

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COLUMBIA INSURANCE COMPANY and
MITEK, INC.,

Plaintiffs,

v.

Case No.

SIMPSON STRONG-TIE COMPANY,
INC.,

3:19-CV-04683-TSH

Defendant.

VIDEOTAPED DEPOSITION OF BRYAN WERT

DATE: Wednesday, April 16, 2025

TIME: 9:02 a.m.

LOCATION: Shartsis Friese, LLP

425 Market Street, 11th Floor

San Francisco, CA 94105

OFFICIATED BY: Ariana Crisafulli

JOB NO.: 7228509

Columbia EX2067

Simpson Strong-Tie Company Inc. v. Columbia Insurance Company

PGR2024-00050

PROCEEDINGS

2 THE OFFICER: Good morning. My name is
3 Ariana Crisafulli. I am the reporter assigned by
4 Veritext to take the record of this proceeding. We are
5 now on the record at 9:02 a.m.

6 This is the deposition of Bryan Wert,
7 taken in the matter of Columbia Insurance Company and
8 MiTek, Inc., vs. Simpson Strong-Tie Company, Inc., on
9 Wednesday, April 16th, 2025, at San Francisco,
10 California 94105.

11 I am a notary authorized to take
12 acknowledgements and administer oaths in California.

13 Additionally, absent and objection on the
14 record before the witness is sworn, all parties and the
15 witness understand and agree that any certified
16 transcript produced from the recordings of this
17 proceeding:

18 - is intended for all uses permitted
19 under applicable procedural and
20 evidentiary rules and laws in the same
21 manner as a deposition recorded by
22 stenographic means; and
23 - shall constitute written stipulation
24 of such.

25 This proceeding will be recorded via

Page 5

1 video technology by Reilly Leet.
2 At this time will everyone in attendance
3 please identify yourself for the record, beginning from
4 my right.

5 MS. SCHEIPETER: Julie Scheipeter and
6 Scott Eidson for Plaintiff from Stinson, LLP.

7 MR. MAUCH: Joseph Mauch of Shartsis
8 Friese on behalf of Defendant Simpson Strong-Tie
9 Company.

10 MR. WERT: Brian Wert with the Simpson
11 Strong-Tie Company.

12 THE OFFICER: Thank you. Hearing no
13 objection, I will now swear in the witness.

14 Please raise your right hand.

15 WHEREUPON,

16 BRYAN WERT,

17 called as a witness and having been first duly sworn to
18 tell the truth, the whole truth, and nothing but the
19 truth, was examined and testified as follows:

20 THE OFFICER: You may proceed.

21 EXAMINATION

22 BY MS. SCHEIPETER:

23 Q Good morning, Mr. Wert.

24 A Good morning.

25 Q You recently had your deposition taken; right?

Page 6 1 A I did. 2 Q So you're familiar with the setup and all the 3 rules. I'm just going to give you a quick reminder of a 4 few of those so that we can get a clear transcript 5 today. So I need verbal responses, no head shakes or 6 "mm-hmms." 7 Just let me finish my question before you 8 begin your answer, and likewise, I will let you fully 9 finish your answer before I begin my next question, and 10 then we can take breaks as needed throughout the day. I 11 just ask that we don't take a break or request a break 12 whenever a question is pending. Does all that sound 13 okay? 14 A That sounds good. 15 Q Any questions? 16 A None. 17 Q Are you on any medications today that would 18 prevent you from providing complete and truthful 19 testimony? 20 A No, I am not. 21 Q And do you have any health conditions that 22 would prevent you from providing complete and truthful 23 testimony today? 24 A No, I do not. 25 Q You're aware that Simpson has disclosed you in	Page 8 1 A Yes. 2 Q And the factual summary of those opinions were 3 put into disclosure that was served upon us by Simpson. 4 That's your understanding; correct? 5 A That's my understanding. 6 Q Okay. And so the purpose of the deposition 7 today is for me to have a greater understanding of 8 exactly what those opinions are, as well as the factual 9 basis for those opinions. Do you understand that? 10 A Understood. Yeah. 11 Q Okay. And so to the extent you have any 12 opinions on any of those topics, I need to know what 13 they are today, as well as the factual basis; 14 understood? 15 A Understood. 16 Q Okay. So just starting at a high level, what 17 opinions have you formed in this case? You can just 18 list them. 19 A Opinions have I formed in this case; well, 20 suppose, in thinking through, like, I believe there were 21 five different areas that I'm being asked to -- to look 22 through. I would say -- I would say that one, that fire 23 wall hangers and Type III construction has been ongoing 24 for good bit of time. 25 But there's been changes in the building code
Page 7 1 this case as a qualified expert who may offer some 2 expert opinions; right? 3 A I am. 4 Q But unlike Simpson's retained experts, you did 5 not summarize or detail those opinions in a written 6 report; correct? 7 A I did not. 8 Q Instead, Simpson disclosed a high-level 9 summary of the subject matter of those opinions in a 10 disclosure provided by Simpson? 11 A Yes. 12 Q That's your understanding? 13 A That's my understanding. 14 Q So the purpose of the deposition today is for 15 me to understand exactly what your expert opinions are 16 and then also the factual and legal basis for those 17 opinions. 18 And so if you have any opinions today 19 regarding those topics set forth in the disclosure, 20 which we'll get to in a minute, now is the time to 21 explain what they are and the basis for those. Do you 22 understand that? 23 A Could you -- I'm sorry, could you repeat that? 24 Q Sure. So you formed some expert opinions for 25 this case; right?	Page 9 1 and entities supportive of wood construction for multi- 2 family that leads to the use of Type III construction 3 that have warranted changes to detailing over time. 4 And I would say Simpson has been working with 5 our customers in order to meet their -- their needs. 6 Overall, I guess I would say I haven't -- didn't come 7 with a prepared list of opinions. Probably best for me 8 to just answer your questions and provide them along the 9 way; otherwise, I -- yeah. 10 Q Sure. Okay. Well, let's just get into the 11 disclosure then. That might help us. 12 A Sure. 13 THE OFFICER: Do you have stickers? 14 MS. SCHEIPETER: Yes. Do you want me 15 to -- I can mark them. 16 THE OFFICER: Okay. 17 MS. SCHEIPETER: Or do you pre-mark them? 18 Okay. Okay. 19 I'm going to hand you what has been 20 marked as Wert Exhibit 1. 21 (Wert Exhibit 1 was marked for 22 identification.) 23 THE VIDEOGRAPHER: Counsel, can you lift 24 up that microphone? 25 MS. SCHEIPETER: This one?

3 (Pages 6 - 9)

Page 10 1 THE VIDEOGRAPHER: Yeah, just tuck it 2 above. Thank you. 3 BY MS. SCHEIPETER: 4 Q Okay. Mr. Wert, do you recognize this 5 document? 6 A Give me second to look through it. So I 7 recognize some of the information on page 4 and the top 8 page 5 as far as, you know, the topics that I'm here to 9 discuss. I don't think I saw the full document prior to 10 today. 11 Q Okay. So for the record, Wert Exhibit 1 is 12 Defendant Simpson's Strong-Tie Company, Inc.'s Expert 13 Disclosure Pursuant to Federal Rule of Civil Procedure, 14 Rule 26. 15 And starting at the very end of page 3 and 16 going on through pages 4 and 5, like you stated, this is 17 where Simpson identifies you as a qualified expert who 18 might offer some opinions on those five areas; correct? 19 A Yes. 20 Q And you're at least familiar with the content 21 of those five bullet points on pages 4 and 5 that set 22 forth the categories of expert opinion; right? 23 A I am. 24 Q Okay. And you've seen that before? 25 A I have.	Page 12 1 A Yes. 2 Q So starting at page 3, which is number 2 in 3 this disclosure, looking through the items that are 4 identified for you, is there anything in this disclosure 5 that you do not feel comfortable offering fact or expert 6 opinion on? 7 A There is not. 8 Q Ok. In this disclosure, Simpson has 9 identified you as someone with specialized knowledge, 10 skill, and experience in structural engineering, 11 construction practices, and development of joist hangers 12 for fire-resistive wall assemblies. 13 What specialized knowledge, skill, and 14 experience do you have in those areas that's relevant to 15 your opinions in this case? 16 A Well, I am a licensed professional engineer in 17 multiple states. I'm currently holding licenses in 18 California, Texas, and Florida; have let others expire 19 as my role has changed in the company. So I'm not 20 needed to stamp a bunch of documents anymore in 21 different states. 22 Before starting at Simpson 18 years ago, I was 23 an engineer at a structural firm in Las Vegas, designing 24 both single- and multi-family structures and custom 25 homes and like commercial structures.
Page 11 1 Q All of the opinions that you intend to offer 2 at trial fall within one of those five topics on pages 4 3 and 5; correct? 4 A Correct. 5 Q And then in reading through those five topics, 6 is there anything in this disclosure that you do not 7 feel comfortable offering an expert opinion on? 8 MR. MAUCH: And I'll just object for the 9 record to the extent that it mischaracterizes the 10 document and the nature of Mr. Hensen's testimony being 11 only opinion as opposed to facts and opinion. 12 THE WITNESS: -- Wert. 13 MR. MAUCH: I'm sorry, did I say Hensen? 14 Mr. Wert. Thank you. I'm reading "Mr. Hensen" right 15 now. 16 THE WITNESS: I was like, did she say 17 something different? 18 MR. MAUCH: No, sorry. Mr. Wert. 19 THE WITNESS: We look so much alike. 20 Sorry, can you repeat your question so I 21 can answer it? 22 BY MS. SCHEIPETER: 23 Q Yeah. So looking at this disclosure for 24 you -- so this disclosure has both Mr. Hensen and 25 yourself listed; right?	Page 13 1 And since joining Simpson, I have worked on 2 many projects, designing different types of connectors, 3 taught on the building code, the changes of the building 4 code in multiple cycles. So I feel qualified to answer 5 questions in this regard. 6 Q You said you taught on the building code? 7 A Correct. Yes. 8 Q Instructed other employees at Simpson about 9 those changes? 10 A Instructed building officials, professional 11 engineers, architects, contractors. So those in the 12 industry. 13 Q So to the extent that you were teaching on 14 changes in the building code to those outside of the 15 Simpson organization, how was that being offered? 16 A How was that being offered? 17 Q Was it in person? Was it a webinar? Can you 18 sort of explain to me how that comes about? 19 A Sure. Done -- done both. Many different 20 types of webinars. Sometimes they're on Simpson 21 products; sometimes they're on the building code and how 22 they can lead to use of Simpson's products. And so I've 23 done these via webinar; I've done these in person. 24 These where we could have, you know, one to -- 25 to two-day gatherings with different professionals in

4 (Pages 10 - 13)

