

EXHIBIT 40

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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.

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1 A P P E A R A N C E S :

2

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A L S O P R E S E N T :

THOMAS B O'BRIEN, JR , Vice President

and General Counsel, ASTM International

CARL MALAMUD, Public Resource Org

(via telecon)

RYAN ARMSTRONG, Videographer

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2 VIDEOGRAPHER: We are now on is

3 record.

4 Please note that the microphones

5 are sensitive and may pick up

6 whispering and private conversations.

7 Please turn off all cell phones or

8 place them away from the microphones

9 as they can interfere with the

10 deposition audio. Recording will

11 continue until all parties agree to go

12 off the record.

13 My name is Ryan Armstrong

14 representing Veritext Legal Solutions.

15 The date today is July 24, 2015,

16 and the time is approximately 10:43

17 a.m.

18 This deposition is being held at

19 Veritext located at 1801 Market

20 Street, Suite 1800, Philadelphia,

21 Pennsylvania, and is being taken by

22 counsel for the defense.

23 The caption of this case is

24 American Society for Testing and

25 Materials International, et al. V

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1 Public.Resource.Org, Incorporated.

2 This case is being held in the

3 United States District Court for the

4 District of Columbia, Case Number

5 1:13-cv-01215-EGS. The name of the

6 witness is Dan Smith.

7 At this time the attorneys

8 present in the room and everyone

9 attending remotely will identify

10 themselves and the parties they

11 represent. Our court reporter Linda

12 Rossi, representing Veritext Legal

13 Solutions, will swear in the witness

14 and we can proceed.

15 MR. BECKER: This is Matthew

16 Becker and Andrew Bridges of Fenwick &

17 West for the defendant

18 Public.Resource.Org.

19 MR. FEE: Kevin Fee from Morgan

20 Lewis on behalf of ASTM.

21 MR. BRIDGES: We also have

22 somebody there --

23 MR. O'BRIEN: Tom O'Brien from

24 ASTM.

25 MR. BRIDGES: And then on the

1 phone is Carl Malamud of
2 Public.Resource.Org.
3 MR. FEE: I'm sorry. I did hear
4 the caption had EGS at the end.
5 That's the wrong caption now. It's
6 re-assigned ending with PSC-DAR.
7 Before we get started, I want to
8 reserve reading and signing for the
9 witness.
10 - - -
11 DANIEL SMITH, after having been
12 duly sworn, was examined and testified
13 as follows:
14 - - -
15 EXAMINATION
16 - - -
17 BY MR. BECKER:
18 Q. My name is Matthew Becker of
19 Fenwick & West for the defendant
20 Public.Resource.Org, and I'll be taking your
21 deposition today.
22 Could you, please, state your
23 full name for the record?
24 A. Daniel Gerald Smith.
25 Q. Mr. Smith, have you ever had

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1 your deposition taken before?
2 A. No.
3 Q. Mr. Smith, have you ever been
4 involved in any lawsuits before?
5 A. No.
6 MR. FEE: Objection. Vague.
7 Remember give me a second to object
8 first.
9 BY MR. BECKER:
10 Q. Mr. Smith, let's just go over
11 the rules so that you're familiar with them.
12 In a deposition I'll be asking the questions
13 and you'll be providing answers to those
14 questions. Do you understand that you're
15 giving testimony under oath today as
16 though -- today as you would in a court of
17 law?
18 A. Yes.
19 Q. And do you understand that the
20 court reporter is taking down everything that
21 you say?
22 A. Yes.
23 Q. And that means that we need
24 audible responses to everything, not nods and
25 gestures.

Page 11

1 A. Yes.
2 Q. If at any point you do not
3 understand a question, will you, please, let
4 me know and I'll try to clarify the question?
5 A. Yes.
6 Q. And if you answer my question,
7 I'll assume that you understood. Does that
8 make sense?
9 A. Yes.
10 VIDEOGRAPHER: The time is now
11 10:46. We're going off the video
12 record.
13 - - -
14 (A recess was taken.)
15 - - -
16 VIDEOGRAPHER: The time is now
17 10:46. We're back on the video
18 record.
19 BY MR. BECKER:
20 Q. Mr. Smith, if you ever need a
21 break for any reason, please let me know and
22 we'll take a break as long as I'm not in the
23 middle of a line of questioning. If I am in
24 the middle of a line of questioning, then
25 I'll ask that we can finish that line of

Page 12

1 questioning and then you can take a break.
2 Does that sound good?
3 A. Yes.
4 MR. FEE: That's fine. We'll
5 let you at least finish your question
6 and get an answer.
7 BY MR. BECKER:
8 Q. And if you come to realize at
9 any point that one of your answers is not
10 completely correct, will you, please, let me
11 know and we can address it?
12 A. Yes.
13 Q. And after the deposition, the
14 transcript is prepared, you'll have a chance
15 to review it and make changes to it.
16 However, if you make any changes, I will be
17 able to comment on those changes. Do you
18 understand?
19 A. Yes.
20 Q. Mr. Smith, is there any
21 medication or other reason that might prevent
22 you from giving your best testimony today?
23 A. No.
24 Q. Is there any reason that you
25 can think of that might prevent you from

Page 13

1 giving your best testimony today?
 2 A. No.
 3 Q. Mr. Smith, what do you do for a
 4 living?
 5 A. I work for ASTM International.
 6 Q. And when you say you work for
 7 ASTM International, what do you mean?
 8 A. I'm the vice --
 9 MR. FEE: Objection. Vague.
 10 You can answer.
 11 THE WITNESS: I'm the vice
 12 president of technical committee
 13 operations.
 14 BY MR. BECKER:
 15 Q. And what is technical committee
 16 operations?
 17 A. It's a division within ASTM.
 18 Q. What does technical committee
 19 mean?
 20 A. Technical committees develop
 21 standards.
 22 Q. When you say "standards," what
 23 do you mean by that?
 24 A. Consensus standards.
 25 Q. By "consensus standards," what

Page 14

1 do you mean by that?
 2 A. Documents.
 3 Q. Any documents?
 4 A. Specifications, test methods,
 5 practices, guides, classifications and
 6 terminology.
 7 Q. Does the term "standards" have
 8 any specific meaning to you?
 9 MR. FEE: Objection. Vague.
 10 THE WITNESS: I'm not sure what
 11 you mean by that.
 12 BY MR. BECKER:
 13 Q. Can you define what a standard
 14 is?
 15 A. Just what I said previously,
 16 it's a test method, a specification, a
 17 practice, a guide, classification or
 18 terminology.
 19 Q. And you say that the technical
 20 committees develop standards. How do --
 21 actually, let me back up.
 22 What is a technical committee?
 23 A. I'm not sure how to answer
 24 that. I'm not sure what you mean by that.
 25 Q. How would you define a

Page 15

1 technical committee?
 2 A. A group of experts that develop
 3 standards.
 4 Q. And who are those experts?
 5 A. Volunteers.
 6 Q. And are they only volunteers?
 7 MR. FEE: Objection. Vague.
 8 THE WITNESS: For the most part
 9 from my knowledge, they're all
 10 volunteers.
 11 BY MR. BECKER:
 12 Q. How does a technical committee
 13 go about developing standards as you say?
 14 A. They use our consensus process.
 15 Q. What is the consensus process?
 16 A. It's two levels of voting
 17 starting with the subcommittee and then the
 18 main committee.
 19 Q. What's the difference between a
 20 subcommittee and a main committee?
 21 A. A subcommittee is typically
 22 smaller with a more narrow interest. A main
 23 committee has broader interest.
 24 Q. So within a technical
 25 committee, then, there is -- is there just

Page 16

1 one main committee?
 2 A. A main committee is a technical
 3 committee.
 4 Q. And are there numerous
 5 subcommittees?
 6 A. Yes.
 7 Q. And how many subcommittees on
 8 average?
 9 A. It varies.
 10 Q. Could you give me a range by
 11 which it might vary?
 12 A. The best of my knowledge, maybe
 13 from 3 to 40, 50.
 14 Q. When you say there is a
 15 consensus process that involves voting in the
 16 subcommittee and then voting at the main
 17 committee level, can you elaborate on that
 18 process?
 19 MR. FEE: Objection. Vague.
 20 THE WITNESS: They vote on
 21 standards so the folks on that
 22 committee will vote on whether or not
 23 they agree or not agree with the
 24 content of the standard.
 25 BY MR. BECKER:

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1 Q. Is that agree or don't agree on
2 the content of a draft standard or the
3 finalized standard?
4 A. A draft standard.
5 Q. Could we just back up a little
6 bit and could you walk me through how a
7 standard is developed at ASTM?
8 A. It varies, but it could be
9 by -- it starts typically with a task group.
10 Q. And what does the task group
11 do?
12 A. They'll develop the content of
13 the draft.
14 Q. And who composes the task
15 group?
16 MR. FEE: Objection. Vague.
17 THE WITNESS: The task group is
18 typically made up of volunteers who
19 wish to serve on the task group.
20 BY MR. BECKER:
21 Q. Are -- is everyone in a task
22 group an ASTM member?
23 A. No, not necessarily.
24 Q. In what situations would
25 individuals who are not members of ASTM

Page 18

1 compose members of the task group?
2 MR. FEE: Objection to form.
3 THE WITNESS: I'm not sure what
4 you mean by that. Could you repeat
5 that or say that differently?
6 BY MR. BECKER:
7 Q. Let's see. Are -- let me back
8 up just a moment.
9 Are any members of the task
10 group also members of ASTM?
11 A. Yes.
12 Q. But some members of the task
13 groups are not members of ASTM?
14 A. Could be. It's mostly members.
15 Q. And why would individuals who
16 are not members of ASTM be members of the
17 task group?
18 MR. FEE: Objection. Calls for
19 speculation.
20 THE WITNESS: From my
21 experience, because they're interested
22 in the standard that's being
23 developed.
24 BY MR. BECKER:
25 Q. How large are task groups on

Page 19

1 average?
2 A. It varies, but it could be
3 anywhere from 3 to 30 approximately.
4 Q. And you said that the task
5 group develops the content or the original
6 draft of a standard. Is that correct?
7 MR. FEE: Objection. Lack of
8 foundation.
9 THE WITNESS: From my
10 experience, that's what a task group
11 does.
12 BY MR. BECKER:
13 Q. How is a task group initially
14 formed?
15 A. It's formed by a group of
16 volunteers who want to develop a standard or
17 a revision to a standard.
18 Q. Do the members and -- excuse
19 me.
20 Do the ASTM members and
21 nonmembers of ASTM who compose task groups
22 generally have the same or similar interests?
23 MR. FEE: Objection. Calls for
24 speculation.
25 THE WITNESS: I don't know. I

Page 20

1 would think they would have a variety
2 of different interests.
3 BY MR. BECKER:
4 Q. Are there any characteristics
5 other than ASTM membership that would
6 distinguish ASTM members who are members of
7 task groups and those members of task groups
8 who are not ASTM members?
9 MR. FEE: Objection to form.
10 THE WITNESS: The members pay
11 the \$75 membership fee. Nonmembers
12 don't pay the membership. That's the
13 only thing I can think of.
14 BY MR. BECKER:
15 Q. How does a task group go about
16 developing the initial draft of a standard?
17 A. They could do it in a variety
18 of ways.
19 Q. Could you give me some examples?
20 A. They could do it through the
21 use of our collaboration areas, an online
22 space that allows them to develop the draft.
23 Q. And in what other ways?
24 A. They could do it through course
25 of e-mail.

Page 21

1 Q. And in what other ways?
2 A. Through a meeting.
3 Q. And in what other ways?
4 A. None other come to mind at this
5 point.
6 Q. Are there any differences in
7 how a task group would develop a draft of a
8 standard today versus how they might have
9 developed a draft of a standard in the 1970s
10 or 1980s?
11 MR. FEE: Objection. Lack of
12 foundation. Calls for speculation.
13 You can answer.
14 THE WITNESS: Just from common
15 sense, we wouldn't have had our Web
16 tools, they wouldn't have been able to
17 use our Web tools or our virtual
18 meeting technology in the '70s.
19 BY MR. BECKER:
20 Q. Do you know how task groups
21 developed drafts in the 1970s and 1980s?
22 A. I don't know firsthand, but my
23 guess is they would have done it at meetings.
24 Q. When did ASTM first provide the
25 online collaboration areas for the use by

Page 22

1 task groups?
2 A. Guessing, it was sometime
3 probably in the early 2000s roughly.
4 Q. How long have you been at ASTM
5 for?
6 A. About 23 years.
7 Q. So you were at ASTM for roughly
8 a decade, at least a decade prior to when the
9 online collaboration area was first rolled
10 out. Is that correct?
11 A. Approximately.
12 Q. So prior to when the online
13 collaboration area was rolled out, how did
14 task groups develop draft standards at ASTM?
15 A. To my knowledge, it would have
16 been at meetings.
17 Q. Were these meetings organized
18 by ASTM?
19 A. Some of them.
20 Q. But other meetings might not
21 have been organized by ASTM, is that what
22 you're saying?
23 MR. FEE: Objection. Vague.
24 THE WITNESS: They could. They
25 could organize their own meetings

Page 23

1 outside of ASTM.
2 BY MR. BECKER:
3 Q. Do you know how drafts of
4 the -- of ASTM standards were exchanged
5 between task group members prior to the
6 introduction of the online collaboration area
7 by ASTM?
8 A. My guess would be through mail
9 and fax.
10 Q. Do you know if that mail and
11 fax of drafts was facilitated by ASTM?
12 MR. FEE: Objection. Vague.
13 THE WITNESS: I would imagine
14 that some of them would have been
15 facilitated by ASTM and others would
16 not have been.
17 BY MR. BECKER:
18 Q. Prior to the introduction of
19 the online collaboration area, were there
20 specific forms that task group members were
21 made to fill out when drafting drafts of ASTM
22 standards?
23 MR. FEE: Objection to form.
24 THE WITNESS: I believe we had
25 forms starting in about 2003 on our

Page 24

1 membership applications that required
2 members to assign all rights to ASTM.
3 BY MR. BECKER:
4 Q. So the membership, the forms on
5 the membership applications for ASTM that
6 asked individuals to assign all rights to
7 ASTM, as you said, started in 2003 and didn't
8 exist prior to that date?
9 A. I believe that's correct.
10 Q. And this just concerned the
11 membership applications. Correct?
12 MR. FEE: Objection. Vague.
13 THE WITNESS: We also had them
14 on our renewal forms, membership
15 renewal forms. And then we also had
16 them on our work item registration,
17 and then our collaboration.
18 BY MR. BECKER:
19 Q. What is a work item registration
20 form?
21 A. It's for essentially opening up
22 a new work item.
23 Q. What is a work item?
24 A. Either a revision to a standard
25 or development of a new standard.

Page 25

1 Q. And when was the language that
 2 you say concerns assignments of rights
 3 introduced to the work item form?
 4 A. I think it was in about 2003,
 5 '04, '05, somewhere in there.
 6 Q. So somewhere in the 2003 to
 7 2005 period, you're not certain precisely
 8 when?
 9 A. I believe so.
 10 Q. But it didn't exist on those
 11 forms prior to at earliest 2003?
 12 A. That's correct.
 13 Q. Who fills out a work item form?
 14 A. A member.
 15 Q. Is it only ASTM members who
 16 fill out work item forms?
 17 A. If a member would ask a staff
 18 person to help facilitate filling out a form,
 19 they may do that.
 20 Q. What is a collaboration form?
 21 A. The collaboration, if a member
 22 wants to initiate a collaboration area, they
 23 have to go through an online process to
 24 initiate it.
 25 Q. Just so I understand, is that

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1 to create the online collaboration area that
 2 you had described earlier as being a location
 3 online provided by ASTM where members of a
 4 task group could go to help develop the draft
 5 for a standard?
 6 A. Yes.
 7 Q. And so the collaboration form
 8 was only introduced after the collaboration
 9 areas had been provided by ASTM to its
 10 members?
 11 A. Yes.
 12 Q. And when, again, did you say
 13 that that was?
 14 A. I think it was about 2003.
 15 Q. People who are members of task
 16 groups for developing standards but are not
 17 themselves ASTM members, do they fill out
 18 membership applications for ASTM?
 19 A. No.
 20 Q. And those individuals who I
 21 just described a moment ago, do they fill out
 22 renewal forms for ASTM?
 23 A. No.
 24 Q. And those individuals who I
 25 just described a moment ago, do they fill out

Page 27

1 work item registration forms for ASTM?
 2 A. No.
 3 Q. And those individuals I
 4 described a moment ago, do they fill out
 5 collaboration forms for ASTM?
 6 A. Yes.
 7 Q. They do. Are they required to
 8 fill out collaboration forms for ASTM in
 9 order to participate in the development of a
 10 draft of a standard?
 11 MR. FEE: Objection. Vague.
 12 THE WITNESS: Yes.
 13 BY MR. BECKER:
 14 Q. From approximately what year
 15 forward have individuals who are members of
 16 ASTM task groups but not themselves members
 17 of ASTM been required to fill out
 18 collaboration forms in order to participate
 19 in the drafting of an ASTM standard?
 20 A. To my knowledge, since the
 21 beginning.
 22 Q. When you say "since the
 23 beginning," what do you mean?
 24 A. When we had -- when we created
 25 the form.

Page 28

1 Q. So that would be approximately
 2 2003, you're saying?
 3 A. Yes.
 4 Q. Were individuals who were
 5 members of task groups but not themselves
 6 members of ASTM required to fill out any
 7 forms in order to participate in the drafting
 8 of an ASTM standard prior to 2003?
 9 A. Not to my knowledge.
 10 Q. Is there any means by which
 11 ASTM claims that individuals who are -- who
 12 were members of task groups but not
 13 themselves members of ASTM have assigned any
 14 copyrights that they might have in the drafts
 15 of the standards that were created and
 16 eventually published through ASTM -- to ASTM?
 17 MR. FEE: Objection. Calls for
 18 a legal conclusion. Instruct you not
 19 to disclose any communications you
 20 might have had with counsel regarding
 21 that subject. If you have an
 22 independent knowledge that is
 23 responsive, you can answer that.
 24 THE WITNESS: I don't know. Not
 25 to my knowledge.

Page 29

1 BY MR. BECKER:
2 Q. Today when individuals who are
3 members of ASTM task groups but not members
4 of ASTM fill out collaboration forms, does
5 ASTM believe that by doing so those
6 individuals are assigning their copyright
7 interest to ASTM in the draft of the standard
8 that they have created?
9 MR. FEE: Objection. Calls for
10 a legal conclusion. Again, I instruct
11 you not to disclose your
12 communications with counsel. But if
13 you have an understanding otherwise,
14 you can answer.
15 THE WITNESS: I believe it does.
16 BY MR. BECKER:
17 Q. Does ASTM believe that it does?
18 MR. FEE: Same objection and
19 instruction.
20 THE WITNESS: I would think so,
21 yes.
22 BY MR. BECKER:
23 Q. What are all the forms that
24 nonmembers may provide to ASTM in the course
25 of their activities with the technical

Page 30

1 committees?
2 MR. FEE: Objection to form.
3 Vague as to time. You may answer.
4 THE WITNESS: The collaboration
5 form. No other forms come to mind
6 that a nonmember would submit to ASTM,
7 but there could be some.
8 BY MR. BECKER:
9 Q. Are there any other means by
10 which nonmembers of ASTM who are themselves
11 members of an ASTM task group may assign
12 their copyright interest to ASTM other than
13 the collaboration form?
14 MR. FEE: Objection. Calls for
15 a legal conclusion. I instruct you
16 not to disclose your communications
17 with counsel. If you have any other
18 responsive information, you can
19 provide that.
20 THE WITNESS: We had a form that
21 we did use for assigning rights to
22 ASTM.
23 BY MR. BECKER:
24 Q. What form is this?
25 A. It's a form for assigning

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1 interest to ASTM.
2 Q. And who is given this form?
3 A. A task group or an individual
4 who might be bringing something forward to
5 contribute to ASTM.
6 Q. Were all members of ASTM task
7 groups given this form that you're
8 describing?
9 A. No.
10 Q. What members of ASTM task
11 groups were given this form that you're
12 assigning?
13 A. If an individual is bringing a
14 significant -- like a document to ASTM that
15 they wanted to convert into an ASTM standard.
16 Q. When you say "a document," what
17 do you mean by that?
18 A. A piece of paper.
19 Q. In what instances would
20 individuals have brought documents such as
21 you're describing to be converted into an
22 ASTM standard?
23 A. If an individual wanted to take
24 a document that they had and make it into an
25 ASTM standard, they brought it forward to

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1 ASTM.
2 Q. Could you give me some examples
3 of why somebody might do that?
4 A. Because they want to make it
5 into an ASTM standard.
6 Q. Would this be individuals or
7 companies that had previously drafted
8 standards that they would then like to see
9 turned into ASTM standards?
10 MR. FEE: Objection. Calls for
11 speculation.
12 THE WITNESS: Could be.
13 BY MR. BECKER:
14 Q. What years -- from between
15 which years were -- was this form that you're
16 describing used?
17 A. I think it was created in
18 approximately 2002 or somewhere in that area.
19 Q. Is this document still used?
20 A. I'm not aware of any recent
21 use, but it may have.
22 Q. Do you know if this document
23 was produced to Public.Resource?
24 MR. FEE: Objection. Calls for
25 speculation.

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1 THE WITNESS: I don't know.
 2 MR. BECKER: Counsel, do you
 3 know if this document was produced to
 4 Public.Resource?
 5 MR. FEE: I'm not here to answer
 6 your questions. You might want to
 7 look at the documents that we sent you
 8 today or yesterday. I think that
 9 would be what he's talking about.
 10 THE WITNESS: It was in the
 11 packet.
 12 BY MR. BECKER:
 13 Q. Do you know what the title of
 14 the document that you're describing is?
 15 A. No, I'm not sure. It's just
 16 one page.
 17 Q. Is it the ASTM International
 18 Participation and Acknowledgement Form?
 19 A. I'm not sure. If I could see
 20 it, I could tell you.
 21 - - -
 22 (Exhibit 1284, ASTM
 23 International Participation and
 24 Acknowledgement Form, Bates
 25 ASTM103273, was marked for

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1 identification.)
 2 - - -
 3 BY MR. BECKER:
 4 Q. I'm handing you what's been
 5 marked as Exhibit 1284.
 6 A. Yes.
 7 Q. This document was produced by
 8 ASTM last night at approximately 9:00 p m.,
 9 and the document is Bates labeled ASTM103273.
 10 And the document is titled: "ASTM
 11 International Participation and
 12 Acknowledgement Form." Is this the document
 13 that you were just describing when you said
 14 there was a form for assigning rights to
 15 ASTM?
 16 A. Yes.
 17 MR. FEE: Objection to the
 18 extent that your preamble is you're
 19 asking him to respond to any of that,
 20 you should ask him that separately.
 21 If you're asking him to respond to
 22 your question is this the document, I
 23 don't have an objection.
 24 BY MR. BECKER:
 25 Q. Do you recognize this document?

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1 A. Yes.
 2 Q. Could you tell me what this
 3 document is?
 4 A. I believe it's a document that
 5 we would give an individual who is interested
 6 in bringing forward a document to have it
 7 become an ASTM standard.
 8 Q. And is this document the
 9 document that you had described just earlier
 10 being a form for assigning rights to ASTM?
 11 A. Yes.
 12 Q. And you said that you believe
 13 this document was first used in 2002. Is
 14 that correct?
 15 A. I believe that's about right.
 16 Q. Is this form required for all
 17 members of a task group to fill out?
 18 MR. FEE: Objection. Vague.
 19 THE WITNESS: No, not to my
 20 knowledge, it's not.
 21 BY MR. BECKER:
 22 Q. Is this form required for all
 23 members of a task group who are contributing
 24 to the drafting of a standard under ASTM?
 25 MR. FEE: Objection. Are you

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1 done? Objection to the extent it
 2 calls for a legal conclusion. Also
 3 vague.
 4 THE WITNESS: No, not to my
 5 knowledge.
 6 BY MR. BECKER:
 7 Q. What individuals does ASTM
 8 require to fill out this form?
 9 MR. FEE: Objection. Asked and
 10 answered. You can answer again.
 11 THE WITNESS: We would give this
 12 form to an individual who is
 13 interested in providing a document to
 14 ASTM to make it into an ASTM standard.
 15 BY MR. BECKER:
 16 Q. And so on this form where it
 17 says number 1, "I am submitting my original
 18 material," regardless of that statement, this
 19 document is not required if a member of a
 20 task group were to be drafting original
 21 material for the use in the ASTM standard
 22 draft so long as he was doing so directly
 23 with the task group itself and not bringing
 24 in outside documents?
 25 MR. FEE: Objection. Calls for

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1 a legal conclusion. Vague.
 2 Confusing. You can answer if you can.
 3 THE WITNESS: I think I'll
 4 answer it by just saying the purpose
 5 of this form is for when an individual
 6 wants to bring a document into ASTM to
 7 make it into an ASTM standard.
 8 BY MR. BECKER:
 9 Q. So this document is not
 10 required of every member of a task group who
 11 contributes original material to an ASTM
 12 standard draft?
 13 MR. FEE: Objection. Vague. To
 14 the extent it calls for a legal
 15 conclusion.
 16 THE WITNESS: This form would
 17 not be.
 18 BY MR. BECKER:
 19 Q. When is the last time, to your
 20 knowledge, that this form, Exhibit 1284, was
 21 used by ASTM?
 22 A. I don't know.
 23 Q. Do you have any guess as to
 24 what year this form was last used by ASTM?
 25 MR. FEE: Objection. Lack of

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1 foundation. Calls for speculation.
 2 THE WITNESS: I don't know.
 3 BY MR. BECKER:
 4 Q. Do you know any specific
 5 standards that this form was used in
 6 conjunction with?
 7 A. I don't know offhand, no. No
 8 specifics.
 9 Q. Does ASTM retain the signed
 10 copies that it receives of this Participation
 11 and Acknowledgement Form?
 12 A. I'm not sure.
 13 Q. Do you know how many of these
 14 Participation and Acknowledgement Forms have
 15 been signed and returned to ASTM?
 16 A. No.
 17 Q. Do you have any approximate
 18 guess as to how many of these Participation
 19 and Acknowledgement Forms have been signed
 20 and returned to ASTM?
 21 MR. FEE: Objection. Calls for
 22 speculation.
 23 THE WITNESS: No.
 24 BY MR. BECKER:
 25 Q. Do you know if this

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1 Participation and Acknowledgement Form has
 2 ever been signed and returned to ASTM?
 3 A. I don't know for sure, but I
 4 would guess it has been.
 5 Q. And what's your basis for
 6 guessing that it has been?
 7 A. I vaguely remember instances
 8 where we would have to use this.
 9 Q. And what instances were those?
 10 A. I can't remember.
 11 Q. What other information do you
 12 recollect in conjunction with those instances
 13 where you believe that you had to use this
 14 form as you describe it?
 15 MR. FEE: Objection. Vague.
 16 THE WITNESS: The only thing I
 17 can remember is members interested in
 18 bringing forward documents that they
 19 were interested in having become ASTM
 20 standard.
 21 BY MR. BECKER:
 22 Q. Prior to the introduction of
 23 the Participation and Acknowledgement Form in
 24 approximately 2002, was there any means by
 25 which ASTM had members of task groups who

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1 contributed original contents to the drafts
 2 of ASTM standards but were not themselves
 3 members of ASTM thereby transferred their
 4 copyrights to ASTM?
 5 MR. FEE: Objection. Calls for
 6 a legal conclusion. To the extent --
 7 you shouldn't disclose any
 8 communications you had with counsel
 9 regarding the subject matter. If you
 10 have independent information that you
 11 can share, go ahead and answer with
 12 respect to that.
 13 THE WITNESS: I'm not aware of
 14 any formal forms that we used prior to
 15 2003.
 16 BY MR. BECKER:
 17 Q. Are you aware of any informal
 18 means by which individuals such as those that
 19 I just described in my previous question
 20 might have transferred their copyright to
 21 ASTM?
 22 MR. FEE: Same objection and
 23 instruction.
 24 THE WITNESS: I'm not sure what
 25 you mean by "informal."

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1 BY MR. BECKER:
2 Q. I'm simply asking because you
3 say you're not aware any formal forms that
4 are used prior to 2003. So I'm asking if
5 there were any informal means by which ASTM
6 believes that individuals transferred their
7 copyright to ASTM prior to 2003?
8 MR. FEE: Objection. Calls for
9 a legal conclusion. You shouldn't
10 disclose your communications with
11 counsel on this subject, but if you
12 have other information, you can answer
13 about that.
14 THE WITNESS: I don't believe --
15 we didn't feel like we needed any
16 formal, any formal assignment paper.
17 BY MR. BECKER:
18 Q. Why didn't ASTM feel like it
19 needed any formal assignment paper?
20 MR. FEE: Objection. Calls for
21 a legal conclusion. You shouldn't
22 disclose any communication you had
23 with counsel regarding the subject,
24 but if you have any other information
25 that's responsive, you can answer

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1 about that.
2 THE WITNESS: Because we felt
3 that there was a basic understanding,
4 there is a basic understanding today
5 and there's been a basic understanding
6 for as long as ASTM has been around
7 that the reason they come to the table
8 is for the sole purpose of developing
9 an ASTM standard that will receive a
10 logo, and that will be copyrighted and
11 be distributed. Our members buy the
12 resulting standards from ASTM. We've
13 never, that I can recall, have had a
14 member or a nonmember take issue with
15 ASTM selling the resulting copyrighted
16 standard to them and to others. I
17 believe that the reason they come to
18 the table is because they want --
19 they're there for the sole purpose of
20 having a standard that will have an
21 ASTM logo on it.
22 BY MR. BECKER:
23 Q. Anything else?
24 MR. FEE: Same objections and
25 instructions.

