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1 A That title, till 2014. 09:21
2 **Q And so were you promoted once again in 2014?** 09:27
3 A Yes. 09:20
4 **Q And what is the title that you were promoted** 09:21
5 **to?** 09:23
6 A Senior manager of standards. 09:24
7 **Q And is that the title that you hold today?** 09:21
8 A Yes. 09:24
9 **Q Okay. And do you have any other roles at** 09:24
10 **ASHRAE, other than senior manager of standards?** 09:24
11 A No. 09:29
12 **Q Have you served on any of the committees in** 09:29
13 **ASHRAE?** 09:21
14 A No. 09:23
15 **Q Have you -- what involvement in the design of** 09:24
16 **standards have you played?** 09:21
17 A I oversee the development of all the 09:23
18 standards at ASHRAE. 09:26
19 **Q And what does that involve?** 09:26
20 A It involves a lot of things. It involves 09:27
21 reviewing all the documentation for membership, 09:22
22 overseeing the documentation for public reviews, could 09:27
23 be change proposals, could be minutes, the publication 09:24
24 drafts, editing and reviewing those, working with the 09:20
25 appeals. 09:27

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1 **Q And when you say you oversee the** 09:25
2 **documentation for membership and for public reviews and** 09:29
3 **change proposals and publication drafts, what does that** 09:23
4 **entail?** 09:26
5 A It can entail -- well, making sure that the 09:28
6 document for membership, that the documentation is all 09:22
7 complete, meaning every -- all the, you know, parts are 09:25
8 filled out, everything is properly signed. And it 09:29
9 could involve talking with the chairs of project 09:23
10 committees to help them make sure their committee is 09:29
11 balanced. 09:24
12 **Q What do you mean by making sure the project** 09:27
13 **committees are balanced?** 09:20
14 A Under our ANSI rules, our committees have to 09:22
15 be balanced, meaning for nonsafety standards, no more 09:25
16 than 50 percent of the people can be in any one 09:29
17 interest category; and for safety standards, no more 09:23
18 than one-third in each interest category. 09:26
19 **Q And what is an interest category?** 09:22
20 A It's -- it describes the -- the role a person 09:25
21 plays typically in their job or their duties that 09:22
22 they're doing, and that shows their bias for that 09:25
23 particular standard that's being developed. 09:20
24 **Q Could you list for me the interest** 09:27
25 **categories?** 09:29

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1 A For which standard? 09:21
2 **Q So the interest categories are different for 09:23**
3 **particular standards? 09:25**
4 A They can be, yes. 09:26
5 **Q Okay. Do you know the -- off the top of your 09:27**
6 **head the interest categories for the 90.1 standards? 09:20**
7 A I can list some of them, but I would have to 09:26
8 look at a roster to verify they're all correct. 09:28
9 **Q Okay. 09:22**
10 A There's compliance, industry, utility, 09:22
11 general, and I think user. 09:21
12 **Q And what does -- what are the -- those 09:27**
13 **categories? Excuse me, let me rephrase. 09:25**
14 **What -- what kind of a person would a -- 09:29**
15 **would fall into the compliance category? 09:22**
16 A I would need to look at the application that 09:26
17 shows the definition to give you an exact person, the 09:28
18 exact definition; but for example, somebody that's 09:22
19 involved in codes would be a compliance person. 09:26
20 **Q When you say someone who's involved in codes, 09:20**
21 **like what -- what kind of role do you mean by that? 09:24**
22 A A code official. 09:27
23 **Q A code -- 09:29**
24 A A building code person; that type of person. 09:20
25 **Q Would that be something like a regulator? 09:23**
Page 22

1 A Could be. 09:26
2 **Q Okay. So that would -- that would encompass 09:27**
3 **somebody in a government position, then, would be under 09:21**
4 **compliance? 09:27**
5 MR. CUNNINGHAM: Object to form. 09:28
6 THE WITNESS: I would have to look at 09:29
7 the roster to see how a government employee 09:20
8 would be listed. It depends on where they 09:22
9 work, what they do. Without looking at an 09:26
10 individual, I can't tell you for sure that 09:20
11 they would go under compliance. 09:21
12 **Q (BY MR. BECKER) Okay. What other categories 09:24**
13 **could a government official go under, other than 09:25**
14 **compliance? 09:28**
15 A Depending on the -- it depends on what the 09:29
16 definition is. I really probably should look at the 09:21
17 definitions to tell you for sure. 09:24
18 **Q And where would the definitions be found? 09:25**
19 A The definitions would be as part of the 09:28
20 application. 09:20
21 **Q The membership application? 09:21**
22 A Yes, sir. 09:22
23 **Q You also said that one of your jobs is to 09:21**
24 **make sure that documentation is complete. What does 09:24**
25 **that involve? 09:27**
Page 23

1 A For which part of the process? After 09:29
2 membership? 09:22
3 **Q Let's talk about membership applications. 09:23**
4 A So for membership applications, there is an 09:27
5 application form that would list the -- you know, what 09:20
6 project committee they're applying for, their name, 09:24
7 what interest category they believe they should be 09:27
8 categorized. And then they would have -- then there is 09:33
9 a signature at the bottom and their voting status, what 09:35
10 they would like to be on that committee. 09:39
11 There's a bias/conflict of interest form, 09:32
12 which gives background on where they've worked for the 09:36
13 last five years, other organizations that they've been 09:30
14 involved with, who pays their way to participate, and 09:34
15 any public statements they would have made in regards 09:38
16 to the particular standard they're applying for, and 09:31
17 that, too, is signed. 09:34
18 And then there's a biographical record that 09:36
19 is done through the ASHRAE website which gives their 09:38
20 background, like where they -- you know, their degrees 09:33
21 and things like that, whether -- other committees 09:38
22 they've been involved in within ASHRAE, awards; things 09:31
23 like that. 09:36
24 **Q Are you the person who makes sure that all of 09:36**
25 **these fields are filled out? 09:39**
Page 24

1 A I have a staff person that does that, but 09:31
2 then they are reviewed by another committee. And when 09:32
3 there's a question, then I'm the one that helps work 09:35
4 with that. 09:39
5 **Q And what is the name of the staff person who 09:30**
6 **checks these forms? 09:32**
7 A It's varied over the years. 09:35
8 **Q What is the name of the person today? 09:37**
9 A Katrina Shingles. 09:30
10 **Q And is there -- does Katrina Shingles have a 09:36**
11 **specific position? 09:31**
12 A She's a secretary. 09:32
13 **Q Is there a specific position for the person 09:38**
14 **who has always checked the -- the forms? 09:32**
15 A It's been a secretary or an administrative 09:37
16 assistant. 09:30
17 **Q And you said there's also a committee that 09:37**
18 **looks over that? 09:39**
19 A Yes. There's a staff liaison, and then there 09:30
20 is -- in addition to that, and then there is -- 09:34
21 depending -- the process has changed slightly. There 09:37
22 could be up to two oversight committees. 09:30
23 **Q And you said that the process has changed. 09:33**
24 **When did the process change? 09:37**
25 A This year. 09:30
Page 25

1 **Q And what's special about it being referenced 09:43**
2 **in federal law? 09:47**
3 A It is -- let's see if I get this right -- 09:48
4 it's referenced in the EAct, so it's the minimum 09:40
5 energy code for commercial buildings. 09:45
6 **Q I'm sorry, could you spell that, EAct? 09:48**
7 A E-P-A-C-T. It's the Energy Policy Act. 09:43
8 **Q And what does the Energy Policy Act do? 09:47**
9 A That's the federal law for -- it's the 09:41
10 minimum efficiency for commercial codes as it relates 09:46
11 to 90.1. So 90.1 is the minimum. That's the code in 09:40
12 EAct. 09:47
13 **Q The -- I'm sorry, the minimum for what? 09:48**
14 A Commercial buildings. 09:40
15 **Q Is that the minimum level of energy 09:42**
16 **efficiency? 09:44**
17 A Yes. 09:45
18 **Q So if I understand you correctly, ASHRAE 09:40**
19 **Standard 90.1 is referenced in the EAct as the minimum 09:44**
20 **standard for energy efficiency for commercial 09:44**
21 **buildings? 09:47**
22 A Correct. 09:48
23 **Q So who is it who has to follow the EAct? 09:44**
24 MR. CUNNINGHAM: Object to form. 09:40
25 THE WITNESS: To the best of my 09:44
Page 30