Page 14 1 the industry. We've done it to where, you know, call on 2 structural engineers' offices with the local sales folks 3 and give what's known as "lunch and learns" where you, 4 you know, bring in lunch and then you talk about a 5 topic. 6 Q And you said the audience at these various, I 7 don't know, I'll call them "education sessions," include 8 building officials, contractors, who else? 9 A Engineers, sometimes architects. 10 Q Engineers outside of Simpson? 11 A Yes. 12 Q From? 13 A From different firms all over the country. 14 Mostly in the United States. So I've done this in 15 Chile, South -- South America as well. 16 Q And is there any sort of regular frequency 17 with which Simpson offers those types of sessions? 18 A I think it varies based on, you know, which 19 branch in North America. I was working out of the 20 southeast branch for many years where we offered 21 these -- Simpson's about to offer a virtual session 22 that's going to go, I believe, at least a full day next 23 week. 24 I won't be participating in that one. This 25 was more when I was working at the southeast branch for	Page 16 1 taking existing product and, "What if we used, you know, 2 a different fastener in it or with a different 3 substrate," or something to that fact. 4 We -- there -- there are times when you would 5 get involved in new product development as there's 6 overflow from the -- the main lab that's in the 7 Pleasanton, California location. 8 Q So as a branch engineer, is that providing 9 support services to Simpson customers, or can you tell 10 me a little bit about what that role entailed? 11 A As a branch engineer that -- you would give 12 the training that we talked about, these education 13 seminars; you would work on literature to where -- some 14 regional literature to support construction in -- in, 15 you know, the states that the branch covered. You would 16 support national literature as well, just from a review 17 standpoint. 18 Most -- most of the branch engineers would get 19 involved there. Sometimes you'd be pulled into product 20 development as just kind of a learning situation. Most 21 of that is done by our research and development 22 engineers out of the home office in Pleasanton. So 23 you'd have just various responsibilities like that. 24 Q And then as you progressed to the engineering 25 manager, you were overseeing other branch engineers in
Page 15 1 Simpson in an engineering direct capacity. 2 Q How long have you been at Simpson? 3 A Eighteen years. 4 Q How many different jobs have you had or titles 5 have you had at Simpson? 6 A Let's see -- five. 7 Q Can you just briefly walk through sort of the 8 evolution of your career there, how your role has 9 changed? 10 A Sure. I -- I started out as a -- Simpson's 11 name for it -- it's kind of always -- we joke about 12 it -- "branch engineer," but doesn't have to do with 13 trees. Just has to do with -- we call our divisions 14 "branches." 15 So I started out as an engineer at the 16 southeast branch, then I became the engineering manager 17 of that branch. And within that function, there's 18 branch engineers, field engineers, training, all -- and 19 the test lab for the southeast branch rolled up into 20 that role. 21 Q When you say "test lab," does that refer to 22 product development, then? 23 A It does, though at the branches you're dealing 24 minorly with actual product development; you're more 25 dealing with kind of what-if scenarios. So it's usually	Page 17 1 those duties? 2 A Correct. Yeah. Another portion of those 3 duties was also traveling. 4 THE OFFICER: Was also what? Sorry. 5 THE WITNESS: Traveling in the field with 6 our -- our sales team to work with contractors, 7 engineers, building officials; help answer questions 8 about Simpson products and uses per the building code 9 and what have you. 10 BY MS. SCHEIPETER: 11 Q Were you customer facing as a branch engineer? 12 A Yeah. 13 Q And then also as the engineering manager? 14 A Yes. 15 Q Okay. And then your next role after that? 16 A Next role after that was as the concrete sales 17 manager. So at the time Simpson divided its -- its 18 business into core, which is our connector and lateral 19 systems products, concrete products, which would be, you 20 know, adhesives and mechanical anchors, powder actuated 21 fasteners. 22 And then the fastener division, which is 23 mostly screws, some nails, some stainless nails and 24 screws, quick drive collated system to install screws, 25 things like that.

5 (Pages 14 - 17)

Page 18 1 So as a concrete sales manager, I was more 2 focused on basically any connections to concrete as a 3 substrate. And I had a sales team that was throughout 4 the whole Southeast that I managed, along with some 5 product specialists that were focused more on carbon 6 fiber and, you know, helping to rehabilitate structures 7 by adding carbon fiber to those structures. 8 Q Okay. And then from the concrete sales 9 manager -- 10 A I became the commercial sales manager. 11 Simpson restructured from product focused for the sales 12 team to market focused. 13 So my team, most of the -- the folks that were 14 on the concrete side converted into the commercial side 15 with some changes in personnel where we were focused on 16 customers that are serving commercial projects rather 17 than residential or OEM or home centers. These were 18 other divisions that were market focused. 19 Q I'm sorry, I missed what you said. Simpson 20 moved from organizing the sales team by product to what? 21 A Market. 22 Q Market. Thank you. Okay. And then does that 23 take us to your present role? 24 A Yeah, present role is the director of product 25 management for connectors and lateral systems.	Page 20 1 product development or understand, you know, requests 2 for changes to existing products or going to trade shows 3 where you'd see customers. 4 But you're not, you know, daily responding to 5 customer calls; right? The -- the salespeople or the 6 branch engineers who are getting those direct calls 7 might be calling my team or me directly just -- just to 8 ask questions to support our customers. 9 Q And as part of your current role, does that 10 involve R&D efforts at Simpson? 11 A It does. 12 Q For the whole product line that you previously 13 described? 14 A Correct. 15 Q Does the R&D team report directly to you? 16 A Does the R&D team report directly to me? 17 Q Yes. 18 A The product managers do. 19 Q Okay. 20 A So there's a whole slew of other divisions 21 that support research and development. 22 Obviously, engineering, marketing, inventory 23 control, tool and die. None of those report to me, just 24 product management. 25 THE OFFICER: Did you say, "tool and
Page 19 1 Q And can you describe what you do in your 2 current role? 3 A So this role, I -- I manage a team that 4 supports all the product lines that basically are in the 5 product hierarchy of connectors, which -- hangers, 6 straps, angles, you know, there's quite a few different 7 things that roll up in that line. Lateral systems, 8 which has been our strong frame, which is a moment frame 9 and strong wall. 10 So pre -- preassembled shear walls. So the 11 team that works on development of products in those 12 lines works on supporting those lines and, you know, 13 helping our -- our sales team to get our customers what 14 they need to keep building safer, stronger structures. 15 Q Are you still customer facing? 16 A Less so, but in some capacities. 17 Q Your team has more direct interaction with 18 customers than you? 19 A They -- team, somewhat. I mean, they are less 20 so as well. When you go from this -- this position -- I 21 moved from working out of a branch to working at the 22 home office. So once you're on the home office side, 23 you're a little bit less customer facing. 24 There are situations -- whether you go out in 25 the field and travel with a salesperson to work on new	Page 21 1 die"? 2 THE WITNESS: Tool and die. Yeah, the -- 3 D-I-E, the dies are used to fabricate a lot of the bent 4 metal parts that we make. 5 BY MS. SCHEIPETER: 6 Q Can you tell me approximately, at least by 7 year, when you were a branch manager for the southeast 8 region? 9 A Branch engineering manager? 10 Q I thought your first job was a branch 11 engineer; is that correct? 12 A It was. 13 Q Okay. So -- 14 A Second job as a branch engineering manager. 15 Q Got it. So for the first role, can you give 16 me the date range approximately when you held that role? 17 A About February of 2007 is when I started, and 18 then I believe it was 2014 that I moved into the 19 engineering manager role. 20 Q Okay. So 2014 to what year did you move into 21 the concrete sales manager role? 22 A Let's see. I would say that was -- I'm going 23 to go backwards here so I can think through these. I 24 believe that was until -- it's either 2020 or 2021. 25 Q And then how long did you hold the title of

6 (Pages 18 - 21)

Page 22 1 concrete sales manager? 2 A That was around a year before that moved into 3 the commercial sales manager role, and then it was -- 4 yeah -- end of 2023 that I moved over into the product 5 management role. 6 Q Okay. So thinking about the products at issue 7 in this case, joist hangers and specifically joist 8 hangers used for fire-resistive wall assemblies, have 9 all of your roles somehow involved that product line 10 with the exception of the concrete sales manager? 11 A Yeah, that would probably be somewhat of the 12 exception to that, though the way our sales teams work; 13 right? Like, there could be people working together and 14 supporting others just 'cause of who their customers 15 were. 16 My team could still technically at that time, 17 you know, go in if they owned an account. If that 18 person wanted to order a firewall hanger, that could 19 still happen. But I'd say your statement is accurate. 20 Q And that was from roughly somewhere 2020, 2021 21 through the end of 2023? 22 A No, 'cause the commercial sales manager, we 23 had many customers that were, you know -- depending on 24 who you ask in the industry, multi-family would be 25 considered residential, but also, it's commercial,	Page 24 1 information. So I'd be aware of it, but I likely was 2 not running reports on that -- those specific skews. 3 BY MS. SCHEIPETER: 4 Q You weren't responsible for the product 5 performance? 6 MR. MAUCH: Objection. Vague. 7 THE WITNESS: Yeah. I -- what do you 8 mean by "for the product performance"? 9 BY MS. SCHEIPETER: 10 Q Fair, and fair objection. By "products," 11 right now I'm referring to Simpson's line of firewall 12 hangers. So depending on the year, I think it could 13 have either been the DG or the DGF? I'd have to go back 14 to my timeline. I think that would have been the DGF. 15 A Yeah. So I -- as far as the -- but again, the 16 performance, I'm -- if you could rephrase the question 17 for -- 18 Q As the concrete sales manager, did you have 19 any obligation or responsibility with respect to overall 20 sales for those concrete products? 21 A I did for the concrete products. 22 Q Okay. And I'm just trying to establish 23 whether you had any sort of similar role or duty with 24 respect to the joist hangers that are at issue in this 25 case.
Page 23 1 especially with structures that have commercial 2 underneath a podium and residential above. So we could 3 have customers that would, you know, order firewall 4 hangers and other things for the residential structure 5 above. 6 Q And do you remember when you started that 7 commercial sales manager role? 8 A Probably 2022. 9 Q Okay. So roughly two years in that concrete 10 sales manager title? 11 A Yeah. It was maybe a year and a half. I'd 12 have to go back and look at the exact dates. It was a 13 fun transition going from supporting the sales team from 14 a product to a market standpoint. It was a big change 15 for the company. 16 Q Okay, fair enough. So you would have some 17 indirect involvement with that product line, but, I 18 mean, is it fair to say that for those two years that 19 you were the concrete sales manager, you weren't 20 tracking Simpson sales for those types of products? 21 MR. MAUCH: Objection. Vague. 22 THE WITNESS: Yeah. As a -- as the 23 concrete sales manager -- I'm trying to think of my 24 involvement with the multi-family team at all at that 25 time and -- 'cause they were certainly tracking that	Page 25 1 A Yeah, so just in general; right? My team was 2 responsible for products that you would -- that were on 3 the concrete side. I guess the reason I'm sort of 4 hesitant to -- to say, "Oh, that wasn't my 5 responsibility," is we just -- we support each other in 6 different roles. 7 So they would come up, and if there was 8 questions on there, at times my background could be 9 utilized to help my team if they got asked something for 10 those or any other hangers or straps or what have you. 11 So -- but yes, directly, as far as what my team was 12 compensated on and what have you, it was not products in 13 that line while I was the concrete sales manager. 14 Q Understood. So you mentioned earlier you're a 15 professional licensed engineer. Are there any other 16 particular certifications or degrees that you hold that 17 are relevant to your claimed areas of expertise? 18 A So I have a bachelor's degree in civil 19 engineering with an emphasis in building science, and 20 then I have a master's degree in civil engineering with 21 an emphasis in structural engineering. 22 Q Do you claim any expertise in firewall design 23 or testing? 24 A Well, I've been a party to us having fire 25 testing completed for quite a few of the products that

7 (Pages 22 - 25)