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1 THE WITNESS: Not at this time.
2 BY MR. BECKER:
3 Q. The basic understanding that
4 you just described, how is that basic
5 understanding documented?
6 MR. FEE: Objection. Again,
7 instruct you not to disclose
8 communications with counsel on that
9 subject, but if you have other
10 information, you can go ahead and
11 disclose that.
12 THE WITNESS: I'm not sure what
13 you mean by "documented."
14 BY MR. BECKER:
15 Q. Are there any documents that
16 reflect the basic understanding that you just
17 described concerning the reasons for
18 individuals contributing in the drafting of
19 ASTM standards?
20 A. No, we didn't feel like
21 documentation was needed.
22 Q. Does ASTM have any documents to
23 support its position that there was a basic
24 understanding between the members who --
25 excuse me, let me rephrase that.

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1 Does ASTM have any documents to
2 support its position that there was a basic
3 understanding between the individuals who
4 drafted ASTM standards and ASTM that the
5 copyright in those standards were to belong
6 to ASTM?
7 MR. FEE: Objection. Instruct
8 you not to disclose communications
9 with counsel on that subject. If
10 you're aware of other documents, you
11 can go ahead and respond with respect
12 to them.
13 THE WITNESS: I'm not aware of
14 any documents.
15 BY MR. BECKER:
16 Q. Just a moment ago you were
17 describing the reasons why people participate
18 in the drafting of ASTM standards. Could you
19 describe some of the incentives for
20 individuals to participate in the drafting of
21 ASTM standards?
22 MR. FEE: Objection. Lack of
23 foundation. You can answer.
24 THE WITNESS: In general, you
25 can say that an individual would -- or

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1 a company or an individual would be
 2 interested in having an ASTM standard
 3 that they could say their product or
 4 service is in compliance with.
 5 BY MR. BECKER:
 6 Q. Are there any other reasons?
 7 MR. FEE: Objection.
 8 THE WITNESS: I'm sure there are
 9 other reasons, I just can't think of
 10 any right now.
 11 BY MR. BECKER:
 12 Q. Does ASTM have any forms by
 13 which companies have assigned any copyrights
 14 that they may have in the draft standards to
 15 ASTM?
 16 MR. FEE: Objection. To the
 17 extent it calls for a legal
 18 conclusion, I instruct you not to
 19 disclose communications with counsel
 20 on this subject, but if you have any
 21 documents to identify, go ahead.
 22 THE WITNESS: I'm not aware of
 23 any.
 24 BY MR. BECKER:
 25 Q. Does ASTM distinguish between

1 companies and individuals in the -- in its
 2 understanding of the granting of copyright
 3 rights to ASTM?
 4 MR. FEE: Objection. Vague. To
 5 the extent I understand it, I think it
 6 calls for a legal conclusion. To the
 7 extent you think that requires you to
 8 disclose any communication from
 9 counsel, you shouldn't do so. If you
 10 understand you have non-privileged
 11 information that is responsive, go
 12 ahead and provide it.
 13 THE WITNESS: I'm not sure what
 14 you mean by that question.
 15 BY MR. BECKER:
 16 Q. Let me rephrase. If an
 17 individual fills out a form that ASTM
 18 believes assigns a copyright to ASTM but that
 19 individual is employed by a company and is
 20 acting in the scope of employment, does ASTM
 21 believe that a copyright is granted to it?
 22 MR. FEE: Objection. Calls for
 23 a legal conclusion. Calls for
 24 speculation. You shouldn't disclose
 25 any communications with counsel that

1 you might think are responsive to
 2 that. If you have other information,
 3 you can go ahead and answer.
 4 THE WITNESS: My understanding
 5 is that the members join as
 6 individuals, and that when they come
 7 to an ASTM meeting, they're
 8 contributing their own knowledge to
 9 the ASTM standard.
 10 BY MR. BECKER:
 11 Q. When you say that's your
 12 understanding, is that also ASTM's
 13 understanding?
 14 A. Yes.
 15 MR. FEE: Same objections.
 16 THE WITNESS: Yes.
 17 MR. FEE: And instructions.
 18 BY MR. BECKER:
 19 Q. When you say "members join as
 20 individuals," does this also include
 21 individuals who are government employees?
 22 A. Yes.
 23 Q. Does ASTM believe that
 24 government employees who are acting within
 25 the scope of their employment by the federal

1 government join as individuals when they join
 2 ASTM?
 3 MR. FEE: Objection. Calls for
 4 a legal conclusion. Calls for
 5 speculation. Instruct you not to
 6 disclose communications with counsel
 7 on this subject, but you can answer if
 8 you have other information.
 9 THE WITNESS: I'm not sure what
 10 the individual members believe. I
 11 believe our committees believe that
 12 the input they get on the standards
 13 are from that individual, the
 14 individual knowledge that they're
 15 providing, not necessarily a company
 16 or a government position.
 17 BY MR. BECKER:
 18 Q. And what's your basis for
 19 believing that that is what the members of
 20 the committee believe?
 21 A. Just my experience.
 22 Q. What experience are you
 23 referring to?
 24 A. My experience with working with
 25 technical committees.

1 Q. Can you provide any specific
2 examples?
3 MR. FEE: Objection. Vague.
4 THE WITNESS: I've managed
5 probably 20 maybe different committees
6 during my time. A specific example
7 would be D04 road and paving
8 committee.
9 BY MR. BECKER:
10 Q. And could you, please, describe
11 what instances you're referring to?
12 MR. FEE: Objection. Vague.
13 THE WITNESS: Instances of what?
14 BY MR. BECKER:
15 Q. Instances where you believe
16 that the participation of government, federal
17 government employees constituted their
18 participation in an individual capacity and
19 not in their capacity as employees of the
20 federal government?
21 A. Just like I said, my
22 experience. I'm not sure how I would be able
23 to characterize a specific example.
24 Q. Could you refer to particular
25 individuals who you -- who were members, who

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1 are employed by the federal government that
2 you interacted with in your management of
3 these 20 different committees that you
4 believe were participating in their
5 individual capacity and not as employees of
6 the federal government?
7 MR. FEE: Objection. Calls for
8 a legal conclusion.
9 THE WITNESS: No, I don't know.
10 I don't know for sure.
11 BY MR. BECKER:
12 Q. The membership fees for federal
13 government employees, are these typically
14 paid by the individuals or paid by the
15 federal government?
16 MR. FEE: Objection. This is
17 beyond the scope, I think, of any of
18 the topics we're here to have
19 testimony today. Does this have
20 something to do with one of the three
21 topics?
22 MR. BECKER: I don't believe
23 this is beyond the scope. This has to
24 do with --
25 MR. FEE: Which topic does it

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1 relate to?
2 MR. BECKER: This relates to the
3 issue of ownership and copyright.
4 The forms that were provided to
5 us include --
6 MR. FEE: I'll let you answer
7 his question.
8 THE WITNESS: I don't know.
9 MR. FEE: We've been going about
10 an hour, could we take a short break
11 now?
12 MR. BECKER: In just a couple of
13 minutes or so.
14 MR. FEE: I'll give you a couple
15 more questions. I'm ready to take a
16 break. Go ahead.
17 BY MR. BECKER:
18 Q. What communications do you have
19 with individuals who were employed by the
20 federal government and participated in at
21 least one of those 20 different committees
22 that you managed that reflected their
23 participation in an individual capacity and
24 not as federal government employees?
25 MR. FEE: Objection. Calls for

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1 a legal conclusion. Compound.
2 THE WITNESS: I'm not sure what
3 you're asking.
4 BY MR. BECKER:
5 Q. Do you have any specific
6 communications that reflect your belief that
7 individuals who you interacted with on one of
8 these 20 different committees that you manage
9 were participating as in their individual
10 capacity and not as federal government
11 employees?
12 MR. FEE: Objection. Calls for
13 a legal conclusion. Compound.
14 THE WITNESS: I don't have any
15 concrete examples that I can think of.
16 BY MR. BECKER:
17 Q. And do you have any specific
18 observations that you can think of that would
19 show that individuals who participated in one
20 of these 20 different committees were acting
21 in their individual capacity and not as
22 employees of the federal government?
23 MR. FEE: Objection. Calls for
24 a legal conclusion and compound.
25 THE WITNESS: Again, just my

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1 experience in sitting in the meetings
 2 and observing the individual members
 3 contribute to the development of the
 4 standards.
 5 BY MR. BECKER:
 6 Q. What about those contributions
 7 of those members gave you that impression?
 8 MR. FEE: Objection. Calls for
 9 a legal conclusion. Compound.
 10 THE WITNESS: I'm not thinking
 11 of any one example. I'm just thinking
 12 over time in all of my different
 13 committees and all the different
 14 meetings that I've attended, to me it
 15 appears that people are contributing
 16 off the cuff spontaneously in the
 17 development of the standard.
 18 BY MR. BECKER:
 19 Q. When they participate, do
 20 members of the federal government use their
 21 federal government issued e-mail addresses?
 22 MR. FEE: Objection. Compound.
 23 Calls for speculation.
 24 THE WITNESS: They may or they
 25 may not.

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1 BY MR. BECKER:
 2 Q. What is it about off-the-cuff
 3 or spontaneous contributions that you think
 4 means that these individuals are
 5 participating in their individual capacity
 6 and not as federal government employees?
 7 MR. FEE: Objection. Calls for
 8 a legal conclusion.
 9 THE WITNESS: Just my belief
 10 based on what I'm observing that I
 11 think it's a very spontaneous
 12 conversation, people providing
 13 contributions based on what they
 14 believe, not necessarily what their
 15 company believes.
 16 BY MR. BECKER:
 17 Q. Are individuals who
 18 participate -- excuse me.
 19 Are federal government
 20 employees who participate in ASTM committees
 21 or task groups classified differently than
 22 other individuals who participate in those
 23 committees or task groups?
 24 MR. FEE: Objection. Vague.
 25 THE WITNESS: I'm not sure what

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1 you mean by "differently."
 2 BY MR. BECKER:
 3 Q. Is there a specific
 4 classification that's given to government
 5 employees who participate in the development
 6 of standards under ASTM?
 7 A. They're given a classification
 8 just as all other members are.
 9 Q. And what is that classification?
 10 A. It could either be a producer,
 11 user, general interest, depending upon the
 12 scope of the committee.
 13 Q. Would a federal government
 14 employee count as a producer?
 15 A. I can't think of a situation
 16 where they would be.
 17 Q. Would a federal government
 18 employee count as a user?
 19 A. They may.
 20 Q. Would a federal government
 21 employee count as a general interest member?
 22 A. They may.
 23 Q. In what circumstances might a
 24 federal government employee count as a user
 25 versus a general interest member?

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1 A. It depends on the scope of the
 2 committee.
 3 Q. Could you give some examples?
 4 A. On my road and paving
 5 committee, federal highway would be
 6 considered a user.
 7 MR. FEE: We've been going quite
 8 some time. I asked to have a short
 9 break. We're going to take a break
 10 now, no question pending.
 11 MR. BECKER: We can take a
 12 break.
 13 VIDEOGRAPHER: Time is now
 14 11:48. We're going off the video
 15 record.
 16 - - -
 17 (A recess was taken.)
 18 - - -
 19 VIDEOGRAPHER: The time is now
 20 12:02. We're back on the video
 21 record.
 22 BY MR. BECKER:
 23 Q. Mr. Smith, do you have any
 24 additional recollections or other information
 25 that you would like to add in response to any

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1 of the questions we've discussed so far
 2 today?
 3 A. Relative to our members'
 4 awareness that they're assigning copyrights
 5 to ASTM, I believe you had asked that
 6 question prior to 2003.
 7 Q. Yes.
 8 A. ASTM also has an Intellectual
 9 Property Policy that makes our members aware
 10 of that as well.
 11 Q. And when was ASTM's
 12 Intellectual Property Policy first
 13 instituted?
 14 A. I'm not sure, but I believe it
 15 was in the '90s.
 16 Q. Is there anything else other
 17 than ASTM's Intellectual Property Policy that
 18 you believe contributes to ASTM's belief that
 19 there was an understanding that the copyright
 20 of individuals who participated in the
 21 drafting of ASTM standards was owned by ASTM?
 22 MR. FEE: Objection. Asked and
 23 answered. Are you asking him to
 24 repeat all the other things he
 25 mentioned before or are you excluding

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1 those?
 2 MR. BECKER: Were there other
 3 things that he mentioned before?
 4 MR. FEE: Oh, yeah. I'll be
 5 honest. Actually I shouldn't say
 6 that. But you're asking him to list
 7 everything he can think of now again?
 8 MR. BECKER: In terms of
 9 documents.
 10 MR. FEE: Oh, documents.
 11 MR. BECKER: I don't think there
 12 was anything else, was there?
 13 MR. FEE: Your prior question
 14 wasn't limited to documents, that's
 15 why I said that.
 16 THE WITNESS: Is it before 2003?
 17 BY MR. BECKER:
 18 Q. Yes.
 19 A. I'm not aware of any other
 20 documents.
 21 Q. Is there anything else that you
 22 have to add to your earlier testimony other
 23 than your mention of the IP Policy?
 24 A. I can't think of anything at
 25 this time.

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1 - - -
 2 (Exhibit 1285, Intellectual
 3 Property Policy of ASTM, Bates
 4 ASTM103277 - ASTM103284, was marked
 5 for identification.)
 6 - - -
 7 BY MR. BECKER:
 8 Q. I'm handing you what's been
 9 marked as Exhibit 1285. Is this the
 10 Intellectual Property Policy of ASTM that you
 11 had just mentioned?
 12 A. Yes, I believe this is a
 13 version of it.
 14 Q. Are there multiple versions of
 15 the ASTM intellectual property policy?
 16 A. I believe there were at least
 17 two or three.
 18 Q. This says it was approved on
 19 April 28, 1999. Correct?
 20 A. It does say that.
 21 Q. It says that at the top of the
 22 first page and at the bottom of the last
 23 page. Is that correct?
 24 A. That's correct.
 25 MR. FEE: Objection. It says

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1 adopted on the last page, not
 2 approved.
 3 BY MR. BECKER:
 4 Q. And for the record, this is the
 5 document Bates number ASTM 103277 to
 6 ASTM 103284 titled: "INTELLECTUAL PROPERTY
 7 POLICY OF ASTM." It says at the top of page
 8 Bates number ASTM103277 "Approved 28
 9 April 1999." Is that correct?
 10 A. Yes.
 11 Q. Was this the first edition of
 12 the Intellectual Property Policy of ASTM?
 13 A. I believe there was one prior
 14 to this.
 15 Q. Do you know when the
 16 Intellectual Property Policy of ASTM that
 17 existed prior to this was created?
 18 A. No.
 19 Q. Do you have any idea?
 20 A. I think it was at some point in
 21 the '90s. Maybe mid '90s, but I'm not sure.
 22 Q. Does ASTM have any record of an
 23 Intellectual Property Policy prior to this
 24 one, Exhibit 1285?
 25 A. I'm not sure.

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1 Q. Do you know how many versions
2 of ASTM's Intellectual Property Policy have
3 been formally adopted by ASTM over the years?
4 MR. FEE: Objection. Vague.
5 THE WITNESS: I'm not sure.
6 BY MR. BECKER:
7 Q. Do you know who drafted the
8 ASTM Intellectual Property Policy?
9 MR. FEE: Objection. Vague.
10 You're asking about 1285?
11 BY MR. BECKER:
12 Q. Exhibit 1285.
13 A. I'm not certain.
14 Q. Do you know who might have
15 drafted Exhibit 1285?
16 MR. FEE: Objection. Calls for
17 speculation.
18 THE WITNESS: I'm not certain.
19 BY MR. BECKER:
20 Q. When you say you're not
21 certain, you mean you have no idea?
22 A. I would assume it would have
23 been under general counsel.
24 Q. And who would that have been on
25 April 28, 1999?

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1 A. It would have been Moe Brooke.
2 Q. Can you spell that for me,
3 please?
4 A. B-R-O-O-K-E.
5 Q. Do you know approximately what
6 years Moe Brooke was the general counsel of
7 ASTM from?
8 A. Roughly from maybe 1980 to late
9 '90s.
10 Q. And who took over as general
11 counsel after Moe Brooke?
12 A. Tom O'Brien.
13 Q. And Tom O'Brien is the current
14 general counsel. Is that correct?
15 A. Correct.
16 Q. Do you know when Tom O'Brien
17 took over as general counsel of ASTM?
18 A. I think it was in about 2004.
19 Q. So was there anybody who was
20 the general counsel of ASTM between Moe
21 Brooke and Tom O'Brien?
22 A. I don't believe on staff we had
23 anybody between Moe Brooke and Tom O'Brien.
24 Q. Was there a gap of some years
25 between the time when Moe Brooke was general

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1 counsel and when Tom O'Brien took over as
2 general counsel?
3 A. I'm not certain.
4 - - -
5 (Exhibit 1286, Intellectual
6 Property Policy of ASTM International
7 ("Policy"), Bates ASTM103285 -
8 ASTM103290, was marked for
9 identification.)
10 - - -
11 BY MR. BECKER:
12 Q. I'm handing you what's been
13 marked as Exhibit 1286. This is the document
14 produced by ASTM last night as Bates number
15 ASTM103285 to ASTM103290, titled:
16 "INTELLECTUAL PROPERTY POLICY OF ASTM
17 INTERNATIONAL ('POLICY')."
18 Do you recognize this document?
19 A. It's our Intellectual Property
20 Policy.
21 Q. What is the relationship of
22 this Exhibit 1286 to the document 1285 that
23 we were just discussing?
24 MR. FEE: Objection. Vague.
25 THE WITNESS: It appears to be a

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1 revision.
2 BY MR. BECKER:
3 Q. Can you tell me what the date
4 is that's in the top right-hand corner of
5 this document?
6 A. It appears to be 3/17/10 maybe.
7 I assume.
8 Q. At the bottom of the last page
9 it says, "As amended by the ASTM
10 International Board of Directors, October 28,
11 2003 and April 13, 2010." Is that correct?
12 A. It does say that.
13 Q. Does this appear to be a
14 redline showing the changes to the
15 Intellectual Property Policy of ASTM that
16 were instituted in 2010?
17 A. That's what it appears to be.
18 - - -
19 (Exhibit 1287, Intellectual
20 Property Policy of ASTM International
21 ("Policy"), Bates ASTM003445 -
22 ASTM003448, was marked for
23 identification.)
24 - - -
25 BY MR. BECKER:

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1 Q. I'm handing you what's been
2 marked as Exhibit 1287. This is a document
3 produced by ASTM as Bates number ASTM003445
4 to ASTM003448. Do you recognize this
5 document?
6 A. It appears to be a draft of the
7 Intellectual Property Policy.
8 Q. Why do you say that it is a
9 draft of the Intellectual Property Policy?
10 A. Or perhaps a version, I should
11 say.
12 Q. Do you know what the date of
13 this version is?
14 A. At the top it says, Originally
15 approved April 1999 [as read], and then on
16 the back it says, "As Amended by the Board of
17 Directors, _____ 2003."
18 Q. Do you know if this version of
19 the ASTM Intellectual Property Policy went
20 into effect?
21 A. I don't know for sure, this
22 particular version.
23 Q. Who would know?
24 MR. FEE: Objection. Calls for
25 speculation.

1 THE WITNESS: I don't know. Our
2 general counsel could probably figure
3 it out, I think. I don't know if this
4 is the -- I just don't know if this
5 is the exact version that was approved --
6 BY MR. BECKER:
7 Q. Did you review the --
8 A. -- by the board.
9 Q. Excuse me. I'm sorry, go
10 ahead.
11 A. I don't know if this is the
12 exact version that was adopted by our board
13 in 2003 since the exact date is not at the
14 end.
15 Q. Did you review this document in
16 preparation for your deposition today?
17 A. I don't know if I reviewed this
18 exact document.
19 Q. Did you review any versions of
20 the ASTM Intellectual Property Policy in
21 preparation for your deposition today?
22 A. Yes.
23 Q. Do you know approximately how
24 many versions of the ASTM Intellectual
25 Property Policy that you reviewed in

1 preparation for your deposition today?
2 A. I believe it was one.
3 Q. Do you know which version that
4 was that you reviewed in preparation for your
5 deposition today?
6 A. The current 2013 -- or 2010
7 rather. The one that was adopted in 2010.
8 Q. Is the one adopted in 2010 the
9 most recent version of the ASTM Intellectual
10 Property Policy?
11 A. To my knowledge, yes.
12 - - -
13 (Exhibit 1288, Intellectual
14 Property Policy of ASTM International
15 ("Policy"), Bates ASTM003437 -
16 ASTM003441, was marked for
17 identification.)
18 - - -
19 BY MR. BECKER:
20 Q. I'm handing you what's been
21 marked as Exhibit 1288. This is the document
22 produced by plaintiffs as Bates number
23 ASTM003437 to ASTM003441. Do you recognize
24 this document?
25 A. Yes.

1 Q. What is this document?
2 A. It's the ASTM Intellectual
3 Property Policy.
4 Q. What is the date of this
5 version of the ASTM Intellectual Property
6 Policy?
7 A. It was originally approved in
8 April of 1999. This particular version was
9 amended by the ASTM International Board of
10 Directors on October 28, 2003, and April 13,
11 2010.
12 Q. So this is the most current
13 version of the ASTM Intellectual Property
14 Policy then?
15 A. I would think.
16 Q. Is this the version that you
17 reviewed in preparation for the deposition
18 today?
19 A. Yes.
20 Q. And on the final page of
21 Exhibit 1288 it says at the bottom, "As
22 amended by the ASTM International Board of
23 Directors October 28, 2003 and April 13,
24 2010," whereas on the front it says -- at the
25 top of the front page it says, "Originally

1 Approved 28 April 1999."
 2 So this document appears to
 3 list three different versions of the ASTM
 4 Intellectual Property Policy. Is that
 5 correct?
 6 A. Yes.
 7 Q. What is your basis for
 8 believing -- excuse me, let me rephrase.
 9 After reviewing these dates, do
 10 you still believe there was a version of the
 11 ASTM Intellectual Property Policy that
 12 existed prior to April 28, 1999?
 13 A. I believe we did.
 14 Q. What is your basis for
 15 believing that there was a prior version of
 16 the ASTM Intellectual Property Policy?
 17 A. I just seem to recall, but I
 18 could be wrong. I thought there was.
 19 Q. If there was a prior version of
 20 the ASTM Intellectual Property Policy prior
 21 to April 28, 1999, that was formally adopted
 22 by ASTM, who would know that?
 23 MR. FEE: Objection. Calls for
 24 speculation.
 25 THE WITNESS: I don't know.

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1 BY MR. BECKER:
 2 Q. Did you discuss the existence
 3 of a version of the ASTM Intellectual
 4 Property Policy that existed prior to
 5 April 28, 1999, with anyone in preparation
 6 for your deposition today?
 7 A. No.
 8 Q. Do you know why the ASTM
 9 Intellectual Property Policy was revised on
 10 at least two occasions?
 11 MR. FEE: Objection. To the
 12 extent that that calls for you to
 13 disclose communications with counsel,
 14 you shouldn't disclose those, but if
 15 you know otherwise, you can answer.
 16 THE WITNESS: No, I don't.
 17 BY MR. BECKER:
 18 Q. Looking at Exhibit 1285, the
 19 April 28, 1999, version of the ASTM
 20 Intellectual Property Policy, does ASTM
 21 believe that this Intellectual Property
 22 Policy grants it any copyrights in the drafts
 23 of standards created by individuals who are
 24 not employed by ASTM?
 25 MR. FEE: Objection. Calls for

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1 a legal conclusion. You shouldn't
 2 disclose any communications you've had
 3 with counsel regarding that subject.
 4 If you otherwise can respond, go
 5 ahead.
 6 THE WITNESS: I'm not a lawyer,
 7 but in reading page 4 of the policy
 8 part D, I believe that that does do
 9 what you asked.
 10 BY MR. BECKER:
 11 Q. That is the section V policy
 12 part D?
 13 A. Yes.
 14 Q. Would you, please, compare that
 15 section V part D for Exhibits 1285 and
 16 Exhibit 1288?
 17 MR. FEE: Objection. Vague if
 18 that's the question.
 19 BY MR. BECKER:
 20 Q. Do you see any differences
 21 between section V part D in the Exhibit 1288
 22 versus Exhibit 1285?
 23 A. I'd have to go through it word
 24 by word. Is there anything particular
 25 that --

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1 Q. Do you see that in the 2013 --
 2 excuse me, 2010 edition, Exhibit 1288, it
 3 adds the line, "Each member agrees by such
 4 participation and enjoyment of his/her annual
 5 membership benefits, to have transferred any
 6 and all ownership interests, including
 7 copyright, they possess or may possess in the
 8 ASTM IP to ASTM"?
 9 A. I do see that.
 10 Q. Why did ASTM insert this
 11 sentence into the ASTM Intellectual Property
 12 Policy?
 13 MR. FEE: Objection. Calls for
 14 a legal conclusion. I instruct you
 15 not to disclose any communications you
 16 had with counsel regarding that
 17 subject.
 18 THE WITNESS: I don't know.
 19 BY MR. BECKER:
 20 Q. Do you have any knowledge about
 21 the revisions that were made to the ASTM
 22 Intellectual Property Policy subsequent to
 23 the 1999 version?
 24 MR. FEE: Objection. Vague.
 25 Compound. You can answer yes or no.

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1 THE WITNESS: Maybe.
 2 MR. FEE: Or maybe.
 3 BY MR. BECKER:
 4 Q. When you say "maybe," what do
 5 you mean?
 6 A. I'm not sure exactly what you
 7 mean. I know I can see right here there were
 8 revisions, I could read these. 1286, like
 9 the difference, the differences, but...
 10 Q. Could you tell me what is the
 11 purpose of the clause at part IV C in
 12 Exhibit 1286?
 13 MR. FEE: Objection to the
 14 extent it calls for a legal
 15 conclusion. To the extent your
 16 understanding of the purpose of any --
 17 MR. BECKER: Excuse me.
 18 MR. FEE: -- changes in clauses
 19 is based upon communications with
 20 counsel, I instruct you not to answer.
 21 MR. BECKER: Let me say -- let
 22 me rephrase.
 23 BY MR. BECKER:
 24 Q. I meant Exhibit 1288.
 25 MR. FEE: Same objections and

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1 instructions.
 2 BY MR. BECKER:
 3 Q. Let me restate for the record.
 4 In Exhibit 1288, what is the purpose of the
 5 clause at part IV C?
 6 MR. FEE: Objection. Calls for
 7 a legal conclusion. To the extent of
 8 your understanding of the purpose of
 9 that clause is based on communications
 10 with counsel, you shouldn't disclose
 11 that. If you have another basis for
 12 understanding the purpose of that
 13 clause, go ahead and answer.
 14 THE WITNESS: I don't know what
 15 that means. It seems like it's very
 16 legal speak.
 17 BY MR. BECKER:
 18 Q. Who would know?
 19 MR. FEE: Objection. Calls for
 20 speculation. To the extent that your
 21 answering that question would require
 22 you to disclose communications that
 23 you've had with counsel, you shouldn't
 24 disclose those. If you otherwise know
 25 who would know the answer to that

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1 question, go ahead and answer.
 2 THE WITNESS: I would imagine
 3 our general counsel would know.
 4 BY MR. BECKER:
 5 Q. If you look at Exhibit 1285,
 6 does clause IV C exist in that document?
 7 A. I don't see it.
 8 MR. FEE: Objection. The
 9 document speaks for itself.
 10 BY MR. BECKER:
 11 Q. Do you know why ASTM introduced
 12 that clause at section IV C subsequent to the
 13 April 28, 1999, version of the ASTM
 14 Intellectual Property Policy?
 15 MR. FEE: Objection. Calls for
 16 a legal conclusion. You shouldn't
 17 disclose any communications with
 18 counsel regarding that subject matter.
 19 If you otherwise know why that was
 20 done, you can answer it.
 21 THE WITNESS: No.
 22 BY MR. BECKER:
 23 Q. Is ASTM aware of any ASTM
 24 members seeking legal advice to explain any
 25 of the language in the ASTM Intellectual

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1 Property Policy?
 2 MR. FEE: Hold on a second. You
 3 can answer it yes or no or maybe.
 4 THE WITNESS: I'm not aware of
 5 any.
 6 BY MR. BECKER:
 7 Q. If you don't know what the
 8 clause at section IV C means, why would you
 9 expect an ASTM member to know what that
 10 clause means?
 11 MR. FEE: Objection. Calls for
 12 speculation. Mischaracterizes his
 13 testimony. You can answer.
 14 THE WITNESS: I don't know.
 15 BY MR. BECKER:
 16 Q. Does ASTM know whether any ASTM
 17 member actually understands this language --
 18 MR. FEE: Objection. Calls
 19 for --
 20 BY MR. BECKER:
 21 Q. -- in the IP Policy?
 22 MR. FEE: Vague. Calls for
 23 speculation.
 24 THE WITNESS: I don't know
 25 either way.

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1 BY MR. BECKER:
 2 Q. Does ASTM know one way or
 3 another whether any members actually
 4 understand the language in its Intellectual
 5 Property Policy?
 6 MR. FEE: Objection. Calls for
 7 speculation.
 8 THE WITNESS: I can't think of
 9 any evidence either way.
 10 BY MR. BECKER:
 11 Q. Returning to Exhibit 1288,
 12 section V D, it says, "If requested by ASTM
 13 International, such Participants and
 14 committee members agree to execute any and
 15 all documents deemed necessary or appropriate
 16 by ASTM International to transfer and
 17 effectuate ownership of all such rights,
 18 including but not limited to copyrights, they
 19 may possibly have in ASTM IP." And the first
 20 page, first paragraph says, "...Standards,
 21 Draft Standards, Adjuncts, Certification
 22 Programs and related materials, Technical
 23 Papers, Research Reports, Manuals, Software,
 24 Training Course Materials and Logos
 25 collectively referred to as 'ASTM IP'?"