1 knowledge, it's the -- the requirement is all 09:45
2 states are supposed to become compliant with 09:48
3 it or deem to comply by another method every 09:43
4 so many years to the latest version of 09:49
5 90.1. 09:41
6 **Q (BY MR. BECKER) When you say that all states 09:45**
7 **must become compliant, does that mean that the states 09:47**
8 **have to adopt this into their regulations or does it 09:40**
9 **mean that these states have to build their buildings to 09:45**
10 **comply with the EAct? 09:49**
11 MR. CUNNINGHAM: Object to form. 09:41
12 THE WITNESS: It means they're supposed 09:43
13 to adopt a code that is equivalent to the 09:45
14 current version of 90.1 within two -- I 09:48
15 believe it's within two years of each year, 09:41
16 or there is some other rules that they have 09:45
17 to follow if they don't deem to comply. 09:48
18 It does not have to be 90.1. It could 09:42
19 be another version of a different code. 09:44
20 So... 09:47
21 **Q (BY MR. BECKER) What other codes would -- 09:45**
22 **would suffice to -- to satisfy the EAct? 09:40**
23 MR. CUNNINGHAM: Object to form. 09:44
24 THE WITNESS: The IECC. 09:47
25 **Q (BY MR. BECKER) What is the IECC? 09:40**
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1 A International Energy -- I'm not positive. I 09:44
2 just speak in acronyms, so I can't remember. I have to 09:49
3 look it up, to be honest. But it's through 09:42
4 International Code Council. It's their energy 09:47
5 efficiency code. 09:42
6 **Q The International Code Council, are they 09:46**
7 **known as ICC? 09:48**
8 A Yes. 09:40
9 **Q What's the -- is there any relationship of 09:44**
10 **the IECC to ASHRAE's Standard 90.1? 09:47**
11 A 90.1 is a compliance option to the IECC. 09:43
12 **Q What does that mean? 09:42**
13 A It means you can choose -- if you adopt that 09:44
14 as your code and you adopt it in its entirety and 09:49
15 then -- and 90.1 is a reference as a compliance option 09:43
16 at the -- whatever level you're -- design your code -- 09:49
17 wherever that code is adopted, if they -- if the 09:43
18 builder wants to build according to what's in 90.1, 09:46
19 they have that option or they can build according to 09:49
20 the IECC, and then that's their choice. 09:42
21 **Q Does the IECC say within it that someone can 09:41**
22 **comply with ASHRAE Standard 90.1 and that would be 09:47**
23 **sufficient? 09:40**
24 MR. CUNNINGHAM: Object to form. 09:41
25 THE WITNESS: It -- there is a reference 09:43
Page 32

1 as -- yeah, as a compliance option to the 09:44
2 IECC, yes. 09:49
3 **Q (BY MR. BECKER) So compliance option, then, 09:40**
4 **means an alternative? 09:42**
5 A Correct. 09:44
6 **Q And is -- does that mean that ASHRAE's 09:45**
7 **Standard 90.1 is more rigorous than the IECC? 09:40**
8 MR. CUNNINGHAM: Object to form. 09:41
9 THE WITNESS: I would have to review. 09:41
10 It depends on what version. Off the top of 09:42
11 my head, I -- I don't know. 09:44
12 **Q (BY MR. BECKER) Taking a step back, 09:40**
13 **Ms. Reiniche, who do you report to at ASHRAE? 09:41**
14 A Claire Ramspeck. 09:44
15 **Q And what is Ms. Ramspeck's position? 09:48**
16 A Director of technology. 09:43
17 **Q And do you report to anybody else? 09:48**
18 A I suppose you could say Jeff Littleton. 09:44
19 **Q And what is Mr. Littleton's position? 09:47**
20 A Executive vice president. 09:40
21 **Q And is there anybody else that you report to? 09:40**
22 A No. 09:42
23 **Q And is there anyone who reports to you? 09:43**
24 A Yes. 09:46
25 **Q And who are those people? 09:47**
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1 A Mark -- Mark Weber, Carmen Manning, Nicole 09:41
2 Jones, Angela McFarlin, Katrina Shingles, Steve 09:40
3 Ferguson, Beverly Fulks, Tanishe Meyers-Lisle, Susan 09:43
4 LeBlanc, and Bert Etheridge. 09:41
5 **Q And what is Mr. Weber's position? 09:42**
6 A He is the manager of standards American. 09:46
7 **Q Does that mean he's in charge of the American 09:41**
8 **ASHRAE standards? 09:44**
9 A Yes, but there's some that are assigned to 09:46
10 other people; but the majority of them, yes. 09:48
11 **Q And why would some of them be assigned to 09:41**
12 **other people? 09:43**
13 A We provide staff support for some of the 09:44
14 standards, and we divide them up because of the 09:47
15 schedule that one person can provide higher levels of 09:40
16 support. 09:44
17 **Q So does Mark Weber provide staff support to 09:45**
18 **range of standards, with the exception of some other 09:43**
19 **group of standards? 09:46**
20 A He does -- he's the main point of contact for 09:47
21 the majority of the standards. There's some that he is 09:42
22 specifically the staff liaison to, and then there's 09:47
23 several others that are assigned to other managers in 09:40
24 the department. 09:43
25 **Q Okay. And why is it that there are others 09:44**
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1 **that are assigned to other managers in the department? 09:47**
2 A We just -- we just split them up because 09:41
3 of staff loads. One person can't support them based on 09:44
4 their meeting schedules; one person can't do all of 09:40
5 them. Some of them, it's based on their prior 09:43
6 expertise. 09:47
7 **Q And do you know what standards they are that 09:49**
8 **are not assigned to Mark Weber that are American 09:41**
9 **standards? 09:45**
10 A Yes. 09:45
11 **Q And which standards are those? 09:46**
12 A 90.1, 90.2, 90.4, 189.1, 15, 34. 09:49
13 **Q And who is Standard 90.1 assigned to? 09:53**
14 A Steve Ferguson. 09:59
15 **Q And you say that Steve Ferguson reports to 09:50**
16 **you as well? 09:53**
17 A Yes. 09:54
18 **Q And what is Steve Ferguson's position? 09:55**
19 A Manager of standards for codes. 09:58
20 **Q And he's also the staff liaison for 90.1, you 09:56**
21 **were saying? 09:51**
22 A Yes. 09:51
23 **Q Okay. What does Mr. Ferguson do as staff 09:54**
24 **liaison for 90.1? 09:57**
25 A A lot of things. He'll -- he does -- he'll 09:59
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1 do a double review of the membership items reviewed by 09:53
2 Katrina, works with the project committee chair to help 09:58
3 come up with a balance committee, looking at terms, you 09:54
4 know, helping making sure they, you know, get -- rotate 09:59
5 people in and out per our rules. He attends all the 09:52
6 full project committee meetings, some of the 09:59
7 subcommittee meetings. 09:52
8 He processes the letter ballots for approval 09:55
9 of all drafts. He reviews the drafts to make sure 09:57
10 they're written consistently. He points out conflicts 09:52
11 when they make one change to a section and then they 09:56
12 haven't made a similar change to another section so 09:58
13 there's not conflicts. 09:53
14 He reviews all of the public -- final 09:55
15 publication drafts in the final roll-ups of the 90.1 09:58
16 for each new version every three years. He does the 09:53
17 minutes. 09:57
18 **Q Are you aware of any other work that 09:53**
19 **Mr. Ferguson does as the staff liaison for 90.1? 09:55**
20 A That's -- that's pretty much the general 09:51
21 stuff that I can think of. He has other duties besides 09:54
22 90.1. 09:57
23 **Q Does Mr. Ferguson draft any of the text for 09:58**
24 **90.1? 09:53**
25 A He reviews the drafts and points out 09:54
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1 conflicts. 09:57
2 **Q But he doesn't contribute text directly to 09:57**
3 **90.1? 09:51**
4 A No. He may comment when they're discussing 09:52
5 proposed text changes to make them aware of something, 09:56
6 but he does not necessarily, unless they wrote 09:50
7 something in the incorrect format. 09:53
8 **Q And what would he do if they had written 09:56**
9 **something in an incorrect format? 09:58**
10 A He would edit it, send it back. If it's a 09:50
11 substantive change to fix it, then it would have to go 09:53
12 back to the committee for a new vote. If it's 09:56
13 editorial, then the chair or a subcommittee -- or in 09:59
14 consultation with a subcommittee chair can say that's 09:54
15 correct and -- and then move it forward in whatever 09:58
16 step in the process it's in. 09:50
17 **Q When you say he edits it and sends it back, 09:51**
18 **does that mean that he actually changes the text, or 09:54**
19 **does this mean that he sends a comment that there is a 09:56**
20 **conflict or something like that and leaves it to the 09:50**
21 **committee to make the change? 09:52**
22 A If it's -- it depends. If it's a conflict 09:54
23 and he understands -- he has an engineering degree, so 09:57
24 if he understands how to change it, he can propose a -- 09:51
25 he may propose the wording change. If it's not 09:55
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1 something he understands and it's a conflict, then 09:50
2 he'll comment and ask the committee for direction. 09:53
3 **Q And is there any record of the wording 09:53**
4 **changes that Mr. Ferguson has proposed? 09:56**
5 A There's probably -- if he sent something 09:52
6 back, it -- to the committee, it would have been sent 09:54
7 via email. 09:58
8 **Q If you wanted to go back and find any 09:51**
9 **proposed changes that Mr. Ferguson had made, how would 09:57**
10 **you go about doing that? 09:51**
11 A I'd have to look in his email. He wouldn't 09:52
12 have proposed them in the minutes. That's not 09:55
13 something recorded in the minutes, so he would have 09:57
14 sent it via email. 09:59
15 **Q And how would that -- would that change be 09:52**
16 **reflected in the minutes in -- in any way? 09:54**
17 A Not -- not unless it was -- if he sent a 09:58
18 change back, this assumes that the committee has 09:54
19 already approved the proposed change. And if there was 09:57
20 an issue and he sent it back, then if -- if a change 09:59
21 had to be made that was substantive, there would be 09:54
22 another -- there would be a letter ballot. So then it 09:57
23 would be reflected in a letter ballot. If it's 09:51
24 editorial, the chair would accept it. 09:54
25 **Q Who makes the determination for a substantive 09:59**