Page 26 1 my team has been developing. We've done fire testing 2 for multiple products that are used in mass timber 3 construction. The DGT hanger launched after I began my 4 role here in product management. 5 And I've, you know, reviewed different 6 portions of the building code that allows for, you know, 7 assemblies for firewalls. So I would say I'm fairly 8 familiar with firewall assemblies and, you know, 9 currently the -- the hangers that are used for 10 firewalls. 11 Q You're not claiming any expertise in patent 12 law; correct? 13 A I am not claiming expertise in patent law. 14 Q And you're not applying principles of patent 15 law to the facts of this case with respect to your 16 expert opinions? 17 A I am not. I rely on counsel for expertise on 18 patent law. 19 Q What did you do to prepare for your deposition 20 today? 21 A Preparation had -- working with counsel to 22 understand the areas of responsibilities that were 23 aligned in this document that we've discussed. I took 24 some time to look through a few pieces of our literature 25 that we've had for, you know, our current DGT and DU	Page 28 1 I apologize. I was following the last line of 2 questioning of others. Good clarification. 3 BY MS. SCHEIPETER: 4 Q And you're referring to your deposition 5 transcript, your fact witness deposition that was 6 January, earlier this year? Is that right? 7 A Earlier this year, yes. 8 Q Okay. When did you review that transcript? 9 A I reviewed that last week, and I had reviewed 10 it, you know, shortly after as well, to look for any 11 discrepancies, shortly after the deposition occurred. 12 Q You said you learned the definition of 13 "POSITA"; that term had never come up in your work 14 before? 15 A As it's a legal term, and this is my first 16 time having lovely depositions, this is the first time 17 I've learned that term. 18 Q What is your understanding of that term now? 19 What do you know now about it? 20 A So basically -- I think you actually have it 21 written out here on the page. So the person having 22 ordinary skill in the art as it relates to a -- a 23 subject at hand. 24 Q Okay. And then you mentioned blog posts. 25 Those would be blog posts published by Simpson?
Page 27 1 series and some of the literature that was available for 2 previous DGF and DG series. 3 I learned the term "POSITA" and what that 4 means and then just kind of looked through some of the 5 blog posts and other things we've done to -- to educate 6 folks on multi-family construction and, you know, Type 7 IIIA construction in particular and the different 8 assemblies that are used specifically for -- for 9 firewalls. 10 Q And when you say "counsel," you're referring 11 to Mr. Mauch? 12 A I am. 13 Q Did you have any meetings or calls with in- 14 house counsel at Simpson for your preparation today? 15 A I did not. 16 Q Did you meet with any other attorneys besides 17 Mr. Mauch? 18 A I did not. 19 Q Did you confer with any of Simpson's other 20 experts? 21 A I did not. 22 Q Did you read any deposition transcripts? 23 A I did not. 24 MR. MAUCH: How about your own, Mr. Wert? 25 THE WITNESS: I did read my own. Sorry,	Page 29 1 A Correct. Yeah, we have an SE blog -- "SE" 2 standing for "structural engineering" -- blog. 3 Q Is that externally facing? 4 A Yes. 5 Q Is it linked on your website? 6 A It is. 7 Q In the particular post that you were looking 8 at were related to education that you provided on Type 9 III construction? 10 A Yes. The particular ones I was looking at had 11 to do with Type III construction. 12 Q Can you describe in any more detail what those 13 blog posts were about? 14 A There was one written by Paul McEntee, who's 15 an R&D engineering manager now for Simpson Strong-Tie 16 having to do with the different types of ways to handle 17 firewall assemblies. And I think that one has been 18 updated over the years as the code has changed. 19 There's another one where there's a two-part 20 series by Bruce Lindsey who's a -- I don't know if he 21 still is, I assume so, but he was, at the time when he 22 wrote those, working for Woodworks and just kind of 23 talking about the state of the -- the building code, the 24 changes that are happening in the code so that you could 25 utilize wood more often in multi-family construction.

8 (Pages 26 - 29)

Page 30 1 Q Bruce Lindsey? 2 A Yes. 3 Q And so he was writing a blog post, sort of as 4 a guest author, as he was not a Simpson Strong-Tie 5 employee? 6 A Correct. Bruce is not a Simpson Strong-Tie 7 employee. 8 Q He was with Woodworks, which is an industry 9 association; right? 10 A Woodworks is an industry association promoting 11 the use of -- of wood and mass timber for structures 12 beyond single-family residential. 13 Q One of the organizations that was pushing that 14 type of construction for Type III taller buildings? 15 A Woodworks tries to utilize, you know -- like, 16 educate folks to -- to use for Type III buildings, also 17 for mass timber -- larger commercial buildings as mass 18 timber can go way higher than what you could do with a 19 Type III building. So any -- anything to promote the 20 use of wood as your base material to build a structure. 21 Q So earlier when I asked you just to identify 22 what your opinions are, it sounded like you hadn't 23 really thought of or formulated specific opinions in 24 this case. Is that fair? 25 A I'm -- I'm sure I have opinions, but you know,	Page 32 1 to be informed by whatever I'm educated on from that 2 point forward. 3 BY MS. SCHEIPETER: 4 Q When was the first time that you saw this 5 disclosure, Wert Exhibit 1? 6 MR. MAUCH: Objection. Misstates prior 7 testimony, lacks foundation, assumes facts not in 8 evidence. 9 THE WITNESS: As far as seeing this -- 10 this exact document? When you handed it to me to me 11 today. 12 BY MS. SCHEIPETER: 13 Q When was the first time that you saw the five 14 bullet points that I think you previously testified you 15 were familiar with? 16 A I saw those five bullet points -- I'd say that 17 was roughly a month and a half or so ago. 18 Q Okay. While preparing for your deposition or 19 reviewing those five bullet points, did you take any 20 notes regarding your opinions? 21 MR. MAUCH: Objection to the extent it 22 mischaracterizes Exhibit 1 and the nature of Mr. Wert's 23 testimony. 24 THE WITNESS: The only notes I took for 25 any of this, I took while in meeting with Counsel.
Page 31 1 as far as getting into just -- generally I thought it -- 2 yeah, it's more appropriate just to answer the questions 3 being posed, and I can share if I have facts that I know 4 around those, and if there's opinions related to those 5 facts, I'm happy to give them. 6 Q So with respect to any opinions that you think 7 you might have, when did you form those opinions? 8 MR. MAUCH: Objection. Vague. 9 THE WITNESS: Yeah, it's -- sure I've 10 formed opinions over time. Yeah, that's -- it'd be a 11 very open answer. It's -- if you could be more specific 12 with the question. 13 BY MS. SCHEIPETER: 14 Q Sure. I'm sorry, are you done? 15 A I am. 16 Q And I'm just referring to the opinions that 17 you intend to offer at trial that come within the five 18 bullet points on Wert Exhibit 1. 19 MR. MAUCH: Objection to the extent it 20 mischaracterizes the document and the nature of 21 Mr. Wert's testimony. 22 THE WITNESS: Yeah, I would say for -- 23 for the different subjects that are in there, I 24 certainly formed opinions and -- over the years, and 25 then as I learned more, you know, my opinions are likely	Page 33 1 BY MS. SCHEIPETER: 2 Q Did you confer with anyone else from Simpson 3 when formulating any of your opinions? 4 MR. MAUCH: Same objection. 5 THE WITNESS: No. I did reach out to -- 6 to Sam Hensen earlier this week just to catch up and say 7 hi to him, but unfortunately, he was traveling. 8 Ironically, as I live in Texas and was 9 coming here, he was traveling to Texas, and we did not 10 get a chance to connect. So I guess the -- the answer 11 is -- is no, I -- I did not. 12 BY MS. SCHEIPETER: 13 Q Okay. You tried to reach out to Mr. Hensen 14 but couldn't get ahold of him? 15 A Correct. 16 Q And so you have not discussed your opinions on 17 these topics with Mr. Hensen at all, at any time? 18 A I have not. 19 Q Fair to say, then, that you also have not 20 discussed these topics with any third parties such as 21 customers, engineers, installers? 22 A No, I -- 23 MR. MAUCH: Hold -- I'll object that it's 24 vague. 25 Make sure you pause so I can get my

Page 34 1 objection in, Mr. Wert. 2 THE WITNESS: Understood. 3 BY MS. SCHEIPETER: 4 Q Were you provided or did you rely on any 5 factual assumptions for your opinions? 6 MR. MAUCH: Objection. Vague. 7 THE WITNESS: Provided? I can't think of 8 factual assumptions I was provided. No. 9 BY MS. SCHEIPETER: 10 Q Were you provided any legal assumptions? 11 MR. MAUCH: Same objection. Vague. 12 THE WITNESS: I was -- I mean, I had 13 discussion about some of the legal aspects of the case 14 with Counsel, but I think most of those would be facts. 15 I don't know that I would call them assumptions. 16 BY MS. SCHEIPETER: 17 Q So some of these topics in Wert Exhibit 1 18 contain what you would refer to as "legal terms"; right? 19 A "POSITA" would be an example of that. 20 Q Terms you were not previously familiar with? 21 A Sure. 22 Q Were you provided any definitions for those 23 legal terms? 24 A I was -- for the term "POSITA," I was provided 25 what that -- that one is. I'd have -- I can go back and	Page 36 1 your preparation for your deposition today? It sounds 2 like you didn't sit and write out specific opinions for 3 this case; right? 4 MR. MAUCH: Objection. Vague, and it 5 mischaracterizes the disclosure in Exhibit 1 and the 6 nature of Mr. Wert's testimony. 7 THE WITNESS: I did not write out 8 opinions ahead of time. 9 BY MS. SCHEIPETER: 10 Q Did you think about what your opinions were 11 other than for the purposes of preparing for this 12 deposition? 13 MR. MAUCH: Same objection. 14 THE WITNESS: I read through, you know, 15 these -- these five topics and prepared in -- in that 16 way. No, I did not. 17 BY MS. SCHEIPETER: 18 Q Did you review any MiTek documents in 19 preparing your opinions or preparing for this 20 deposition? 21 A I believe I went on MiTek's website and looked 22 at their page for the FWH hanger. 23 Q Any other pages? 24 A No. 25 Q What in particular were you looking for on
Page 35 1 look through the document and see if there's any others 2 if you would like me to. 3 Q We can get to it when we discuss these in more 4 detail. But off the top of your head, "POSITA" is the 5 only legal term that you remember being defined? 6 A It -- it stood out. 7 Q Mr. Wert, was your deposition in January the 8 first time that you had given sworn testimony? 9 A Yes. 10 Q Okay. No other expert testimony provided in 11 previous cases? 12 A No. 13 Q Did you have access to all the information you 14 needed to form your opinions and the factual basis for 15 those opinions? 16 A I believe so. 17 Q Any other Simpson documents that you recall 18 reviewing while forming your opinions? 19 A No. I think I mentioned the Simpson catalogs 20 that I looked at, some of the flyers for firewall 21 hangers. I had seen, I think, previous testing that we 22 had -- we had done and provided at the last deposition. 23 So I can recall those. 24 Q Is it fair to say that your preparation for 25 your opinions is a little bit just co-extensive with	Page 37 1 that website? 2 A Just looking at what's currently on there for, 3 you know, product features, as, you know, I was being 4 asked in this to be able to compare, you know, our 5 different series to compare and contrast to their 6 hanger. 7 Q Were you familiar with the MiTek FWH before 8 you did that review of the website? 9 A I would say I was familiar with their hanger; 10 yes. 11 Q Okay. So let's talk about, I'm going to call 12 it "topic one." It's the first bullet point on page 4 13 of Wert Exhibit 1. If you want to take a moment just to 14 reread that first bullet point. At the end, I'm going 15 to ask you what opinions you have about it. 16 MR. MAUCH: And I don't want to interfere 17 with your question, and you can ask your questions 18 however you want, Julie. But my concern is that all of 19 your questions are framed as questions about his 20 opinion, and I think the disclosure and Rule 26 are very 21 clear that testimony pursuant to Rule 702 of the Federal 22 Rules of Evidence can be either opinion or non-opinion 23 testimony. So I just want to make that very clear that 24 he's been disclosed to provide testimony, not 25 necessarily opinions.