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1 A. Where were you reading that
 2 first sentence?
 3 Q. That was from the first
 4 paragraph on the front page under
 5 "INTRODUCTION," it defines ASTM IP as those
 6 items that I just listed.
 7 A. Okay.
 8 Q. So returning to section V D,
 9 are you aware of -- excuse me, is ASTM aware
 10 of any instances where it has requested
 11 individuals to agree to execute any documents
 12 necessary to transfer copyright ownership to
 13 ASTM?
 14 MR. FEE: Objection. Vague.
 15 THE WITNESS: The only
 16 situations that I can recall are the
 17 ones that we talked about earlier
 18 using that form. I seem to remember
 19 that there were instances where we
 20 used that form, but I don't know the
 21 specifics about them.
 22 BY MR. BECKER:
 23 Q. Subsequent to the drafting of
 24 any standards, has ASTM ever retroactively
 25 asked an individual to assign their copyright

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1 in that draft standard to ASTM?
 2 MR. FEE: Objection. Calls for
 3 a legal conclusion.
 4 THE WITNESS: I'm not sure I
 5 understand that question.
 6 BY MR. BECKER:
 7 Q. Just to back up a moment.
 8 When -- in your previous answer when you said
 9 that the only situations you can recall are
 10 the ones we talked about earlier using that
 11 form, were you referring to Exhibit 1284, the
 12 ASTM International Participation and
 13 Acknowledgement Form?
 14 A. Yes.
 15 Q. Returning to my question, let's
 16 see if I can clarify. Section V D says, "If
 17 requested by ASTM International, such
 18 Participants and committee members agree to
 19 execute any and all documents deemed
 20 necessary, or appropriate by ASTM
 21 International to transfer and effectuate
 22 ownership of all such rights, including but
 23 not limited to copyrights, they may possibly
 24 have in ASTM IP."
 25 Once a -- once an individual

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1 has contributed to the drafting of an ASTM
 2 standard, has ASTM ever asked an individual
 3 to assign the copyright in a draft document
 4 that he or she has already created to ASTM?
 5 MR. FEE: Objection. Calls for
 6 a legal conclusion.
 7 THE WITNESS: I really don't
 8 know either way. It's possible.
 9 BY MR. BECKER:
 10 Q. Other than your reference to
 11 Exhibit 1284, are there other instances in
 12 which ASTM has asked an individual to execute
 13 an assignment of copyright to ASTM?
 14 A. Yes.
 15 Q. What instances are those?
 16 A. On our work item registration
 17 process, there is a click through that
 18 requests that that individual assign all
 19 rights to their contributions both past and
 20 present as well as on our membership
 21 application and also on our renewal
 22 application and also on our collaboration
 23 area.
 24 Q. And those are the online forms
 25 that you referred to earlier today as having

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1 first been instituted in approximately 2003.
 2 Correct?
 3 A. Correct.
 4 Q. Who would know if ASTM has ever
 5 asked an individual to assign the copyright
 6 in a draft document that that individual has
 7 already previously created to ASTM?
 8 MR. FEE: Objection. Assumes
 9 facts not in evidence. You can
 10 answer.
 11 THE WITNESS: Yeah, I don't know
 12 who it would be because it would
 13 depend on which committee it involved.
 14 BY MR. BECKER:
 15 Q. Would a staff member be
 16 involved in that or would it simply be a
 17 volunteer committee member?
 18 MR. FEE: Objection. Vague.
 19 THE WITNESS: Involved in what
 20 exactly?
 21 BY MR. BECKER:
 22 Q. In the request for an
 23 assignment of copyright for a work that had
 24 already previously been created by an
 25 individual to ASTM?

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1 A. And that they would bring it in
 2 to ASTM for the develop -- as developing as
 3 an ASTM standard?
 4 Q. They -- or that they had
 5 developed as part of an ASTM committee but
 6 had not executed any assignments to ASTM for
 7 that document.
 8 A. I'm sorry, is your question who
 9 would know that?
 10 Q. Yeah, who would know that?
 11 A. The staff person, whoever the
 12 staff manager for that particular committee
 13 would be would have knowledge of that.
 14 Q. Would the ASTM general counsel
 15 have knowledge of whether an assignment was
 16 made concerning a particular work to ASTM
 17 subsequent to the creation of that work?
 18 A. Maybe.
 19 Q. Did you speak with any ASTM
 20 staff members about any assignments of
 21 copyright to ASTM in preparation for your
 22 deposition today?
 23 MR. FEE: Objection. Vague.
 24 THE WITNESS: Particular
 25 assignments?

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1 BY MR. BECKER:
 2 Q. Yes.
 3 A. No.
 4 Q. Did you speak with any ASTM
 5 staff members about documents that ASTM
 6 believes generally assign copyright to
 7 ASTM --
 8 MR. FEE: Objection. Vague.
 9 BY MR. BECKER:
 10 Q. -- in preparation for your
 11 deposition today?
 12 A. In general, yes. And then
 13 there were also a few specific forms, forms
 14 that had actual members renewing or applying
 15 for membership.
 16 Q. And who did you speak with,
 17 excluding counsel, regarding the subjects of
 18 copyright assignments to ASTM in preparation
 19 for your deposition today?
 20 A. Specific examples of?
 21 Q. Both specific and general
 22 examples.
 23 A. In general I talked to Marge
 24 Cassidy, our treasurer.
 25 Q. Anybody else?

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1 A. Jim Thomas, our president.
 2 Q. Anybody else?
 3 A. John Pace, our vice president
 4 of -- our vice president of publications.
 5 Q. Anybody else?
 6 A. Phil Lively, our vice president
 7 of technology.
 8 Q. Anybody else?
 9 A. Kathie Morgan, our executive
 10 vice president.
 11 Q. Anybody else?
 12 A. I believe that's everybody.
 13 Q. What did you speak with Marge
 14 Cassidy about in preparation for your
 15 deposition today?
 16 A. Just any information that she
 17 would have relative to assignment of
 18 copyright by our members.
 19 Q. And what did you learn from
 20 Marge Cassidy?
 21 A. Nothing.
 22 Q. What did Marge Cassidy say
 23 about assignment of copyright from ASTM
 24 members?
 25 A. She really didn't have any

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1 knowledge.
2 Q. Did you approach Marge Cassidy
3 or did she approach you in preparation for
4 your deposition today?
5 MR. FEE: Objection. Lack of
6 foundation.
7 THE WITNESS: I didn't initiate
8 it and she didn't initiate it. We
9 called a meeting. Our general counsel
10 called a meeting.
11 BY MR. BECKER:
12 Q. Who was in attendance at that
13 meeting?
14 A. Our legal team and Marge.
15 Q. Do you know the date of that
16 meeting?
17 A. It was yesterday.
18 Q. How long did you meet for?
19 A. Maybe 10, 15 minutes.
20 Q. What did you speak with Marge
21 about at that meeting?
22 A. Just wanted to get her
23 perspective on anything that has to do with
24 assigning copyright.
25 Q. And what was Marge's

1 perspective?
2 A. She didn't have much of a
3 perspective as someone who works in
4 accounting. But she's a senior staff person
5 who has been at ASTM for a long time, so I
6 was interested in that.
7 Q. How long has Marge Cassidy been
8 at ASTM for?
9 A. 50 years.
10 Q. Did you ask Marge about the
11 assignment of copyright at ASTM prior to your
12 tenure at ASTM?
13 A. Yes.
14 Q. And what did she say about
15 that?
16 A. She didn't really remember
17 anything of significance that I can share.
18 Q. Do you recall any details about
19 your conversation with Marge Cassidy about
20 the assignment of copyright?
21 A. No.
22 VIDEOGRAPHER: The time is now
23 12:54. We're going off the video
24 record. This concludes disc one.
25 - - -

1 (A recess was taken.)
2 - - -
3 VIDEOGRAPHER: The time is now
4 1:58. We're back on the video record.
5 This begins disc two.
6 - - -
7 (Exhibit 1289, Defendant
8 Public.Resource.Org, Inc.'s Amended
9 Notice of Rule 30(b)(6) Deposition of
10 American Society for Testing and
11 Materials, was marked for
12 identification.)
13 - - -
14 BY MR. BECKER:
15 Q. Mr. Smith, I'm handing you
16 what's been marked as Exhibit 1289. This is
17 the "PUBLIC.RESOURCE.ORG AMENDED NOTICE OF
18 RULE 30(B)(6) DEPOSITION OF AMERICAN SOCIETY
19 FOR TESTING AND MATERIALS." Do you recognize
20 this document?
21 A. I do.
22 Q. Have you seen this document
23 before?
24 A. I believe I have.
25 Q. And do you understand that you

1 are testifying on behalf of ASTM today?
2 A. I do.
3 MR. FEE: Just so the record is
4 clear, he's testifying on behalf of
5 ASTM with respects to Topics 2, 3 and
6 24 only.
7 MR. BECKER: And for the record,
8 Public.Resource.Org had requested that
9 ASTM provide a witness on additional
10 topics beyond 2, 3 and 24, and ASTM
11 has refused to provide that additional
12 witness that was requested.
13 MR. FEE: That's not correct.
14 You've had a witness on every other
15 topic. Jeff Grove. Jeff Grove,
16 G-R-O-V-E.
17 MR. BECKER: And as we've
18 discussed, Public.Resource.Org does
19 not believe that Jeff Grove was a
20 sufficient witness on many of those
21 topics and, therefore, has requested a
22 witness on the topics on which
23 Mr. Grove was deficient.
24 MR. FEE: Suffice to say we
25 disagree with that.

1 BY MR. BECKER:
2 Q. Mr. Smith, you understand that
3 you are responsible for preparing to answer
4 questions on the topics on which you've been
5 noticed and which you are appearing on behalf
6 of ASTM. Correct?
7 A. Yes, I believe it's 2, 3 and
8 24.
9 Q. And have you prepared to answer
10 questions on Topics 2, 3 and 24?
11 A. Yes.
12 Q. And you understand that you are
13 answering these questions on those topics on
14 behalf of ASTM?
15 A. Yes.
16 Q. Mr. Smith, when did you prepare
17 to answer topics at deposition today?
18 MR. FEE: Objection. Vague.
19 THE WITNESS: Yesterday and on
20 Tuesday.
21 BY MR. BECKER:
22 Q. Tuesday of this week?
23 A. Correct.
24 Q. And when were you first
25 notified that you would be appearing as the

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1 witness for the deposition today?
2 A. I think we found out, exactly
3 the date was sometime in maybe the first week
4 in July.
5 Q. Have you done any preparation
6 for your deposition today between the first
7 week of July and Tuesday of this week?
8 A. Yes.
9 Q. What did you do to prepare
10 during that time period?
11 A. I reviewed the membership
12 screens, the renewal screens, the work item
13 registration pages and --
14 Q. Did you do -- I'm sorry.
15 A. -- any ASTM intellectual
16 property files.
17 Q. And when you say the membership
18 screens, the renewal screens, and the work
19 item registration pages, are you referring to
20 the same pages that you had discussed near
21 the start of our deposition today?
22 A. Yes.
23 Q. And when you say that you
24 reviewed any ASTM intellectual property
25 files, what do you mean by that?

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1 A. I reviewed our current ASTM
2 Intellectual Property Policy.
3 Q. Did you do anything else to
4 prepare for the deposition today?
5 A. I met with the people that I
6 mentioned previously.
7 Q. Did you review any other
8 documents other than the ones that you've
9 just listed a moment ago?
10 A. I reviewed documents that had
11 the Bates numbers associated with them.
12 Q. Do you know which documents
13 that have Bates numbers associated with them
14 that you reviewed?
15 THE WITNESS: Do we have them
16 somewhere, the ones that we produced?
17 MR. FEE: You have to answer his
18 questions, I can't give you the
19 answers.
20 THE WITNESS: I'm sorry.
21 BY MR. BECKER:
22 Q. Do you recall the titles of any
23 of the documents that you reviewed that had
24 Bates numbers on them?
25 A. There were specific examples of

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1 memberships that were filled out by a member.
2 I think it was a renewal that may have been
3 completed by a member. Screens that I had
4 mentioned. There were other documents I'm
5 not thinking of right now, but yes.
6 Q. The other documents that you
7 reviewed, did they all have Bates numbers on
8 them?
9 A. Yes.
10 Q. So were there any other
11 documents other than the ones that you
12 described just a moment ago specifically that
13 you reviewed in preparation for your
14 deposition today that did not have Bates
15 numbers on them?
16 MR. FEE: Objection. Asked and
17 answered. Go ahead.
18 THE WITNESS: I don't believe
19 so.
20 BY MR. BECKER:
21 Q. When did you meet with Jim
22 Thomas in preparation for your deposition
23 today?
24 A. On Tuesday, whatever day that
25 was. On Tuesday, last Tuesday.

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1 Q. What did you discuss with Jim
 2 Thomas when you met with him then?
 3 A. I asked Jim about any memory
 4 that he has relative to assignments of
 5 copyright.
 6 Q. And what did he say?
 7 A. Pretty much what I've explained
 8 to you relative to formally getting
 9 documentation from our members on assignment
 10 from 2003 to the present relative to our
 11 renewal forms, membership application forms,
 12 collaboration area. And then prior to that,
 13 Jim's recollection and feelings were that
 14 copyright assignment from our members was a
 15 very basic understanding that our members had
 16 and our staff have had, the sole purpose they
 17 come to an ASTM meeting is to develop a
 18 standard that's going to result in an ASTM
 19 approved standard with a logo on it that's
 20 copyrighted.
 21 Q. Did Mr. Thomas identify any
 22 basis for his belief that copyright
 23 assignment from ASTM members was a very basic
 24 understanding, as you described it, that ASTM
 25 members had with the purpose of developing an

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1 ASTM standard?
 2 A. Can you explain?
 3 Q. Let me rephrase that. Did
 4 Mr. Thomas identify any basis for his belief
 5 that ASTM members had an understanding that
 6 their drafts would be -- that the copyright
 7 for their drafts would be held by ASTM?
 8 A. I think his basis was on the
 9 fact that we've never had a member that has
 10 really questioned, that we can recall, or
 11 challenged ASTM copyrighting something.
 12 Another basis being that we sell our
 13 standards and our members are some of our
 14 biggest customers, so they're buying the
 15 standards from us. Jim Thomas has provided
 16 numerous presentations at different committee
 17 meetings announcing about this lawsuit and
 18 what the ramifications potentially could be.
 19 How it could affect our business model and
 20 how we want to maintain our low entry for
 21 participation, \$75 membership, no meeting
 22 fees, and we sell our resulting standards so
 23 that we can support our operations. And the
 24 members, based on the presentations that I've
 25 seen, have embraced that concept.

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1 Q. Did Jim Thomas say all of that
 2 to you? When I say "all of that," I'm
 3 referring to your previous statement that you
 4 attributed to Jim Thomas, were all of those
 5 statements from Jim Thomas?
 6 MR. FEE: Objection. Compound.
 7 THE WITNESS: Jim has told me
 8 and I have seen Jim do these
 9 presentations.
 10 BY MR. BECKER:
 11 Q. When you spoke with Jim Thomas
 12 on Tuesday, did he say that a member has
 13 never challenged the copyright assertions by
 14 ASTM?
 15 A. Yes.
 16 Q. And when you met with Jim
 17 Thomas on Tuesday, did he say that the fact
 18 that ASTM sells standards to its members is a
 19 basis for why there may be an understanding
 20 that by ASTM members, that their
 21 contributions would be copyrighted by ASTM?
 22 A. He had indicated that the fact
 23 that we sell the standards back to our
 24 members is probably a real good indication
 25 that there's a basic understanding from our

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1 members that we are copyrighting the material
 2 that they contribute.
 3 Q. Did Jim Thomas say anything
 4 else to you when you met with him on Tuesday?
 5 MR. FEE: Objection. Vague.
 6 THE WITNESS: I can't think of
 7 anything else specific that he said.
 8 BY MR. BECKER:
 9 Q. Did you ask Jim Thomas any
 10 questions when you met with him on Tuesday?
 11 A. No, I don't think I asked him
 12 any questions. I think the meeting was
 13 basically to discuss copyright assignment.
 14 And I don't know if -- it was more of a
 15 discussion, I don't think we had -- I had
 16 questions. I mean, I didn't need to ask
 17 questions. It was a discussion.
 18 Q. A moment ago you referred to
 19 the \$75 fee. Do ASTM members -- excuse me,
 20 let me rephrase.
 21 Do individuals have to pay ASTM
 22 a fee to participate in the standard drafting
 23 process?
 24 MR. FEE: Objection. Asked and
 25 answered.

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1 THE WITNESS: They have to pay
2 \$75 to be a member, but they don't
3 have to pay \$75 to participate. So an
4 individual can participate without
5 paying ASTM.
6 BY MR. BECKER:
7 Q. What are the differences that
8 individuals who are members of ASTM enjoy in
9 their participation in the standard drafting
10 process versus individuals who are not
11 members?
12 MR. FEE: Objection. Vague.
13 THE WITNESS: They get to --
14 free volume of standards and they get
15 to vote. When it's on the ballots,
16 they get to cast votes. Nonmembers do
17 not.
18 BY MR. BECKER:
19 Q. When you say "on the ballots,"
20 what ballots are you referring to?
21 A. On the technical standards.
22 Q. Are those ballots for voting up
23 or down on the revision or creation of
24 particular standards?
25 A. Correct.

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1 Q. Have you had any other
2 communications with Jim Thomas about your
3 deposition today other than the meeting you
4 had with him on Tuesday?
5 A. No.
6 Q. And have you had any
7 communications with Marge Cassidy in
8 preparation for your deposition today other
9 than the meeting that you had with her?
10 A. No.
11 Q. You said you met with John
12 Pace, the vice president of publications, as
13 well in preparation for your deposition
14 today. Correct?
15 A. Uh-huh.
16 Q. What did you discuss with
17 Mr. Pace?
18 A. Any knowledge that he would
19 have relative to the assignment of copyright
20 from our members.
21 Q. What did Mr. Pace say?
22 A. He didn't provide any input.
23 He didn't have any knowledge.
24 Q. Did you discuss any other
25 issues with Mr. Pace at that meeting?

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1 A. No.
2 Q. When was that meeting?
3 A. That meeting was yesterday.
4 Q. So Mr. Pace provided no
5 information to you on the subject of
6 copyright by individuals to ASTM?
7 A. No.
8 MR. FEE: Objection. Vague.
9 BY MR. BECKER:
10 Q. A moment ago you referred to
11 presentations by Jim Thomas. Can you give
12 any specific -- can you tell me about any
13 specific presentations by Jim Thomas that you
14 think address issues of copyright ownership
15 by ASTM?
16 A. I can't recall any
17 presentations that he did specific on that
18 subject.
19 Q. What presentations were you
20 referring to?
21 A. At ASTM conferences where we
22 have breakfast meetings with all of the
23 individuals attending that meeting, are
24 invited to a breakfast meeting. And we hold
25 them in four different committee weeks; in

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1 January, April, May and June of every year.
2 I've heard Jim Thomas talk about what I said
3 at those breakfast meetings.
4 Q. Do you recall on what dates
5 Mr. Thomas spoke about those issues at
6 breakfast meetings?
7 A. I can't provide specific dates.
8 Q. Do you have general dates as in
9 this year, last year or the year prior?
10 A. I believe it was this year was
11 mentioned. And it was probably last year as
12 well.
13 Q. Do you recall Mr. Thomas
14 mentioning anything on this subject prior to
15 last year?
16 A. I can't say for sure.
17 Q. Are these breakfast meetings
18 recorded in any way?
19 A. No.
20 Q. Are there any minutes kept of
21 the breakfast meetings?
22 A. No, but we have annual -- our
23 annual meeting -- we may have minutes from
24 our annual meeting, but I'm not sure. I
25 think we might have slides actually,

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1 presentation slides that are available for
 2 our annual meetings.
 3 Q. You said you also meet with
 4 Phil Lively, the vice president of
 5 technology. Is that correct?
 6 A. Yes.
 7 Q. When did you meet with him?
 8 A. I met with Phil yesterday.
 9 Q. What did you speak with Phil
 10 Lively about yesterday?
 11 A. About copyright assignments for
 12 members to ASTM.
 13 Q. And what did Phil Lively tell
 14 you?
 15 A. About his involvement and help
 16 with having the language that we talked about
 17 earlier on the membership application screens
 18 and the membership renewal screens and the
 19 collaboration area screen and the work item
 20 registration screens.
 21 Q. When you say, "the language
 22 that we talked about earlier," are you
 23 referring to language that ASTM believes
 24 assigns copyright from individuals to ASTM?
 25 MR. FEE: Objection. Calls for

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1 a legal conclusion.
 2 THE WITNESS: The language that
 3 we talked about that is on the
 4 membership applications, yes. That
 5 the members acknowledge when they're
 6 either registering a work item or
 7 joining as a new member or renewing
 8 their membership or opening up a
 9 collaboration area that assigns all of
 10 their past, present and future
 11 contributions to ASTM standards --
 12 into ASTM standards to ASTM.
 13 BY MR. BECKER:
 14 Q. What was Mr. Lively's
 15 involvement in the language that you are
 16 referring to?
 17 MR. FEE: Objection. Vague.
 18 THE WITNESS: He helped us with,
 19 from a technology standpoint, getting
 20 that language up onto our Web site,
 21 onto the screens.
 22 BY MR. BECKER:
 23 Q. So you're saying that
 24 Mr. Lively was involved in the -- Mr. Lively
 25 did not draft the language, but Mr. Lively

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1 helped create the electronic version of the
 2 forms that appear on the ASTM Web site. Is
 3 that what you're saying?
 4 MR. FEE: Objection. Compound.
 5 THE WITNESS: I'm not sure what
 6 exactly you mean by that, but
 7 essentially he was able to accomplish
 8 getting the language up onto the
 9 screens so that the members can
 10 acknowledge the statement during the
 11 process.
 12 BY MR. BECKER:
 13 Q. Did Mr. Lively draft any of the
 14 language on the membership application or
 15 renewal forms or any of the other forms that
 16 you're describing?
 17 MR. FEE: Objection. Compound.
 18 THE WITNESS: I don't believe
 19 so.
 20 BY MR. BECKER:
 21 Q. What did Mr. Lively tell you
 22 about the work that he did related to
 23 copyright assignments?
 24 A. Just that he could remember
 25 helping with putting the information up on

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1 the Web screens, and he could remember when
 2 he was a staff manager back in the very
 3 beginning time, I think it was early '80s
 4 when he was a staff manager, and kind of
 5 reiterating what I had previously said about
 6 there being an understanding that our members
 7 understand that their contributions to ASTM,
 8 is well understood that we're going to
 9 copyright that material.
 10 Q. Did Mr. Lively provide any
 11 basis for his statement that there was an
 12 understanding in the early '80s that ASTM
 13 would copyright the material provided by
 14 individuals that was incorporated into the
 15 standard drafts?
 16 A. Can you repeat that question?
 17 Q. Yes. Did Mr. Lively provide
 18 any basis for his statement that there was an
 19 understanding in the early '80s that ASTM
 20 would copyright the material provided by
 21 individuals that was incorporated into the
 22 standard drafts?
 23 A. No. I think it was just his
 24 belief just as it was my belief.
 25 Q. Did you discuss anything else

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1 with Mr. Lively at that meeting?
 2 A. Not that I can recall.
 3 Q. Did you have any other
 4 communications with Mr. Lively in preparation
 5 for your deposition today other than that
 6 meeting yesterday?
 7 A. No.
 8 Q. And did you have any other
 9 communications with John Pace in preparation
 10 for your deposition today other than your
 11 meeting with him yesterday?
 12 A. No.
 13 Q. You said that you also met with
 14 Kathie Morgan, the executive vice president,
 15 in preparation for your deposition today. Is
 16 that true?
 17 A. Yes.
 18 Q. And when did you meet with
 19 Kathie?
 20 A. Yesterday.
 21 Q. What did you discuss with
 22 Kathie at your meeting yesterday?
 23 A. We discussed the form that we
 24 had here, 1284, and her recollection of what
 25 that form was used for.

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1 Q. That's Exhibit 1284 you were
 2 referencing?
 3 A. Yes.
 4 Q. What did Kathie Morgan say
 5 about Exhibit 1284?
 6 A. She thought that that form was
 7 used by ASTM whenever an individual who was
 8 bringing forward a full document into ASTM,
 9 that we would want to have that form filled
 10 out which would assign the copyright of that
 11 information to ASTM.
 12 Q. Did Kathie Morgan tell you
 13 anything else about Exhibit 1284?
 14 A. Not that I can recall.
 15 Q. Did Kathie Morgan tell you when
 16 Exhibit 1284 was first used by ASTM?
 17 A. I think -- I don't know for
 18 sure. I think our recollection was the same
 19 as mine earlier, that it was about, you know,
 20 maybe prior to 2003.
 21 Q. When you say "prior to 2003,"
 22 approximately what year do you believe that
 23 this form, Document 1284, was first used?
 24 MR. FEE: Objection. Asked and
 25 answered.

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1 THE WITNESS: Yeah, I'm not
 2 sure. I think it -- it was -- I think
 3 it was in the early 2000s.
 4 BY MR. BECKER:
 5 Q. Taking a step back, when you
 6 spoke with Phil Lively yesterday in
 7 preparation for your deposition today, did
 8 you ask him when the Web forms were first set
 9 up that included language concerning
 10 copyright assignments on the ASTM Web site?
 11 MR. FEE: Objection to form.
 12 Compound.
 13 THE WITNESS: I don't believe I
 14 asked him.
 15 BY MR. BECKER:
 16 Q. Did Mr. Lively tell you
 17 yesterday when the Web forms that include
 18 language concerning copyright assignments on
 19 the ASTM Web site were first set up?
 20 MR. FEE: Objection to form.
 21 Compound.
 22 THE WITNESS: I don't believe
 23 he -- I don't believe he said.
 24 BY MR. BECKER:
 25 Q. Other than Marge Cassidy, Jim

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1 Thomas, John Pace, Phil Lively and Kathie
 2 Morgan, was there anybody else that you met
 3 with in preparation for your deposition
 4 today?
 5 A. Besides our legal team?
 6 Q. Yes.
 7 A. No.
 8 Q. And other than those
 9 individuals, was there anybody else that you
 10 communicated with in preparation for your
 11 deposition today?
 12 A. No.
 13 Q. Collectively about how much
 14 time would you say that you spent in
 15 preparation for your deposition today?
 16 A. Maybe 15 hours.
 17 Q. Returning to Exhibit 1288, the
 18 ASTM Intellectual Property Policy from 2010,
 19 please turn to section VI B, "Intellectual
 20 Property Other Than Standards." That's Bates
 21 numbered ASTM003440. Can you, please, review
 22 subsections 1a and b from this document. For
 23 the record, that's section VI B1a and VI B1b.
 24 Please tell me when you're done reviewing it.
 25 A. [Reviewing document.] Okay.

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1 Q. This section says it relates to
 2 "Intellectual Property Other Than Standards,"
 3 and it says, "ASTM International recognizes
 4 different ways to assign intellectual
 5 property rights: ...When individual authors
 6 submit manuscripts of technical papers for
 7 publication by ASTM International, the author
 8 must sign an agreement (Author Agreement)
 9 whereby ownership of the material is assigned
 10 to ASTM International...."
 11 Why does ASTM have a special
 12 agreement for authors of intellectual
 13 property other than standards?
 14 MR. FEE: Objection. Calls for
 15 a legal conclusion. To the extent you
 16 can answer that question without
 17 disclosing communications with
 18 counsel, you may go ahead and do so.
 19 THE WITNESS: I don't know.
 20 BY MR. BECKER:
 21 Q. Do you know who would know?
 22 MR. FEE: Objection. Calls for
 23 speculation.
 24 THE WITNESS: I would --
 25 potentially in part the ASTM general

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1 counsel.
 2 BY MR. BECKER:
 3 Q. Is there anybody else who would
 4 know?
 5 MR. FEE: Same objection.
 6 THE WITNESS: I don't know.
 7 BY MR. BECKER:
 8 Q. This document again goes on to
 9 say, "... however, if a technical paper was
 10 prepared in the course of the author's
 11 employment by the U.S., Canadian, or British
 12 Governments, ASTM acknowledges that copyright
 13 does not exist."
 14 Why does ASTM acknowledge that
 15 copyright doesn't exist if the technical
 16 paper was prepared in the course of an
 17 author's employment by one of these federal
 18 governments?
 19 MR. FEE: Objection. Calls for
 20 a legal conclusion. Instruct you not
 21 to disclose communications with
 22 counsel regarding that subject, but if
 23 you have knowledge from some other
 24 source, go ahead and answer.
 25 THE WITNESS: I don't know.

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1 BY MR. BECKER:
 2 Q. Does ASTM believe that if a
 3 standard was prepared in the course of the
 4 author's employment by the U.S., Canadian or
 5 British governments, that a copyright exists
 6 in that standard?
 7 MR. FEE: Objection. Calls for
 8 a legal conclusion. Instruct you not
 9 to disclose any communications with
 10 counsel regarding that matter. If you
 11 can answer it without disclosing those
 12 communications, go ahead.
 13 THE WITNESS: I don't know.
 14 BY MR. BECKER:
 15 Q. Who would know?
 16 MR. FEE: Objection. Calls for
 17 speculation.
 18 THE WITNESS: I would
 19 potentially think that our ASTM
 20 general counsel would know.
 21 BY MR. BECKER:
 22 Q. Is there anybody else who would
 23 know?
 24 MR. FEE: Same objection.
 25 THE WITNESS: I don't know.