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1 **change versus an editorial change? 09:53**
2 A If staff -- the difference between a 09:57
3 substantive and an editorial change is a substantive 09:50
4 change changes the requirements of the standard. So 09:53
5 changing a "should" to a "shall" would be a substantive 09:58
6 change. 09:51
7 If it's editorial, like, you know, changing 09:52
8 an "a" to a "the" or something like that, it's clear 09:54
9 that's an editorial. 09:59
10 If staff questions acceptance of a change as 09:51
11 substantive and the committee does not want to send a 09:54
12 new letter ballot out, when it goes to the next body, 09:57
13 we make the next body aware for approval, which would 09:50
14 be SPLS for public reviews or standards for publication 09:54
15 approval. We make them aware of it -- that concern, 09:50
16 and then SPLS looks at it and makes a determination of 09:53
17 whether or not it's substantive or editorial. And then 09:50
18 if it's substantive and they didn't vote it out, it 09:52
19 goes back to the project committee. 09:54
20 **Q Could you tell me again what the acronym SPLS 09:55**
21 **stands for? 09:59**
22 A Standards Project Liaison Subcommittee. 09:50
23 **Q And is there a separate SPLS for each 09:54**
24 **standard? 09:59**
25 A No. 09:59

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1 **Q There's -- is there a single SPLS for ASHRAE? 09:50**
2 A There is a single SPLS for ASHRAE. They 09:53
3 review all the standards. 09:58
4 **Q And who is -- who composes SPLS? 09:50**
5 A That is a subcommittee of standards committee 09:54
6 of approximately -- I think it's 15 members. 09:58
7 **Q And are they elected or are they appointed? 09:55**
8 A The standards committee members are elected 09:50
9 by the board of directors, and then the subcommittee 09:55
10 assignments are done by the incoming chair and vice 09:50
11 chair, along with myself every year. So it just 09:53
12 depends. It's a rotating four-year term. 09:50
13 **Q So when you say that the assignments are done 09:51**
14 **by the incoming chair and a vice chair along with 09:56**
15 **yourself every year and that it's a rotating four-year 09:51**
16 **term, the -- are you saying that these appointments are 09:53**
17 **made for a subset of the 15 people every -- every year? 09:50**
18 A No. It's -- standards committee has 26 09:54
19 members, and then there's multiple subcommittees. 09:57
20 Standards committee, about one-third rolls off every 09:51
21 four years. So we don't have a new standards committee 09:53
22 every four years. So there's some consistency. So 09:57
23 there might be just a couple people that were on SPLS 09:50
24 one year that will roll off, and so we're adding some 09:55
25 new or moving some others into SPLS. 09:59

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1 **Q What are some of the other subcommittees for 09:55**
2 **a standards -- standards committee? 09:51**
3 A Then there's the standards reaffirmation 09:53
4 subcommittee. There's the code interaction 09:51
5 subcommittee. There's the policy, procedures, and 09:53
6 interpretation subcommittee -- I'm doing acronyms in my 09:58
7 head -- and an international liaison subcommittee 10:07
8 and -- /intersociety association subcommittee. And 10:03
9 then there's a -- there's an ExCom. 10:09
10 **Q I'm sorry, there's -- 10:04**
11 A ExCom. 10:06
12 **Q What is ExCom? 10:08**
13 A Executive committee. 10:00
14 **Q Returning to SPLS, what is their role? 10:00**
15 A SPLS is the oversight committee. They're the 10:06
16 first level to go to -- they have -- they're assigned 10:00
17 to -- liaisons are assigned to multiple project 10:04
18 committees to help in addition to staff provide 10:09
19 guidance, and they're the -- the person that moves 10:01
20 forward any of the issues from those project 10:05
21 committees. 10:07
22 They review title, purpose and scope changes, 10:09
23 membership, public review drafts, work plans, and deal 10:04
24 with issues common to project committees that get 10:09
25 brought before them. 10:03

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1 Now, Ms. Reiniche, I'm handing you what's 13:05
2 been marked as Exhibit 1155. It's Bates number 13:09
3 ASHRAE0001598. So, Ms. Reiniche, my sincere apologies. 13:07
4 I had missed this one last document that pertains to 13:04
5 the subject that we were discussing prior to lunch. 13:08
6 Can you tell me if you recognize this 13:02
7 document? 13:04
8 A Yes. 13:04
9 Q And can you tell me what this document is? 13:05
10 A This is an Application for Membership on 13:09
11 ASHRAE Standard or Guideline Project Committee. 13:01
12 Q And can you tell me if this document contains 13:03
13 a copyright assignment? 13:06
14 A Yes, under number 7. 13:08
15 Q Okay. And could you tell me if after seeing 13:09
16 this document if that changes any of your answers 13:01
17 earlier today? 13:05
18 A No, it does not. 13:05
19 Q Thank you. 13:07
20 Ms. Reiniche, could you walk me through at a 13:07
21 high level how ASHRAE standard -- standards are 13:00
22 created? 13:03
23 A Sure. So it starts with a title, purpose and 13:03
24 scope being submitted for consideration to be approved. 13:08
25 That would have been approved by the procedures, policy 13:03