Page 38 1 THE WITNESS: I've read it. 2 BY MS. SCHEIPETER: 3 Q Okay. Do you have any opinions related to 4 that topic? 5 MR. MAUCH: Same objection. Vague, 6 mischaracterizes the nature of his opinion -- or his 7 testimony -- excuse me. 8 THE WITNESS: I can -- I can state, you 9 know, facts that I know related to that topic and you 10 know, opinions if -- if asked. 11 BY MS. SCHEIPETER: 12 Q But sitting here today, you don't have any 13 particular expert opinions related to this topic that 14 you intend to offer at trial? 15 MR. MAUCH: Same objection. Vague, 16 mischaracterizes testimony. 17 THE WITNESS: I -- I'm happy to answer 18 questions related to this -- this topic, as far as the 19 technology related to the use of fire-resistive wall 20 assemblies, including the state of technology prior to 21 Simpson's DU and MiTek's FWH hangers, and how that 22 technology has changed over time, and how such have 23 benefited or not the end user of such technology. 24 BY MS. SCHEIPETER: 25 Q But you don't have any specific opinions	Page 40 1 you intend to testify about, and that's fine. We can 2 talk about that. I'm just trying to understand, do you 3 have expert opinions? Have you formed expert opinions 4 related to this topic? Yes or no? 5 MR. MAUCH: Same objections. Vague, 6 mischaracterizes disclosure and testimony, asked and 7 answered. 8 THE WITNESS: As I said, I -- I can talk 9 about facts that I know of and opinions I have on those 10 facts related to this subject. 11 BY MS. SCHEIPETER: 12 Q Okay. So what factual testimony do you intend 13 to testify about regarding the state of technology 14 relating to using hangers with fire-assistive wall 15 assemblies? 16 A I can -- happy to talk to you about what 17 different details were used to build fire-rated wall 18 assemblies prior to when Simpson offered the DU and 19 MiTek offered the FWH. 20 Q So starting with before Simpson offered the 21 DU, the state of technology relating to use of hangers 22 before the DU for fire-assistive wall assemblies. 23 A I'm trying to -- is there a question? 24 Q Is that what you intend to testify about? 25 A Yes.
Page 39 1 related to that topic? 2 MR. MAUCH: Asked and answered. Same 3 objections. Vague, mischaracterizes disclosure and 4 testimony. 5 THE WITNESS: I think you're asking a 6 very open question, and I'm -- you know, I'd be happy to 7 answer an actual question about a direct opinion of 8 an -- of a topic, you know, related to that bullet 9 point. 10 BY MS. SCHEIPETER: 11 Q Yeah, my question is simply, do you have 12 expert opinions related to that bullet point? The 13 answer might be "no." I just need to know whether you 14 have expert opinions or not. 15 MR. MAUCH: Same objections. Asked and 16 answered a number of times now. 17 THE WITNESS: I can talk about facts and 18 give you opinions related to this topic. 19 BY MS. SCHEIPETER: 20 Q Right. And I don't want to put words in your 21 mouth. So, you know, it's not my job to prepare an 22 opinion and then ask you what opinions you have about 23 that. 24 I'm trying to understand, do you have 25 opinions? You might just have factual testimony that	Page 41 1 Q Okay. So what factual testimony do you have 2 regarding the state of technology relating to those 3 hangers prior to the release of the DU? 4 A I can provide you with, you know -- discuss 5 different details that were being utilized in the 6 industry at the time. If you'd like me to go through 7 those -- 8 MR. MAUCH: That's what she's asking, 9 Bryan. 10 THE WITNESS: Okay. Okay. Sorry. Just 11 felt like very round robin. 12 So there was a couple of different 13 platform-framing options and a couple different balloon- 14 framing options I can think of. 15 THE OFFICER: Sorry, did you say "balloon 16 framing"? 17 THE WITNESS: Balloon framing, yes. 18 That's where the studs extend up into the 19 floor cavity and the top plates are supporting the 20 typically floor sheathing above rather than having a 21 floor joist of some sort sitting on top of the wall 22 interrupting that that that wall stud going up higher. 23 So for platform framing, you could use a 24 thicker rim board at the time to where the char rate 25 of -- that could be calculated for that rim board could

11 (Pages 38 - 41)

Page 42 1 meet the two-hour firewall assembly requirements. Other 2 options, there -- some jurisdictions allowed -- there's 3 interpretation differences between the two-hour wall, 4 you know, firewall requirement and then the one-hour 5 fire-assembly requirement for floors. 6 So in some cases, you could have just 7 standard platform framing where you're using a floor 8 joist, whether that's all it's on, an I-joist or a floor 9 truss sitting on top of a wall. That wall would have 10 two-hour fire resistance based on multiple different 11 assembly options that are there. 12 Very typically what we'll, you know, talk 13 about is a couple of layers of five-eighths type-X 14 drywall, and then you'd have that same drywall as one 15 layer beneath the floor system that would give that one- 16 hour rating that -- that could be used there. Again, 17 really just depending on the -- the authority of that 18 jurisdiction and what they believe their interpretation 19 of the code to be. 20 For some balloon-frame options, you could 21 have a ledger attached to the top plates and the studs 22 of that -- that wall, and the drywall would stop below 23 that ledger. The ledger would then be directly attached 24 to the wall and have a char rate that could meet the 25 two-hour fire rating, you know, in line with what's	Page 44 1 around the top cord bearing trusses, and, you know, that 2 would interrupt the wall. But you know, specifically I 3 can think of a firm that I worked with in the Houston 4 market that used that detailing quite often. 5 I believe even my -- my old engineering 6 firm in Las Vegas had similar detailing to that as well. 7 So that's, I think, six different methods of building 8 firewalls and being able to make the floor-to-wall 9 construction work and meet the code, depending again on 10 how the authority having jurisdiction interpreted the 11 code. 12 BY MS. SCHEIPETER: 13 Q And maybe I should take a step back for a 14 second. Can you explain -- the term "two-hour fire 15 rating" gets thrown around a lot. Can you explain 16 exactly what that means? 17 A I can. So a two-hour fire-rated assembly, the 18 code has very specific assemblies for different types of 19 construction. This could be done in wood construction. 20 This could be done in cold form steel stud construction. 21 It could be done in masonry or, you know, other building 22 material construction. 23 And these assemblies are, yeah, you can find 24 them directly in the code where they talk about how you 25 construct a wall and just the different materials used
Page 43 1 required for the two layers of type-X gyp. 2 Another option would be if you ran that 3 gypsum board all the way top of to that balloon-frame 4 wall, you could install a more typical ledger, a 5 thinner -- thinner piece, often a two-by or a one and 6 three quarter LVL through the drywall using structural 7 fasteners to where the structural fasteners are just 8 drilling through and technically not removing any 9 material. And so that would also still have -- not 10 impede the two-hour fire rating. 11 Other options for that balloon frame 12 could be, again, the one-hour -- one-hour -- you'd have 13 two hours of gypsum going up the balloon-frame wall with 14 the inner layer of gypsum going all the way up to the 15 top plates and then hangers going over the one layer of 16 gypsum, and then the second hour would be considered so 17 that that -- the one layer going behind, you know, more 18 typical hangers that have been offered for fire 19 assemblies to go over one layer of gypsum could be 20 there, and then the second hour would be given by the -- 21 the gypsum board below the floor joists. 22 And then maybe another option often seen 23 in balloon-frame walls would be top cord bearing 24 trusses, and those top cord bearing trusses could sit on 25 that balloon-frame wall. And, you know, you would cut	Page 45 1 within the wall. And then the -- the point of a two- 2 hour assembly is meant to say, "A typical fire in a 3 building would not get through that wall before two 4 hours of time have elapsed." 5 Q That's helpful. Thank you. Okay, so you've 6 identified six different methods prior to the 7 introduction of the DU that firms used to work with the 8 code to maintain that two-hour fire rating before the 9 FWH or the DU or anything like that; right? 10 A Yes, I did, I think, give you six different 11 methods. 12 Q Okay. And so what first -- why did Simpson 13 seek to develop a different product to solve that same 14 problem if there were six different other options on the 15 market that appeared to be working? 16 MR. MAUCH: Objection to the -- it calls 17 for speculation. 18 THE WITNESS: So my -- my recollection 19 would be that it's likely we were asked by others, I 20 would assume after seeing our -- we've had a technical 21 bulletin where you could use top flange hangers to go 22 over a single layer of a drywall, which that's a one- 23 hour assembly, in many cases, for a long time. 24 So probably our customers asked and said, 25 "Hey, we like installing hangers, and do you have any

Page 46 1 options that would work for a two-hour firewall 2 assembly?" 3 As, you know, Type III construction 4 started to become more popular as, you know, the 5 American Wood Council and Woodworks and -- and others 6 were promoting the use of wood for taller and taller 7 buildings after it was allowed by -- by code and, you 8 know, so that's likely how that came about. 9 BY MS. SCHEIPETER: 10 Q About what year did the building codes start 11 changing? 12 MR. MAUCH: Objection. Vague. 13 THE WITNESS: Yeah. So the building 14 codes change every three years, typically. Is there a 15 specific change you're asking about that I can try to 16 answer? 17 BY MS. SCHEIPETER: 18 Q So at some point, the IBC change to allow for 19 this Type III construction using -- or higher than Type 20 III construction using wood; right? 21 A So you could use Type III construction and go 22 taller, I believe since the 2000 IBC was introduced as a 23 first year. The IBC came out, and we went from the UBC 24 prior to that. And then sitting here in the lovely 25 State of California, they have their CBC, which modified	Page 48 1 code, and then the states and then possible counties and 2 even cities can then make modifications from there. 3 Q So the IBC, would you call it a "model code"? 4 A I believe some have used the term "model code, 5 base code." 6 Q To your knowledge, do most jurisdictions in 7 the United States have some version of the IBC? 8 A To my knowledge, at this point, most states 9 are using the IBC as their -- their model code. 10 Q Okay. And you mentioned 2012; the 2012 11 version of the IBC, you said that that is when 12 Woodworks -- can you just repeat that testimony? What 13 was different about the 2012 IBC? 14 A I mean, it's interesting 'cause even minor 15 things, like talking about exterior walls and the use of 16 fire-retardant lumber, they italicized fire-retardant 17 lumber in there to make it very straightforward, I think 18 for building designers and owners to be able to talk to 19 a building official and say, "This is directly in the 20 code." 21 There were changes on -- and I always get 22 the -- it's a four-letter term that has to do with fire 23 sprinklers -- but the use of a certain type of fire 24 sprinkler gave another allowance to build taller out of 25 wood as long as you use those fire sprinklers; that was
Page 47 1 existing versions of each one of those, and there's 2 other states that do the same. 3 So since 2000, you could -- you could use Type 4 III construction, including, say, the use of fire -- 5 fire-treated lumber or fire-retardant timber in walls to 6 do Type III construction; it just had to be a non- 7 combustible exterior wall. That's one of the main 8 requirements for Type III construction. 9 But there's been many clarifications with each 10 code cycle over the years. You know, the one that 11 stands out is to where -- where people started talking 12 about the code a lot more, and Woodworks and others -- I 13 can think of articles that were written, and, you know, 14 even on our blog. 15 I think that Bruce Lindsey from Woodworks came 16 in; I think he did reference the 2012 IBC. But again, 17 this is just where there were clarifications on the use 18 of Type III and how you could use wood for it as well as 19 things to do with podiums, fire sprinklers, other 20 requirements that allow you to build taller out of wood. 21 Q And the building codes vary by jurisdiction; 22 right? 23 A So building -- jurisdictions can -- can modify 24 the -- the IBC as they see fit. So that's usually 25 the -- the variance. They usually start with the base	Page 49 1 clarified. 2 There was further clarifications about the 3 ability to use a kind of a podium construction; right? 4 'Cause there's usually -- when you think about most -- 5 it's fun to get my hands out around -- when you're -- 6 you're building multi-family structures, you're either 7 doing -- these structures usually have a parking garage 8 of some sort for the higher density ones. 9 And you either have a wraparound-type 10 structure where you have the parking structure and you 11 just wrap the building around it, or you have a podium 12 structure where you're -- you'll build either the -- the 13 parking, sometimes you'll have commercial space, and 14 then above that you'll have the residential structure. 15 And the code made a very good clarification in 16 their special provision section that said you can have 17 Type I construction for kind of -- usually a concrete 18 structure below. There's a three-hour fire separation, 19 you know, that that podium creates. And then you could 20 have Type IIIA construction above that and then these 21 other provisions with the sprinklers and the use of 22 fire-retardant timber on exterior walls in order to 23 build taller in the code so -- 24 Q And those were clarifications in the 2012 25 version of the IBC?