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1 BY MR. BECKER:
 2 Q. Does ASTM recognize a
 3 distinction between standards and
 4 intellectual property other than standards in
 5 terms of its copyrightability when created by
 6 someone who is acting in the course of their
 7 employment by the U.S., Canadian or British
 8 governments?
 9 MR. FEE: Objection. Vague.
 10 Confusing. Compound. Calls for a
 11 legal conclusion. Instruct you not to
 12 disclose any communications with
 13 counsel regarding that matter. If you
 14 have other information you can share,
 15 go ahead.
 16 THE WITNESS: I really don't
 17 know.
 18 BY MR. BECKER:
 19 Q. Just to rephrase so we have a
 20 clear question here, does ASTM recognize a
 21 distinction between standards and
 22 intellectual property other than standards in
 23 terms of its copyrightability when created by
 24 someone who is acting in the course of their
 25 employment by the U.S. government?

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1 MR. FEE: Objection. Vague.
 2 Compound. Calls for a legal
 3 conclusion. Instruct you not to
 4 disclose communications with counsel
 5 regarding the subject. If you have
 6 other information you can share, go
 7 ahead.
 8 THE WITNESS: I don't know.
 9 BY MR. BECKER:
 10 Q. Who would know?
 11 MR. FEE: Calls for speculation.
 12 Objection.
 13 THE WITNESS: Potentially our
 14 general counsel.
 15 BY MR. BECKER:
 16 Q. Did you discuss this issue in
 17 preparation for your deposition today?
 18 A. No.
 19 Q. Did you inquire about the
 20 copyrightability of material created by
 21 employees of the federal government in the
 22 course of their employment with the federal
 23 government in preparation for your deposition
 24 today?
 25 MR. FEE: Hold on one second.

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1 You can answer it yes or no.
 2 THE WITNESS: I don't think we
 3 did. Not that I -- I can't recall
 4 that we talked about that
 5 specifically.
 6 BY MR. BECKER:
 7 Q. The next clause of the
 8 Intellectual Property Policy states, When
 9 ASTM contracts, subsidizes, or agrees with
 10 writers, authors, editors, or others to
 11 prepare or otherwise help create ASTM
 12 Intellectual Property other than technical
 13 papers as given in 1a above, a "Work For
 14 Hire" Agreement must be signed in which
 15 copyright is acknowledged to reside in ASTM
 16 or will be assigned to ASTM [as read].
 17 MR. FEE: You skipped the word
 18 "International" there twice, for the
 19 record.
 20 MR. BECKER: Excuse me.
 21 BY MR. BECKER:
 22 Q. You're right, I'm looking at
 23 the earlier version of the Intellectual
 24 Property Policy, it appears that
 25 international has been inserted into the more

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1 recent version, so let me read that again.
 2 Section VI B1b states, "When
 3 ASTM International contracts, subsidizes, or
 4 agrees with writers, authors, editors, or
 5 others to prepare or otherwise help create
 6 ASTM IP other than technical papers as given
 7 in 1a above, a 'Work for Hire' Agreement must
 8 be signed in which copyright is acknowledged
 9 to reside in ASTM International or will be
 10 assigned to ASTM International."
 11 Have you ever seen one of these
 12 "Work for Hire" Agreements that's referenced
 13 in this clause?
 14 A. Not that I can recall.
 15 Q. Do you know of any situations
 16 in which a "Work for Hire" Agreement as
 17 described in clause VI B1b has been executed?
 18 A. I don't know of any specific
 19 ones that have been executed.
 20 Q. Did you discuss the existence
 21 of any "Work for Hire" Agreements in
 22 preparation for your deposition today?
 23 A. No.
 24 Q. Do you know of any "Work for
 25 Hire" Agreements that have been executed with

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1 respect to any ASTM standards?
 2 A. No.
 3 Q. Have any "Work for Hire"
 4 Agreements been executed with respect to any
 5 ASTM standards?
 6 A. I'm not aware of any, but there
 7 could have been.
 8 Q. Who would know?
 9 MR. FEE: Objection. Calls for
 10 speculation.
 11 THE WITNESS: Whoever the vice
 12 president of technical committee
 13 operations has been for, you know,
 14 however long you want to go back.
 15 BY MR. BECKER:
 16 Q. I'm sorry, so that would be --
 17 you're saying that the previous vice
 18 president of technical committee operations
 19 prior to yourself would know, might know if
 20 there had been any "Work for Hire" Agreements
 21 executed in relation to ASTM standards?
 22 MR. FEE: Objection. Calls for
 23 speculation.
 24 THE WITNESS: They might. And
 25 our general counsel might know as

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1 well.
 2 BY MR. BECKER:
 3 Q. How long have you been the vice
 4 president of technical committee operations?
 5 A. Six months.
 6 Q. Who was the vice president of
 7 technical committee operations prior to you?
 8 A. Kathie Morgan.
 9 Q. How long was she the VP of
 10 technical committee operations at ASTM?
 11 MR. FEE: Objection. Calls for
 12 speculation. Lack of foundation.
 13 THE WITNESS: Roughly seven
 14 years, eight years.
 15 BY MR. BECKER:
 16 Q. And who was the vice president
 17 of technical committee operations prior to
 18 Kathie Morgan?
 19 A. Ken Pearson.
 20 Q. How long was he the vice
 21 president of technical committee operations?
 22 A. Probably 25 years. 20 to 25
 23 years.
 24 Q. Do you know who the vice
 25 president of technical committee operations

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1 was before Ken Pearson?
 2 A. I think it was Jim Thomas.
 3 Q. Do you know how long Jim Thomas
 4 was the vice president of technical committee
 5 operations?
 6 A. No.
 7 Q. When you spoke with Kathie
 8 Morgan in preparation for your deposition
 9 today, did you discuss "Work for Hire"
 10 Agreements with her?
 11 A. No.
 12 Q. You stated earlier that you're
 13 not certain if an Intellectual Property
 14 Policy existed prior to April 28, 1999. Is
 15 that correct?
 16 MR. FEE: Objection.
 17 Mischaracterizes his testimony.
 18 THE WITNESS: You're saying that
 19 I wasn't sure --
 20 BY MR. BECKER:
 21 Q. Yes.
 22 A. -- whether there was?
 23 Q. Yes.
 24 A. Yeah. I thought I recalled
 25 that there was.

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1 Q. Do you know who would know if
 2 an Intellectual Property Policy existed prior
 3 to April 28, 1999?
 4 A. Yeah, I would like to go back,
 5 if I could, to a previous answer that I
 6 provided.
 7 Q. Please do.
 8 A. With respect to my meeting with
 9 Jim Thomas, Jim Thomas also had discussion
 10 during that meeting relative to his belief
 11 that there was an Intellectual Property
 12 Policy prior to 1999.
 13 Q. And did Jim Thomas state what
 14 his basis was for thinking that there was an
 15 Intellectual Property Policy prior to 1999?
 16 MR. FEE: Objection.
 17 THE WITNESS: I believe he was
 18 just saying he remembered one, he
 19 recalled that there was one.
 20 BY MR. BECKER:
 21 Q. Did you do anything to try to
 22 get a copy of any Intellectual Property
 23 Policy that may have existed prior to 1999?
 24 A. No.
 25 Q. Is there anyone other than Jim

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1 Thomas who would know whether an Intellectual
 2 Property Policy existed prior to 1999?
 3 A. I don't think so.
 4 MR. BECKER: Counsel, given
 5 Topic Number 2 in the Notice of
 6 Deposition, we need somebody who is
 7 able to say definitively whether an
 8 Intellectual Property Policy existed
 9 prior to 1999.
 10 MR. FEE: Do you have any other
 11 questions for him or are you done?
 12 MR. BECKER: No, we're
 13 continuing.
 14 MR. FEE: Okay. Go ahead.
 15 - - -
 16 (Exhibit 1290, Exhibit A from
 17 Complaint, was marked for
 18 identification.)
 19 - - -
 20 BY MR. BECKER:
 21 Q. I'm handing you what's been
 22 marked as Exhibit 1290. This is Exhibit A
 23 from the Complaint filed by plaintiffs. Do
 24 you recognize this document?
 25 A. I don't think I looked at this

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1 document.
 2 Q. Well, this is the listing of
 3 standards that ASTM is asserting are
 4 infringed by Public.Resource.Org.
 5 - - -
 6 (Exhibit 1291, Certificates of
 7 Copyright Registration, Bates
 8 ASTM000001 - ASTM000168, was marked
 9 for identification.)
 10 - - -
 11 BY MR. BECKER:
 12 Q. I'm handing you what has been
 13 marked as Exhibit 1291. These are the
 14 documents produced as Bates number ASTM000001
 15 to ASTM000168. Do you recognize this
 16 document?
 17 MR. FEE: Objection.
 18 Mischaracterizes what has been marked
 19 as 1291 as one document.
 20 THE WITNESS: I think I saw an
 21 example of one yesterday.
 22 BY MR. BECKER:
 23 Q. What is Exhibit 1291?
 24 MR. FEE: Objection. Lack of
 25 foundation.

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1 THE WITNESS: They look like
 2 they're examples of Certificates of
 3 Copyright Registration.
 4 BY MR. BECKER:
 5 Q. I will represent to you that
 6 Exhibit 1291 is all of the Certificates of
 7 Copyright Registration that ASTM has produced
 8 to Public.Resource in this action.
 9 You said you saw an example of
 10 one of these Certificates of Copyright
 11 Registration yesterday?
 12 A. Yes.
 13 Q. Was that in preparation for
 14 your deposition?
 15 A. Yes.
 16 Q. And in what context did you see
 17 an example of the Certificate of Copyright
 18 Registration?
 19 MR. FEE: Objection. Vague.
 20 THE WITNESS: I'm not sure what
 21 you mean by "context."
 22 BY MR. BECKER:
 23 Q. Were you shown an example of
 24 the Certificate of Copyright Registration by
 25 anybody?

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1 A. It was just in the materials
 2 along with other Bates numbered documents.
 3 Q. Do you recall which Certificate
 4 of Copyright Registration you viewed
 5 yesterday?
 6 A. No.
 7 Q. Was it only one Certificate of
 8 Copyright Registration that you looked at?
 9 A. I believe so.
 10 Q. Did you have any discussions
 11 with anyone in preparation for your
 12 deposition today concerning Certificates of
 13 Copyright Registration by ASTM?
 14 MR. FEE: You can answer it yes
 15 or no.
 16 THE WITNESS: Yes.
 17 BY MR. BECKER:
 18 Q. And who did you have these
 19 discussions with?
 20 A. I had a discussion with Kathe
 21 Hooper.
 22 Q. Anybody else?
 23 A. Other than the legal team, I
 24 don't think so.
 25 Q. I don't believe that Kathe

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1 Hooper was one of the people that you listed
 2 as an individual that you spoke with in
 3 preparation for your deposition?
 4 A. Yeah, we -- I didn't -- we did
 5 not have a special meeting with her.
 6 Q. What did you discuss when you
 7 spoke with Kathe Hooper in preparation for
 8 your deposition today?
 9 A. We discussed why, when this
 10 form was filled out, why we had checked off
 11 the box yes to question 2a about "Was this
 12 contribution to the work a work made for
 13 hire."
 14 Q. And why is that, that box 2a
 15 was checked off on the copyright
 16 registrations?
 17 A. She said that the copyright
 18 office had told her to fill out the form that
 19 way.
 20 Q. Did she say why the copyright
 21 office told her to fill out the form that
 22 way?
 23 A. I don't believe so.
 24 Q. Was she the one who prepared
 25 the copyright registrations?

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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?

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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.

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1 Q. Do you know what had been the
2 discussion with the copyright office by Kathe
3 Hooper's predecessor concerning checking box
4 2a?
5 A. Do I know?
6 MR. FEE: Objection.
7 BY MR. BECKER:
8 Q. Yeah.
9 MR. FEE: Vague.
10 THE WITNESS: I only know what
11 Kathe Hooper told me.
12 BY MR. BECKER:
13 Q. And what precisely did Kathe
14 Hooper tell you about that?
15 MR. FEE: Objection. Asked and
16 answered.
17 THE WITNESS: That the copyright
18 office had informed Kathe Hooper's
19 predecessor to check box yes to the
20 answer -- to the question on 2a.
21 BY MR. BECKER:
22 Q. Did Kathe Hooper tell you any
23 information about what her predecessor had
24 said to the copyright office that led to the
25 copyright office telling her to check box 2a?

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1 A. No. My understanding is it was
2 just a question on how to fill out the form.
3 Q. Did ASTM ever have a lawyer
4 review the applications for copyright
5 registration?
6 A. I don't know.
7 Q. Do you have any knowledge about
8 what information the copyright office had
9 obtained from ASTM when it said to check box
10 2a?
11 A. No.
12 Q. If ASTM had provided different
13 facts concerning the material that was being
14 copyrighted, that might call for a different
15 answer to whether box 2a should be checked on
16 the copyright registration form. Correct?
17 MR. FEE: Objection. Calls for
18 speculation. Calls for a legal
19 conclusion. Calls for expert
20 testimony. You can answer if you
21 know.
22 THE WITNESS: I don't know.
23 BY MR. BECKER:
24 Q. Why is ASTM listed as the
25 author under section 2a?

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1 A. I think the copyright office
2 told us to fill out the form in that manner.
3 Q. Did Kathe Hooper tell you that
4 the copyright office said to fill out the
5 copyright registration form by putting
6 American Society for Testing and Materials
7 under name of author, section 2a?
8 A. Yes.
9 Q. Did Kathe Hooper tell you
10 anything else about listing ASTM under the
11 name of author field in section 2a?
12 A. No.
13 Q. Are there any documents that
14 reflect ASTM's communication with the
15 copyright office concerning how to fill out
16 section 2a of the forms for copyright
17 registration?
18 MR. FEE: Objection. Calls for
19 speculation. This is beyond the
20 scope. You can answer.
21 THE WITNESS: Not that I'm aware
22 of.
23 BY MR. BECKER:
24 Q. Are there any letters that
25 reflect ASTM's communication with the

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1 copyright office concerning how to fill out
2 section 2a of the forms for copyright
3 registration?
4 MR. FEE: Objection. Same
5 objections as before, plus you just
6 answered that question. You can
7 answer it again.
8 THE WITNESS: Not that I'm aware
9 of.
10 BY MR. BECKER:
11 Q. Are there any internal memos
12 that reflect ASTM's communication with the
13 copyright office concerning how to fill out
14 section 2a of the forms for copyright
15 registration?
16 MR. FEE: Objection. Calls for
17 speculation. It's beyond the scope of
18 his designation. You can answer if
19 you know.
20 THE WITNESS: Not that I'm aware
21 of.
22 BY MR. BECKER:
23 Q. Who would know whether any
24 documents exist that reflect ASTM's
25 communications with the copyright office

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1 concerning how to fill out section 2a of the
2 forms for copyright registration?
3 MR. FEE: Objection. Calls for
4 speculation. Beyond the scope of his
5 designation. You can answer.
6 THE WITNESS: I don't know.
7 Maybe the people that worked in our
8 publications department at the time
9 that that question was -- at the time
10 that the copyright office had informed
11 us.
12 BY MR. BECKER:
13 Q. Do you know who was the
14 president of publications as of the time that
15 ASTM communicated with the copyright office
16 regarding how to fill out section 2a of the
17 copyright registration forms?
18 A. I believe it was Bob Meltzer,
19 Robert Meltzer.
20 Q. Do you know if Robert Meltzer
21 is still alive?
22 A. I don't know for sure.
23 MR. FEE: Matt, is now a good
24 time to take a break?
25 MR. BECKER: We can in just a

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1 moment.
2 BY MR. BECKER:
3 Q. Please turn to page ASTM000107
4 of Exhibit 1291. I will represent to you
5 that this is the earliest copyright
6 registration that ASTM has provided to
7 Public.Resource in this action. Under
8 section 2-1, in the section that says, "NAME
9 OF AUTHOR," do you see that it lists
10 "American Society for Testing and Materials,"
11 and then says, "Was this author's
12 contribution to the work a 'work made for
13 hire,'" and then checks the box yes?
14 A. Yes.
15 Q. And then on the next page, do
16 you see that under the "CERTIFICATION" near
17 the bottom of the page, it lists "Robert L.
18 Meltzer," and then has his -- what appears to
19 be his signature --
20 A. Yes.
21 Q. -- with a date of January 31,
22 1980?
23 A. Yes.
24 Q. Is it your belief that as of at
25 least January 31, 1980, Kathe Hooper's

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1 predecessor had had a conversation with the
 2 copyright office in which they instructed her
 3 to check the box saying that the -- scratch
 4 that.
 5 Is it your understanding that
 6 as of at least January 31, 1980, someone at
 7 ASTM had had a conversation with someone from
 8 the copyright office in which that person
 9 from ASTM was instructed to check the box
 10 saying that the work was a "work made for
 11 hire," and listing the name "American Society
 12 for Testing and Materials" under the "NAME OF
 13 AUTHOR" field?
 14 MR. FEE: Objection to form.
 15 THE WITNESS: I'm not sure I
 16 understand the question. If you could
 17 rephrase it, I'm a little lost.
 18 BY MR. BECKER:
 19 Q. Sure. Is it your -- after
 20 looking at this document, page ASTM000107 to
 21 108, is it your understanding that as of at
 22 least January 31, 1980, someone at ASTM had a
 23 conversation with someone from the copyright
 24 office in which that person from ASTM was
 25 instructed to check the box saying that the

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1 work was a "work made for hire," and listing
 2 the names "American Society for Testing and
 3 Materials" under the "NAME OF AUTHOR" field?
 4 MR. FEE: Objection. Form. Go
 5 ahead.
 6 THE WITNESS: Yeah, I believe
 7 that's right, I just don't know
 8 when that con -- I don't know when
 9 that conversation exactly was made.
 10 BY MR. BECKER:
 11 Q. But you believe it was as of at
 12 least January 31, 1980?
 13 A. I don't know. It could have
 14 been before that. I really don't know.
 15 MR. BECKER: All right. We can
 16 go off the record.
 17 VIDEOGRAPHER: The time is now
 18 3:08. We're going off the video
 19 record.
 20 - - -
 21 (A recess was taken.)
 22 - - -
 23 VIDEOGRAPHER: The time is now
 24 3:20. We're back on the video record.
 25 BY MR. BECKER:

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1 Q. Mr. Smith, do you know which
 2 standards at issue in this litigation each
 3 copyright registration that ASTM has provided
 4 corresponds to?
 5 A. I'm not sure I get the
 6 question.
 7 Q. If you look at, we were just
 8 discussing ASTM000107 in Exhibit 1291, that's
 9 a standard, the title of the work is "1980
 10 ANNUAL BOOK OF ASTM STANDARDS, Part
 11 1:Steel-Piping, Tubing, Fittings." Is that
 12 correct?
 13 A. Correct.
 14 Q. Do you know how many standards
 15 are in the 1980 Annual Book of ASTM
 16 Standards, Part 1:Steel-Piping, Tubing,
 17 Fittings?
 18 A. No.
 19 MR. FEE: Objection. Beyond the
 20 scope of his designation.
 21 THE WITNESS: No, I don't.
 22 MR. BECKER: I would disagree, I
 23 don't think this is beyond the scope
 24 of his designation. This has to do
 25 with the -- with copyright ownership

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1 and the chain of title. This is --
 2 MR. FEE: You just asked him how
 3 many chapters essentially there were
 4 in a book.
 5 MR. BECKER: Well, that's one of
 6 the questions I have, is related to
 7 this particular registration. It's a
 8 registration for a work.
 9 MR. FEE: We disagree for the
 10 record.
 11 BY MR. BECKER:
 12 Q. Are there multiple standards
 13 listed in the 1980 Annual Book of ASTM
 14 Standards, Part 1:Steel-Piping, Tubing,
 15 Fittings?
 16 MR. FEE: Same objection.
 17 THE WITNESS: Yes.
 18 BY MR. BECKER:
 19 Q. How do you know that?
 20 A. Because it's our volume of
 21 standards and volumes contain more than one
 22 standard.
 23 Q. Is there a way to confirm --
 24 excuse me, scratch that.
 25 Do you know how to determine

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1 how many standards are in the 1980 Annual
2 Book of ASTM Standards, Part 1:Steel-Piping,
3 Tubing, Fittings?
4 MR. FEE: Same objection.
5 THE WITNESS: I don't know if
6 there would be a way to find that out
7 today.
8 BY MR. BECKER:
9 Q. Why not?
10 MR. FEE: Same objection.
11 Beyond the scope.
12 THE WITNESS: I just don't know
13 if we still have that information from
14 35 years ago.
15 BY MR. BECKER:
16 Q. How would you go about trying
17 to determine how many standards were in the
18 1980 Annual Book of ASTM Standards, Part
19 1:Steel-Piping, Tubing, Fittings?
20 MR. FEE: Same objection.
21 THE WITNESS: I would probably
22 ask our publications department if we
23 had any record of the index for that
24 book. And if we did, you can count
25 them.

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1 BY MR. BECKER:
2 Q. Would you be able to determine
3 this from anything else other than the book
4 itself or an index for that book?
5 MR. FEE: Same objection.
6 THE WITNESS: I don't know.
7 BY MR. BECKER:
8 Q. Does ASTM keep complete copies
9 of every book it has published?
10 MR. FEE: Same objection.
11 THE WITNESS: I don't know. I
12 don't think so.
13 BY MR. BECKER:
14 Q. Who would know?
15 MR. FEE: Objection. Calls for
16 speculation. Beyond the scope.
17 THE WITNESS: Maybe folks from
18 our publications department.
19 BY MR. BECKER:
20 Q. Would Kathe Hooper know?
21 MR. FEE: Objection. Calls for
22 speculation. Beyond the scope.
23 THE WITNESS: She might.
24 BY MR. BECKER:
25 Q. Would John Pace know?

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1 MR. FEE: Same objections.
2 THE WITNESS: He might.
3 BY MR. BECKER:
4 Q. Who else is in the publications
5 department other than Kathe Hooper and John
6 Pace?
7 MR. FEE: Objection. Beyond the
8 scope of his designation.
9 BY MR. BECKER:
10 Q. Let me rephrase. Who else
11 other than --
12 A. 50-some people. I don't know.
13 Q. Let me rephrase. Other than
14 John Pace and Kathe Hooper, who else might
15 know whether the -- whether copies of all of
16 ASTM's publications are kept?
17 A. I don't know.
18 MR. FEE: Objection. Beyond the
19 scope of his designation.
20 THE WITNESS: I don't know.
21 MR. FEE: Calls for speculation.
22 BY MR. BECKER:
23 Q. If you look at Exhibit 1290 and
24 compare it with -- compare the second page of
25 1290 with ASTM0000107, the copyright

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1 registration page that we've been discussing,
2 you will see that in the middle of the page,
3 page 2 of Exhibit 1290 it lists ASTM A370 as
4 a designation, the edition 1997e2, "Standard
5 Methods and Definition for Mechanical Testing
6 of Steel Products" with a registration
7 certificate number TX 434-207. Do you see
8 that?
9 A. Yes.
10 Q. Do you see that the
11 registration number TX 434-207 corresponds
12 with the registration number in the top
13 right-hand corner of the page ASTM000107 from
14 Exhibit 1291?
15 A. Yes.
16 Q. Do you know how ASTM
17 confirmed -- do you know if ASTM confirmed
18 that ASTM standard A370 1997e2 was in the
19 1980 Annual Book of ASTM Standards, Part
20 1:Steel-Piping, Tubing, Fittings?
21 MR. FEE: Objection. Beyond the
22 scope of his designation.
23 THE WITNESS: I don't know if
24 you're suggesting that because the
25 registration certificate numbers in

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1 Exhibit 1291 and A370 in Exhibit 1292,
 2 if you are suggesting because they are
 3 the same certificate numbers, that
 4 that confirms that this standard is in
 5 this volume? Is that what you're
 6 asking me?
 7 BY MR. BECKER:
 8 Q. Well, I'm wondering if that
 9 does confirm that.
 10 A. I don't know because I'm not
 11 sure how the registration number process
 12 really works. I don't know for sure.
 13 Q. So do you have any way of
 14 telling us which standard that is at issue in
 15 this litigation corresponds to which of the
 16 copyright registrations that ASTM has
 17 provided to Public.Resource?
 18 MR. FEE: Objection. Beyond the
 19 scope of his designation. You can
 20 answer.
 21 THE WITNESS: I don't know. I
 22 don't know.
 23 MR. BECKER: I just want to
 24 state for the record I strongly
 25 disagree that this is beyond the scope

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1 of his designation. Topic 2 says,
 2 "All elements of the Chain of Title of
 3 copyright ownership, including
 4 copyright authorship and ownership of
 5 component parts of the Works-At-Issue
 6 in this case." The issue of what
 7 standards are covered by which
 8 registrations seems very relevant to
 9 the question of copyright ownership,
 10 at least to the extent that ASTM is
 11 claiming copyright ownership.
 12 Are you still objecting that
 13 this is beyond the scope of his
 14 designation?
 15 MR. FEE: Yes. Just like every
 16 other deposition objection, they're
 17 not going to get resolved here, they
 18 get resolved, if necessary, at a later
 19 date.
 20 BY MR. BECKER:
 21 Q. In preparation for your
 22 deposition today, did you speak to anybody
 23 about how to correlate the copyright
 24 registrations that ASTM has provided to
 25 Public.Resource with the standards that ASTM

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1 is suing Public.Resource over in this
 2 litigation?
 3 MR. FEE: Objection. Beyond the
 4 scope of his designation. You can
 5 answer.
 6 THE WITNESS: No.
 7 BY MR. BECKER:
 8 Q. Do you know if the 1980 Annual
 9 Book of ASTM Standards, Part 1:Steel-Piping,
 10 Tubing, and Fittings is available in ASTM's
 11 digital library?
 12 MR. FEE: Objection. Beyond the
 13 scope of his designation.
 14 THE WITNESS: I don't know.
 15 BY MR. BECKER:
 16 Q. Do you know how to determine
 17 what works are available in ASTM's digital
 18 library?
 19 MR. FEE: Objection. Beyond the
 20 scope of his designation.
 21 THE WITNESS: I think it's
 22 searchable.
 23 BY MR. BECKER:
 24 Q. Searchable by whom?
 25 MR. FEE: Same objection.

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1 THE WITNESS: By standard.
 2 BY MR. BECKER:
 3 Q. Can members of the public
 4 search ASTM's digital library?
 5 MR. FEE: Same objection.
 6 Objection. Vague also.
 7 THE WITNESS: If you pay for it
 8 in a subscription.
 9 BY MR. BECKER:
 10 Q. So members of the public cannot
 11 search ASTM's digital library unless they pay
 12 for a subscription?
 13 MR. FEE: Objection. Vague.
 14 Beyond the scope of his designation.
 15 THE WITNESS: Correct.
 16 BY MR. BECKER:
 17 Q. Returning to Exhibit 1291 and
 18 turning to the next page, ASTM 00108, it's
 19 the back of this same copyright registration
 20 form that we've been discussing. The section
 21 near the top that says, "PREVIOUS
 22 REGISTRATION," and it says that -- checks yes
 23 for the box that says, "Has registration for
 24 this work or for an earlier version of this
 25 work, already been made in the Copyright

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1 Office?" And then it says, "give: Previous
 2 Registration Number," and the registration
 3 number "TX 226-040 Year of Registration 1979"
 4 is provided. Is that correct?
 5 MR. FEE: Objection.
 6 Mischaracterizes, eliminates portions
 7 of that section.
 8 THE WITNESS: That reads as you
 9 said.
 10 BY MR. BECKER:
 11 Q. Do you know if the standard
 12 ASTM A370 1997e2 was featured in this other
 13 work that's registered as TX 226-040 with the
 14 year of registration 1979?
 15 MR. FEE: Objection. Beyond the
 16 scope of his designation.
 17 THE WITNESS: I don't know for
 18 sure. I don't know.
 19 BY MR. BECKER:
 20 Q. Do you know how somebody would
 21 determine what work is referenced by this
 22 registration number that's provided?
 23 MR. FEE: Objection. Vague.
 24 Calls for speculation. Beyond the
 25 scope of his designation.

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1 THE WITNESS: I think it's this,
 2 the 1980 Annual Book of ASTM Standards
 3 or the 1979 book correlates with this
 4 registration.
 5 BY MR. BECKER:
 6 Q. For ASTM A370 1997e2, what does
 7 the 19 -- excuse me, did I say -- let me
 8 rephrase that.
 9 For ASTM A370 1977e2, what does
 10 1977 designate?
 11 A. It means that's the year that
 12 that version was approved. So A370 may have
 13 been a new standard that was first approved
 14 in 1977, or it could have been revised and
 15 that version was approved in 1977.
 16 Q. So 1977 is the year of most
 17 recent either approval or revision?
 18 MR. FEE: Objection. Compound.
 19 Vague. Mischaracterizes his testimony.
 20 THE WITNESS: Not necessarily.
 21 There could be -- there could be more
 22 recent versions.
 23 BY MR. BECKER:
 24 Q. For ASTM A370 1977e2, could
 25 there have been more recent versions of it

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1 than 1977?
 2 A. Yes.
 3 Q. And in what case would there be
 4 more recent versions?
 5 A. If the committee successfully
 6 balloted a revision to the standard.
 7 Q. In what circumstances would a
 8 revision result in a change of the year
 9 that's listed from 1977 to a different year?
 10 A. If it was approved, if a
 11 revision was approved in a different year, it
 12 would be provided that year date.
 13 Q. But for the version that is
 14 marked as 1977e2, was that version first
 15 released in 1977?
 16 A. It depends when it was -- it
 17 depends. If it was approved at the end of
 18 1977, it could have been published in 1978.
 19 Q. Would it have been published
 20 any later than 1978? Excuse me, would it
 21 have been first published any later than
 22 1978?
 23 A. This particular 1977 version, I
 24 wouldn't have --
 25 Q. Yes.