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1 interpretation subcommittee, then forwarded to the 13:07
2 standards committee for approval. Depending on what 13:02
3 year, it would have had to go to tech council, but 13:06
4 always ends up at our board of directors to approve the 13:00
5 title, purpose and scope for a new standard project 13:03
6 committee or guideline. 13:07
7 Then after that, you would do a call for 13:09
8 members, people would submit the membership 13:02
9 applications, and then the committee chair would 13:05
10 recommend to the standards project liaison subcommittee 13:08
11 and standards committee their membership. 13:01
12 And then the committee would -- would begin 13:06
13 working on drafting the document. Then they would 13:00
14 approve it for public review. And then depending on 13:04
15 what type of committee, would dictate how much more 13:08
16 oversight. So standards project liaison subcommittee 13:03
17 or the SPLS liaison would -- would say it's okay to go 13:06
18 out for public review. It goes out for comment. 13:01
19 The committee reviews all the comments, 13:05
20 responds to all the commenters. And then the 13:07
21 commenters have to indicate their resolution status. 13:00
22 And then the committee needs to decide whether or not 13:03
23 changes need to be made to the standard -- to the 13:06
24 document based on the comments received, or if not -- 13:09
25 if not, it goes for -- they'll approve it for 13:02

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1 publication. If they need to make more changes, it 13:06
2 will go back to the public review process. 13:08
3 Q So in this process that you were describing, 13:01
4 it's the standards committee that would begin drafting 13:05
5 the document; is that correct? 13:08
6 A No. It's the project committee that drafts 13:09
7 the document. 13:01
8 Q And the process that you just described, is 13:01
9 that the process that's used for ASHRAE Standard 90.1? 13:06
10 A It would have when it was started. The 13:02
11 difference -- there's a little difference now because 13:04
12 it's on continuous maintenance. 13:06
13 Q And what -- what does that difference mean? 13:08
14 A The difference is the membership is on a 13:00
15 four-year rotating cycle, so one -- basically, roughly 13:04
16 one-third of the committee would roll off every four 13:08
17 years, so they're not -- everyone is not coming off at 13:01
18 the same time. And new members will be added, so 13:04
19 they're added continuously, typically once a year. 13:07
20 Then instead of the full draft going out, 13:02
21 their addenda are issued to go out for public review 13:07
22 and comment. They'd either come from stuff that has 13:00
23 been generated by the committee or through a continuous 13:03
24 maintenance change proposal. And then the rest of the 13:05
25 process would follow the same way. 13:07

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1 Q And the -- who drafts the title, purpose and 13:03
2 scope? 13:07
3 A The title, purpose and scope can be -- a new 13:02
4 one can be submitted by anyone. I could submit one; 13:05
5 you could submit one. The technical committee within 13:07
6 ASHRAE is usually how it's submitted. 13:01
7 Q And is the technical committee, are they 13:02
8 volunteers or are they employees of ASHRAE? 13:07
9 A Volunteers. 13:00
10 Q And the project committee as well is 13:01
11 volunteers, correct? 13:03
12 A That's correct. 13:04
13 Q How are ASHRAE employees involved in the 13:01
14 creation and maintenance of ASHRAE Standard 90.1? 13:05
15 A In the -- are you talking from now or are you 13:01
16 talking about when it was first started? 13:04
17 Q Let's -- let's go from when it first started 13:07
18 until now. 13:09
19 A So when the title, purpose and scope would 13:01
20 have been proposed, a staff member would -- would 13:03
21 review that to make sure it's in the correct format 13:05
22 and, if there is some questions, would actually send it 13:09
23 back to whoever had proposed it to make -- to correct 13:01
24 it or say if they're okay, if we met their intent, and 13:05
25 then send it forward to -- it probably when -- 19 -- 13:09

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1 90.1 was developed in, I think, 1975. They probably 13:05
 2 didn't have all the subcommittees that we have now, but 13:01
 3 would have went through the approving bodies up through 13:04
 4 the board that way. 13:07

5 **Q And would there have been a project committee 13:07**
 6 **as well for -- for the original 90.1? 13:09**

7 A Yes. 13:01

8 **Q And during that process, did staff members 13:09**
 9 **draft any of the text for 90.1? 13:15**

10 A From the beginning? 13:10

11 **Q Yeah. 13:12**

12 A Not unless they were making the edits to -- 13:13
 13 because of conformity and -- or conflicts or things 13:16
 14 like that. 13:19

15 **Q And would staff members have contributed any 13:12**
 16 **text to subsequent versions of 90.1? 13:18**

17 A In the same way, either in the discussions, 13:10
 18 if there's a conflict or stuff doesn't -- or through 13:13
 19 the editing and review of the material. 13:17

20 **Q And does ASHRAE have any record of that? 13:12**

21 A If it was done -- it would have been done via 13:17
 22 email, at the time email started. 90.1 started before 13:10
 23 the Internet, so if the -- if -- if the records still 13:15
 24 existed, it would have been in paper format. 13:10

25 **Q What is ASHRAE's purpose in creating these 13:11**
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1 **standards? 13:14**

2 A It's to -- the purpose is to advance the 13:16
 3 building sciences. We have a long mission statement, 13:12
 4 but that's essentially what it is. 13:16

5 **Q Does ASHRAE's mission statement reflect its 13:15**
 6 **purposes in -- in developing these standards? 13:18**

7 A I would say yes. 13:13

8 **Q And how does ASHRAE advance the building 13:16**
 9 **sciences? 13:19**

10 A I would -- well, I would say through the 13:12
 11 development of the -- the standards that affect, you 13:15
 12 know, the energy efficiency of buildings, indoor air 13:18
 13 quality, indoor environmental quality. I'm sure 13:12
 14 there's other things that we create, courses and books 13:15
 15 that are outside the standards development process that 13:18
 16 we do as well. 13:11

17 **Q And why is it that individuals who are not 13:10**
 18 **employees of ASHRAE participate in the standard design 13:16**
 19 **process? 13:19**

20 MR. CUNNINGHAM: Object to form. 13:13

21 THE WITNESS: I would say because for 13:14
 22 various reasons it could affect their 13:18
 23 company. Maybe they want to make the world a 13:10
 24 better place, maybe it affects the codes. It 13:13
 25 varies. It depends on the individuals. 13:16

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1 **Q (BY MR. BECKER) And by "the codes," are you 13:18**
 2 **referring to the standards that have been enacted into 13:19**
 3 **regulation? 13:14**

4 A That and -- and the international codes, the 13:14
 5 codes spelled by NFPA, IAPMO. 13:19

6 **Q Are there any other reasons why -- why 13:13**
 7 **individuals who are not employees of ASHRAE participate 13:16**
 8 **in the ASHRAE development -- standard development 13:19**
 9 **process? 13:13**

10 MR. CUNNINGHAM: Object to form. 13:14

11 THE WITNESS: I'm sure there are. I 13:15
 12 just -- that's not a question I ask when 13:16
 13 people apply for membership. 13:19

14 **Q (BY MR. BECKER) Does ASHRAE draw -- draft 13:11**
 15 **model laws or ordinances? 13:14**

16 A Where we would start with the drafting for 13:16
 17 the law, is that what you mean? 13:11

18 **Q Does ASHRAE oversee the drafting of model 13:12**
 19 **laws and ordinances? 13:16**

20 A We submit comments on things that are coming 13:18
 21 out through -- through -- through the -- through 13:10
 22 Congress or that have been posted in the Federal 13:12
 23 Register; things like that. 13:15

24 **Q And what's the purpose of submitting comments 13:16**
 25 **in -- for things that are coming out in legislation and 13:19**
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1 **regulation as you're describing? 13:11**