Page 50 1 A Yeah. And it further got clarified in 2015 2 and 2018. It -- it continues 'cause usually what 3 will -- but that is -- that is certainly -- 2012 is kind 4 of in the zeitgeist of, like, more jurisdictions had 5 enough clarifications to feel comfortable authorizing 6 the use of taller Type IIIA structures. And by that 7 time, I think there were more examples that Woodworks or 8 AWC could point to, to, you know, give cases for 9 jurisdictions to review. 10 Q And how did those clarifications to the code 11 in 2012, 2015, how did those clarifications impact the 12 demand for structural connectors that could attach to 13 fire-resistive wall assemblies? 14 MR. MAUCH: Objection. Compound. 15 THE WITNESS: I would say what occurred 16 was more jurisdictions were allowing Type III 17 construction to build taller out of wood. And because 18 these were being allowed, there was an increase in -- in 19 demand for solutions to make that construction as cost 20 effective as possible. 21 BY MS. SCHEIPETER: 22 Q So there was an increase in demand to make the 23 construction as cost effective as possible. Was there 24 an overall increase in demand for products that would 25 aid in that construction?	Page 52 1 the DGT or the FWH? 2 MR. MAUCH: Objection. Vague. 3 THE WITNESS: I haven't, I guess, 4 recently visited any firms that are showing me specific 5 details that are a mix of those. I would not be 6 surprised to find -- the firm that I mentioned earlier 7 that used top flange trusses, Shepherd Crane, I think 8 they would very likely be using that same method, but 9 yeah. 10 BY MS. SCHEIPETER: 11 Q So another part of that first topic in Wert 12 Exhibit 1 is how the state of such technology has 13 changed over time, and "such technology," I guess refers 14 to technology relating to using fire hangers with fire- 15 assistive wall assemblies. So what facts or opinions do 16 you have about how the state of that technology has 17 changed over time? 18 A So the hangers are certainly part of it. I 19 also think the fire-retardant lumber is a different 20 technology change. There's been new introductions of 21 chemicals that can be used. You know, a big thing with 22 these -- these walls, especially these two-hour 23 assemblies that use that type of lumber, there's a 24 reduction in the strength of those walls. 25 So different chemicals have different factors
Page 51 1 MR. MAUCH: Objection. Vague. 2 THE WITNESS: I would just say that as 3 there's more wood-framed multi-family construction, you 4 know, product or projects that are being approved, then 5 yeah, demand will increase for products that can support 6 those. And those could include other types of products, 7 like rod systems that are used for hold-down resistance 8 for shear walls and those types of structures, and so 9 plenty of different product types that could go into 10 those structures. 11 BY MS. SCHEIPETER: 12 Q So those six options that you previously 13 testified about, to your knowledge, are all six of those 14 methods still being used today? 15 A I have not gone and looked at building plans 16 recently to -- to try to review, but all of those could 17 certainly still be used today. It would just depend on 18 the authority having jurisdiction approving their use. 19 Q You just don't have any particular knowledge 20 about it; right? 21 A That's a -- there's a lot of jurisdictions out 22 there. 23 Q To your knowledge, are there any engineering 24 firms that prefer to write out building plans that call 25 for one of those methods versus specifying a hanger like	Page 53 1 that reduce those. So if you can have chemicals that 2 don't reduce the capacity, that's better -- or as much, 3 that's better. But the introduction of hangers as an 4 option or another technology change, and builders have 5 been using hangers to support floor joists for decades, 6 so they're very used to that type of construction. 7 The other change that came with the different 8 series of hangers that have been offered was, you know, 9 testing to meet the fire-rated assembly requirements. 10 And, you know, just like builders and building 11 jurisdictions and engineers like to have code reports 12 that verify the load capacity, you know, that you can 13 transfer, which is obviously kind of the main reason 14 anybody chooses any connection, is going to be, you 15 know, depending on their dimensions and then the load 16 requirements that they need to transfer. 17 The addition of having a -- a test report that 18 says "This does not reduce the two-hour fire-rated 19 assembly" makes it easier for all those parties involved 20 to feel good about, you know, the -- the structure being 21 built that it's meeting the -- the life-safety 22 requirements of the code. 23 Q Any other changes to the technology? 24 A There's been different offerings of -- of 25 hangers. So, you know, in Simpson's most recent version

Page 54 1 of the DGT, it's the only hanger out there where it's 2 designed for the use of gun nails without having to use 3 a specific positive-placement nailer so -- 4 Q Can you say that again? "Without having to 5 use a" -- 6 A Positive-placement nailer. So that's the head 7 of a gun nail, and it -- it's where it can find the hole 8 in a hanger. So there's been those types of changes, 9 just to make it, again, just simpler for the installer 10 to put in the hanger itself instead of having to either 11 use a -- a hammer and nail; right? They could use a -- 12 a gun nailer. 13 Positive-placement nailers have been used for 14 a while, but far more common are regular gun nailers 15 that don't have that positive-placement head. They get 16 used for sometimes drywall, very often structural 17 sheathing or floor sheathing, and, you know, depending 18 on the hanger itself, you can -- you can use, yeah, just 19 different options that are there. 20 Q Does that make installation of that particular 21 hanger faster? 22 A Yeah. Anytime you can use a gun nailer, you 23 are typically going to be able to install it faster than 24 hand nailing a product. 25 Q Okay. I realize we've been going for over an	Page 56 1 record. The time is 10:30 a.m. 2 BY MS. SCHEIPETER: 3 Q Mr. Wert, before the break we were discussing 4 the first bullet point on page 4 of Wert Exhibit 1, and 5 specifically the portion of that bullet point that 6 discusses how the state of technology for fire-resistive 7 wall assemblies has changed over time. And you've 8 listed a few ways in which, from your perspective, that 9 technology has changed. 10 The last part of this topic is how those 11 changes have benefited or not the users of such 12 technology. And so with respect to the DGT, you 13 mentioned that increases the speed, or that development 14 of that technology increased the speed with which 15 installers can install that particular product; right? 16 A Correct. 17 Q Okay. Are there any other benefits that you'd 18 like to discuss that are part of this particular topic? 19 A I guess the only other thing I'd say, 20 there's -- I'd say with that -- the DGT, it's most -- 21 mostly formed on a -- on a die, which makes it faster to 22 produce and I think ultimately results in a lesser 23 expensive solution for the end user. 24 Q Part of the topic, it says "How such changes 25 have benefited or not the end users of such technology."
Page 55 1 hour. So let's take a 10-minute break -- 2 A Before you do, I do want to clarify; I think I 3 did say that the DGT doesn't have to have the positive 4 placement; it does. We have other products that don't 5 require that, but it still allows for a gun nailer, and 6 others -- other products out -- out there do not. 7 Q Okay. 8 A Does that -- does that make sense? 9 Q So it can be installed using a gun nailer? 10 A It can. It does need that positive-placement 11 head, like -- so just -- but they're common enough. 12 Anyway. It's a minor point, but a point nonetheless, 13 and I want to make sure I correct it. 14 Q Sure. But the overall benefit to end users is 15 that use of the nail gun -- gun nailer increases the 16 speed of installation? 17 A Correct. 18 MS. SCHEIPETER: Okay. 19 All right. Let's take a quick break. 20 THE VIDEOGRAPHER: This marks the end of 21 media unit 1. We are going off the record. The time is 22 10:14 a.m. 23 (Off the record.) 24 THE VIDEOGRAPHER: This marks the 25 beginning of media unit 2. We are going back on the	Page 57 1 Do you have any opinions about whether any of these 2 changes have not benefited end users? 3 A No. I'd say they've been an evolution and, 4 you know, of trying just to meet the end user's needs. 5 And no, I'd say most of them are -- are a useful 6 benefit. 7 Q Okay. Are you aware of any particular 8 documents that support your opinions on this topic? 9 MR. MAUCH: Objection. Vague. 10 THE WITNESS: I mean, I am aware of 11 obviously the literature we put out there and help it -- 12 help users to understand the benefits that'll be 13 provided by the features that are involved. MiTek 14 obviously does similar. There's articles that have been 15 written about the, you know, state of firewall 16 assemblies and the use of Type III construction and do 17 talk about, like -- and there's hangers that are out 18 there to help with this type of construction. So 19 probably those two things I could point to. 20 BY MS. SCHEIPETER: 21 Q We talked about Woodworks earlier. Are there 22 any other industry associations that push this type of 23 construction or have been involved in clarifying the 24 code or otherwise promoting this type of construction? 25 A Well, the American Wood Council, AWC, is also

15 (Pages 54 - 57)