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1 A. I wouldn't have thought that it
 2 would be published any later than 1978.
 3 Q. Does ASTM release a new version
 4 of the Annual Book of ASTM Standards every
 5 year?
 6 A. Yes.
 7 Q. What is contained in the Annual
 8 Book of ASTM Standards? Is that every
 9 standard that ASTM -- excuse me. Is that
 10 every ASTM standard that is current as of
 11 that year?
 12 MR. FEE: Objection. Compound.
 13 THE WITNESS: The Annual Book of
 14 ASTM Standards comprises a collection
 15 of volumes, so there are specific
 16 volumes of ASTM standards. This Part
 17 1:Steel-Piping, Tubing, Fittings is a
 18 volume.
 19 BY MR. BECKER:
 20 Q. Would volume have been -- would
 21 there have been a 1979 Annual Book of ASTM
 22 Standards, Part 1:Steel-Piping, Tubing,
 23 Fittings?
 24 A. Yes.
 25 Q. Would there have been a 1978

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1 Annual Book of ASTM Standards, Part
 2 1:Steel-Piping, Tubing, Fittings?
 3 A. I don't know specifically if
 4 there would be -- you know, if it was called
 5 the same thing, a Part 1 or -- because
 6 sometimes we have to reshuffle our volumes
 7 depending -- as they get bigger, we have to
 8 manage the size of each volume. So I don't
 9 know if it was -- would have been called Part
 10 1 or something else, but I also don't know if
 11 the same exact standards that were in there
 12 in 1979 are not necessarily in there in 1980.
 13 Q. Would ASTM A370 1977e2 have
 14 been published in an Annual Book of ASTM
 15 Standards prior to 1980?
 16 A. Most -- yeah, most likely, yep.
 17 Q. Do you know why ASTM has not
 18 provided Public.Resource with the copyright
 19 registrations for any such volumes prior to
 20 1980?
 21 MR. FEE: Objection. Calls for
 22 speculation. Beyond the scope of his
 23 designation.
 24 THE WITNESS: I don't know.
 25 BY MR. BECKER:

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1 Q. Why are some standards
 2 re-approved?
 3 MR. FEE: Objection. Beyond the
 4 scope of his designations.
 5 THE WITNESS: The technical
 6 committees make the decision as to
 7 whether or not they want to re-approve
 8 the standard through the consensus
 9 process.
 10 BY MR. BECKER:
 11 Q. And in what situations are
 12 standards re-approved?
 13 MR. FEE: Same objection.
 14 THE WITNESS: If the committees
 15 want -- it's up to the committees. So
 16 if there's -- if the committees are
 17 happy with the current state of the
 18 standard and they don't feel like
 19 there's any revisions that are
 20 necessary, then they can initiate a
 21 ballot for a re-approval.
 22 BY MR. BECKER:
 23 Q. And does that re-approval mean
 24 there are no changes from the previous
 25 version?

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1 A. Yes. Nothing is technically
 2 significant.
 3 Q. Returning to ASTM000108, just
 4 below where it lists the information under
 5 "PREVIOUS REGISTRATION," it has a section
 6 that says, "COMPILATION OR DERIVATIVE WORK"
 7 which says, "PREEXISTING MATERIAL." And then
 8 below that it says, "1979 Annual Book of ASTM
 9 Standards, Part 1." And then below that,
 10 "MATERIAL ADDED TO THIS WORK," it says,
 11 "Compilation of previously published text
 12 plus additional text."
 13 Do you know what that
 14 additional text is that was added to the 1979
 15 Annual Book of ASTM Standards, Part 1 to
 16 create the 1980 Annual Book of ASTM
 17 Standards, Part 1?
 18 A. I don't know exactly what that
 19 text was, but it's -- my guess is that it
 20 means revisions to the standards that were
 21 included in the 1979 book that are also
 22 included in the 1980 book, but there are also
 23 revisions, and any new standards that were
 24 approved that were not in the 1979 book but
 25 made it to the 1980 book.

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1 Q. Is the basis of your previous
 2 statement that typically the next years'
 3 Annual Book of Standards includes standards
 4 that had been recently approved or changed in
 5 that past year?
 6 MR. FEE: Objection.
 7 Mischaracterizes his testimony. Vague
 8 and confusing.
 9 THE WITNESS: Can you restate
 10 that?
 11 BY MR. BECKER:
 12 Q. Yeah. Maybe I'll just ask you,
 13 what's the basis for your guess that the
 14 revisions to the standards that were included
 15 in the 1979 book are -- excuse me.
 16 What is the basis for your
 17 statement that your guess is that any
 18 revisions to the 1979 book of standards that
 19 resulted in the 1980 book of standards is
 20 attributable to new standards or revised
 21 standards within that past year?
 22 MR. FEE: Objection. Vague.
 23 Confusing.
 24 THE WITNESS: I'm not sure I
 25 completely understand what your

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1 question means, but I'll just explain
 2 it that if there -- let's just say,
 3 for example, that there's a standard
 4 that is in the 1979 book. If that
 5 standard is revised, then the revision
 6 is included in the 1980 book. Does
 7 that kind of answer your question?
 8 MR. BECKER: Yes.
 9 BY MR. BECKER:
 10 Q. And generally that's the case
 11 for any successive Annual Book of Standards.
 12 Is that correct?
 13 MR. FEE: Objection. Vague.
 14 Compound.
 15 THE WITNESS: Yeah, that's the
 16 way it works.
 17 BY MR. BECKER:
 18 Q. Is there a log of every
 19 revision over time to any particular standard
 20 from its first creation?
 21 MR. FEE: Objection. Vague.
 22 THE WITNESS: ASTM is 115 years
 23 old, so I don't think there is a log
 24 that exists for standards that were
 25 approved in our early stages.

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1 BY MR. BECKER:
 2 Q. Does ASTM keep a log of every
 3 revision over time to any particular standard
 4 from its first creation for those standards
 5 that have been created in the past ten years?
 6 MR. FEE: Objection. Vague.
 7 THE WITNESS: We might. It's
 8 possible.
 9 BY MR. BECKER:
 10 Q. Do you know who would know
 11 whether this is the case or not?
 12 A. I just don't know the
 13 particular time frame. You say ten years, I
 14 don't know if it's ten years or what the time
 15 frame is that we have it in our system.
 16 Q. So are you saying that a log
 17 exists but you're not certain how far back it
 18 goes?
 19 A. Correct.
 20 MR. FEE: Objection. Vague.
 21 THE WITNESS: Correct.
 22 BY MR. BECKER:
 23 Q. And is that log publicly
 24 available or is that only internal to ASTM?
 25 MR. FEE: Objection. Vague, and

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1 compound.
 2 THE WITNESS: It's internal to
 3 ASTM, but we do make historical
 4 versions of standards available from
 5 our Web site. I believe we started
 6 that from 19 -- it might have been
 7 like 2000.
 8 BY MR. BECKER:
 9 Q. And who maintains these logs?
 10 MR. FEE: Objection. Vague.
 11 THE WITNESS: It's part of our
 12 automated system.
 13 BY MR. BECKER:
 14 Q. Who is in charge of that
 15 automated system?
 16 A. I guess the system itself, our
 17 technology area.
 18 Q. Would that be the VP of
 19 technology who is in charge of that?
 20 A. Uh-huh. Yes. I'm sorry.
 21 Q. On Exhibit 1291, please turn to
 22 ASTM000149. And when you have that open,
 23 please also flip to ASTM000155. If you look
 24 at ASTM000149 under the section 2-1, it says,
 25 "AUTHOR OF (Briefly describe nature of this

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1 author's contribution)," and it says, "Entire
 2 Text." In contrast, if you look at
 3 ASTM000155 under section 2-1 "AUTHOR OF
 4 (Briefly describe nature of this author's
 5 contribution)," it says, "Collective Work."
 6 Do you know why ASTM has said
 7 that under one registration, that they are
 8 the author of the entire text, but under a --
 9 this other registration, ASTM000155, ASTM
 10 says that it is a collective work?
 11 A. I don't know why.
 12 MR. FEE: Objection.
 13 Mischaracterizes the document. Did
 14 you answer? Sorry.
 15 THE WITNESS: I'm sorry, too.
 16 BY MR. BECKER:
 17 Q. Who would know why there is
 18 this difference between these two copyright
 19 registrations?
 20 MR. FEE: Objection. Calls for
 21 speculation.
 22 THE WITNESS: I don't know.
 23 BY MR. BECKER:
 24 Q. You don't know who would know
 25 the answer to that question?

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1 MR. FEE: Objection. Asked and
2 answered.
3 THE WITNESS: I don't know. Bob
4 Meltzer maybe since it was from 1980.
5 BY MR. BECKER:
6 Q. Please turn to ASTM000167 of
7 Exhibit 1291. This is a copyright
8 registration for "F1193-06 Standard Practice
9 for Quality, Manufacture, and Construction of
10 Amusement Rides and Devices." Is this a
11 registration for a single standard by ASTM?
12 MR. FEE: Objection. Calls for
13 a legal conclusion.
14 THE WITNESS: It appears to be.
15 BY MR. BECKER:
16 Q. Is F1193-06 just one standard?
17 A. Yes.
18 Q. Why has ASTM here registered a
19 single standard whereas for the bulk of the
20 registrations that are provided by ASTM to
21 Public.Resource they have registered entire
22 volumes of standards?
23 MR. FEE: Objection. I think I
24 need to talk about a privilege issue
25 before he can respond to that

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1 question. Go outside for one second.
2 VIDEOGRAPHER: The time is now
3 3:56. We're going off the video
4 record. This concludes disc two.
5 - - -
6 (A recess was taken.)
7 - - -
8 VIDEOGRAPHER: The time is now
9 4:02. We're back on the video record.
10 This begins disc three.
11 MR. FEE: If you could just read
12 back the question so he can respond.
13 - - -
14 (The court reporter read the
15 pertinent part of the record.)
16 - - -
17 THE WITNESS: My understanding
18 was that back when we only published
19 books and we didn't make our standards
20 available as separates, we would
21 copyright, we would submit copyright
22 registrations for the entire volume.
23 As we began making standards available
24 as single standards available for
25 purchase, we began -- and those single

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1 copies were available prior to them
2 being available in the volume, we
3 began filing separate registrations.
4 BY MR. BECKER:
5 Q. At approximately what time did
6 ASTM begin filing for separate registrations?
7 MR. FEE: Objection. Vague.
8 THE WITNESS: I'm not exactly
9 sure.
10 BY MR. BECKER:
11 Q. Was it prior to 2013 when ASTM
12 first started filing for individual
13 registrations of individual standards?
14 A. Yes.
15 Q. The standard listed in
16 ASTM000167 that we're discussing says its
17 year of completion was 2006 and date of first
18 publication was March 3, 2006. But the
19 effective date of the registration as stated
20 in the top right-hand corner is April 10,
21 2013. Was this standard first registered in
22 2013?
23 MR. FEE: Objection. Calls for
24 speculation. Calls for a legal
25 conclusion. You can answer.

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1 THE WITNESS: Yeah. I really
2 don't know.
3 BY MR. BECKER:
4 Q. If you look in Exhibit 1291 at
5 the four registrations immediately preceding
6 this registration we're discussing as
7 ASTM 00167, so that's the pages ASTM 00159 to
8 166. These are all copyright registrations
9 from 2013 -- excuse me, March 5, 2013, but
10 they concern standards that were first
11 published many years prior to 2013. Is that
12 correct?
13 MR. FEE: Objection. Compound.
14 Calls for speculation.
15 THE WITNESS: I don't know for
16 sure.
17 BY MR. BECKER:
18 Q. Do you know if ASTM filed for
19 these registrations in preparation for
20 litigation with Public.Resource?
21 MR. FEE: Objection. I'm going
22 to instruct him not to answer that
23 question.
24 THE WITNESS: I won't answer
25 that question.

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1 MR. BECKER: Counsel, why is it
2 that you're instructing him not to
3 answer that question?
4 MR. FEE: If it's done in
5 anticipation of litigation, it's work
6 product. You're asking him for work
7 product.
8 MR. BECKER: Counsel, I'm not
9 certain if I agree with that. This is
10 a public filing.
11 MR. FEE: It doesn't matter if
12 you agree with it. I'm not -- you can
13 say whatever you want, but his
14 instruction is what it is, he's going
15 to follow it.
16 MR. BECKER: Counsel, I'll state
17 for the record that I believe that
18 this concerns a public filing and it's
19 not work product.
20 MR. FEE: The reason why
21 something was done is not contained in
22 these public filings. That's what
23 you're asking him. If you want to ask
24 him questions about what appears in
25 the case of public filings, feel free.

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1 MR. BECKER: Counsel, I'm not
2 interested in any attorney-client
3 communications here. I'm simply
4 asking about the reasons why ASTM took
5 a particular action here.
6 MR. FEE: I've instructed him
7 not to answer. He said he's not
8 answering the question.
9 BY MR. BECKER:
10 Q. Do you still refuse to answer
11 this question?
12 A. Yes.
13 Q. What was the business reason
14 for filing any of these five registrations
15 that I just discussed that were filed in
16 2013?
17 MR. FEE: Objection. Calls for
18 a legal -- strike that.
19 Objection. To the extent that
20 that requires you to disclose
21 attorney-client communications, I
22 would direct you not to do so. If you
23 are aware of business reasons
24 unrelated to attorney-client
25 communications, you can disclose

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1 those.
2 THE WITNESS: I'm not aware of
3 any other business reasons for why we
4 filed these as we would for any other
5 standard that we produced.
6 BY MR. BECKER:
7 Q. What are the business reasons
8 for filing for Certificates of Registration
9 for any of these standards under ASTM's name?
10 MR. FEE: Objection. To the
11 extent that requires you to disclose
12 attorney-client communications, you
13 shouldn't do so. If you're aware of
14 business reasons separate and apart
15 from legal communications, you can go
16 ahead and answer.
17 THE WITNESS: My understanding
18 is that we copyright these standards
19 so that we can sell them and support
20 the operations of the organization.
21 BY MR. BECKER:
22 Q. What are ASTM organizational
23 members?
24 A. Organizational members are
25 essentially members that wish to support ASTM

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1 through a larger membership fee of \$400.
2 Q. Is there any distinction other
3 than the payment of \$400 that separates
4 organizational members from individual
5 members?
6 MR. FEE: Objection. Vague.
7 Beyond the scope of his designation.
8 THE WITNESS: Organizational
9 members may get some other fringe
10 benefits that the individual members
11 don't receive.
12 BY MR. BECKER:
13 Q. Do organizational members
14 constitute organizations as apart from
15 individuals?
16 MR. FEE: Objection. Vague.
17 Beyond the scope of his designation.
18 THE WITNESS: Organizational
19 members get to designate a particular
20 individual on the committee. Others
21 that would join ASTM from that
22 organization would be considered
23 individual members.
24 BY MR. BECKER:
25 Q. Do individuals who are not part

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1 of any organizations typically sign up for
2 organizational memberships?
3 MR. FEE: Objection. Vague.
4 Beyond the scope of his designation.
5 THE WITNESS: I don't know.
6 BY MR. BECKER:
7 Q. Can organizational members be
8 members of technical committees?
9 A. Yes. As a matter --
10 MR. FEE: There's no question
11 pending.
12 BY MR. BECKER:
13 Q. I'm sorry, what were you about
14 to say?
15 A. I believe all organizational
16 members are members of technical committees
17 Q. Have any organizational members
18 executed copyright assignments for ASTM?
19 A. Not to my knowledge. I'm
20 sorry, can you repeat that question?
21 Q. Yes. Have any organizational
22 members executed copyright assignments for
23 ASTM?
24 A. Through the membership
25 applications that we talked about earlier,

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1 through the renewal applications that we
2 talked about earlier, if they're involved in
3 a collaboration area, they would make an
4 assignment, and if they registered a work
5 item, they would make an assignment.
6 Q. So those are the same -- the
7 same assignment language that would relate to
8 individual members you're saying would also
9 relate to organizational members when
10 organizational members sign up for
11 membership?
12 A. Correct.
13 Q. How do organizational members
14 participate in technical committees?
15 A. The same way as participating
16 members, individual members.
17 Q. Can you elaborate on that?
18 MR. FEE: Objection. Vague.
19 THE WITNESS: I don't think I
20 can. There's no difference.
21 BY MR. BECKER:
22 Q. Do organizational members
23 designate an individual to participate on
24 their behalf?
25 MR. FEE: Objection. Asked and

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1 answered.
2 THE WITNESS: No. Organizations
3 designate a member, an employee to
4 participate on technical committees.
5 BY MR. BECKER:
6 Q. What's the difference between
7 what you just said and an organizational
8 member designating an individual to
9 participate on technical committees on its
10 behalf?
11 MR. FEE: Objection.
12 Mischaracterizes his testimony to the
13 extent it purports to summarize it.
14 You can answer.
15 THE WITNESS: An organizational
16 member is an individual, it's not the
17 organization. So the organization
18 designates a member, an employee to be
19 a member to represent it on a
20 technical committee.
21 BY MR. BECKER:
22 Q. When you say the organization
23 designates an employee to be a member to be a
24 representative on a technical committee, when
25 you say representative, do you mean a

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1 representative of that organization?
2 A. Maybe.
3 Q. Does ASTM have any knowledge as
4 to whether organizational members, when they
5 designate an individual to participate in a
6 technical committee, whether those
7 organizations are designating that individual
8 on the organization's behalf?
9 MR. FEE: Objection. Vague.
10 May call for a legal conclusion.
11 THE WITNESS: I think it varies.
12 I think organizational -- again,
13 organizations that choose to support
14 ASTM through an organizational
15 membership designate an individual to
16 participate on a technical committee.
17 That individual may be contributing to
18 the content of ASTM standards as an
19 individual even as an organizational
20 member, not necessarily representing
21 the organization's -- the
22 organizational views.
23 BY MR. BECKER:
24 Q. For organizational memberships,
25 does the organization itself typically pay

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1 the \$400 fee?
 2 MR. FEE: Objection. Calls for
 3 speculation.
 4 THE WITNESS: I don't know for
 5 sure. Not necessarily. But probably
 6 in most cases, probably.
 7 BY MR. BECKER:
 8 Q. Do you know of any instance
 9 when a person indicated that he or she
 10 disagreed with his or her organization's
 11 position with respect to an action on a
 12 technical committee?
 13 A. No.
 14 Q. Do you know of any instance
 15 when an individual indicated that he or she
 16 was specifically speaking on his or her own
 17 behalf as apart from the organization that he
 18 or she is part of?
 19 A. No.
 20 Q. Are any U.S. federal agencies
 21 organizational members of ASTM?
 22 A. I don't know.
 23 Q. Who would know if any federal
 24 agencies are organizational members of ASTM?
 25 MR. FEE: Objection. Calls for

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1 speculation. Also beyond the scope of
 2 his designation.
 3 THE WITNESS: We have an
 4 organizational member directory on the
 5 Web site.
 6 BY MR. BECKER:
 7 Q. And where on the Web site is
 8 that organizational member directory located?
 9 A. I think it's on the membership
 10 page.
 11 - - -
 12 (Exhibit 1292, Check, Bates
 13 ASTM049368, was marked for
 14 identification.)
 15 - - -
 16 BY MR. BECKER:
 17 Q. I'm handing you what's been
 18 marked as 1292. This is the document
 19 produced by plaintiffs as Bates number
 20 ASTM049368.
 21 Do you recognize this document?
 22 A. No.
 23 Q. Do you have any reason to
 24 believe that this document produced by ASTM
 25 is not authentic?

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1 MR. FEE: Objection. This is
 2 beyond the scope of his designation.
 3 THE WITNESS: No.
 4 MR. BECKER: For the record, I
 5 don't believe that this is beyond his
 6 designation as this concerns an
 7 organizational membership renewal.
 8 MR. FEE: I don't think he was
 9 designated to authenticate checks from
 10 2013, but we'll agree to disagree.
 11 BY MR. BECKER:
 12 Q. Does this document indicate to
 13 you that the Department of Consumer Affairs
 14 from the State of California had paid for an
 15 organizational membership renewal with ASTM?
 16 MR. FEE: Objection. Calls for
 17 speculation. Beyond the scope of his
 18 designation.
 19 THE WITNESS: I guess you could
 20 assume that. I don't know for sure.
 21 BY MR. BECKER:
 22 Q. Do you have any reason for
 23 thinking this -- that's not what this
 24 document shows?
 25 MR. FEE: Same objections.

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1 THE WITNESS: No, no reason not
 2 to believe.
 3 - - -
 4 (Exhibit 1293, 2011 Membership
 5 renewal invoices, Bates ASTM086030 -
 6 ASTM086031, was marked for
 7 identification.)
 8 - - -
 9 BY MR. BECKER:
 10 Q. I'm handing you what's been
 11 marked as Exhibit 1293. This is the document
 12 produced by plaintiffs as ASTM086030 to
 13 086031. Can you tell me what this document
 14 is?
 15 A. It is a 2011 membership renewal
 16 invoice.
 17 Q. It is a different 2011
 18 membership renewal invoice on each side.
 19 Correct?
 20 A. Yeah. For different persons,
 21 yeah.
 22 Q. And these persons are employees
 23 of NIST. Is that correct?
 24 MR. FEE: Objection. Calls for
 25 speculation. Beyond the scope of his

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1 designation.
2 THE WITNESS: It says here
3 they're from NIST.
4 BY MR. BECKER:
5 Q. NIST is a federal agency.
6 Correct?
7 MR. FEE: Same objections.
8 THE WITNESS: I believe. Sorry.
9 I believe so.
10 BY MR. BECKER:
11 Q. And they both give their NIST
12 e-mail addresses. Is that correct?
13 MR. FEE: Objection. Calls for
14 speculation. Beyond the scope of his
15 designation. You can answer.
16 THE WITNESS: The e-mail
17 addresses are on this piece of paper.
18 BY MR. BECKER:
19 Q. And the e-mail addresses say
20 @nist.gov. Correct?
21 A. Yes.
22 Q. And the addresses that they
23 provide are for NIST. Correct?
24 MR. FEE: Objection. Calls for
25 speculation. Beyond the scope of his

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1 designation.
2 THE WITNESS: Yes, the NIST
3 address is on these pieces of paper.
4 BY MR. BECKER:
5 Q. And did -- the credit card
6 information and payer is the same for both
7 renewal invoices. Correct?
8 MR. FEE: Objection. Beyond the
9 scope of his designation.
10 THE WITNESS: It appears that
11 the names are the same.
12 BY MR. BECKER:
13 Q. And that name appears to be
14 Aruella Kuehl, K-U-E-H-L. Aruella is spelled
15 A-R-U-E-L-L-A -- excuse me, that's Arvella,
16 A-R-V-E-L-L-A.
17 MR. FEE: Objection. Beyond the
18 scope of his designation.
19 BY MR. BECKER:
20 Q. Is that correct?
21 MR. FEE: Same objection.
22 THE WITNESS: If that's -- yeah,
23 that's the way you want to spell it.
24 BY MR. BECKER:
25 Q. Could you, please, indicate

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1 where on these renewal invoices, if anywhere,
2 language exists that would assign any
3 copyright that Charles E. Gibson or Benjamin
4 K. Tsai, the individuals listed on these
5 membership renewal invoices, might have
6 granted to ASTM?
7 MR. FEE: Objection. Calls for
8 a legal conclusion. Compound. You
9 can answer if you know.
10 THE WITNESS: No, there's
11 language in the middle of both pages
12 beginning with "You agree...."
13 BY MR. BECKER:
14 Q. Is that where it says, "You
15 agree, by your participation in ASTM and
16 enjoyment of the benefits of your annual
17 membership, to have transferred and assigned
18 any and all interest you possess or may
19 possess, including copyright, in the
20 development or creation of ASTM standards or
21 ASTM IP to ASTM. For additional information,
22 please see the ASTM IP Policy, available at
23 www.astm.org"?
24 A. Yes.
25 Q. For these membership renewal

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1 invoices, are individuals required to check
2 any box showing that they have read and
3 understand the provision that I just read out
4 loud?
5 MR. FEE: Objection. Vague.
6 Compound.
7 THE WITNESS: I don't see here
8 where there's a box to check off.
9 BY MR. BECKER:
10 Q. For the membership renewal
11 invoices, are the members required to sign
12 anywhere on the renewal invoice?
13 MR. FEE: Same objections.
14 THE WITNESS: I don't see
15 anywhere else other than the signature
16 for where the credit card information
17 is.
18 BY MR. BECKER:
19 Q. And if an individual pays by
20 some other means that doesn't require a
21 credit card, would it not be necessary to
22 sign this membership renewal invoice at all
23 in order to get a membership renewal?
24 MR. FEE: Objection. Calls for
25 speculation. Form.

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1 THE WITNESS: I don't know. I
 2 guess you could sign a check. The
 3 only other way you could pay is
 4 through a check, so you could sign a
 5 check.
 6 BY MR. BECKER:
 7 Q. It also lists electronic
 8 payments. Correct?
 9 A. Yes.
 10 Q. So if somebody were to provide
 11 an electronic payment, then they would not
 12 need to sign anywhere on this form. Is that
 13 correct?
 14 MR. FEE: Objection. Calls for
 15 speculation.
 16 THE WITNESS: I suppose.
 17 BY MR. BECKER:
 18 Q. Is there any means through the
 19 membership renewal invoice that ASTM ensures
 20 that it has the understanding and assent of
 21 the individual renewing his or her membership
 22 that any copyright he or she has in the
 23 development or creation of ASTM standards is
 24 to be assigned to ASTM?
 25 MR. FEE: Objection. Vague and

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1 confusing. Calls for speculation.
 2 Calls for a legal conclusion.
 3 THE WITNESS: Through the
 4 original membership application,
 5 through the work item registration
 6 process, and through the collaboration
 7 registration process.
 8 BY MR. BECKER:
 9 Q. My question was with regards to
 10 the 2011 membership renewal invoice. I'll
 11 read it again.
 12 Is there any means through the
 13 membership renewal invoice that ASTM ensures
 14 that it has the understanding and assent of
 15 the individual renewing his or her membership
 16 that any copyright he or she has in the
 17 development or creation of ASTM standards is
 18 to be assigned to ASTM?
 19 MR. FEE: Objection to form.
 20 Vague and confusing. Compound. Calls
 21 for speculation and calls for a legal
 22 conclusion.
 23 THE WITNESS: Within the 2011
 24 membership renewal invoice, the only
 25 thing that is there is this language

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1 that we read.
 2 BY MR. BECKER:
 3 Q. And my question is, is there
 4 any means through the membership renewal
 5 invoice that ASTM ensures that it has the
 6 understanding and assent of the individual
 7 who is renewing his or her membership that
 8 any copyright he or she has in the
 9 development or creation of ASTM standards is
 10 to be assigned to ASTM?
 11 MR. FEE: Same objections. Plus
 12 asked and answered.
 13 THE WITNESS: Plus what?
 14 MR. FEE: Asked and answered.
 15 THE WITNESS: Same answer.
 16 BY MR. BECKER:
 17 Q. It's a yes or no answer.
 18 MR. FEE: No. Answer it however
 19 you want to answer it.
 20 THE WITNESS: Within the 2011
 21 membership renewal invoice, there is
 22 this clause that we feel is -- informs
 23 the members that they're assigning
 24 their copyright to us within their
 25 participation at ASTM.

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1 BY MR. BECKER:
 2 Q. How does ASTM know that a
 3 member has read that clause?
 4 A. We don't.
 5 Q. How does ASTM know that a
 6 member agrees with that clause?
 7 MR. FEE: Objection to the
 8 extent it calls for a legal
 9 conclusion. Also calls for
 10 speculation. You can answer.
 11 THE WITNESS: We don't know for
 12 sure.
 13 - - -
 14 (Exhibit 1294, Organizational
 15 Membership Directory, was marked for
 16 identification.)
 17 - - -
 18 BY MR. BECKER:
 19 Q. I'm handing you what's been
 20 marked as Exhibit 1294. It's a document
 21 titled: "Organizational Membership
 22 Directory." This is two separate printouts
 23 combined. It is the A to K listing and the L
 24 to Z listing. It's something -- it's over
 25 100 pages long.

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1 Do you recognize this document?
2 A. Yes.
3 MR. FEE: Objection. You should
4 really look at the document before you
5 answer that question.
6 THE WITNESS: The first page I
7 do. I mean, if this is just the
8 organizational directory, I'm aware
9 that it exists and I recognize it.
10 BY MR. BECKER:
11 Q. Is this the organizational
12 directory?
13 A. It appears to be.
14 Q. Is this the organizational
15 directory that you were discussing earlier
16 today that lists the organizational members
17 of ASTM?
18 A. Yes.
19 Q. This is the -- just to be
20 clear, this is the organizational membership
21 directory of ASTM. Correct?
22 A. Yes.
23 Q. Unfortunately I don't think
24 that this document has page numbers on it,
25 but if you look, let's see, at the 11th from

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1 last page, please. This page, in about the
2 middle of the page you'll see the U.S. AIR
3 FORCE, U.S. AIR FORCE NONDESTRUCTIVE
4 INSPECTION OFFICE, U.S. AMC LOGSA PSCC, the
5 U.S. Army Engineering Research & Development
6 Center and the U.S. Army Natick Soldier RD&E
7 Center. Let me know when you see that.
8 A. Yes.
9 Q. Does this indicate to you that
10 a number of federal agencies are
11 organizational members of ASTM?
12 MR. FEE: Objection. Beyond the
13 scope of the designation.
14 THE WITNESS: Yes.
15 BY MR. BECKER:
16 Q. Such as the U.S. Air Force, for
17 instance. Correct?
18 MR. FEE: Same objection.
19 THE WITNESS: I don't see the
20 U.S. Air Force on here.
21 BY MR. BECKER:
22 Q. Just above the middle of the
23 page, right below the ASTM logo that's in the
24 middle of the page.
25 A. I have EPA that's below that.

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1 Q. Okay.
2 A. Unless I'm on the wrong page.
3 MR. FEE: Let me see your page.
4 THE WITNESS: Maybe you meant
5 the 12th page in?
6 BY MR. BECKER:
7 Q. Yes, I meant the next page. Do
8 you see the U.S. Air Force now?
9 A. Yes.
10 Q. Okay. So does this indicate to
11 you that the U.S. Air Force is an
12 organizational member of ASTM?
13 MR. FEE: Objection. Beyond the
14 scope of his designation.
15 THE WITNESS: It would appear to
16 be.
17 BY MR. BECKER:
18 Q. Looking at this page and the
19 following two pages, which lists a number of
20 U.S. federal agencies, please tell me if any
21 of them participate in standards development
22 at ASTM?
23 MR. FEE: Objection. Vague.
24 Beyond the scope of his designation.
25 Compound.