2 A The purpose is to -- to -- typically, you 13:14
 3 want stuff that's been done through consensus process 13:19
 4 and has the expertise, so that may be a reason. 13:13
 5 Another reason may be to make it consistent language 13:17
 6 with what's already out there in our standards or 13:10
 7 others; that type of thing. 13:14

8 **Q When you say "you want stuff that's been done 13:15**
 9 **through the consensus process," who is "you" in that 13:10**
 10 **sentence? 13:14**

11 A ASHRAE. 13:15

12 **Q ASHRAE. Okay. 13:15**
 13 **And why is it that ASHRAE wants things that 13:18**
 14 **have been done through the consensus process? 13:11**

15 A Because the -- the proper experts are 13:14
 16 participating in the development of those documents, 13:17
 17 it's -- it's been vetted in the industry, people have 13:10
 18 had a chance to comment. We've tried to reach 13:13
 19 resolution so, you know, an equal amount of people are 13:17
 20 unhappy. 13:10

21 **Q And you referred to an interest in expertise 13:14**
 22 **in the process of drafting legislation and regulation. 13:18**
 23 **Does that also reflect ASHRAE's interest in -- in 13:13**
 24 **having expertise reflected in that process? 13:17**

25 MR. CUNNINGHAM: Object to the form. 13:19

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1 standards through training programs, including 13:37
 2 self-directed learning, building code interaction and 13:30
 3 ASHRAE chapter oriented training. 13:33
 4 What is the Department of Energy's role in 13:36
 5 that? 13:38
 6 A They -- Department of Energy provides 13:39
 7 training not only ASHRAE, but other code bodies' codes, 13:33
 8 so it would be supported through software development, 13:30
 9 maybe at the DOE level, they give trainings on what's 13:35
 10 in 90.1; things like that. 13:30
 11 Q Does the Department of Energy provide funding 13:33
 12 to ASHRAE? 13:37
 13 A No. 13:37
 14 Q Does the Department of Energy provide any 13:30
 15 funds to ASHRAE? 13:34
 16 A I suppose if someone is a -- a member and the 13:38
 17 Department of Energy pays their membership fees to 13:32
 18 ASHRAE to be a member of ASHRAE, then yes, but it goes 13:34
 19 to membership. 13:37
 20 Q On the second page of Exhibit 1157, 13:36
 21 subsection 5 says, "Cooperating in promoting of 13:32
 22 ANSI/ASHRAE standards adoption in the International 13:36
 23 Standards Organization (ISO) standards." 13:39
 24 What is that referring to? 13:32
 25 A That must have been -- that would have been a 13:35
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1 new thing added. The Department of Energy hasn't done 13:37
 2 anything that I'm aware of to promote the adoption of 13:30
 3 ASHRAE -- ANSI/ASHRAE standards in ISO. 13:32
 4 Q And for section 8, where it refers to 13:38
 5 "Cooperating and promotion of ANSI/ASHRAE standards 13:30
 6 adoption in building codes," what does that refer to? 13:36
 7 A That could be supporting proposals that would 13:33
 8 have been submitted to adopt 90.1 in -- in the 13:39
 9 international code, because that's the federal minimum, 13:33
 10 and they would have provided supporting testimony, 13:37
 11 probably. 13:30
 12 Q When you say "they would have provided 13:31
 13 supporting testimony, probably," is that the Department 13:33
 14 of Energy that would provide that? 13:36
 15 A A -- a staff member from the Department of 13:37
 16 Energy. 13:30
 17 Q Okay. Are there any other ways that ASHRAE, 13:31
 18 ANSI and the Department of Energy have cooperated in 13:39
 19 promoting these standards adoption in building codes? 13:33
 20 A I'm not aware of ANSI promoting standards 13:30
 21 adoption in building codes, other than -- it's an 13:34
 22 ANSI/ASHRAE standard going through their process. They 13:39
 23 don't go to building codes. I can't think of anything 13:31
 24 else with the Department of Energy. 13:36
 25 Q Anything else with regards to just ASHRAE and 13:38
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1 the Department of Energy? 13:31
 2 A No. 13:32
 3 Q And section 10 refers to "Advancing and 13:34
 4 supporting the professional development of DOE 13:36
 5 personnel by facilitating membership, attendance, and 13:39
 6 active participation at the local and society levels of 13:33
 7 ASHRAE, especially as a member of technical committees 13:37
 8 and standard project committees, and by providing a 13:30
 9 venue for publication of research and practice." 13:33
 10 What kind of publication is this referring 13:36
 11 to? 13:37
 12 A They're talking about research publication. 13:31
 13 If the DOE does research, they're publishing it 13:34
 14 somewhere. It's not referring to standards. 13:37
 15 Q Does ASHRAE publish DOE research? 13:30
 16 A Not that I'm aware of. 13:36
 17 Q With regards to section 13, do you know what 13:32
 18 they are referring to with regards to counter-terrorism 13:38
 19 design features? 13:35
 20 A No. 13:30
 21 Q Do you know what -- under -- under section 13:34
 22 14, the DOE Energy Efficient Building Systems Regional 13:38
 23 Innovation Cluster Initiative is? 13:35
 24 A I don't think that exists anymore, but 13:30
 25 there's been a collaborative where they've worked 13:32
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1 together, and they just -- they talk about research and 13:34
 2 things like that. 13:37
 3 Q Was the Memorandum of Understanding Between 13:31
 4 the DOE and ASHRAE, Exhibit 1157, eventually signed by 13:34
 5 both ASHRAE and the Department of Energy? 13:34
 6 A I need to go back and check to see if it was 13:37
 7 signed. 13:30
 8 Q How would you characterize the relationship 13:32
 9 between the Department of Energy and ASHRAE? 13:34
 10 A I mean, they work -- we work together. 13:32
 11 That's probably on -- not all -- not all of these 13:35
 12 projects, but I mean some things. 13:30
 13 Q You mentioned that someone from the 13:30
 14 Department of Energy would testify on behalf of ASHRAE 13:33
 15 in terms of getting the Standard 90.1 adopted as a 13:38
 16 building code. How does ASHRAE benefit from having 13:38
 17 90.1 endorsed by the DOE? 13:32
 18 MR. CUNNINGHAM: Object to the 13:35
 19 characterization of prior testimony. 13:36
 20 THE WITNESS: They don't testify on 13:30
 21 behalf of ASHRAE. They testify on behalf of 13:31
 22 the Department of Energy. 13:34
 23 Q (BY MR. BECKER) Excuse me. 13:35
 24 A So the benefit is then the IECC and 90.1 can 13:36
 25 be the same. So it's a -- it's the benefit to having 13:35
 Page 113