Page 58 1 involved in that; that's part of their reason for 2 existence is to promote the use of wood in all types of 3 construction. You know, they are going to get involved 4 in helping with clarifications for the code. Simpson 5 Strong-Tie certainly gets involved; if there's expertise 6 we can provide, we have folks that help do that. I 7 don't know for sure, but I would assume MiTek similarly 8 will do that just because wood construction is useful 9 for selling their product as it is Simpson's product. 10 Q And then looking at topic one or the first 11 bullet point, is there anything else in this topic that 12 we haven't yet discussed that you intend to offer 13 testimony about at trial? 14 A I believe we've covered the things that I 15 would discuss, unless there's other related questions 16 that you would have or our attorneys would have on the 17 subject. 18 Q No other technological developments that you 19 find important regarding the state of fire-assistive 20 wall assemblies? 21 A At the moment, nothing is coming to top of 22 mind. 23 Q All right. Let's move on to that next topic, 24 which is "Benefits or differences of Simpson's DU 25 series, DG series, DGF series, DGT series, and MiTek's	Page 60 1 for all of the -- the series, just the service and 2 availability of the Simpson Strong-Tie hanger series 3 is -- is a benefit to our users. The cost effectiveness 4 of the DU series is, I think, a reason many of the end 5 users have chosen that and continue to choose that 6 series of hanger. 7 All of the DG, DGF and DGT, those different 8 offerings that we've had over the years could be 9 installed on a two-by-four wall. And I do believe the 10 FWH requires that you have a two-by-six wall. The DG, 11 DGF and DGT could also be used back-to-back on a two-by- 12 six wall, and I would have to double check it, but I 13 don't believe that the FWH can do that either. 14 All of -- all of these, including the FWH, 15 do -- have been tested to, you know, ensure they do not 16 change the -- the fire assembly rating. I believe we -- 17 have to go and check -- which I believe MiTek has the -- 18 the fire rating. 19 Simpson's products have had the fire and 20 temperature rating throughout. The DGT -- most 21 jurisdictions, I do believe, focus more on the fire 22 itself rating, the temperature rating a little bit less 23 so. But the D -- DG, DGF, both still had a two-hour 24 temperature rating as well. I think our DGT is at 1.75 25 hours.
Page 59 1 FWH series over older technologies, including benefits 2 or differences regarding ease of installation, load 3 differences, and/or fire ratings." Do you have opinions 4 related to this topic? 5 MR. MAUCH: Objection. Vague. 6 Mischaracterizes disclosure. 7 THE WITNESS: I am ready to talk about 8 facts that I know of related to this topic and can offer 9 any opinions as well. 10 BY MS. SCHEIPETER: 11 Q Do you have opinions over whether -- sorry. 12 Do you have opinions about whether any of the Simpson 13 products listed in that topic have benefits over the 14 MiTek FWH? 15 A I can -- I can state some facts that I believe 16 support some benefits over MiTek's FWH series that would 17 lead to me having an opinion that yes, there are 18 benefits of some of these hangers over what MiTek can 19 offer. 20 Q Okay, so let's just go through those. 21 A Okay. Are we -- 22 Q Yeah, so what specific benefits are you 23 referring to, and to which hangers do the benefits apply 24 to? 25 A So I would say first and foremost through --	Page 61 1 And again, what we spoke to earlier, the -- 2 the DGT did offer, or does offer the ability to be 3 installed with gun nails. The FWH does not. It 4 requires longer, three and a half inch nails that are 5 usually not available, to my knowledge, in a gun nailer. 6 Usually, the limit to that is two and a half inches. 7 Again, as I mentioned earlier, the DGT being 8 mostly made on a die makes it pretty darn fast to 9 manufacture and hence ends with a cost-effective choice 10 for the end user. Load differences, DU series has been 11 consistent since its offering, I believe. DG, DGF -- 12 when the DGF replaced the DG, it met or exceeded all of 13 those loads that were available. 14 The DGT could be one-for-one replacement in 15 the -- the vast majority of cases. I think some -- when 16 we drop the DGHF, it's a heavier gauge, and the DGT did 17 not go quite to that thickness. So there's some slight 18 drops for these series. There's also skewed 19 availability, meaning that if the joist -- joist does 20 not 90 degrees to the wall, you can have some angle. 21 Q For the DGT or for all of them? 22 A For, I believe, all of the Simpson series. So 23 that's -- that certainly helps in most cases; having 24 those ratings makes it easier again for the specifier 25 to, you know -- professional engineer to specify it and

16 (Pages 58 - 61)

Page 62 1 then the authority having jurisdiction to approve it. 2 So I think that goes into all of the ease of 3 installation, load differences, fire ratings. You know, 4 I guess a main distinction between the DU and then 5 the -- the DG DGF, DGT, and the FWH is the sequencing. 6 So that really depends on user preference. 7 If they're wanting to put up the drywall ahead 8 of time and take advantage of the -- the DU or DHU 9 series, they can do so. Otherwise, if they'd rather put 10 up the hanger prior to the drywall, the DG and DGF 11 offered this, the DGT currently offers this, and the FWH 12 currently offers this from a sequencing standpoint. 13 Q I'm going to ask you to pause just for a 14 second. We'll get to the benefits of Simpson's various 15 products as they evolved. Right now, I just want to 16 talk about the benefits that you see with respect to 17 Simpson versus the FWH. And so I think I got them all 18 down, beginning with service and availability you think 19 is a benefit that all of the Simpson Firewall hangers 20 provide over the MiTek FWH; right? 21 A I -- I do and that's -- yes. 22 Q Okay. And so you think that -- well, just say 23 more about that. What do you mean that "service and 24 availability is a benefit"? 25 A Just in -- in general availability. Simpson	Page 64 1 part of the feedback I heard from our team that deals 2 with home centers, you know, there was a point where 3 Lowe's started using MiTek instead of Simpson and then 4 came back to Simpson very quickly. 5 Just -- and the reasons they told us were the 6 level of service and the -- and the availability of our 7 product stood out as major differentiators. 'Cause if 8 you deal with home centers, a fill rate is very 9 important. 10 THE OFFICER: Did you say "fill rate"? 11 THE WITNESS: Fill rate, yeah. 12 BY MS. SCHEIPETER: 13 Q So the Lowe's example, is there anything else 14 that you know about MiTek's level of service or specific 15 examples you can give? 16 A No, I'd have to go back to maybe get -- you 17 know, look at emails from salespeople or, you know, 18 really, it's word of mouth from phone calls or just 19 riding in the field and hearing what -- what salespeople 20 say when, you know, telling me how they differentiate 21 themselves from our competition. 22 Q And it's service and availability? 23 A Those are -- service and availability are two 24 major tenants of what Simpson provides for our 25 customers.
Page 63 1 has hangers, you know, some -- depending on which, 2 there's more common types; right? A three and a half by 3 18-inch floor truss is probably the most common floor 4 joist that we are seeing. And so having that available, 5 having multiple warehouses that can provide that hanger 6 in a timely fashion and get it to job sites quickly, 7 having the amount of salespeople and other support folks 8 like branch engineers available to help answer 9 questions, to help even if there's questions on -- on 10 building code interpretation. 11 Simpson has just a -- a lot of folks available 12 to help our -- our end users, including, you know, 13 somebody just needs to order the hangers. There -- 14 there's inside sales that they're able to reach. They 15 call our 800 number; they get a person right away. 16 They're not put through a -- any sort of robocalling. 17 There's lots of literature and the website and other web 18 tools that make it easier to specify the products. So 19 there's just a lot of different services and 20 availability. 21 Q What do you know about the level of service 22 that MiTek provides to its customers? 23 A So I don't have direct knowledge other than 24 the feedback I've heard over the years from our sales 25 team, some customers, some large customers. Part of --	Page 65 1 Q Is your opinion that Simpson's product 2 literature is better than MiTek product literature? 3 A I'll give -- I'll say that's my opinion. I 4 like the formatting of ours by comparison. 5 Q Is that, would you say, an expert opinion or 6 just a personal opinion? 7 MR. MAUCH: Objection. Vague. Seeks a 8 legal conclusion. 9 THE WITNESS: The opinion I was just 10 giving is my personal opinion. I have heard from other 11 specifiers similar things that they find things easier 12 to find within our catalog, and they understand it a 13 little bit better. 14 BY MS. SCHEIPETER: 15 Q Is it your opinion that Simpson's website is 16 better than MiTek's website? 17 A I haven't been on MiTek's website a whole lot 18 to -- to compare the two. So I'd have to go back and 19 compare both to give you a fair answer. 20 Q And you mentioned web tools, that Simpson has 21 some web tools that I guess make specification of 22 connectors simpler. Do you have any information about 23 any web tools that MiTek offers to specifiers in this 24 regard? 25 A I do not.

17 (Pages 62 - 65)

Page 66 1 Q Your opinion about Simpson offering more 2 availability or that being a benefit to its customers, 3 is that based only on information you have about 4 Simpson's product availability, or do you also have 5 information about MiTek's ability to get product to 6 customers? 7 A I don't have any -- in regards to the FWH, I 8 don't have any recent information about theirs. I do 9 know when the product was first offered, that was one of 10 the drawbacks I had heard from the field. Our multi- 11 family managers would -- would talk about -- talk about 12 it and say that, you know, projects were being held up 13 due to availability, and that was feedback they were 14 getting from their contacts, be it contractors or 15 general -- general contractors or framers. 16 Q And you said that's when the FWH was first 17 introduced that you heard that feedback? 18 A It was. 19 Q Okay. Have you heard that feedback recently? 20 A I have not. 21 Q And then the second thing you mentioned was 22 the cost effectiveness for the DU specifically. So does 23 that mean that the DU is less expensive than the FWH? 24 A I'm not sure today's pricing. I haven't gone 25 and looked at any comparisons to -- to do that. I, you	Page 68 1 A I would have to ask folks that were involved 2 in the development at the time. I'm -- I'm unaware. 3 Q Are you aware of any feedback that Simpson has 4 received from customers as that being a benefit to the 5 DG, DGF, DGT versus MiTek's competitive offering? 6 A I would say I've not heard direct feedback on 7 somebody, you know, stating -- stating that feature 8 stood out. I can just state that obviously building 9 with two-by-fours is going to be less expensive than 10 building with two-by-sixes. So there's a benefit to 11 the -- the owner and everybody else involved in the 12 line. 13 Q And then the next benefit was the fire and 14 temperature rating. You said MiTek has the fire rating 15 but only Simpson has the temperature rating for these 16 products? 17 A At least the last time I remembered looking, I 18 didn't see a temperature rating. I'd be happy to go and 19 double check that, but I do remember that being an 20 earlier differentiator between the two. 21 Q Is that something that customers request from 22 Simpson? 23 A As I -- I think I mentioned earlier, I think 24 the fire rating is the one that stands out more to 25 others, but having both is certainly beneficial. It's
Page 67 1 know -- when -- when offered, it certainly was out 2 there, and then when FWH came out, it was -- it was more 3 expensive than the DU series. 4 Q But you don't have any information about the 5 current price of the DU as compared to the current price 6 of the FWH? 7 A No, I do not have that readily available. I 8 could find out, but not today. 9 Q And then you discussed that the Simpson DG, 10 DGF, and DGT can be installed on a two-by-four wall 11 assembly as being a benefit; is that right? 12 A Correct. 13 Q Okay. Is that pretty common in this type of 14 construction? 15 A Using two-by-four walls? It can be. It 16 really just depends on your load demand; right? Just 17 like the hanger has to have a certain load capacity, it 18 really depends on how the -- the wall is loaded. It can 19 vary throughout the structure; right? The upper levels 20 may be two-by-four and lower may have to become two-by- 21 six. And obviously spacing of those studs change -- 22 changes too. 23 Q Is that a feature that Simpson's customers 24 requested from Simpson when they were designing these 25 products?	Page 69 1 just something else that could be asked for. 2 Q Does Simpson market that temperature rating as 3 a differentiating factor? 4 A It's put in -- put into Simpson literature. 5 You can see where it has -- both are -- are listed. So 6 I would consider that marketing if it's on our flyers 7 and website and other literature. 8 Q And then I think we already covered the 9 benefit of the DGT being installed with gun nails. 10 Anything else that we haven't discussed about that 11 particular benefit that you'd like to add? 12 A No. 13 Q Next you said the DGT is fast to manufacture, 14 which also makes it cost effective. Do you have any 15 information about whether today the DGT is less 16 expensive than the FWH? 17 A I've heard different explanations of pricing, 18 and I think they can vary, as often in multi-family 19 projects are quoted as an overall. So it's hard to say, 20 you know, one-to-one if we're seeing as many -- as many 21 times where you know the exact price just because 22 there's going to be a package sold to a multi-family 23 project. 24 Q Sure. So for example, if a contractor is 25 going to use Simpson products for the whole project,

18 (Pages 66 - 69)