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1 THE WITNESS: I'm not sure how
2 to answer that other than if you had
3 asked me a specific question. I might
4 know some of them, but I mean, they're
5 members, but also I'm not sure how you
6 define "participation."
7 BY MR. BECKER:
8 Q. Do any of these U.S. government
9 agencies that are listed in those three pages
10 I mentioned help to draft standards at ASTM?
11 MR. FEE: Objection. Compound.
12 Vague.
13 THE WITNESS: For my --
14 MR. FEE: Sorry.
15 THE WITNESS: That's okay. I
16 mean, I can give you one example from
17 my personal experience is the USEPA
18 participates on our environmental
19 assessment committee.
20 BY MR. BECKER:
21 Q. And when you say they
22 participate on the environmental assessment
23 committee, do you mean that they assist in
24 the drafting of standards?
25 MR. FEE: Objection. Vague.

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1 THE WITNESS: They make
2 contributions at the meetings.
3 BY MR. BECKER:
4 Q. And do those contributions end
5 up in the final approved standards?
6 MR. FEE: Objection. Vague.
7 THE WITNESS: I don't -- I can't
8 say specifically.
9 BY MR. BECKER:
10 Q. What kind of contributions do
11 they provide at these meetings?
12 MR. FEE: Objection. Vague.
13 THE WITNESS: Oral contributions.
14 BY MR. BECKER:
15 Q. Do they provide any written
16 contributions?
17 MR. FEE: Objection. Vague.
18 THE WITNESS: They may through
19 the balloting process.
20 BY MR. BECKER:
21 Q. Do they vote on standard drafts
22 or revisions?
23 MR. FEE: Objection. Form.
24 THE WITNESS: They may. They
25 have the opportunity to.

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1 - - -
2 (Exhibit 1295, E-mail chain with
3 attachment, Bates ASTM025633 -
4 ASTM025640, was marked for
5 identification.)
6 - - -
7 BY MR. BECKER:
8 Q. I'm handing you what's been
9 marked as Exhibit 1295.
10 Could you, please, take a
11 moment to try to put the pages for the
12 previous exhibit back in the same order that
13 they were provided to you, if possible?
14 MR. BRIDGES: I'll do that.
15 Hand them to me, I'll do that.
16 THE WITNESS: I think that's the
17 order.
18 BY MR. BECKER:
19 Q. Do you recognize this document
20 that has been provided to you as
21 Exhibit 1295? It is Bates number ASTM025633
22 to 025640.
23 A. No.
24 Q. Are you copied on this e-mail
25 that's Exhibit 1295?

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1 A. Yes.
2 Q. Did you ever receive this
3 e-mail that's Exhibit 1295?
4 A. I may have.
5 Q. Do you have any reason to think
6 that if you had -- that you did not receive
7 this e-mail produced by ASTM that has your
8 name listed under the cc line?
9 A. No.
10 Q. Do you have any reason to
11 believe that this document provided by ASTM
12 is not authentic?
13 MR. FEE: Objection. Calls for
14 a legal conclusion.
15 THE WITNESS: I have no idea.
16 BY MR. BECKER:
17 Q. Is that a yes or a no?
18 A. I don't know. I don't see any
19 reason why it wouldn't be.
20 Q. If you turn to the second page,
21 it says -- this is an e-mail from Sarah
22 Petre, P-E-T-R-E, to Jeff Grove that says --
23 in which you are cc'd at dsmith@astm.org. Is
24 that correct?
25 A. Yes.

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1 Q. And it says, "Jeff: Attached
2 is a summary of all the potentially relevant
3 standards related to the UE's efforts that
4 focus on the environmental footprint of
5 products and services. This list is more
6 over inclusive. I also included a list of
7 the EPA members that participate in E50 or
8 E60." Is that correct?
9 A. That's what it says.
10 Q. Then if you turn to Bates
11 number ASTM025637, the second paragraph from
12 the top says, "The following representatives
13 from EPA participate on the relevant ASTM
14 committees...," and then lists a number of
15 individuals. Is that correct?
16 A. Yes.
17 Q. Do you know any of these
18 individuals that are listed?
19 A. Yes.
20 Q. Which individuals do you know?
21 A. I know Deb Goldblum. I know
22 Sven-Erik Kaiser. And I know Patricia
23 Overmeyer.
24 Q. Who is Deborah Goldblum?
25 A. She works in the EPA. It's --

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1 I'm not sure what region it is, but it's in
 2 Philadelphia, office in Philadelphia.
 3 Q. Do you know what her position
 4 is?
 5 A. I don't.
 6 Q. Do you know what Sven-Erik
 7 Kaiser's position is?
 8 A. No.
 9 Q. Do you know what Patricia
 10 Overmeyer's position is?
 11 A. No.
 12 Q. How do you know Deborah
 13 Goldblum?
 14 A. Through my work on Committee
 15 E50 on environmental assessment.
 16 Q. And how do you know Sven-Erik
 17 Kaiser?
 18 A. The same.
 19 Q. And how do you know Patricia
 20 Overmeyer?
 21 A. The same.
 22 Q. How has Deborah Goldblum
 23 participated on the Committee E50?
 24 MR. FEE: Objection. Vague.
 25 THE WITNESS: She brought

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1 forward an idea for standards.
 2 BY MR. BECKER:
 3 Q. What idea was that?
 4 A. It was there were standards for
 5 green cleanup.
 6 Q. So she brought forward the idea
 7 for a standard for green cleanup?
 8 A. Yes.
 9 Q. And what happened with her
 10 idea?
 11 MR. FEE: Objection. Vague.
 12 THE WITNESS: She presented --
 13 my recollection is that she presented
 14 it to the subcommittee in E50.
 15 BY MR. BECKER:
 16 Q. Was that standard -- excuse me.
 17 Was that idea that Deborah
 18 Goldblum presented made into an official
 19 standard under ASTM?
 20 MR. FEE: Objection. Vague.
 21 THE WITNESS: I'm not sure. I'm
 22 no longer with that committee.
 23 BY MR. BECKER:
 24 Q. What year is this that Deborah
 25 Goldblum brought forward that idea?

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1 A. Just roughly maybe 2009. 2008,
 2 2010, in that time frame.
 3 Q. What happened after Deborah
 4 Goldblum brought forward her idea in that
 5 committee?
 6 MR. FEE: Objection. Vague.
 7 It's also beyond the scope of his
 8 designation.
 9 THE WITNESS: I believe the
 10 committee formed a task group to
 11 develop the standard.
 12 BY MR. BECKER:
 13 Q. And what happened at the task
 14 group to develop that standard?
 15 MR. FEE: Same objection.
 16 Beyond the scope and calls for
 17 speculation.
 18 THE WITNESS: I mean, there were
 19 many task group meetings, they had
 20 discussions about developing content.
 21 BY MR. BECKER:
 22 Q. What was Deborah Goldblum's
 23 idea for a standard concerning green cleanup,
 24 to the best of your knowledge?
 25 MR. FEE: Objection. Beyond the

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1 scope of his designation.
 2 THE WITNESS: It was, I think,
 3 for remediation at a construction
 4 site.
 5 BY MR. BECKER:
 6 Q. Do you know any other details
 7 about Deborah Goldblum's idea for green
 8 cleanup?
 9 MR. FEE: Same objection.
 10 THE WITNESS: No.
 11 BY MR. BECKER:
 12 Q. What aspects of remediation at
 13 a construction site did Deborah Goldblum's
 14 idea concern?
 15 MR. FEE: Hold a second.
 16 THE WITNESS: I really --
 17 MR. FEE: Hold on.
 18 THE WITNESS: I'm sorry.
 19 MR. FEE: Objection. Beyond the
 20 scope of his designation. Also asked
 21 and answered. Go ahead.
 22 THE WITNESS: I really don't
 23 know. I'm not a technical person.
 24 BY MR. BECKER:
 25 Q. Did Sven-Erik Kaiser provide

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1 any contributions for standards or standard
2 revisions for Committee E50?
3 MR. FEE: Objection. Compound.
4 Form. You can answer.
5 THE WITNESS: I don't know.
6 BY MR. BECKER:
7 Q. Did Patricia Overmeyer provide
8 any contributions for standards for Committee
9 E50?
10 MR. FEE: Objection. Vague.
11 THE WITNESS: I don't know other
12 than they -- Patricia participated at
13 the meetings and attended meetings.
14 MR. FEE: Matt, why don't we
15 take a break, we've been going an hour
16 and a half.
17 MR. BECKER: Just a moment.
18 BY MR. BECKER:
19 Q. Did Patricia vote in the
20 Committee E50?
21 A. I don't know.
22 MR. FEE: Objection. Beyond the
23 scope of his designation.
24 BY MR. BECKER:
25 Q. Do you know if Deborah Goldblum

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1 voted in Committee E50?
2 MR. FEE: Same objection.
3 THE WITNESS: No, I don't know.
4 BY MR. BECKER:
5 Q. Do you know if Sven-Erik Kaiser
6 voted in Committee E50?
7 MR. FEE: Same objection.
8 THE WITNESS: I don't know.
9 MR. BECKER: We can take a
10 break.
11 VIDEOGRAPHER: The time is now
12 4:57. We're going off the video
13 record.
14 - - -
15 (A recess was taken.)
16 - - -
17 VIDEOGRAPHER: The time is now
18 5:05. We're back on the video record.
19 - - -
20 (Exhibit 1296, Membership
21 application, Bates ASTM068894, was
22 marked for identification.)
23 - - -
24 BY MR. BECKER:
25 Q. I'm handing you what's been

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1 marked as Exhibit 1296. This is the document
2 produced by plaintiffs as Bates number
3 ASTM068894. Can you tell me what this
4 document is?
5 A. It appears to be a membership
6 application, but I -- an older version of a
7 membership application.
8 Q. And what does the -- there's
9 a -- it looks like a stamp with some
10 handwriting in the bottom right-hand corner.
11 It says, "ACCT #," "ORD #," "DEC 02 2008,"
12 "PROCESSED BY: DG." And then it has some
13 other numbers associated with it. Do you
14 know what that is?
15 A. The account number is the -- is
16 that individual's membership number. So when
17 you join, you get assigned a membership
18 number. I don't know what the order number
19 is. Dec 02, 2008, is, I guess, the date that
20 was processed by ASTM, but I don't know for
21 sure.
22 Q. And do you know who DG is when
23 it says, "PROCESSED BY: DG"?
24 A. No.
25 Q. Does that designate an

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1 individual or a department?
2 A. I don't know.
3 Q. Does this stamp indicate that
4 this form has been processed and entered into
5 the system --
6 MR. FEE: Objection.
7 BY MR. BECKER:
8 Q. -- at ASTM?
9 MR. FEE: Objection. Vague.
10 It's beyond the scope of his
11 designation.
12 THE WITNESS: I really don't
13 know the specifics of processing these
14 forms.
15 BY MR. BECKER:
16 Q. Who would know whether this
17 stamp in the bottom right-hand corner of this
18 page designates that this application has
19 been processed into ASTM's system?
20 MR. FEE: Objection. Vague.
21 Beyond the scope.
22 Matt, can you explain to me how
23 this has anything to do with these
24 three topics you are supposed to be
25 talking about today?

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1 MR. BECKER: Yeah. It's a
2 membership application. That's one of
3 the ways that ASTM claims that it gets
4 assignment of rights.
5 MR. FEE: And the identity of
6 who DG is is relevant to all this
7 because of what?
8 MR. BECKER: Because this is --
9 this is a feature on the membership
10 application and I need to understand
11 what it means.
12 MR. FEE: I'll let you ask that
13 question, but I'm not going to allow
14 too many more questions along these
15 lines, but go ahead.
16 MR. BECKER: I think this is
17 perfectly relevant right here. My
18 question goes to whether this was
19 entered into the system and whether
20 this person is, therefore, a member of
21 ASTM.
22 MR. FEE: Do you want to read
23 back the question? Or do you know
24 what it is?
25 THE WITNESS: I'm not -- I'm a

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1 little --
2 MR. FEE: You can answer.
3 THE WITNESS: No. Just for
4 clarity, I'd like it repeated, if
5 possible.
6 BY MR. BECKER:
7 Q. Who would know whether this
8 stamp in the bottom right-hand corner of this
9 page designates that this application has
10 been processed into ASTM's system?
11 MR. FEE: Objection. Vague.
12 Beyond the scope of his designation.
13 THE WITNESS: Possibly somebody
14 who works in our customer service
15 department back in 2008.
16 BY MR. BECKER:
17 Q. Who heads the customer service
18 department at ASTM?
19 MR. FEE: Objection. Vague.
20 THE WITNESS: Derek Franco is
21 the director of our, I believe it's
22 called internal sales.
23 BY MR. BECKER:
24 Q. Was Derek Franco the head of
25 internal sales in 2008?

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1 A. Could have been. I don't know
2 for sure, though.
3 Q. Do you know who else might have
4 been the head of internal sales in 2008?
5 A. I'm not exactly sure.
6 Q. Could you show me where, if
7 anywhere, on this document Exhibit 1296 there
8 is language that ASTM believes it is assigned
9 copyright through?
10 MR. FEE: Objection. Calls for
11 a legal conclusion. To the extent
12 that question calls for you to
13 disclose attorney-client
14 communications, I'd instruct you not
15 to do that. If you have an answer
16 otherwise, you can go ahead and
17 answer.
18 THE WITNESS: I don't see the
19 language on this form that was on the
20 other forms.
21 BY MR. BECKER:
22 Q. Is there any language on this
23 page that would transfer copyright from the
24 individual who is listed on this form, Diana,
25 I believe it's M-E-N-A-G-E-D to ASTM?

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1 MR. FEE: Objection. Calls for
2 a legal conclusion. To the extent the
3 answer would disclose attorney-client
4 communications, I instruct you not to
5 disclose that. You can answer if you
6 have knowledge of it otherwise.
7 THE WITNESS: I don't see any
8 language on this particular form that
9 would indicate that.
10 - - -
11 (Exhibit 1297, 2010 ASTM
12 International Committee Membership
13 Application, Bates ASTM079420, was
14 marked for identification.)
15 - - -
16 BY MR. BECKER:
17 Q. I'm handing you what's been
18 marked as Exhibit 1297. This is the document
19 produced by ASTM as ASTM079420. Do you know
20 what this document is?
21 A. It says, "2010 ASTM International
22 Committee Membership Application."
23 Q. Is there any language on this
24 document, Exhibit 1297, that would assign
25 copyright from the applicant to ASTM?

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1 MR. FEE: Objection. Calls for
2 a legal conclusion. To the extent
3 that question would require you to
4 disclose attorney-client
5 communications, I instruct you not to
6 do so. If you can answer otherwise,
7 go ahead.
8 THE WITNESS: I don't see any
9 language on here similar to the
10 language that we had talked about
11 earlier.
12 BY MR. BECKER:
13 Q. The applicant here, Raymond
14 Ortiz, is an organization member of the
15 Defense Energy Support Center. Is that
16 correct?
17 MR. FEE: Objection.
18 Mischaracterizes the document.
19 THE WITNESS: I don't see how
20 you're figuring out he's an
21 organizational member.
22 BY MR. BECKER:
23 Q. Excuse me, let me rephrase
24 that.
25 Raymond Ortiz says -- lists his

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1 organization name as "Defense Energy Support
2 Center." Is that correct?
3 A. That would appear to be right.
4 Q. And he lists a, looks like a
5 military e-mail address. Is that correct?
6 MR. FEE: Objection. Calls for
7 speculation. Beyond the scope of his
8 designation.
9 THE WITNESS: That's what would
10 appear from this form.
11 BY MR. BECKER:
12 Q. It would appear that Raymond
13 Ortiz is a member of the military. Is that
14 correct?
15 MR. FEE: Objection. Calls for
16 speculation. Beyond the scope of his
17 designation.
18 THE WITNESS: I suppose that
19 looks like that's the case.
20 BY MR. BECKER:
21 Q. And it appears that someone
22 else, Zoe Fitzsimmonds is paying by credit
23 card, Visa, for Mr. Ortiz's committee
24 membership application. Is that correct?
25 A. That's the name that appears,

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1 that is on the form.
2 - - -
3 (Exhibit 1298, ASTM Application,
4 Bates ASTM073844, was marked for
5 identification.)
6 - - -
7 BY MR. BECKER:
8 Q. I'm handing you what's been
9 marked as Exhibit 1298. This is a document
10 produced by ASTM as ASTM073844. Can you tell
11 me what this document is?
12 A. It looks like it's an ASTM
13 application.
14 Q. Is there any language on this
15 document that -- Exhibit 1298, that ASTM
16 believes assigns copyright from the applicant
17 to ASTM?
18 MR. FEE: Objection. Calls for
19 a legal conclusion. To the extent
20 that question would require you to
21 disclose attorney-client
22 communication, I instruct you not to
23 do so. If you have other responsive
24 information, go ahead and do so.
25 THE WITNESS: I don't see the

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1 language on this form that was on the
2 previous forms.
3 BY MR. BECKER:
4 Q. When you say "the previous
5 forms," are you referring to Exhibit 1293?
6 A. Correct.
7 Q. But you're not referring to
8 Exhibit 1297 or Exhibit 1296. Correct?
9 A. Correct.
10 - - -
11 (Exhibit 1299, ASTM
12 Applications, Bates ASTM066848 -
13 ASTM066853, was marked for
14 identification.)
15 - - -
16 BY MR. BECKER:
17 Q. I'm handing you what's been
18 marked as Exhibit 1299. These are the
19 documents produced by ASTM as ASTM066848 to
20 ASTM066853. Could you tell me what these
21 documents are?
22 A. Looks like they're ASTM
23 applications.
24 Q. These are ASTM applications
25 that are in Spanish. Correct?

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1 A. Would appear to be that.
 2 Q. Are they membership applications?
 3 A. I believe they are.
 4 Q. Is there any language on these
 5 membership applications that ASTM believes
 6 assigns ASTM any copyright by the applicants?
 7 MR. FEE: Objection. Calls for
 8 expert testimony to the extent it
 9 requires a translation, to the extent
 10 it is in Spanish. Calls for a legal
 11 conclusion. To the extent that that
 12 question requires the disclosure of
 13 any attorney-client communication, you
 14 shouldn't disclose it. You can answer
 15 it otherwise.
 16 THE WITNESS: I don't know.
 17 BY MR. BECKER:
 18 Q. Do you speak Spanish?
 19 A. No.
 20 Q. Have you seen this document
 21 previously?
 22 A. No.
 23 Q. In preparation for your
 24 deposition today, had you spoken with
 25 anybody -- excuse me, let me rephrase.

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1 In preparation for your
 2 deposition today, have -- had you
 3 communicated with anyone at ASTM about
 4 membership applications that were not in
 5 English?
 6 A. No.
 7 Q. I will submit to you that there
 8 is no assignment language on this document.
 9 MR. FEE: Move to strike that to
 10 the extent you're ever going to try to
 11 use it for something.
 12 BY MR. BECKER:
 13 Q. Do you know what an MOU
 14 affiliation is?
 15 A. It stands for Memorandum of
 16 Understanding.
 17 Q. What is a Memorandum of
 18 Understanding?
 19 A. It's part of our MOU program
 20 that we have with developing countries.
 21 Q. What is the MOU program?
 22 A. It's roughly that we will
 23 provide on a gratuitous basis standards to
 24 national standards bodies of developing
 25 countries. And in return, they provide us

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1 reports on the use of ASTM standards.
 2 Q. Are those national standards
 3 bodies that you're describing government
 4 bodies or private bodies?
 5 MR. FEE: Objection. Beyond the
 6 scope of his designation.
 7 THE WITNESS: I'm not exactly
 8 sure.
 9 BY MR. BECKER:
 10 Q. What uses of ASTM standards do
 11 these national standards bodies report to
 12 ASTM?
 13 MR. FEE: Same objection.
 14 THE WITNESS: I'm not exactly
 15 sure. I just think in general use,
 16 but I've never seen one of the
 17 reports.
 18 BY MR. BECKER:
 19 Q. When you say "general use,"
 20 what do you mean by that?
 21 MR. FEE: Same objection.
 22 THE WITNESS: How they may be
 23 utilizing ASTM standards within their
 24 country.
 25 BY MR. BECKER:

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1 Q. When you say how they are
 2 utilizing ASTM standards within their
 3 country, when you say "they," are you
 4 referring to these standards bodies?
 5 MR. FEE: Same objection.
 6 Vague.
 7 THE WITNESS: I believe it's how
 8 they're -- the people are utilizing
 9 them. If they're referenced in
 10 regulation or if they're being used.
 11 BY MR. BECKER:
 12 Q. When you say "the people," are
 13 you referring to the actual citizens of
 14 that -- those countries?
 15 MR. FEE: Objection. Beyond the
 16 scope. Matt, I'm going to let him
 17 answer this question, but you are so
 18 far off of the topics now, that this
 19 is going to be the last question on
 20 this topic. You can answer it. Go
 21 ahead.
 22 THE WITNESS: I'm not sure.
 23 - - -
 24 (Exhibit 1300, Membership
 25 application, Bates ASTM067024, was

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1 marked for identification.)
 2 - - -
 3 BY MR. BECKER:
 4 Q. I'm handing you what's been
 5 marked as Exhibit 1300. Could you, please,
 6 identify this document?
 7 A. It says at the top "Laboratory
 8 Inspection Program," but it would appear to
 9 be a membership application.
 10 Q. I'll note that this document is
 11 produced by ASTM as ASTM067024. Is there any
 12 mention of copyright assignment or ASTM's IP
 13 Policy on this document?
 14 MR. FEE: Objection to form.
 15 THE WITNESS: I don't see that
 16 language on here, no.
 17 - - -
 18 (Exhibit 1301, Membership
 19 applications, Bates ASTM066871,
 20 ASTM069213, ASTM069058, ASTM080176,
 21 ASTM061450, ASTM063146, ASTM063147,
 22 ASTM065682 & ASTM066345, was marked
 23 for identification.)
 24 - - -
 25 BY MR. BECKER:

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1 Q. I'm handing you what's been
 2 marked as Exhibit 1301. This is a
 3 compilation of documents that were provided
 4 by ASTM as single pages. It is one example
 5 from each year from which ASTM has provided a
 6 membership application starting with the 2007
 7 membership application and ending with the
 8 2014 membership application. And the Bates
 9 numbers are ASTM066871, ASTM069213,
 10 ASTM069058, ASTM080176, ASTM061450,
 11 ASTM063146, ASTM063147, ASTM065682 and
 12 ASTM066345.
 13 Are these the ASTM membership
 14 application forms for the years 2007 through
 15 2014?
 16 MR. FEE: Objection to the
 17 extent the witness has cherry picked
 18 pages of membership applications that
 19 were produced to you; to form as well,
 20 and compound.
 21 THE WITNESS: These are versions
 22 of the application from these years.
 23 BY MR. BECKER:
 24 Q. Were there multiple versions of
 25 the ASTM membership applications for these

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1 respective years, 2007 through 2014?
 2 MR. FEE: Objection to form.
 3 THE WITNESS: There probably
 4 was, yes.
 5 BY MR. BECKER:
 6 Q. How do you know that?
 7 A. Well, because I know our
 8 applications, we have applications that have
 9 the language that we spoke about earlier that
 10 was on, was it 1293, Exhibit 1293? We have
 11 copies of membership applications that have
 12 that language on there.
 13 Q. Exhibit 1293 is a membership
 14 renewal invoice. Correct?
 15 A. Yes.
 16 Q. And a membership renewal
 17 invoice is different from a membership
 18 application. Correct?
 19 A. Yes.
 20 Q. So when you say that there are
 21 different versions, do you mean that there is
 22 different versions of the membership
 23 applications for each year or that there is a
 24 membership application and there also is a
 25 membership renewal invoice --

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1 MR. FEE: Objection. Form.
 2 BY MR. BECKER:
 3 Q. -- for each year?
 4 A. We have membership applications
 5 for these years that have that language from
 6 Exhibit 1293 on them.
 7 Q. How do you know that there are
 8 membership applications for all of the years
 9 2007 through 2014 that have the same language
 10 that is from the 2011 membership renewal
 11 invoice Exhibit 1293?
 12 MR. FEE: Objection to form.
 13 THE WITNESS: Because I believe
 14 we put the language on the renewal
 15 forms and the application forms at the
 16 same time.
 17 BY MR. BECKER:
 18 Q. Why would there be membership
 19 applications that do not have the language
 20 that you're referring to? And to -- let
 21 me -- hold on. Let me clarify.
 22 By the language that you're
 23 referring to on Exhibit 1293, you're
 24 referring to the purported copyright
 25 assignment language that starts with "You

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1 agree. By your participation in ASTM..."
 2 Correct?
 3 A. Yes.
 4 MR. FEE: Hold on. Objection to
 5 form.
 6 THE WITNESS: Sorry.
 7 MR. FEE: It's compound. Calls
 8 for a legal conclusion.
 9 THE WITNESS: The language that
 10 I'm talking about is on Exhibit 1293
 11 that begins with "You agree, by your
 12 participation...."
 13 BY MR. BECKER:
 14 Q. Why do you believe that ASTM
 15 put the language that you're referring to on
 16 the renewal forms and the application forms
 17 at the same time?
 18 A. That's what I recall.
 19 Q. Recall from what?
 20 MR. FEE: Objection. Vague.
 21 THE WITNESS: Just what I
 22 remember.
 23 BY MR. BECKER:
 24 Q. Do you know when ASTM first
 25 used the language that you're referring to

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1 from Exhibit 1293?
 2 A. Not exactly sure.
 3 Q. Do you have any idea as to what
 4 year ASTM first started using that language
 5 that appears on Exhibit 1293?
 6 A. I thought it was in about 2005.
 7 Q. Do you have any way to confirm
 8 when ASTM began using that language that was
 9 featured on Exhibit 1293?
 10 MR. FEE: Objection. Vague.
 11 THE WITNESS: Not right here,
 12 now.
 13 BY MR. BECKER:
 14 Q. How would you go about
 15 confirming that?
 16 A. I would ask our general counsel.
 17 Q. Is there any other way that you
 18 would confirm that?
 19 A. Not right now.
 20 Q. Is there anyone who would know
 21 other than ASTM's general counsel when the
 22 copyright assignment language that you're
 23 referring to from 1293 was first used by ASTM
 24 on membership forms?
 25 A. I'm not sure.

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1 Q. How many different forms of
 2 membership application existed in 2007?
 3 A. I don't know.
 4 Q. Do you know how many different
 5 forms of membership application ASTM had for
 6 the year 2008?
 7 A. No.
 8 Q. Do you know how many forms of
 9 membership application ASTM had for the year
 10 2009?
 11 A. No.
 12 Q. Do you know how many forms of
 13 membership application ASTM had for 2010?
 14 A. No.
 15 Q. How about for 2011?
 16 A. No.
 17 Q. Or 2012?
 18 A. No.
 19 Q. Or 2013?
 20 A. No.
 21 Q. Or 2014?
 22 A. No.
 23 Q. Do you know why ASTM has
 24 different membership application forms?
 25 MR. FEE: Objection. To the

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1 extent that your answering that
 2 question would disclose
 3 attorney-client communications, you
 4 shouldn't disclose that. You can
 5 answer otherwise.
 6 THE WITNESS: No. My experience
 7 has been that if we go to a very
 8 focused individual conference, there
 9 may be a -- it could be the staff
 10 manager prepares an application for
 11 that particular committee and did not
 12 use the most current application.
 13 BY MR. BECKER:
 14 Q. Is there a difference between
 15 ASTM membership application forms and ASTM
 16 committee membership application forms?
 17 MR. FEE: Objection. Vague.
 18 THE WITNESS: We have a type of
 19 membership that's called a
 20 participating membership where you
 21 join technical committees. And then
 22 we also have informational members
 23 that just joined ASTM but they do not
 24 join a particular technical committee.
 25 But I'm not aware of a difference

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1 between a committee membership
 2 application and a membership
 3 application.
 4 BY MR. BECKER:
 5 Q. If you look in this
 6 Exhibit 1301 at page Bates number ASTM063146
 7 and compare that with ASTM063147 following
 8 it, do you see that ASTM063146 is a 2012
 9 membership application whereas ASTM063147 is
 10 an ASTM committee membership application?
 11 A. Yes.
 12 Q. Can you, please, indicate
 13 where, if anywhere on ASTM063146, the 2012
 14 membership application, there is any language
 15 that ASTM believes assigns it copyright from
 16 the applicant?
 17 MR. FEE: Objection. Calls for
 18 a legal conclusion. To the extent
 19 that requires you to disclose
 20 attorney-client communications, you
 21 shouldn't do so, but you can answer
 22 otherwise.
 23 THE WITNESS: At the top it
 24 mentions that by applying or renewing
 25 your ASTM membership, you acknowledge

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1 you have read and agree and abide by
 2 ASTM's Intellectual Property Policy.
 3 The policy is available in the ASTM
 4 Web site (www.astm.org) and/or by
 5 request to ASTM International
 6 headquarters [as read].
 7 BY MR. BECKER:
 8 Q. Does this document, ASTM063146,
 9 include any of the text from the ASTM
 10 Intellectual Property Policy?
 11 MR. FEE: Objection. The
 12 document speaks for itself. You can
 13 answer.
 14 THE WITNESS: The document
 15 speaks for itself. It references the
 16 intellectual -- recognizes and says,
 17 "YOU ACKNOWLEDGE YOU HAVE READ AND
 18 AGREE TO ABIDE BY ASTM'S INTELLECTUAL
 19 PROPERTY POLICY."
 20 BY MR. BECKER:
 21 Q. But does it include the text
 22 from the ASTM Intellectual Property Policy
 23 that it requires members to abide by?
 24 MR. FEE: Same objection.
 25 THE WITNESS: Same answer.