1 a -- one code. 13:39

2 **Q And are the IECC and Standard 90.1 the same?** 13:32

3 A They are not exactly the same. 13:36

4 **Q And how do they differ?** 13:39

5 A I would have to look at the versions and the 13:32

6 comparisons. In some instances, 90.1 would be more 13:35

7 stringent; in other, IECC. 13:30

8 **Q On balance, would you characterize the IECC** 13:30

9 **as being more stringent than ASHRAE 90.1 or vice versa?** 13:34

10 A They have a different process. The IECC, 13:41

11 while it's a consensus process, is not an ANSI 13:45

12 consensus process, so it's comparing apples to oranges. 13:49

13 **Q What does ASHRAE do to educate governments** 13:46

14 **and government officials about its work?** 13:49

15 A It has a staff person and/or leadership talk 13:42

16 to the staff on the hill about what our process is, 13:49

17 what standards we have, certification programs, classes 13:44

18 and things like that. 13:44

19 **Q And are there particular staff people who** 13:45

20 **talk to staff members on the hill?** 13:47

21 A Yes. 13:40

22 **Q And what individuals are these?** 13:41

23 A Mark Ames and Doug Read. And Jeff Littleton 13:45

24 might talk to some, too. 13:49

25 **Q And you say ASHRAE has leadership that talks** 13:49

Page 114

1 **to staff on the hill. Is that Jeff Littleton?** 13:42

2 A The -- it -- it could be Jeff, it could be 13:45

3 whoever is the president for that given -- given 13:40

4 society year or vice president that society year. It 13:43

5 depends on the year, it depends on who they're talking 13:47

6 to. 13:42

7 **Q And what are Mr. Ames' and Mr. Read's** 13:42

8 **positions at ASHRAE?** 13:47

9 A Well, Mr. -- Mark's title is senior manager 13:49

10 of government affairs. Doug's title was director. He 13:46

11 has retired. 13:43

12 **Q And was -- was Doug's -- Doug Read's title** 13:46

13 **just director or director of government affairs?** 13:49

14 A Director of government affairs. 13:42

15 **Q Are there other employees of ASHRAE who work** 13:48

16 **with -- or who did work with Mr. Ames and Mr. Read on** 13:43

17 **government affairs?** 13:48

18 A They have a secretary -- or an administrative 13:41

19 assistant that works there. She doesn't talk to people 13:46

20 on the hill. And they have a new person there, Jim 13:48

21 Scarborough. He deals with local. 13:42

22 **Q Is that a local government that he works --** 13:40

23 **deals with?** 13:43

24 A Yeah, the grassroots chapters within ASHRAE. 13:44

25 **Q So is government affairs its own department** 13:49

Page 115

1 **within ASHRAE?** 13:43

2 A Yes. 13:43

3 **Q And is that located in Washington, D.C.?** 13:43

4 A Yes. 13:43

5 **Q And what is -- why is it that ASHRAE has a** 13:43

6 **separate department for government affairs that's** 13:44

7 **located in Washington, D.C.?** 13:44

8 A So they can -- it's easier to talk to people 13:44

9 on the hill. It's been there as long as I've been 13:44

10 there. 13:44

11 MR. BECKER: All right. Let's take a 13:44

12 break. 13:44

13 THE VIDEOGRAPHER: Going off the record 13:44

14 at 13:44. 13:44

15 (Recess taken.) 13:53

16 THE VIDEOGRAPHER: Going on the record 13:56

17 at 13:56. 13:56

18 **Q (BY MR. BECKER) Ms. Reiniche, are you aware** 13:56

19 **if DOE employees are on the 90.1 policy committee?** 13:56

20 A 90.1 policy committee? You mean on the 13:56

21 project committee? 13:56

22 **Q Project committee, excuse me.** 13:56

23 A Yes. 13:56

24 **Q They are?** 13:56

25 A There is a staff person on there, yes. 13:56

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1 **Q And have DOE employees been on the 90.1** 13:53

2 **project committee -- committee in the past?** 13:57

3 A Yes. 13:59

4 **Q Okay. And so DOE employees provide -- they** 13:50

5 **contribute to the development of 90.1; is that correct?** 13:50

6 MR. FEE: Objection to form. 13:54

7 THE WITNESS: They participate in the 13:55

8 process. I'm not aware of any draft 13:57

9 language. 13:50

10 (Exhibit 1158 marked for identification.) 13:51

11 **Q (BY MR. BECKER) Ms. Reiniche, I'm handing** 13:52

12 **you what's been marked as Exhibit 1158. This is a** 13:53

13 **document with Bates number ASHRAE0005856. It's labeled** 13:50

14 **"Marketing Task Force Report."** 13:58

15 A Okay. 13:50

16 **Q Are you familiar with this document,** 13:53

17 **Ms. Reiniche?** 13:55

18 A Yes. 13:59

19 **Q Could you tell me what this document is?** 13:50

20 A This is a document that would have been 13:53

21 presented to the project committee on priorities -- on 13:54

22 trying to get things out in the marketplace. 13:56

23 **Q And could you tell me what -- do you know** 13:53

24 **what Chris Mathis's position is at ASHRAE?** 13:56

25 A He is not a staff member at ASHRAE. 13:50

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1 **Q Oh, really. Who is Chris Mathis?** 13:52
2 A He's an ASHRAE member. 13:55
3 **Q Okay. And is -- what was the purpose of** 13:56
4 **creating this document?** 13:59
5 MR. CUNNINGHAM: Object to form. 13:52
6 THE WITNESS: Just to tell -- inform 13:58
7 people of where they were on these priorities 13:51
8 for marketing. 13:55
9 **Q (BY MR. BECKER) Is there some kind of a** 13:59
10 **marketing committee that he was part of?** 13:51
11 A There must have been a marketing committee, 13:57
12 because there was a marketing task force, but it 13:58
13 wouldn't been -- wouldn't have been a -- a committee 13:51
14 within 90.1. 13:53
15 **Q This would have been a -- a separate ASHRAE** 13:58
16 **committee?** 13:52
17 A An ad hoc or something like that. 13:53
18 **Q And is it typical to have individuals who are** 13:56
19 **not employees of ASHRAE who are on marketing committees** 13:59
20 **for ASHRAE?** 13:54
21 A In any ad hoc committee, we have members 13:58
22 on -- on those committees. It's not typically just 14:01
23 ASHRAE staff. 14:05
24 **Q With regards to the fifth page of Bates** 14:01
25 **number ASHRAE0005859, it says, "Actions on each** 14:01
Page 118

1 **Priority (#2). Increase the use of the standard by** 14:00
2 **architects, engineers and building officials."** 14:00
3 **Then as a -- subpoints under that, it says,** 14:00
4 **"Underway! ASHRAE and DOE partnership to bring** 14:00
5 **train-the-trainer sessions to the Chapters!"** 14:00
6 **Do you know what these train-the-trainer** 14:00
7 **sessions are?** 14:01
8 A It's to train people to teach others about 14:01
9 90.1. 14:01
10 **Q And do you know how ASHRAE and DOE were** 14:01
11 **partnering to provide these training sessions?** 14:01
12 A I would have to check, because this would 14:01
13 have been when it was started. 14:01
14 **Q On the next page it says, "Expand the reach** 14:01
15 **of the standard," and then a subpoint, it says, "DOE** 14:01
16 **partnership activities underway (training)."** 14:01
17 **Is that referring to the train-the-trainer** 14:01
18 **sessions or is that referring to something else?** 14:01
19 A No, the train-the-trainer sessions. 14:01
20 **Q On the third-to-last page, marked Bates** 14:02
21 **number ASHRAE0005865, it says "Obstacles Recognized."** 14:02
22 **Do you see that?** 14:02
23 A Yes. 14:02
24 **Q What is it about the format, printing,** 14:02
25 **beauty, readability, editing, style, images, voice,** 14:02
Page 119

1 **et cetera, that was considered an obstacle?** 14:06
2 MR. CUNNINGHAM: Object, insofar as this 14:02
3 leaves the scope of the topics this witness 14:03
4 was designated for. 14:07
5 THE WITNESS: Well, it would have been 14:09
6 after this that we -- just the readability, 14:00
7 the formatting, we just changed -- went from 14:04
8 one column to two columns. We would have 14:07
9 changed the chapter organization just to make 14:00
10 it flow better and easier for the reader to 14:03
11 understand. 14:06
12 **Q (BY MR. BECKER) And is that something that** 14:07
13 **you know from your work at ASHRAE?** 14:07
14 A Yes, we have since -- since this, and we have 14:00
15 done one complete overhaul in the formatting. 14:04
16 **Q And what are they referring to by** 14:00
17 **"enforcement of EPAct" there?** 14:04
18 A They're probably talking about the fact that 14:00
19 not all states abide by it. They don't -- there's a 14:02
20 lot of states that are on older versions of the code 14:07
21 when they're supposed -- when, according to EPAct, 14:00
22 they're supposed to be adopting the latest version 14:04
23 within two years of the determination that the newest 14:08
24 version of 90.1 is more energy efficient than the last. 14:02
25 **Q Just to clarify, when you say "older versions** 14:08
Page 120