Page 70 1 there might be a total project discount? 2 A That would just be a total project quoted 3 price to -- to our distribution channel and then however 4 they quote it to the contractors since we, in -- in the 5 vast majority of cases, are not selling directly to the 6 contractor. 7 Q And then the final benefit was that all of the 8 Simpson Firewall hangers can be skewed. The FWH can be 9 skewed as well; right? 10 A I believe so. 11 Q Okay, so that's not a differentiating benefit, 12 it's just a benefit? 13 A Yeah, I'd have to look to see if there's a -- 14 I don't recall if there's a difference in the level of 15 skew available for either. 16 Q Any other benefits, as you sit here today, 17 that the Simpson products, firewall hanger products 18 offered to customers as compared to the MiTek FWH? 19 A I believe those are the main ones. 20 Q Okay. So now I want to get to kind of where 21 you were starting to go, which is the unique differences 22 or benefits for each of the Simpson products as they've 23 evolved over time. So starting with the DG, the DG was 24 an alternative that Simpson offered to customers as 25 compared to the DU; correct?	Page 72 1 A Skew -- well I believe both could be skewed. 2 I --I think there's some load capacities that are 3 slightly higher with the -- the DG series 'cause there 4 are three different levels, to where the DU has the DU 5 and DHU; right? And that has to do with the thickness 6 of the steels, which usually directly changes the 7 capacities. The DG was available in three different 8 thicknesses, so it had even higher load capacities 9 available. 10 Q Okay. And then after the DG came the DGF; 11 correct? 12 A Yes. The DGF was offered as a replacement 13 series to the DG series. 14 Q And what benefit did the DGF provide to 15 customers over the DG? 16 A The DG met or exceeded all the load capacities 17 provided by the -- the DG, and then the -- the DGF also 18 had funnel flanges that were able to make it -- which is 19 another attribute we have of other hangers -- that just 20 make installing the -- the joists a bit easier on the -- 21 the contractor. 22 Q Can you -- sorry, can you explain that one a 23 little bit? I'm not familiar with funnel flanges. 24 A So funnel flanges just have to do at the top 25 of the -- if you're familiar with the geometry of most
Page 71 1 A Yes. The DU was available, and then the DG 2 became available, offering an alternative series, 'cause 3 both were offered at the same time. 4 Q And what benefits did the DG provide to 5 customers over the DU? 6 A I don't know that I'd say it was over it, 7 'cause it really depends on the customer, as again, some 8 are still using the DU, DHU, but the most -- most 9 apparent benefit is just sequencing, being able to 10 install the DG prior to putting up the drywall. 11 Q And that preferred installation sequence was 12 really the core reason that Simpson decided to develop 13 the DG; right? 14 MR. MAUCH: Objection. Vague. Assumes 15 facts not in evidence. 16 THE WITNESS: Simpson, I believe, 17 developed the DG in order to have an offering that could 18 be installed prior to drywall. 19 BY MS. SCHEIPETER: 20 Q It was getting that feedback from customers 21 that they wanted a product with that feature? 22 A Some customers were requesting that we have a 23 product available to be installed prior to drywall. 24 Q Any other differences or benefits of the DG 25 versus the DU skewable?	Page 73 1 hangers; right? They have a U-shape, and so at the top, 2 if you have a funnel flange, it kind of opens it up a 3 little bit. So if you don't have a funnel flange, it 4 helps -- it's kind of like, you know, funnel helps 5 direct things into a certain place. Same sort of thing 6 at the top of the -- the hanger was able to help direct 7 things into a certain place. 8 Q So the benefit was ease of installation? 9 A Benefit was ease of installation, same with 10 the -- the stops that were provided with the DGF. Well, 11 the DG had stops as well. The DGF had stops that were 12 even easier to understand where you're -- where the 13 joist is supposed to stop in the seat and, you know, be 14 held back that the distance for the double five-eighths 15 drywall to be able to fit behind it. 16 Q Thank you. 17 A Those are the main ones. 18 Q From a cost perspective, was the pricing 19 similar? 20 A To my recollection, the pricing was similar 21 for those two lines. 22 Q Okay. And then how about benefits of the DGT 23 over the DGF? 24 A The DGT again offered -- there's no welding 25 involved for any of the -- the DGT's. So they're able

Page 74 1 to be manufactured even faster, again even more 2 economical, and then the ability to be installed with 3 gun nails; you're not having to use those longer nails 4 that have to be hammered into place. So in ease of 5 installation difference and then, yeah, those were the 6 main -- main ones. 7 Q So was the DGT offered at a lower price than 8 the DGF? 9 A It was. 10 Q Do you know how much? 11 A I don't recall off the top of my head, but I 12 do know that we -- we offered it at a -- a lower price 13 than what we had been offering the DGF. 14 Q Has Simpson done any testing of -- or have 15 they tested the total time it takes to install the DGT 16 versus MiTek's FWH? 17 MR. MAUCH: Objection. Calls for 18 speculation. 19 THE WITNESS: I am not aware of us doing 20 comparison installation-time testing between the two. 21 BY MS. SCHEIPETER: 22 Q Do you have any information on which product 23 is faster to install? 24 A Again, I'm -- I'm not sure -- I'm unaware of 25 us doing a time trial to compare the two.	Page 76 1 Q Okay. 2 A I'm happy to look that up in a break and give 3 it to you if that's helpful though. 4 Q I appreciate that. That's fine. Mr. Wert, 5 I'm handing you what I've marked as Wert Exhibit 2. 6 Just take a moment to familiarize yourself with it. 7 (Wert Exhibit 2 was marked for 8 identification.) 9 Are you ready? 10 A I am. 11 Q Have you ever seen this email before? 12 A I believe I have. 13 Q Okay. Do you know, were you a recipient of 14 this email? 15 A I was looking for my name, but I did not see 16 that. However, I do see "engineering branch managers," 17 which I was a part of that group at the time. 18 Q Okay. 19 A Or sorry, did I say "branch"? Sorry. I 20 should have been looking for "branch engineering 21 managers," but let's see, Billy Viars, who was on my 22 team, got it for sure. Either way, I -- maybe the 23 branch 23 sales reps. Yeah, I'm not seeing my name 24 particularly, but I've -- I've seen this document 25 before.
Page 75 1 Q And the DGT was offered as a one-to-one 2 replacement of the DGF; right? 3 A I believe for the most part we were able to 4 offer a one-for-one for all sizes. There -- there's 5 probably -- I believe there's some cases at the higher 6 end we were not able to obtain the same load capacities 7 'cause again, it's a thinner gauge than the -- I believe 8 the DG -- or the -- sorry, the DGBF. 9 Q And so if a Simpson customer needed those 10 higher loads, their option would be the DU? 11 A There's other options that we have available 12 for even much higher capacities. It's -- there's a tech 13 bulletin that has more -- more typical Simpson hangers, 14 and I mean "typical," meaning that they can be used in a 15 fire assembly or a non-firewall assembly. So if they 16 needed those higher loads, those other hangers are -- 17 are options. 18 Q Does that tech bulletin have a title, or would 19 you know where to find it? 20 A I believe it's on, like, if you go to the DGT 21 or DU webpage, it's in the Related Literature section. 22 It does have a title. It's just, there's a whole lot 23 of -- I don't recall what it is. And there's usually -- 24 it would start with an F-dash, and then there'd be a lot 25 of letters followed by some numbers.	Page 77 1 Q It's familiar you? 2 A Yes. 3 Q Okay. And so what is your understanding? Can 4 you just describe what the email is, along with the 5 attachment? 6 A It's an introduction of the DGF firewall 7 hanger series sent to the sales team in order to provide 8 them this letter to give to customers to understand that 9 the DG series is being replaced by the DGF series. 10 Q And it's from Tom Evans; correct? 11 A It is from Tom Evans. 12 Q Was he the product manager for the DGF? 13 A I -- I believe Tom Evans was the main product 14 manager of the DGF. 15 Q Okay. So then going to the second page, which 16 is the attachment, it looks to me like a draft letter 17 that Simpson salespeople could potentially provide to 18 their customers to describe the changes from the DGF -- 19 or sorry -- the changes from the DG to the DGF; is that 20 right? 21 A Yes. This is a letter for the sales team to 22 be able to utilize to introduce the DGF series as a 23 replacement to the DG series. 24 Q To your knowledge, was this letter in this 25 form ever provided to customers?

Page 78 1 A I don't -- I would say I could -- I didn't see 2 a direct, you know, copied on somebody doing it, but I 3 would make the assumption that it was. 4 Q That was the purpose? 5 A That was the purpose. 6 Q Okay. And so there's a number of bullet 7 points listed here which provide information about the 8 DGF. I'm interested in the second to last bullet point 9 where it says "The new patent-pending features of the 10 DGF, making it easier to install, include"; my first 11 question is, was there a patent application filed on the 12 DGF? 13 A I would have to either ask Counsel or talk to 14 our internal legal department to find out if there was, 15 but I -- by the fact that we have the bullets as patent 16 pending, that would lead me to believe so. 17 Q You don't have any information about novel 18 features in the DGF that Simpson was seeking patent 19 protection for? 20 A At the time when I was the engineering manager 21 in McKinney? No, I wasn't, you know, looking -- looking 22 into any of those. I don't think I was named on the 23 patent for this or anything like that. 24 Q And then the three bullet points that are 25 listed as the patent-pending features, I think these all	Page 80 1 in the company. 2 Q And so this is a printout of a PowerPoint 3 presentation; correct? 4 A Yes, it is. 5 Q Explaining the move from the DGF to the DGT 6 series? 7 A Correct. 8 Q Was Tom Murphy, was he the product manager? 9 Was he in charge of the DGT launch? 10 A Yes. Tom Murphy was the product manager in 11 charge of the development of the DGT series. 12 Q All right. So to your knowledge, did anyone 13 at Simpson -- I'm sorry. To your knowledge, was this 14 presentation given live at Simpson, or was it just given 15 via email? 16 A I believe this was given live and then shared 17 on our internal internet for people to be able to see. 18 Q Were you present for the presentation, the 19 live presentation? 20 A I believe I was. 21 Q Who else was in attendance at that 22 presentation? And you can state it by divisions, not 23 every single individual, if it was a large audience. 24 A It was a large audience. This -- I believe -- 25 I'm trying to think. This -- this either was the
Page 79 1 pretty much line up with what you testified to earlier 2 as some of the benefits of the DGF. Is that accurate? 3 A The -- the stops and the funnel flanges 4 certainly match up with the -- my testimony from 5 earlier. 6 Q You agree with those features being a benefit 7 of the DGF that makes it easier to install? 8 A I do agree with those -- those features being 9 a benefit for the DGF and DGHF and DGBF to install. 10 Yes. 11 Q Thank you. You can set that one aside. Okay. 12 I am handing you what I've marked as Wert Exhibit 3. 13 Just take a moment to familiarize yourself with that 14 document. 15 (Wert Exhibit 3 was marked for 16 identification.) 17 A Okay. 18 Q Are you familiar with this document? 19 A I am. 20 Q Okay. You've seen it before? 21 A I have. 22 Q Did you receive this in April of 2023, which 23 is the date indicated on the document? 24 A I saw it near or about that time when I 25 believe Tom presented this -- this PowerPoint to folks	Page 81 1 presentation given to our sales leadership, and I 2 can't -- I'm not positive, per se, if -- if I'm -- 3 I'm -- some of these slides were probably also used in 4 the larger, like, out to all of our salespeople. I 5 believe this was given to, you know, branch managers, 6 branch sales directors, sales managers in one of the -- 7 one of the monthly meetings that they have. 8 Q If you could turn to the, I believe it's the 9 fourth page of the document, and for the record, this 10 document begins with Bates number SST0069540. And if 11 you could turn to the page that's Bates labeled 12 SST0069543. 13 A I'm there. 14 Q Okay. So this slide appears to indicate that 15 the installation time for the DGT is actually going to 16 be longer than the installation time for the DGF; right? 17 A It does say "Installation time"; it's in 18 relation to cutting the overall drywall 'cause there's 19 two notches involved, rather than a single notch 20 involved for the DGF. 21 Q Right. And so that increased the installation 22 time for the new DGT series as compared to the outgoing 23 DGF series. 24 A It -- it increased that portion of it. I 25 guess I didn't -- didn't look at how Tom presented that