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1 BY MR. BECKER:
 2 Q. And what's that answer?
 3 MR. FEE: Same objection again.
 4 Asked and answered.
 5 THE WITNESS: At the top of the
 6 page it says, "YOU ACKNOWLEDGE YOU
 7 HAVE READ AND AGREE TO ABIDE BY ASTM'S
 8 INTELLECTUAL PROPERTY POLICY."
 9 BY MR. BECKER:
 10 Q. But does it include the text
 11 from the Intellectual Property Policy that it
 12 says that the membership applicant must abide
 13 by?
 14 MR. FEE: Objection. Asked and
 15 answered.
 16 BY MR. BECKER:
 17 Q. It's a yes or no question.
 18 MR. FEE: He can answer the
 19 question however he feels appropriate.
 20 THE WITNESS: If you're asking
 21 me if the actual text of the
 22 Intellectual Property Policy is on
 23 this membership application, the
 24 answer is no.
 25 BY MR. BECKER:

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1 Q. This application is filled in
 2 by hand. Correct?
 3 MR. FEE: Objection. Calls for
 4 speculation.
 5 THE WITNESS: It appears to be.
 6 BY MR. BECKER:
 7 Q. Does ASTM ever receive requests
 8 for its Intellectual Property Policy by
 9 anybody other than Public.Resource.Org?
 10 A. Possibly.
 11 Q. Do you know one way or the
 12 other?
 13 A. No.
 14 Q. Who would know?
 15 MR. FEE: Objection. Calls for
 16 speculation. It's also beyond the
 17 scope of the designation.
 18 THE WITNESS: Anyone who has
 19 ever received a request would know.
 20 BY MR. BECKER:
 21 Q. Are you personally aware of any
 22 requests?
 23 MR. FEE: Same objection.
 24 THE WITNESS: Not that I can
 25 think of.

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1 BY MR. BECKER:
2 Q. On the next page, ASTM063147,
3 it has different language concerning the ASTM
4 Intellectual Property Policy than the 2012
5 membership application that we were just
6 discussing. Is that correct?
7 MR. FEE: Hold on one second.
8 You can answer.
9 THE WITNESS: Yes, that language
10 is different.
11 BY MR. BECKER:
12 Q. The language that's on
13 ASTM063147 is similar to the language that's
14 on Exhibit 1293, the 2011 membership renewal
15 invoice. Is that correct?
16 MR. FEE: Objection. Vague.
17 THE WITNESS: Yep, that looks
18 correct. Slightly different.
19 BY MR. BECKER:
20 Q. Why is this language different
21 for the 2012 committee membership application
22 than for the 2012 membership application?
23 MR. FEE: Objection. To the
24 extent that would require you to
25 disclose attorney-client

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1 communications, you shouldn't do so.
2 If you can answer otherwise, go ahead.
3 THE WITNESS: My perspective is
4 that they're the same thing. They're
5 both intended for an individual to
6 join a particular committee.
7 BY MR. BECKER:
8 Q. Why is the copyright -- you say
9 they're the same thing, the copyright
10 assignment language?
11 MR. FEE: Same objection and
12 instruction.
13 THE WITNESS: No, I believe the
14 form is the same thing. It serves the
15 same purpose. It's an application so
16 an individual can join the technical
17 committee.
18 BY MR. BECKER:
19 Q. And my question was about the
20 actual language that ASTM believes concerns
21 copyright assignment. Why is there a
22 difference in the language concerning ASTM's
23 IP Policy on ASTM063146 as opposed to the
24 language concerning ASTM's IP Policy on
25 ASTM063147?

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1 MR. FEE: Objection to form. I
2 also object to the extent it calls for
3 attorney-client communications. You
4 shouldn't disclose any communications
5 between you and counsel, but you can
6 answer otherwise.
7 THE WITNESS: I believe the
8 language that is at the top of
9 ASTM063146 was language that we used
10 prior to the language that we used
11 that's contained on ASTM063147.
12 BY MR. BECKER:
13 Q. But if you then turn the page
14 to ASTM065682, that's a 2013 membership
15 application, and it has the same language
16 concerning the ASTM Intellectual Property
17 Policy as on ASTM063146. Correct?
18 A. That's what it looks like.
19 Q. If you turn the page to the
20 following page, the 2014 membership
21 application also has that same language.
22 Correct?
23 A. Yes.
24 Q. So ASTM has continued to use
25 this language into 2014?

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1 MR. FEE: Objection. Vague.
2 THE WITNESS: That's what it
3 would appear to me.
4 BY MR. BECKER:
5 Q. Who knows how many different
6 versions exist for the membership
7 applications during each year from 2007 to
8 2014?
9 A. I don't know if anybody knows.
10 Q. Why is that?
11 MR. FEE: Objection. Calls for
12 speculation.
13 THE WITNESS: My experience as
14 being a staff manager is I don't think
15 people think about the version of an
16 application that's being used. I
17 think it's viewed as a tool that
18 enables an individual to join a
19 technical committee.
20 BY MR. BECKER:
21 Q. Who creates the membership
22 applications such as the 2014 membership
23 application ASTM066345?
24 A. I'm not sure who creates it.
25 Maybe our customer relations. Maybe it's our

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1 membership department. But ASTM knows.
2 Q. How can you find out how many
3 versions of the membership application exists
4 for each year from 2007 to 2014?
5 A. I don't know if you can figure
6 it out. I don't know if there's a way.
7 Q. Who knows how many different
8 versions exist for ASTM committee
9 applications during each year from 2007 to
10 2014?
11 A. Did you say who would know how
12 many versions?
13 Q. I said -- yes.
14 A. I don't know who would know. I
15 don't know if anyone would know.
16 Q. Has Public.Resource received
17 all applications and renewals of all
18 participants in all standards that ASTM is
19 seeking to enforce in this lawsuit going back
20 to the first creation of the standards at
21 issue in this litigation?
22 MR. FEE: Hold on one second.
23 Objection. Calls for
24 speculation. Calls for a legal
25 conclusion. It's beyond the scope of

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1 his designation. You can answer if
2 you know.
3 THE WITNESS: I have no idea.
4 BY MR. BECKER:
5 Q. Who would know?
6 MR. FEE: Same objections.
7 THE WITNESS: I don't know.
8 Maybe possibly our general counsel.
9 BY MR. BECKER:
10 Q. Would anyone other than ASTM's
11 general counsel know?
12 MR. FEE: Same objections.
13 THE WITNESS: I don't think so.
14 BY MR. BECKER:
15 Q. Has ASTM collected for
16 production all applications and renewals of
17 all participants in all standards that ASTM
18 is seeking to enforce in this lawsuit going
19 back to the first creation of the standards
20 at issue in this litigation?
21 MR. FEE: Objection. Calls for
22 speculation. Beyond the scope of his
23 designation. Calls for a legal
24 conclusion.
25 THE WITNESS: I don't understand

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1 what the question means, collection --
2 "collected for production."
3 BY MR. BECKER:
4 Q. Has ASTM looked for and located
5 in order to comply with its discovery
6 obligations in this case all applications and
7 renewals of all participants in all standards
8 that ASTM is seeking to enforce in this
9 lawsuit going back to the first creation of
10 the standards at issue in this litigation?
11 MR. FEE: Objection. It's
12 beyond the scope of his designation.
13 Calls for speculation. Legal
14 conclusion.
15 THE WITNESS: I don't know.
16 BY MR. BECKER:
17 Q. Who would know?
18 MR. FEE: Same objections.
19 THE WITNESS: Possibly our
20 general counsel.
21 BY MR. BECKER:
22 Q. Would anybody other than ASTM's
23 general counsel know?
24 MR. FEE: Same objections.
25 THE WITNESS: I don't know.

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1 - - -
2 (Exhibit 1302, Compilation of
3 documents, Bates ASTM066829,
4 ASTM067015, ASTM067321, ASTM067813,
5 ASTM070124, ASTM071068, ASTM074751,
6 ASTM075283, ASTM060533, ASTM051140,
7 ASTM081145, was marked for
8 identification.)
9 - - -
10 BY MR. BECKER:
11 Q. I'm handing you what's been
12 marked as Exhibit 1302. This is a
13 compilation of documents produced by ASTM as
14 ASTM066829, ASTM067015, ASTM067321, 067813,
15 070124, 071068, 074751, 075283, 060533,
16 051140, 081145.
17 MR. FEE: I object to the use of
18 cherry picked documents assembled in
19 this manner --
20 MR. BECKER: That's fine.
21 MR. FEE: -- used as an exhibit.
22 MR. BECKER: That's fine. There
23 are many more like this.
24 BY MR. BECKER:
25 Q. Once you've had a chance to

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1 look at them, can you tell me what these
2 documents are?
3 A. I believe these are portions of
4 our renewal notice that we send each year.
5 Q. When ASTM members return the
6 renewal letters that ASTM sends them, do they
7 sometimes return only portions of the renewal
8 letters?
9 MR. FEE: Objection. Beyond the
10 scope of his designation. Calls for
11 speculation.
12 THE WITNESS: Possibly.
13 BY MR. BECKER:
14 Q. Do you know one way or the
15 other?
16 MR. FEE: Same objections.
17 THE WITNESS: No.
18 BY MR. BECKER:
19 Q. Who would know?
20 MR. FEE: Same objections.
21 THE WITNESS: I don't know. I
22 suppose the people at our customer
23 relations department that receives the
24 invoices to process.
25 BY MR. BECKER:

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1 Q. Did you speak with anyone in
2 preparation for the deposition today about
3 individuals who had returned partial
4 membership invoices that did not include any
5 discussion of ASTM copyright or ASTM IP
6 Policy?
7 A. I believe you asked if I talked
8 to any of the people who returned partial and
9 the answer to that is no.
10 Q. I'll read back my question.
11 Did you speak with anyone in preparation for
12 the deposition today about individuals who
13 had returned partial membership invoices that
14 did not include any discussion of ASTM
15 copyright or ASTM IP Policy?
16 A. No.
17 Q. Is there any reason why ASTM
18 would remove any mention of ASTM copyright or
19 ASTM's IP Policy from membership renewal
20 invoices once they had received them from
21 members?
22 MR. FEE: Objection. Beyond the
23 scope of his designation. Calls for
24 speculation.
25 THE WITNESS: No, I don't know.

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1 The only possible thing I can think of
2 is that they're only including a
3 portion of the renewal notice that
4 pertains to the payment. I believe
5 it's about a four-page form or
6 five-page form that has other
7 information on there.
8 - - -
9 (Exhibit 1303, Compilation of
10 documents, various Bates from
11 ASTM069093 to ASTM057841, was marked
12 for identification.)
13 - - -
14 BY MR. BECKER:
15 Q. I'm handing you what's been
16 marked as Exhibit 1303. This, again, is a
17 compilation of documents produced by ASTM.
18 It starts with ASTM069093, and I won't read
19 all of the page numbers in between, but I'll
20 simply say that the last page is Bates number
21 ASTM057841.
22 MR. FEE: Object to this exhibit
23 as well as being cherry picked
24 portions of documents or document
25 production.

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1 MR. BECKER: And as I noted
2 before, there are many more documents
3 that ASTM has produced that look just
4 like these.
5 BY MR. BECKER:
6 Q. Could you tell me what these
7 documents appear to be?
8 A. The same as the previous
9 exhibit.
10 Q. When you say "the same as the
11 previous exhibit," do you mean it is a
12 partial membership application or partial
13 membership renewal form?
14 A. Looks like it's the payment
15 information from the renewal form.
16 Q. It appears for some of them
17 such as the second page ASTM069635, that this
18 payment section of the renewal form has been
19 torn off from the rest of the renewal form.
20 Correct?
21 MR. FEE: Objection. Beyond the
22 scope of his designation. Calls for
23 speculation.
24 THE WITNESS: I don't know that.
25 BY MR. BECKER:

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1 Q. How so?
2 MR. FEE: Same objections.
3 THE WITNESS: I just don't know
4 that.
5 BY MR. BECKER:
6 Q. Who would know that?
7 MR. FEE: Same objections.
8 THE WITNESS: I guess if the
9 person who processed this back in 2008
10 would remember, maybe that person.
11 BY MR. BECKER:
12 Q. Is there any way to find out
13 whether, when these renewal invoices were
14 sent in to ASTM, if they included just this
15 single third section of the ASTM renewal
16 invoice?
17 MR. FEE: Same objections.
18 THE WITNESS: No, other than by
19 asking people that processed these.
20 BY MR. BECKER:
21 Q. Does ASTM keep the original
22 copies of renewal invoices that it receives
23 from members?
24 MR. FEE: Same objections.
25 THE WITNESS: I don't know.

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1 Probably for a certain period of time.
2 BY MR. BECKER:
3 Q. Who would know?
4 MR. FEE: Same objections.
5 THE WITNESS: People on our
6 internal sales.
7 BY MR. BECKER:
8 Q. Anybody else?
9 MR. FEE: Same objections.
10 THE WITNESS: Not that I'm aware
11 of.
12 BY MR. BECKER:
13 Q. Do you know any specific people
14 in ASTM's internal sales that would know the
15 answer to that question?
16 MR. FEE: Same objections.
17 THE WITNESS: Possibly Derek
18 Franco.
19 BY MR. BECKER:
20 Q. And what is Derek Franco's role
21 at ASTM?
22 A. He's the director of internal
23 sales.
24 - - -
25 (Exhibit 1304, 2010 Membership

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1 Renewal Invoice, Bates ASTM075697, was
2 marked for identification.)
3 - - -
4 BY MR. BECKER:
5 Q. I'm handing you what's been
6 marked as Exhibit 1304. This has been
7 produced by ASTM as ASTM075697. Can you tell
8 me what this document is?
9 A. It says it's the "2010
10 Membership Renewal Invoice."
11 Q. It would appear that somebody
12 has crossed out language on this renewal
13 invoice and it includes the language that
14 references the ASTM IP Policy. Is that
15 correct?
16 MR. FEE: Objection.
17 Mischaracterizes the document.
18 THE WITNESS: Yes. It looks
19 like that information and other
20 information is crossed out.
21 BY MR. BECKER:
22 Q. Does somebody review the
23 membership renewal invoices when they are
24 delivered to ASTM?
25 A. We have someone that processes

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1 that.
2 Q. Is a membership renewal ever
3 refused for crossing out the language
4 referencing the ASTM IP Policy?
5 MR. FEE: Objection. Beyond the
6 scope of his designation. Calls for
7 speculation.
8 THE WITNESS: I have no idea.
9 BY MR. BECKER:
10 Q. Who would know?
11 MR. FEE: Same objections.
12 THE WITNESS: I don't know.
13 BY MR. BECKER:
14 Q. Does ASTM attribute any
15 significance to the IP Policy language being
16 crossed out in membership invoices that are
17 returned to it?
18 MR. FEE: Objection. Calls for
19 a legal conclusion. To the extent
20 that question requires you to disclose
21 attorney-client communications, you
22 shouldn't do so. If you can answer
23 that question otherwise, go ahead.
24 THE WITNESS: I don't know. But
25 our online renewal process does not

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1 allow you to not acknowledge it.
 2 BY MR. BECKER:
 3 Q. ASTM continues to this day to
 4 accept mail-in membership renewal forms.
 5 Correct?
 6 A. Yes.
 7 - - -
 8 (Exhibit 1305, 2011 Membership
 9 Renewal Invoice, Bates ASTM082973, was
 10 marked for identification.)
 11 - - -
 12 BY MR. BECKER:
 13 Q. I'm handing you what's been
 14 marked as Exhibit 1305. Can you tell me what
 15 this document is?
 16 A. It says it's the "2011
 17 Membership Renewal Invoice."
 18 Q. And this document has the ASTM
 19 IP Policy crossed out as well. Correct?
 20 MR. FEE: Objection.
 21 Mischaracterizes the document.
 22 THE WITNESS: There's a line
 23 through the section 2.
 24 BY MR. BECKER:
 25 Q. And section 2 includes the

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

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1 produced by ASTM as ASTM101777 to 101779. Is
 2 that you addressed on this e-mail as Smith,
 3 Dan at dsmith@astm.org [as read]?
 4 A. Yes.
 5 Q. Do you recognize this document?
 6 A. No.
 7 Q. Do you have any reason to
 8 believe that you did not receive this
 9 document?
 10 A. No.
 11 Q. Do you have any reason to
 12 believe that this document is not authentic?
 13 A. No.
 14 Q. Do you know which retreat this
 15 document is referring to when at the top line
 16 of the e-mail it says, "One more 'talking
 17 points' document for the retreat"?
 18 A. It was most likely for our
 19 spring 2012 retreat.
 20 Q. What was the purpose of the
 21 spring 2012 retreat?
 22 MR. FEE: Objection. This is
 23 beyond the scope. Explain to me how
 24 this has had anything to do with the
 25 three topics.

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1 MR. BECKER: This has to do with
 2 a document that he is included on.
 3 MR. FEE: That's it?
 4 MR. BECKER: We have a 30(b)(6)
 5 designee and we can ask him documents
 6 that relate to his work with ASTM.
 7 MR. FEE: I'm going to instruct
 8 him not to answer that question.
 9 MR. BECKER: This also has to do
 10 with copyright issues.
 11 MR. FEE: Copyright issues. If
 12 it has to do with one of the three
 13 topics, he's not going to answer your
 14 question about it, and I don't think
 15 it has to do with any of the three.
 16 You haven't articulated even an
 17 argument that it does.
 18 MR. BECKER: I disagree, and I
 19 believe that the witness should answer
 20 any questions that are posed to him
 21 that we have. And we are entitled to
 22 be able to ask the witness about his
 23 background and his operations with
 24 ASTM.
 25 MR. FEE: This isn't about his

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1 background. I'm instructing him not
 2 to answer this question.
 3 MR. BECKER: We are entitled to
 4 ask the witness what we want. As a
 5 30(b)(6) witness, we can ask him in
 6 his individual capacity, and this
 7 e-mail is fair game under that.
 8 BY MR. BECKER:
 9 Q. Mr. Smith, are you going to
 10 answer the questions that we ask regarding
 11 this document?
 12 MR. FEE: No, he's not.
 13 THE WITNESS: No, I'm not.
 14 MR. BECKER: Counsel, I believe
 15 that's in violation of the 30(b)(6)
 16 requirements.
 17 MR. FEE: The court's order said
 18 that this was supposed to be on the
 19 three topics that we've been talking
 20 about all day. That's what the basis
 21 for this deposition is.
 22 MR. BECKER: The 30(b)(6) rules
 23 allow us to ask questions of the
 24 30(b)(6) designee. They don't have to
 25 be focused purely on those topics, but

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1 if they are outside of those topics,
 2 you can always object to them, but you
 3 cannot instruct your client not to
 4 answer the question.
 5 MR. FEE: The court has
 6 specifically ordered what the subject
 7 matter of this deposition is going to
 8 be. It did not include anything other
 9 than those three topics, so I'm
 10 instructing him not to answer.
 11 MR. BECKER: I disagree.
 12 MR. FEE: Disagree.
 13 MR. BECKER: The court
 14 instructed --
 15 - - -
 16 (Exhibit 1307, E-mail chain,
 17 Bates ASTM099502 - ASTM099506, was
 18 marked for identification.)
 19 - - -
 20 BY MR. BECKER:
 21 Q. Mr. Smith, I'm handing you the
 22 document that's been marked as Exhibit 1307.
 23 This is the document produced by ASTM as
 24 ASTM099502 to ASTM099506. Do you see that
 25 you are cc'd on this document?

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1 A. Yes.
 2 Q. Do you recognize this document?
 3 A. No.
 4 Q. Do you have any reason to
 5 believe that this document is not authentic?
 6 A. No.
 7 Q. Do you have any reason to
 8 believe that you did not receive this
 9 document at the time it was sent?
 10 A. No.
 11 Q. Do you have any reason to
 12 believe that you didn't review this document
 13 at the time that it was sent to you?
 14 A. I'm not sure.
 15 - - -
 16 (Exhibit 1308, 8/20/14 E-mail
 17 with attachment, Bates ASTM003314 &
 18 ASTM003315, was marked for
 19 identification.)
 20 - - -
 21 BY MR. BECKER:
 22 Q. I'm handing you what's been
 23 marked as Exhibit 1308. This is a document
 24 produced by ASTM as Bates number ASTM003314
 25 to 15.

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1 MR. BECKER: I'll note simply to
 2 counsel that in the court's order
 3 concerning the deposition for today,
 4 the court did not limit the deposition
 5 to any topics. The court simply
 6 denied the plaintiff's motion for a
 7 protective order and ordered that a
 8 deposition was to commence.
 9 BY MR. BECKER:
 10 Q. Mr. Smith, do you see your name
 11 listed under the "To" line for Exhibit 1308?
 12 A. Yes.
 13 Q. Did you receive this e-mail?
 14 A. I'm sure I did.
 15 Q. Mr. Smith, do you -- is this
 16 document as produced by ASTM authentic?
 17 MR. FEE: Objection. Calls for
 18 a legal conclusion. Beyond the scope
 19 of his designation.
 20 MR. BECKER: How is a request
 21 for authentication a --
 22 MR. FEE: Subject to the federal
 23 rules of evidence.
 24 MR. BECKER: Authentication?
 25 BY MR. BECKER:

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1 Q. Mr. Smith, is this a correct
2 copy of the -- this e-mail that you received?
3 A. It could be. There's only
4 one -- looks like there's only one metric
5 attached here.
6 Q. And is that the document
7 titled: "GMAC.DOCX," that's the first
8 attachment listed in the e-mail?
9 MR. FEE: Objection. Calls for
10 speculation.
11 THE WITNESS: There's only one
12 attachment here, GMAC.
13 BY MR. BECKER:
14 Q. What is page 2 of this document?
15 A. It's one of the five metrics
16 that we have in 2015.
17 Q. What do you mean "one of the
18 five metrics"?
19 MR. FEE: Objection. This is
20 beyond the scope of his designations.
21 Does this have something to do with
22 respect to three topics that are the
23 subject of today's deposition?
24 MR. BRIDGES: Absolutely.
25 MR. FEE: How?

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1 MR. BECKER: This concerns the
2 federal government participation in
3 the creation of standards.
4 MR. FEE: And that is relevant
5 to which of your three topics?
6 MR. BECKER: Copyright ownership
7 and assignments and chain of title.
8 MR. FEE: This is respective
9 works at issue. Do you contend that
10 this document has something to do with
11 the work at issue? It's seven years
12 after the most recent work of issue.
13 MR. BECKER: But it still
14 concerns the, potentially the works
15 that are at issue given some of the
16 discussions that are on this document.
17 MR. FEE: I'll give you a little
18 bit of leeway on this, but frankly I
19 don't see that that's going to be the
20 case. Go ahead.
21 BY MR. BECKER:
22 Q. What are the five metrics that
23 you were mentioning?
24 A. We have five different metric
25 projects that we have focused on in 2015.

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1 Q. And when you say "we," are
2 you -- do you mean ASTM?
3 A. Correct.
4 Q. And who specifically at ASTM is
5 focusing on these five projects?
6 A. Our organization.
7 Q. And what are the five different
8 metrics?
9 MR. FEE: Objection. This is
10 beyond the scope. Did any of the five
11 metrics have to do with ownership of
12 copyrights?
13 THE WITNESS: No.
14 MR. BECKER: I'd like to know
15 what the background of this document
16 is.
17 MR. FEE: Is there any link to
18 the topics that are at issue in this?
19 MR. BRIDGES: He's explained
20 that, Counsel.
21 MR. FEE: It's turned out that
22 it has nothing do with copyright
23 issues.
24 MR. BRIDGES: You don't get to
25 ask him the questions.

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1 MR. FEE: He's already said it.
2 If you can link this to one of your
3 three topics, go ahead, but he's not
4 going to spend the next ten minutes
5 talking about a topic that's beyond
6 the scope of his designation.
7 MR. BECKER: The document
8 concerns the 1,500 federal agency
9 participants in ASTM technical
10 committees. I would like to know what
11 the background of this document is and
12 why it was created.
13 MR. FEE: If you want to ask him
14 about the 1,500 federal government
15 participants, go ahead.
16 BY MR. BECKER:
17 Q. What are the five metrics?
18 MR. FEE: Objection. Beyond the
19 scope. Go ahead. Let him ask a
20 couple more questions.
21 THE WITNESS: That's fine. This
22 is one metric. We have another metric
23 that is investigating whether or not
24 there would be a value to hire
25 technical expertise within ASTM staff.

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1 We have another metric that is
2 piloting new technology for
3 collaborating in development of
4 documents. We have another metric
5 that is evaluating a technology
6 options for consolidating or having a
7 content management system, a unified
8 content management system. And
9 there's another one that I'm not
10 thinking of right now.
11 BY MR. BECKER:
12 Q. What is -- what metric does
13 this document concern?
14 MR. FEE: Objection. Vague.
15 THE WITNESS: It deals with
16 coordinating, it says it right at the
17 top. Addresses government interaction
18 issues and creates an ASTM Government
19 Member Advisory Committee to advance
20 the following objectives.
21 BY MR. BECKER:
22 Q. What is the ASTM Government
23 Member Advisory Committee?
24 A. There is not one.
25 Q. So the ASTM Government Member

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1 Advisory Committee was never created?
2 A. No.
3 Q. Does ASTM plan to -- is ASTM
4 still considering creating a Government
5 Member Advisory Committee?
6 MR. FEE: Objection. Beyond the
7 scope.
8 THE WITNESS: We're considering
9 it.
10 BY MR. BECKER:
11 Q. Who prepared this metric?
12 MR. FEE: Objection. Vague.
13 THE WITNESS: I'm not sure.
14 BY MR. BECKER:
15 Q. Who would know?
16 MR. FEE: Objection. Beyond the
17 scope. Calls for speculation.
18 THE WITNESS: Jim Thomas.
19 BY MR. BECKER:
20 Q. Would anybody else besides Jim
21 Thomas know who prepared this?
22 MR. FEE: Same objections.
23 THE WITNESS: Possibly.
24 BY MR. BECKER:
25 Q. Can you name anybody else who

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1 would know?
2 MR. FEE: Same objections.
3 THE WITNESS: Not for sure.
4 BY MR. BECKER:
5 Q. Was Jim Thomas in charge of
6 this metric?
7 MR. FEE: Objection. Vague.
8 THE WITNESS: No.
9 MR. FEE: Calls for speculation.
10 Beyond the scope of his designation.
11 THE WITNESS: No.
12 BY MR. BECKER:
13 Q. The top bullet point statement
14 on the second page says, "Take inventory of
15 the existing 1,500 Federal agency
16 participants in ASTM technical committees to
17 identify areas of under-representation and
18 participation."
19 Do you know if that figure of
20 1,500 federal agency participants in ASTM
21 technical committees is correct?
22 MR. FEE: Objection. Vague.
23 THE WITNESS: It's probably
24 ballpark.
25 BY MR. BECKER:

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1 Q. Who would know what the exact
2 number of federal agency participants in ASTM
3 technical committees is?
4 MR. FEE: Objection. Calls for
5 speculation. Beyond the scope of his
6 designation.
7 THE WITNESS: Perhaps somebody
8 in our membership department. It's a
9 figure that changes on a daily basis.
10 - - -
11 (Exhibit 1309, ASTM
12 Collaboration Area, Bates ASTM103272,
13 was marked for identification.)
14 - - -
15 BY MR. BECKER:
16 Q. I'm handing you what's been
17 marked as Exhibit 1309. This is the document
18 that was produced by ASTM last night as Bates
19 number ASTM103272. It's titled "ASTM
20 Collaboration Area." And it appears that it
21 was printed on -- it was printed yesterday.
22 Could you tell me what this document is?
23 A. I believe it is a picture of an
24 image on our Web site that indicates a member
25 must agree to the language that's stated

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1 there before joining a collaboration area.
 2 Q. Is this the ASTM collaboration
 3 area language concerning the ASTM IP Policy
 4 and copyright that you had discussed earlier
 5 today in the deposition?
 6 A. Looks like it's very similar,
 7 yeah.
 8 Q. When you say it's "very
 9 similar," is there any differences that you
 10 see between this and the version that is on
 11 the ASTM Web site that you were describing
 12 earlier today?
 13 MR. FEE: Objection. Vague.
 14 THE WITNESS: I meant that this
 15 is very similar to the language that
 16 we talked about earlier that was on
 17 the renewal form.
 18 BY MR. BECKER:
 19 Q. When you described earlier that
 20 participants in technical committees who set
 21 up an ASTM collaboration area would have to
 22 agree to language concerning copyright and
 23 the ASTM IP Policy, were you describing this
 24 document 1309?
 25 MR. FEE: Objection to form.