1 **of the code," you mean older versions of ASHRAE 90.1?** 14:00
2 A ASHRAE 90.1 or something that's deemed to 14:02
3 comply, like the IECC, an older version of the IECC. 14:04
4 **Q And it says, "ASHRAE's history of marketing** 14:02
5 **successes."** 14:05
6 **Below that, "Good news! ASHRAE has approved** 14:07
7 **funding to establish a marketing department!!!"** 14:03
8 **Does ASHRAE now have a marketing department?** 14:08
9 A We had a marketing department, then they 14:00
10 dissolved it and moved them under, and now they're 14:03
11 starting back up a marketing section. 14:06
12 **Q And what is the -- the purpose of ASHRAE's** 14:08
13 **marketing department?** 14:06
14 A To market the ASHRAE products and classes and 14:06
15 things like that. 14:00
16 **Q Does that include marketing the standards** 14:02
17 **themselves?** 14:04
18 A Yes. 14:06
19 **Q And why was it that the marketing department** 14:09
20 **had been dissolved?** 14:00
21 A I don't know. That's a -- was a decision 14:04
22 made by -- it would have been Jeff Littleton and 14:06
23 probably the board ExCom. 14:09
24 **Q And do you know why it was brought back?** 14:02
25 A That was another decision that was made by 14:06
Page 121

1 **Q How am I mistaken?** 14:45
2 A What this proposed legislation was, was to 14:48
3 set the baseline for which the DOE uses to make the 14:43
4 determination on whether or not the next version of 14:47
5 90.1 is more energy efficient. So this was proposing 14:40
6 to use 90.1-2004 as the benchmark for each subsequent 14:44
7 version of 90.1. 14:48
8 And then -- and that's only commercial. And 14:40
9 then the IECC is for residential. They're referenced 14:43
10 as the residential. What's being advocated here is 14:48
11 that you use the IECC 2006 as the baseline for each 14:41
12 subsequent version of the IECC for residential moving 14:46
13 forward as for energy efficiency. 14:49
14 **Q Okay. Does the IECC itself refer to** 14:42
15 **commercial buildings or is it only for residential** 14:49
16 **buildings?** 14:42
17 A There -- there's different I-codes within the 14:46
18 IECC. So there's the IRC, which is residential, but 14:40
19 it's part of the whole body of codes. So the IECC for 14:43
20 residential is just the energy efficiency stuff for 14:40
21 residential home -- residential stuff. 14:44
22 **Q On the following page, it says, "American** 14:55
23 **Clean Energy Leadership Act, S.1462." It says,** 14:58
24 **"Introduced by Senator Jeff Bingaman, D-NM. Updates** 14:51
25 **national building energy codes and standards at least** 14:58
Page 142

1 every three years to achieve target energy savings of," 14:51
2 and then it -- four bullet points down from that, it 14:55
3 says, "If DOE determines ASHRAE's future revised model 14:50
4 codes will not meet targets, DOE will propose or 14:55
5 establish a modified code or standard that meets the 14:58
6 above targets. Uses 90.1-2004 as baseline for 14:50
7 commercial buildings IECC 2006 for residential." 14:56
8 When it references "Uses 90.1-2004 as 14:59
9 baseline for commercial buildings," is that in the same 14:53
10 capacity as the reference on the prior page that you 14:56
11 were just referring to? 14:59
12 A Yes. One is a bill proposed in the House; 14:51
13 one is a bill proposed in the Senate. 14:54
14 **Q Did the Department of Energy propose or** 14:53
15 **establish a modified code or a standard that met the** 14:56
16 **above targets on page ASHRAE0024570?** 14:50
17 A This is -- this proposed language is not 14:58
18 in -- in law at this particular time. This was -- this 14:51
19 was talking about what was being proposed at this point 14:55
20 in time in 2010. 14:50
21 **Q What was the outcome?** 14:53
22 A I don't -- I don't think they set -- I don't 14:56
23 believe that they set targets, because it's -- as part 14:59
24 of the -- these codes, it has to be cost effective. 14:56
25 And as ASHRAE explained -- and I'm not sure if it's 14:51
Page 143

1 the -- but we explained that once you -- as you get 14:50
2 above -- when you're going between the 30 and the 50 14:53
3 percent, it gets more and more difficult to have 14:55
4 cost-effective equipment and things like that and -- in 14:58
5 there. So it -- it wasn't put in the law. 14:52
6 **Q On page ASHRAE0024581, it says, "Additional** 14:58
7 **Washington office activities." And it says for the** 14:56
8 **third major bullet point, "Building code adoptions,"** 14:56
9 **and then under that, "Standard 90.1 and Standard** 14:50
10 **189.1/IGCC promotion."** 14:54
11 **Does this mean that the Washington office was** 14:50
12 **engaged in promoting the adoption of Standard 90.1 into** 14:54
13 **building codes?** 14:50
14 A I don't remember. And without seeing it, if 14:55
15 he -- he didn't have notes with it, so I don't think it 14:59
16 was at a building code level. I think that's something 14:52
17 they were talking about expanding in the grassroots. 14:57
18 That was not done at that time. 14:52
19 **Q So that's something -- is that something** 14:53
20 **that's done in -- at this time?** 14:55
21 A We have started a grassroots program to reach 14:51
22 out when we are made aware of references to -- to 14:53
23 different standards. And we could ask volunteers in 14:58
24 those jurisdictions to go. 14:52
25 **Q And when you say "a grassroots program," who** 14:53
Page 144

1 is involved in the grassroots program? 14:57
2 A It's -- it's the individual ASHRAE chapters 14:50
3 within each state, and then each -- you know, there's 14:52
4 multiple chapters within a state. So whoever is 14:55
5 closest to wherever the decision is being made. 14:58
6 **Q And so this is -- the grassroots program** 14:52
7 **works to advocate for building code adoptions --** 14:59
8 **adoptions of Standard 90.1 into building codes --** 14:54
9 MR. CUNNINGHAM: Objection. 14:58
10 **Q (BY MR. BECKER) -- in states and local** 14:59
11 **governments?** 14:51
12 MR. CUNNINGHAM: Objection, 14:52
13 mischaracterization of prior testimony. 14:53
14 THE WITNESS: It could include Standard 14:54
15 90.1. It could include any other -- our 14:56
16 other standards as well. 14:59
17 **Q (BY MR. BECKER) And at the bottom of this** 14:54
18 **page, it says, "Empowering chapters to engage state and** 14:56
19 **local policy-makers." Do you know what that** 14:59
20 **references?** 14:52
21 A That's referencing what I was talking about, 14:53
22 the grassroots, and encouraging local chapters to talk 14:55
23 to their state and local policy makers. 14:51
24 **Q And on the next page, it says, "Opportunities** 14:55
25 **for individual member participation. Contact state and** 14:59
Page 145

1 **compliance?** 15:07
2 A Not that I'm aware of. 15:02
3 **Q Was there a specific reason why ASHRAE was** 15:09
4 **concerned that jurisdictions might not have the** 15:01
5 **necessary enforcement mechanisms and training to assure** 15:07
6 **compliance?** 15:02
7 A Well, this was at a time when the economy was 15:02
8 not doing so good, so places were cutting back, and 15:04
9 that included the local building departments. So these 15:07
10 building code officials aren't able to do as much, 15:02
11 they're not able to check as much. The codes have 15:05
12 gotten more complex, so it's harder for them to enforce 15:08
13 compliance. 15:02
14 **Q If you turn to Exhibit 1164, the followup** 15:01
15 **testimony of Kent W. Peterson. And if you please turn** 15:07
16 **to the sixth page, ASHRAE0024250. It says,** 15:06
17 **"Theoretically" -- excuse me, on -- on the fourth** 15:07
18 **paragraph down, essentially the middle of the page, it** 15:08
19 **says, "Theoretically, there exists a national baseline** 15:00
20 **for building energy codes (ASHRAE Standard 90.1-2004** 15:02
21 **for commercial buildings and the International Energy** 15:06
22 **Conservation Code for residential buildings)." 15:00**
23 **"EPAAct 2005 requires states to adopt a** 15:07
24 **building energy code that is at least as stringent as** 15:08
25 **90.1-2004 and the IECC. However, there are no** 15:02
Page 150

1 **enforcement mechanisms against the states that do not** 15:05
2 **adopt codes that meet these requirements. This is** 15:08
3 **largely due to the fact that building codes generally** 15:03
4 **are considered a state and local government issue."** 15:05
5 **Does this relate to ASHRAE's concern** 15:04
6 **regarding enforcement mechanisms concerning** 15:06
7 **Standard 90.1?** 15:02
8 A Say that one more time. 15:06
9 **Q Does this relate to ASHRAE's concern** 15:08
10 **regarding enforcement mechanisms concerning** 15:00
11 **Standard 90.1?** 15:05
12 A Yes. 15:06
13 **Q Concerns such as reflected in Exhibit 1165** 15:00
14 **that we were just discussing?** 15:03
15 A Yes, and it appears to be a little bit more 15:06
16 than that. 15:09
17 **Q I'm sorry, what do you mean by "it appears to** 15:07
18 **be a little bit more than that"?** 15:09
19 A This also relates to the fact that while the 15:00
20 federal government under EPAAct requires the states to 15:03
21 do this, there's no penalty if they don't. So that's 15:07
22 an enforcement mechanism as well, so where's -- where's 15:00
23 the need for the states to adopt that if there's no way 15:05
24 to enforce it at a national level? 15:08
25 **Q Is that still the case?** 15:07
Page 151

1 A Yes. 15:09
2 MR. BECKER: Could we take a quick 15:18
3 break? 15:19
4 THE VIDEOGRAPHER: Going off the record 15:10
5 at 15:10. 15:11
6 (Recess taken.) 15:26
7 THE VIDEOGRAPHER: Going on the record 15:20
8 at 15:26. 15:22
9 **Q (BY MR. BECKER) Ms. Reiniche, as part of the** 15:21
10 **process for developing the works at issue and updating** 15:22
11 **them, does ASHRAE have a process for correcting any** 15:28
12 **errors that might have occurred in previous versions of** 15:23
13 **Standard 90.1?** 15:28
14 A Yes. 15:20
15 **Q And what is that process called?** 15:20
16 A We issue an erratum. 15:22
17 **Q Okay. And how does that work?** 15:25
18 A Some -- somebody finds an issue where 15:27
19 there -- there's something wrong and believes that it 15:23
20 was changed such and such a way in a -- a previous 15:25
21 propose -- previous change that had been approved, it 15:21
22 gets sent into staff. We consult with the chair of the 15:23
23 committee and/or the subcommittee, depending on where 15:26
24 it is, to make sure that that's correct. If it's 15:20
25 correct, then we issue an erratum. 15:22
Page 152

1 **Q Okay.** 15:25
2 **(Exhibit 1166 marked for identification.)** 15:23
3 **Q (BY MR. BECKER) I'm handing you what's been** 15:25
4 **marked as Exhibit 1166. It's a printout from the** 15:27
5 **ASHRAE website. Do you recognize this document?** 15:23
6 A Yes. 15:27
7 **Q And what is this document?** 15:29
8 A This is a page -- a printout of the page on 15:20
9 the website that lists all the erratum and for what 15:24
10 they apply for. 15:20
11 **Q And starting on the third page of this** 15:23
12 **document, are these the errata for standard ASHRAE** 15:29
13 **90.1?** 15:27
14 A If you -- well, the third major header starts 15:34
15 for the errata for 90.1-1989, and then the next one 15:37
16 down is the 19. -- 90.1-1999 I-P edition, and then the 15:33
17 next one is the SI edition. 15:30
18 **Q And these documents appear to have dates on** 15:35
19 **the -- the end of them. So for instance, under -- on** 15:36
20 **the third page under Standard 90.1-1989 errata, various** 15:33
21 **dates for the -- the second bullet point, it says,** 15:38
22 **"Errata sheet for fourth printing GG 3/94 and all** 15:30
23 **earlier editions September 16th, 1994."** 15:36
24 **What does the date September 16th, 1994 there** 15:30
25 **signify?** 15:36
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EXHIBIT 9

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICAN SOCIETY FOR)
TESTING AND MATERIALS,)
d/b/a ASTM INTERNATIONAL;)
)
NATIONAL FIRE PROTECTION)
ASSOCIATION, INC.; and)
)
AMERICAN SOCIETY OF)
HEATING, REFRIGERATION AND)
AIR CONDITIONING ENGINEERS,)
Plaintiffs and)
Counter-Defendants,)
vs.) Civil Action No.
PUBLIC.RESOURCE.ORG, INC.,) 1:13-cv-01215-TSC
Defendant and) VOLUME: I
Counter-Plaintiff.)

Videotaped 30(b)(6) Deposition of
NATIONAL FIRE PROTECTION ASSOCIATION,
INC., BY BRUCE MULLEN, taken at
42 Chauncy Street, Boston, Massachusetts,
commencing at 9:59 a.m., Tuesday,
March 31, 2015, before Jeanette N.
Maracas, RPR, Notary Public.

JOB No. 2038640
PAGES 1 - 234

1 A. It will be 15 years in November, so 10:03:20
2 14-and-a-half years. 10:03:26
3 Q. What was your job history before NFPA? 10:03:27
4 A. I was a group deputy manager and director for 10:03:33
5 a company in Zimbabwe. 10:03:40
6 Q. What did that company do? 10:03:42
7 A. It was a conglomerate, so it was a lot of 10:03:43
8 different industries. 10:03:47
9 Q. What was the name of the company? 10:03:49
10 A. TSL Limited. 10:03:50
11 Q. What did TSL stand for? 10:03:54
12 A. It used to stand for Tobacco Sales Limited, 10:03:56
13 but it changed its name to TSL. It didn't 10:04:00
14 really stand for anything. 10:04:04
15 Q. What aspects of that job qualified you for 10:04:05
16 the job you then took at NFPA? 10:04:10
17 A. Business experience, financial experience. 10:04:12
18 Q. And any particular types of business or 10:04:21
19 financial experience? 10:04:23
20 A. Just primarily financial experience, a little 10:04:24
21 bit of merger and acquisition experience. 10:04:30
22 Q. How did you get the job at NFPA? 10:04:33
23 A. I responded to an advertisement in the Boston 10:04:35
24 Globe. 10:04:41
25 Q. What have your job titles been since you 10:04:41

1 arrived at NFPA? 10:04:47

2 A. Chief financial officer, that's basically 10:04:50

3 been the consistent title. 10:04:56

4 Q. What other titles have you had since you 10:04:58

5 arrived at NFPA? 10:05:00

6 A. That's it, chief financial officer. 10:05:02

7 Q. You're not a vice president of some sort? 10:05:04

8 A. I am. It's -- that goes with the title chief 10:05:06

9 financial officer. It's a sort of senior 10:05:10

10 VP-level position, but my title is chief 10:05:13

11 financial officer. 10:05:16

12 Q. Has the title of vice president ever been 10:05:16

13 part of your formal job title? 10:05:22

14 A. Sometimes I may -- the full title may be 10:05:24

15 senior vice president and chief financial 10:05:31

16 officer or executive vice president and chief 10:05:34

17 financial officer, but normally just CFO. 10:05:36

18 Q. Did you arrive as a senior vice president 10:05:38

19 and CFO at NFPA when you started working at 10:05:41

20 NFPA? 10:05:45

21 A. When I started working, I was -- my title was 10:05:46

22 a consultant. 10:05:51

23 Q. And that was in 2000? 10:05:58

24 A. 2000. 10:06:00

25 Q. When did your title change from consultant? 10:06:03