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1 THE WITNESS: When earlier was
 2 that?
 3 BY MR. BECKER:
 4 Q. At the start of the deposition.
 5 MR. FEE: Same objection.
 6 THE WITNESS: I may have been.
 7 I'm not sure I recall the beginning of
 8 the deposition, but I think that's
 9 right.
 10 - - -
 11 (Exhibit 1310, ASTM Membership
 12 Application, Bates ASTM103274 -
 13 ASTM103276, was marked for
 14 identification.)
 15 - - -
 16 BY MR. BECKER:
 17 Q. I'm handing you what's been
 18 marked as Exhibit 1310. This is the document
 19 produced by ASTM last night as Bates number
 20 ASTM103274 to ASTM103276.
 21 Do you recognize this document?
 22 A. It looks like it's our
 23 membership application that we have on our --
 24 on the Web.
 25 Q. Is this a correct depiction of

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1 the membership application as it currently
 2 exists on the Web?
 3 A. It might be, or it might be
 4 part of it.
 5 Q. What is missing, if anything,
 6 from this document if it is the membership
 7 application on the Web?
 8 A. This appears to be the 2003
 9 version, so I don't think this is the most
 10 recent version. It appears that there is
 11 language at the very bottom of page
 12 ASTM013275, it asks for acknowledgment about
 13 reading and understanding ASTM's Intellectual
 14 Property Policy, and agree to abide by its
 15 terms, [check off box].
 16 Q. It says, "put in weblink"
 17 there. Do you know why it says that?
 18 A. No, I don't know why.
 19 Q. Does this appear to be a draft
 20 of the ASTM membership application as of
 21 approximately 2003?
 22 A. I would -- I can't say for sure
 23 but since it says, "Costs for 2003" up top, I
 24 would say that's probably correct.
 25 Q. Do you know if this precise

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1 version of the ASTM member application was
 2 ever implemented online on the ASTM Web site?
 3 A. I don't know for sure, but I'm
 4 guessing it was since this looks like a
 5 picture from the ASTM Web site.
 6 Q. Who would know for certain?
 7 A. I don't know if anybody would
 8 at this point since it was an online
 9 application.
 10 MR. BECKER: Let's go off the
 11 record.
 12 VIDEOGRAPHER: The time is now
 13 6:40. We're going off the video
 14 record.
 15 - - -
 16 (A recess was taken.)
 17 - - -
 18 VIDEOGRAPHER: The time is now
 19 7:01. We're back on the video record.
 20 - - -
 21 (Exhibit 1311, Record Retention
 22 Policy, Bates ASTM003501 - ASTM003522,
 23 was marked for identification.)
 24 - - -
 25 MR. FEE: Before we get started,

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1 I just want to say that Mr. Smith has
 2 been available to be deposed since
 3 10:00 a.m. this morning. It's now
 4 7:00. We have about 55 minutes left.
 5 We're not staying past 8:00. So if
 6 you're going to take any other breaks,
 7 it better be short. That was a
 8 20-minute break and I think a complete
 9 waste of time. Go ahead.
 10 BY MR. BECKER:
 11 Q. Mr. Smith, I've handed you
 12 what's marked as Exhibit 1311. This is a
 13 document produced by ASTM as 003501 to 3522.
 14 Could you, please, identify it?
 15 A. It says, "RECORD RETENTION
 16 POLICY."
 17 Q. Is this ASTM's record retention
 18 policy?
 19 A. Yes, I believe it is.
 20 Q. Have you -- did you review
 21 ASTM's record retention policy in preparation
 22 for the deposition today?
 23 A. I reviewed it very briefly.
 24 Q. Do you know what category under
 25 the record retention policy that membership

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1 application forms would qualify as?
 2 MR. FEE: Objection. It's
 3 beyond the scope of his designation.
 4 THE WITNESS: Are you referring
 5 to any particular pages?
 6 BY MR. BECKER:
 7 Q. Yes. If you look at ASTM 3502
 8 and 3503, it says, "Types of Records." That
 9 includes "Temporary Records," "Final Records"
 10 and "Permanent Records." And then it also
 11 has B is -- section B, "Types of Records That
 12 have Legal or Regulatory Periods of
 13 Retention," "Accounting and Corporate Tax
 14 Records," "Corporate Records," "Employment
 15 and Employee Records," "Bank Records," and
 16 "Legal Records."
 17 A. I don't know what category
 18 membership application would fall under,
 19 would just -- I'm not sure.
 20 Q. Do you know what category the
 21 ASTM IP Policy would fall under?
 22 MR. FEE: Objection. Beyond the
 23 scope.
 24 THE WITNESS: No, I don't know.
 25 I'm not very familiar with the "Types

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1 of Records," section III.
 2 - - -
 3 (Exhibit 1312, 11/21/08 E-mail
 4 with attachment, Bates ASTM088320 -
 5 ASTM088325, was marked for
 6 identification.)
 7 - - -
 8 BY MR. BECKER:
 9 Q. I'm handing you what's been
 10 marked as Exhibit 1312. This is the document
 11 produced by ASTM as ASTM088320 to ASTM088325.
 12 It is an e-mail with an attachment that says,
 13 "ASTM International Author/Copyright Owner
 14 Agreement." Is this attachment a correct
 15 copy of the ASTM International
 16 Author/Copyright Ownership Agreement?
 17 MR. FEE: Objection. Vague as
 18 to time. Beyond the scope of the
 19 designation as well.
 20 THE WITNESS: I'm not sure.
 21 BY MR. BECKER:
 22 Q. Who would know whether this
 23 attachment is a correct copy of the ASTM
 24 International Author/Copyright Ownership
 25 Agreement?

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1 MR. FEE: Objection. Beyond the
 2 scope.
 3 THE WITNESS: I would have to
 4 read it first to possibly give you an
 5 answer.
 6 Our publications department
 7 might be able to tell you whether or
 8 not this is the correct
 9 Author/Copyright Owner Agreement since
 10 it's a journal paper, relevant to a
 11 journal paper.
 12 - - -
 13 (Exhibit 1313, Web site
 14 screenshots, Bates ASTM001792 -
 15 ASTM001800, was marked for
 16 identification.)
 17 - - -
 18 BY MR. BECKER:
 19 Q. I'm handing you what's been
 20 marked as Exhibit 1313. This document was
 21 produced by ASTM with Bates number ASTM001792
 22 to 1800. What is this document?
 23 A. This looks like it is
 24 screenshots from our Web site for how an
 25 individual would renew their membership.

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1 Q. Is this a correct copy of the
2 current language for the renewal -- for the
3 membership renewal process on the ASTM Web
4 site?
5 MR. FEE: Objection. Vague.
6 THE WITNESS: These are Web
7 screenshots, so I'm not sure if this
8 is the current version or not. It's
9 kind of hard to read, but it looks
10 like it was -- I mean, it could be
11 current.
12 BY MR. BECKER:
13 Q. Did you review the membership
14 renewal online application in preparation for
15 your deposition today?
16 A. Yes.
17 Q. Is there any reason why you
18 think that this may not be an accurate copy
19 of the current membership renewal process on
20 the ASTM Web site?
21 A. No.
22 Q. Looking at Exhibit 1313, on the
23 second page near the top of the page
24 ASTM001793, does that depict the membership
25 renewal screen that discusses a copyright and

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1 the ASTM IP Policy?
2 A. Yes.
3 MR. FEE: Objection. The
4 document speaks for itself.
5 THE WITNESS: It's a little
6 tough to read, but it would appear
7 that way.
8 - - -
9 (Exhibit 1314, Screenshots,
10 Bates ASTM001801 - ASTM001813, was
11 marked for identification.)
12 - - -
13 BY MR. BECKER:
14 Q. I've handed you what's been
15 marked as Exhibit 1314. This is the ASTM
16 document Bates labeled ASTM001801 to 1813
17 Could you, please, identify this document?
18 A. This looks like screenshots of
19 the path that an individual could take to
20 access the membership application and
21 complete it and submit it online so that they
22 can join a technical committee.
23 Q. Is this for joining a technical
24 committee or is this for getting an ASTM
25 membership?

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1 A. This is for joining a technical
2 committee. It's a participating membership
3 application. So on page ASTM001802 you
4 select the type of membership that you want
5 to purchase. And in this particular instance
6 the screenshots show that they've selected
7 the participating member. And then after
8 that it's an example of what one would see if
9 they selected the organizational membership.
10 And then the informational and then the
11 student.
12 - - -
13 (Exhibit 1315, ASTM Member
14 Application Forms, Bates ASTM052816,
15 ASTM052817, ASTM062194, ASTM062195,
16 ASTM062198 & ASTM062199, was marked
17 for identification.)
18 - - -
19 BY MR. BECKER:
20 Q. I'm handing you what's been
21 marked as Exhibit 1315. This is a
22 document -- this is a number of documents
23 Bates labeled ASTM052816 to 817, ASTM062194
24 to 195, and ASTM062198 to 199. Would you,
25 please, tell me what these documents are?

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1 MR. FEE: Object to the use of
2 randomly selected documents stapled
3 together as one exhibit. You can
4 answer.
5 THE WITNESS: It says at the top
6 in English "ASTM MEMBER APPLICATION
7 FORM."
8 BY MR. BECKER:
9 Q. Is this an ASTM member
10 application form that's in English and
11 Chinese?
12 MR. FEE: Objection. Calls for
13 expert testimony to the extent you're
14 asking him to speak to what language
15 this is.
16 THE WITNESS: I've never seen
17 this application before, but it says
18 ASTM member application form. It's
19 perhaps something that we used as a
20 service to have Chinese members or
21 have Chinese individuals join ASTM.
22 BY MR. BECKER:
23 Q. Are you aware of any discussion
24 of copyright or the ASTM IP Policy in these
25 forms that are in both English and Chinese

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1 that I've provided here as Exhibit 1315?
 2 MR. FEE: Same objections, plus
 3 lack of formation -- or foundation.
 4 Sorry.
 5 THE WITNESS: I'm not aware of
 6 whether there was or there was not.
 7 - - -
 8 (Exhibit 1316, Regulations
 9 Governing ASTM Technical Committees,
 10 was marked for identification.)
 11 - - -
 12 BY MR. BECKER:
 13 Q. I'm handing you what's been
 14 marked as Exhibit 1316. Could you, please,
 15 tell me what this document is?
 16 A. The front page says the
 17 "REGULATIONS GOVERNING ASTM TECHNICAL
 18 COMMITTEES."
 19 Q. What are the Regulations
 20 Governing ASTM Technical Committees?
 21 A. It's essentially this entire
 22 document if it's all included here.
 23 Q. Does it appear to be all
 24 included there?
 25 A. I'd have to go through it, but

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1 it could. Looks like it.
 2 Q. What is the purpose of the
 3 Regulations Governing ASTM Technical
 4 Committees?
 5 MR. FEE: Objection. Beyond the
 6 scope. Vague.
 7 THE WITNESS: Technical
 8 committees follow the regulations and
 9 develop member standards.
 10 BY MR. BECKER:
 11 Q. Do you use the Regulations
 12 Governing ASTM Technical Committees in the
 13 course of your work with ASTM?
 14 A. Yes.
 15 Q. How do you use them?
 16 A. As staff people, we advise our
 17 technical committees on the regulations so
 18 that they -- the regulations can be followed
 19 in the development of their standards.
 20 Q. Do staff members do other
 21 things to assist the members of the technical
 22 committees?
 23 MR. FEE: Objection. Vague.
 24 THE WITNESS: Yes.
 25 BY MR. BECKER:

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1 Q. What do staff members do to
 2 assist the members of technical committees?
 3 MR. FEE: Objection. Vague.
 4 THE WITNESS: General
 5 assistance. Provide them with advice
 6 on regulations, on our form and style
 7 manual. We have interlaboratory study
 8 program that assists our members. A
 9 variety of things. I don't know if
 10 there's anything specific that you
 11 want me to focus on.
 12 BY MR. BECKER:
 13 Q. Does -- how does ASTM staff
 14 members assist individual -- assist technical
 15 committee members in the drafting or revision
 16 of standards?
 17 MR. FEE: Objection. Vague.
 18 THE WITNESS: We have -- we
 19 provide them with editorial
 20 assistance, so we'll provide editorial
 21 help within the documents. Our
 22 interlaboratory study program is
 23 responsible for organizing round-robin
 24 studies for collecting the data and
 25 doing the number crunching in order to

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1 produce precision statements. Our ILS
 2 team will produce the research reports
 3 which are referenced in the standard.
 4 We will help -- we have a graphics
 5 department that will create graphics
 6 for the standards, for committee
 7 members. We have an up-front editor
 8 that provides a great deal of
 9 assistance if we have a draft that
 10 needs to be put into proper ASTM form
 11 and style. We provide them with
 12 assistance on language for caveats
 13 that are placed in the ASTM standards.
 14 BY MR. BECKER:
 15 Q. Anything else?
 16 A. We provide an awful lot of
 17 assistance, but nothing else that comes to
 18 mind at this particular time.
 19 Q. When you say editorial
 20 assistance, what do you mean by that?
 21 A. Grammatical things. We'll
 22 inform members if they have mandatory
 23 language in a non-mandatory section, that
 24 that's outside the form and style policy. Or
 25 vice versa, if they have non-mandatory

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1 language in a mandatory section, we'll
 2 provide assistance in tweaking that language
 3 so that it's within the form and style
 4 guidelines.
 5 Q. Anything else in terms of
 6 editorial assistance other than grammatical
 7 assistance?
 8 A. We could take a document and
 9 place it and organize it so that it has the
 10 relevant sections as defined in the form and
 11 style manual.
 12 Q. Do you mean to reorganize a
 13 draft standard, is that what you're saying?
 14 A. Yes.
 15 Q. What are -- excuse me.
 16 Anything else in terms of
 17 editorial assistance?
 18 A. Our editors will also take a
 19 document that's been approved through our
 20 balloting process, if it's a new standard,
 21 they'll put it into publication format and
 22 work with the technical contacts to make sure
 23 that everything looks good prior to
 24 publication.
 25 Q. When you say they put it into

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1 publication format, does that involve any
 2 changes to the content of the draft standard?
 3 MR. FEE: Objection. Vague.
 4 THE WITNESS: It involves taking
 5 what was balloted in the Word format
 6 and placing it into our XML format
 7 that we use for producing PDFs.
 8 BY MR. BECKER:
 9 Q. Is that a no?
 10 MR. FEE: Objection. You can
 11 answer the question however you like.
 12 You don't have to answer it yes or no.
 13 THE WITNESS: Did you ask me is
 14 that a no?
 15 BY MR. BECKER:
 16 Q. Yeah.
 17 A. What was -- can you repeat the
 18 original question?
 19 Q. The question was, when you say
 20 you put it into publication format, does that
 21 involve any changes to the content of the
 22 draft standards?
 23 MR. FEE: Objection. Vague.
 24 THE WITNESS: It could,
 25 editorial changes, yes.

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1 BY MR. BECKER:
 2 Q. Is that the same grammatical
 3 changes that you were referring to before?
 4 MR. FEE: Objection.
 5 Mischaracterizes his testimony.
 6 Vague.
 7 BY MR. BECKER:
 8 Q. I'm sorry, what did you say?
 9 A. The editors could work with the
 10 technical contacts to incorporate editorial
 11 changes, grammatical or reorganization of
 12 content.
 13 Q. Who are the technical contacts?
 14 A. Who are they?
 15 Q. Yeah.
 16 A. They are individuals that take
 17 the lead in developing a new standard or in
 18 developing a revision to an existing
 19 standard.
 20 Q. Are those volunteers or are
 21 those employees of ASTM?
 22 MR. FEE: Objection. Vague.
 23 Calls for a legal conclusion.
 24 THE WITNESS: They're
 25 volunteers.

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1 BY MR. BECKER:
 2 Q. What did you mean when you said
 3 precision statements?
 4 A. Precision statements are
 5 included in test methods.
 6 Q. What are precision statements?
 7 A. Precision statements include
 8 statements on repeatability and reproducibility.
 9 Q. What do you mean by that?
 10 A. For a test method, a statement
 11 of repeatability would be a laboratory taking
 12 the ASTM test method and running the test in
 13 the laboratory several times. And they take
 14 the results of that test and they see how
 15 close each iteration is. And if the results
 16 are very close, then that would indicate good
 17 precision. If it's -- if the results are not
 18 close, then that would indicate poor
 19 precision. So that's what repeatability is.
 20 Then reproducibility is at least six labs
 21 doing the same thing as what I just described
 22 as that one lab. And then the
 23 reproducibility is a statement that analyzes
 24 the results from all six or more labs.
 25 Q. Do the same precision

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1 statements appear in different standards?
2 A. In test methods.
3 Q. For test methods they do?
4 A. Yes.
5 Q. What is the work that the
6 graphics department does?
7 MR. FEE: Objection. Vague.
8 THE WITNESS: Graphics, I don't
9 know exactly everything that they do,
10 but they will take figures that are
11 perhaps old from years ago and we will
12 use them in our technology, update
13 them to make them more user friendly.
14 BY MR. BECKER:
15 Q. Are these figures that were
16 created by committee members or how are these
17 figures created that the graphics department
18 would update?
19 MR. FEE: Objection to form.
20 THE WITNESS: I would assume by
21 the committee members.
22 BY MR. BECKER:
23 Q. Do members -- do committee
24 members vote on the changes that -- or
25 additions that you just described?

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1 MR. FEE: Objection.
2 Mischaracterizes his testimony. Vague
3 and ambiguous.
4 THE WITNESS: Yes.
5 BY MR. BECKER:
6 Q. Do committee members vote on
7 the final versions of ASTM standards?
8 A. I'm not sure what you mean by
9 "final versions."
10 Q. Do committee members vote on
11 ASTM standards, on the final appearance of
12 ASTM standards?
13 MR. FEE: Objection. Vague.
14 THE WITNESS: The final
15 appearance, the published format?
16 BY MR. BECKER:
17 Q. Yes.
18 A. No.
19 Q. Do ASTM committee members vote
20 on the content that appears in the final form
21 of ASTM standards?
22 MR. FEE: Objection. Vague.
23 THE WITNESS: The content that
24 is balloted and approved through our
25 consensus process is not changed

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1 significantly when it's transformed
2 into the published version.
3 BY MR. BECKER:
4 Q. When you say it's not changed
5 significantly, what do you mean?
6 A. There could be editorial
7 changes. So that's a service that our
8 editors perform. When they're putting it
9 into the published version, they will work
10 with the technical contact to incorporate any
11 editorial changes that may have been agreed
12 upon by the committee.
13 Q. You mentioned caveats in ASTM
14 standards. What are those?
15 A. There are caveats that are in
16 our form and style manual.
17 Q. Are those -- what exactly are
18 the caveats in the form and style manual?
19 MR. FEE: Objection. Vague.
20 THE WITNESS: I wouldn't be able
21 to name all of them for you, but there
22 are caveats related to the use of
23 units, so the standard will -- the --
24 there will be a caveat that will
25 identify the use of units within a

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1 particular standard. We have certain
2 safety caveats and hazardous caveats.
3 I think we have a caveat that deals
4 with mercury being used in the
5 standard. I'm sure there are some
6 others.
7 - - -
8 (Exhibit 1317, Participating
9 Membership Applications, Bates
10 ASTM064686 - ASTM064692, was marked
11 for identification.)
12 - - -
13 BY MR. BECKER:
14 Q. I'm handing you what's been
15 marked as Exhibit 1317. This document has
16 been produced by ASTM as ASTM064686 to 64692.
17 What is this document?
18 A. This looks like a copy of an
19 old application that was downloaded and saved
20 from our Web site and that was filled out by
21 hand. Best guess.
22 - - -
23 (Exhibit 1318, E-mail chain with
24 attachment, Bates ASTM087493 -
25 ASTM087497, was marked for

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1 identification.)
2 - - -
3 BY MR. BECKER:
4 Q. I'm handing you what's been
5 marked as Exhibit 1318. Does this exhibit
6 appear to show an individual who was
7 attempting to renew his application,
8 membership application with ASTM by phone --
9 A. I'd have to read it.
10 Q. -- and e-mail?
11 A. [Reviewing document.] Looks
12 like, based on what I'm reading here, they
13 were trying to renew the membership by phone,
14 but it doesn't say that it actually happened.
15 Q. Can ASTM members renew their
16 membership by phone or e-mail?
17 A. They could. It's not -- I
18 don't think it's very common, but they could.
19 - - -
20 (Exhibit 1319, 2011 ASTM
21 International Committee Membership
22 Application, Bates ASTM061183, was
23 marked for identification.)
24 - - -
25 BY MR. BECKER:

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1 Q. I'm handing you what's been
2 marked as Exhibit 1319, document produced by
3 ASTM as Bates number ASTM061183. What is
4 this document?
5 A. It says, "2011 ASTM...Committee
6 Membership Application."
7 Q. Does this document appear to
8 have a line crossed through the language
9 concerning the ASTM IP Policy?
10 MR. FEE: Objection. The
11 document speaks for itself.
12 THE WITNESS: I can't say that
13 that's a line or whether that's an
14 indicator towards the individual's
15 account number.
16 - - -
17 (Exhibit 1320, How To Standards
18 Writing 101 New Standards, was marked
19 for identification.)
20 - - -
21 BY MR. BECKER:
22 Q. I'm handing you what's been
23 marked as Exhibit 1320. What is this
24 document?
25 A. I'm not sure. It says

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1 Standards Writing 101 How To [as read]. It
2 looks like something that was written in
3 Standardization News back in 2000.
4 Q. Does this document accurately
5 reflect the way that standards were developed
6 at ASTM in approximately March of 2000?
7 MR. FEE: You're going to have
8 to read the whole document to answer
9 that question.
10 THE WITNESS: This was, I
11 believe, a way that an individual
12 could request the development of a new
13 standard.
14 BY MR. BECKER:
15 Q. So there were other ways that
16 an individual could request the development
17 of a new standard as of March 2000?
18 A. Yeah, they could make a request
19 from the subcommittee or by the subcommittee
20 chairman.
21 - - -
22 (Exhibit 1321, How Standards are
23 Developed article, was marked for
24 identification.)
25 - - -

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1 BY MR. BECKER:
2 Q. I'm handing you what's been
3 marked as Exhibit 1321. This document was
4 printed from the ASTM Web site at
5 www.astm.org/MEMBERSHIP/standardsdevelop.HTML.
6 What is this document?
7 A. It looks like maybe an article.
8 MR. FEE: Objection. Lack of
9 foundation.
10 THE WITNESS: Maybe an article
11 we have on our Web site that helps
12 provide guidance for our members.
13 BY MR. BECKER:
14 Q. Do you know what a US TAG ISO
15 list is?
16 A. A US --
17 Q. US TAG ISO list.
18 A. United States Technical
19 Advisory Group ISO list, I don't know if that
20 refers to the list of members that are
21 serving on the technical advisory group.
22 - - -
23 (Exhibit 1322, 8/13/08 E-mail,
24 Bates ASTM073852, was marked for
25 identification.)

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1 - - -
 2 BY MR. BECKER:
 3 Q. I'm handing you what's been
 4 marked as Exhibit 1322 which has been
 5 produced by ASTM as ASTM073852. Can you tell
 6 me what this document is?
 7 A. It's an e-mail from Tom O'Toole
 8 to our customer service department.
 9 Q. Does this refresh your
 10 recollection at all as to what a US TAG ISO
 11 list is?
 12 A. I'm assuming it's the
 13 membership list, because it says, "...listed
 14 as members of the US TAG to ISO TC 160."
 15 Q. Is that an ASTM membership
 16 list?
 17 A. It appears that it's ASTM
 18 subcommittee C14.92, holds the US TAG to the
 19 ISO technical committee 160.
 20 MR. BECKER: All right. Let's
 21 go off the record and take a short
 22 break.
 23 VIDEOGRAPHER: The time is now
 24 7:44. We're going off the video
 25 record.

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1 - - -
 2 (A recess was taken.)
 3 - - -
 4 VIDEOGRAPHER: The time is now
 5 7:49. We're back on the video record.
 6 BY MR. BECKER:
 7 Q. Looking at Exhibit 1289 which
 8 is the Amended Notice of Rule 30(b)(6)
 9 Deposition, topic --
 10 MR. FEE: Hold it. Let him grab
 11 it.
 12 BY MR. BECKER:
 13 Q. Okay. Do you have it?
 14 A. Yeah.
 15 Q. If you turn to page 7. Topic
 16 24 is -- on which you've been designated is,
 17 "The bates numbers of at least one instance
 18 of every form of assignment with which You
 19 claim a person assigned any copyright in the
 20 Works-At-Issue to You."
 21 Could you, please, provide the
 22 Bates number of at least one instance of
 23 every form of assignment with which ASTM
 24 claims that a person assigned any copyright
 25 in the Works-At-Issue to ASTM?

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1 A. I believe I can.
 2 MR. FEE: Do you want to mark
 3 that?
 4 MR. BECKER: Yeah. Let's mark
 5 this as the next one.
 6 - - -
 7 (Exhibit 1323, Bates Numbers of
 8 Assignment Documents, was marked for
 9 identification.)
 10 - - -
 11 BY MR. BECKER:
 12 Q. Is this your answer to my
 13 question?
 14 A. Yes.
 15 Q. Is this correct to the best of
 16 your -- is this Exhibit 1323 your answer to
 17 my question concerning Topic 24?
 18 A. Yes.
 19 Q. Is this Exhibit 1323 correct,
 20 to the best of your knowledge?
 21 A. Yes, to the best of my
 22 knowledge.
 23 Q. Who prepared this document,
 24 Exhibit 1323?
 25 A. I'm not sure. I think our

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1 counsel.
 2 Q. Were you provided this
 3 document, Exhibit 1323, by counsel?
 4 A. Yes.
 5 Q. What did you do to confirm that
 6 Exhibit 1323 is accurate?
 7 A. I didn't go through number by
 8 number.
 9 Q. Did you look at any of the
 10 Bates numbers that are listed on this
 11 Exhibit 1323 and confirm that they
 12 corresponded with any assignment language?
 13 A. We looked at them yesterday,
 14 yes.
 15 Q. Did you look at all of them?
 16 A. I believe I did.
 17 Q. All of the Bates numbers that
 18 are listed?
 19 A. I don't know if I looked at the
 20 exact Bates numbers to correspond -- to
 21 correspond with each individual document, but
 22 I believe I looked at all of the documents.
 23 Q. Has there been any impairment
 24 to the operations of the ASTM technical
 25 committees that has arisen in the past five

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1 years?
2 MR. FEE: Objection. Vague.
3 Beyond the scope of his designation.
4 What topic does this relate to? I'm
5 instructing him not to answer unless
6 there's a topic that this relates to.
7 BY MR. BECKER:
8 Q. In your work with the ASTM
9 technical committees, are you familiar with
10 of any difficulties that have arisen in the
11 past five years that concern the operations
12 of the ASTM technical committees?
13 MR. FEE: Can you identify any
14 topic that that relates to? I take
15 your silence as refusal to do so.
16 I'll instruct him not to answer.
17 BY MR. BECKER:
18 Q. Have -- are you going to refuse
19 to answer that question?
20 MR. FEE: Yes, he is.
21 THE WITNESS: Yes.
22 BY MR. BECKER:
23 Q. Has there been any lack of
24 resources for the operations of the ASTM
25 technical committees in the past five years?

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1 MR. FEE: Can you identify a
2 topic to which that relates? I take
3 that as a no. I'll instruct you not
4 to answer that question.
5 MR. BECKER: I don't have to
6 identify any topics to which that
7 relates.
8 BY MR. BECKER:
9 Q. Will you answer that question?
10 MR. FEE: No, he won't.
11 THE WITNESS: No.
12 BY MR. BECKER:
13 Q. In the scope of your work with
14 ASTM, are you familiar with any lack of
15 resources that members of ASTM technical
16 committees have encountered in the past five
17 years?
18 MR. FEE: Can you identify any
19 topic to which that relates?
20 MR. BECKER: I do not have to
21 identify a topic.
22 MR. FEE: If you don't do so,
23 I'm going to instruct him not to
24 answer.
25 BY MR. BECKER:

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1 Q. Are you refusing to answer that
2 question?
3 A. Yes.
4 MR. BECKER: Then I'm going to
5 end the deposition now and reserve my
6 right to follow up on those questions --
7 MR. FEE: Just so the record is
8 clear --
9 MR. BECKER: -- and the
10 questions that counsel instructed the
11 witness to refuse to answer.
12 MR. FEE: Okay. We're now at
13 six minutes and 50 -- six hours and
14 55 minutes of testimony, just so the
15 record is clear. I have one or two
16 questions for you.
17 - - -
18 EXAMINATION
19 - - -
20 BY MR. FEE:
21 Q. Would you turn back to 1323.
22 A. Yes.
23 Q. I just want to make sure that
24 we're clear about one question. You see in
25 the middle, slightly above the middle of that

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1 page it says, "Bates Range of Paper
2 Membership Forms," and it says ASTM034596
3 through ASTM0088302. Did you review
4 approximately 54,000 pages in connection with
5 the creation of this document?
6 A. No.
7 MR. BECKER: Object as to form.
8 BY MR. FEE:
9 Q. Would you turn to Exhibit 1313.
10 A. I'm afraid I --
11 Q. That is, I believe, the
12 membership renewal --
13 A. Got it. Got it.
14 Q. -- pages of their screenshots.
15 A. Yes.
16 Q. Do you recall Mr. Becker
17 pointed you to, I believe, language on the
18 second page of this document and asked
19 whether or not that had any language related
20 to the IP Policy or assignments?
21 A. Yes.
22 MR. BECKER: Object as to form.
23 BY MR. FEE:
24 Q. Are there any other portions of
25 what's been marked as 1313 that relate to the

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1 IP Policy or assignments?
 2 MR. BECKER: Object as to form.
 3 THE WITNESS: There is
 4 additional language. This document
 5 identifies membership renewal Web
 6 screenshots for different types of
 7 members. So I identified page 2, and
 8 then there's also additional language
 9 on page ASTM001796 as well as
 10 ASTM001798. And I believe that's it.
 11 MR. FEE: I have no other
 12 questions.
 13 Do you have any other questions
 14 or is he done?
 15 MR. BECKER: No, no redirect.
 16 MR. FEE: Great. Thank you.
 17 THE WITNESS: Thanks.
 18 VIDEOGRAPHER: The time is now
 19 7:57. This concludes the videotape
 20 deposition of Dan Smith.
 21 - - -
 22 (Witness excused.)
 23 - - -
 24 (Deposition concluded at 7:57
 25 p.m.)

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1 I declare under penalty of perjury
 2 under the laws that the foregoing is
 3 true and correct.
 4
 5 Executed on _____, 20____,
 6 at _____, _____.
 7
 8
 9
 10
 11 _____
 12 DANIEL SMITH
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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

 Notary Public

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Commonwealth of Pennsylvania Rules of Civil

Procedure

Title 231, Chapter 4000

Depositions and Discovery

Rule 4017

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

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

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