21 (Pages 78 - 81)

Page 82 1 specifically in -- you know, I don't know if he meant 2 the overall time or if he was trying to get into the 3 notching time. I have to ask Tom if he actually did a 4 full -- full-on comparison 'cause it's an estimate that 5 I think he just put together. Does that make sense? 6 Like, obviously it takes more time to cut two notches in 7 drywall than one. 8 Q Sure. You're just thinking that it's possible 9 that the time savings that the DGT allows for with the 10 gun nailer might have further eaten into that 11 installation time? 12 A You could have, yeah. I'm not sure how much 13 that differentiates by -- by using that versus having to 14 swing a hammer and install, you know, or a palm nailer 15 or some other version to install the DGF versus the DGT. 16 Q And then can you turn two more pages to the 17 page labeled SST0069545? 18 A I'm there. 19 Q And so this slide shows an overall series 20 comparison on several different categories comparing 21 Simpson's new DGT as compared to the outgoing DGF and 22 MiTek's FWH; right? 23 A It does show the DGT, DGF, and FWH, and 24 comparisons for different categories. 25 Q And the first category is "Standard Customer	Page 84 1 Q Okay. When you heard this presentation, is it 2 your understanding that that meant that the DGT was 3 going to be cheaper for the customer? 4 A Yeah, it meant the price we were going to 5 offer to our customers was going to be less expensive 6 than the -- the DGF model. And from, I assume, Tom's 7 feedback from the field on pricing from MiTek, it's less 8 than the FWH as well. 9 Q And then drywall installation, is it your 10 understanding that that meant the time spent on the 11 drywall installation? 12 A Yeah, looking at this comparison, the drywall 13 installation, it looks like he expected -- if we're 14 going to -- the 1.05, so that's greater than the 1 for 15 the DGF and the 1 for the FWH. 16 Q So when the product was launched, it was 17 expected that it would take a little more time to 18 install than the DGF and the FWH? 19 MR. MAUCH: Objection. Mischaracterizes 20 documented testimony. 21 THE WITNESS: When it was launched, we 22 expected it would take longer to cut the drywall for the 23 DGT versus the DGF and the FWH. 24 BY MS. SCHEIPETER: 25 Q And you're still not sure if that refers to
Page 83 1 Price." It's showing that -- well, let me ask you 2 first: Is your understanding that if the number in that 3 second column is green, that means that it's a benefit 4 over the old, and if it's in red that means it's maybe a 5 negative as compared to the outgoing DGF? 6 A This is where my red-green colorblind is not 7 very helpful for this conversation. 8 Q You're red-green colorblind? 9 A Well, not fully, but just certain shades are 10 not perfect. So I really love it when people use them 11 in presentations. 12 Q Okay. 13 A So, but I can -- I think I can overall tell 14 the differences; it's just not super clear for me. 15 Q Okay. 16 A So -- 17 Q So, I mean, in looking at this, the second 18 column where it says new DGT, can you see that there's a 19 different color used for the numbers in that column, at 20 least between the two? 21 A They look different shades. Yes. 22 Q Okay. So for customer price, the new DGT, 23 it's a 0.9 as compared to the outgoing DGF is a 1; 24 right? 25 A Correct.	Page 85 1 the overall amount of time it takes to install the DGT 2 or if it's just referring to the time for that specific 3 part of it, which is cutting the drywall? 4 A I believe in -- in this comparison he is, you 5 know, more explicitly showing that that's part of the 6 drywall installation. I'm not seeing an overall time 7 comparison shown in this table. 8 Q And then for the remaining factors -- fastener 9 cost, loads, lead time as between the DGF and DGT -- it 10 looks like those all received equivalent numbers; 11 correct? So there was no difference to the customer in 12 terms of load values, lead time, or fastener cost? 13 A According to Tom's analysis, it's looking like 14 the fastener cost, loads, lead time, and breadth of 15 offering were the same between the DGT and the DGF. 16 Q And then the internal material cost, that's 17 consistent with your prior testimony that it costs less 18 to manufacture; right? 19 A Yes. Having a lower material cost for the DGT 20 versus the -- the DGF series overall, just due to the 21 gauge of material and the fact that the DGT does not 22 require any welding versus the DGF has two models that 23 did require welding. 24 Q And then -- 25 A Two model series. I apologize.

Page 86 1 Q And if you turn to the next page, this lists 2 out some features or benefits of the DGT. Do you agree 3 that all of these bullet points list out features, or do 4 you agree that these are features of the DGT? 5 A These are all features of the DGT; yes. 6 Q Do you see how there's a little callout on the 7 third bullet point with a number "1" in the middle? 8 A I do. 9 Q Do you have any idea what that was indicating? 10 A I do not. 11 Q On that fourth bullet point, and you talked 12 about this before, it says that "An innovative top 13 flange design for back-to-back installation on two-by- 14 six walls"; how important is that particular feature for 15 a customer, or why would that be important for a 16 customer? 17 A It's -- I would say that if they have the 18 design of a building that requires an -- an interior 19 fire-rated wall assembly, having the ability to hang 20 joists from that is a pretty important feature; 21 otherwise, you have to turn your framing in -- in the 22 opposite direct -- or parallel with the wall on at least 23 one side in order to make that work. 24 Or you'd have to likely go with a wider wall; 25 right? And so if you had to go with a two-by-eight, it	Page 88 1 first, have you talked to any customers directly about 2 the benefits of the DGT over the DGF? 3 A I have not been in the field. You're making 4 me feel bad about my job. No, I have not been in the 5 field and talked to customers directly about the DGT. 6 Q Okay. So my assumption, which might be wrong, 7 is that you might've heard this third -- secondhand 8 through sales managers or people who are more directly 9 customer facing. Is that fair? 10 A Yes. Some of the feedback I'm going to get is 11 going to be secondhand, usually through the either sales 12 team, sales managers in different meetings, or directly 13 from salespeople. 14 Q And so what has the nature of that feedback 15 been with respect to benefits of the DGT over the DGF? 16 A As far as the -- the benefits, I've heard that 17 some are taking advantage of the -- the gun nailing 18 feature, so they enjoy that. Some have been -- some of 19 the feedback on the lower pricing was -- was welcome. 20 Some did complain on just the slightly lower capacities. 21 So we've gotten both ends. 22 Q Any other negative feedback besides the lower 23 capacities? 24 A I haven't heard directly from anybody. We've 25 had sales -- salesmen complain about their -- their
Page 87 1 doesn't sound like a whole lot, but anytime you increase 2 the thickness of the wall in multi-family structures, 3 you're reducing the usable square footage inside the 4 building. And so yeah, I'd say it's a useful feature to 5 offer to customers. 6 Q Has Simpson received feedback that that's a 7 pretty important feature? 8 MR. MAUCH: Objection. Calls for 9 speculation. 10 THE WITNESS: Yeah, I -- in all honesty, 11 I haven't talked to anybody directly and heard them tell 12 me that that -- that feature has saved the day, but I 13 could probably go find plans that show the use of that. 14 And to me, that would indicate that that is a useful 15 feature or, you know, talk to multi-family managers that 16 are in -- in the weeds of this business more often, and 17 they could give me further information on that. 18 BY MS. SCHEIPETER: 19 Q Have you had any conversations with sales 20 managers that incorporates feedback from customers about 21 benefits of the DGT over the DGF? 22 A Have I had conversations that -- so you're 23 asking if I've talked to sales managers where they've 24 had feedback from customers and relayed that to me? 25 Q Sure. I mean, let's make it more simple;	Page 89 1 concern over having to cut the drywall twice. But I've 2 actually asked them that direct question: "Has anybody 3 actually complained to you?" And when I've asked that 4 question I haven't -- well, no, but -- 5 Q So to your knowledge, Simpson has not received 6 any direct feedback from customers complaining about -- 7 A To my knowledge, I have not heard of that 8 directly that I can point to. I do -- like, I do know, 9 you know, salespeople were concerned about that when 10 it -- when it came out, 'cause it is -- yeah. 11 MR. MAUCH: Mr. Ward, excuse me. Make 12 sure you're waiting and pausing so that Ms. Scheipeter 13 can finish her question, and I can also, if necessary, 14 object before you start to answer. Being a little 15 quick. 16 THE WITNESS: Okay. 17 BY MS. SCHEIPETER: 18 Q You can set that one aside if you want. Are 19 there any other facts or opinions related to this second 20 topic about benefits or differences between the various 21 Simpson Firewall hangers versus MiTek's that we haven't 22 yet discussed that you intend to offer at trial? 23 A None specifically that I can think of at the 24 moment. 25 Q We've covered all the benefits that Simpson

Page 90 1 offers versus firewall -- versus MiTek firewall hanger? 2 A I would say we've gone through the vast 3 majority of -- that I -- that I can think of at the 4 moment. 5 Q Okay. Let's move on to the third topic. If 6 you want to refer back to Wert Exhibit 1. So the third 7 topic is "Facts relating to why Simpson contends each of 8 the following does not support non-obviousness," and 9 then there's a number of factors that are listed after 10 that. What is your understanding of the term "non- 11 obviousness"? 12 A My understanding of the term "non-obviousness" 13 would be that something is non-obvious, then, you know, 14 a person having authority on the subject wouldn't be 15 able to say that that was obvious. 16 Q Do you have any understanding of the term 17 "secondary considerations of non-obviousness"? 18 A "Secondary considerations of non-obviousness"? 19 I haven't heard that phrase before. 20 Q Or "objective indicia of non-obviousness"? 21 A I have not heard that phrase before. 22 Q So in looking at this third topic, there's a 23 number of those factors, and you've been designated to 24 offer facts or opinions supporting why Simpson contends 25 each of the following does not support non-obviousness.	Page 92 1 A The only -- only thing I can point to was 2 something we did cover in the previous deposition to 3 where I had -- when looking just kind of overall market 4 analysis and just asking our salespeople, comparing 5 different product hierarchies, one of which was firewall 6 hangers, did show that MiTek had a slightly higher 7 percentage of market share based on feedback from the 8 field in that product line versus, say, some of the, you 9 know, many of the other product hierarchies for our 10 connector product line. 11 Q Okay. So what you're saying is that there was 12 some analysis done by your sales team at some point that 13 with respect to this particular product category of 14 firewall hangers, it was Simpson's understanding that 15 MiTek had a slight advantage in the market share? 16 A Yeah, so we did -- basically, it was a -- it 17 was a relatively simple, sort of gut-check analysis that 18 was sent out looking at a couple dozen product 19 hierarchies related to the connector line of products, 20 which firewall hangers was one of them, just asking them 21 to look at what they believed was the Simpson market 22 share in their markets and then compared it to other 23 competitors' market share. So which MiTek was one of 24 the competitors listed. 25 Q And typically, Simpson has the majority market
Page 91 1 The first one is "commercial success." Is it your 2 understanding that Simpson contends that commercial 3 success does not support non-obviousness? 4 A It is my understanding that commercial success 5 does not support non-obviousness. Yes. 6 Q And that was a little bit incomplete. Non- 7 obviousness -- we're talking about MiTek's 510 patent; 8 right? 9 A Yes. That's what this entire endeavor is 10 around, is 510 patent. 11 Q Yes. Claim 40 of the 510 patent; right? 12 A To my knowledge, Claim 40 is the only claim 13 standing on the 510 patent. 14 Q Have you reviewed Claim 40 of the 510? 15 A I have not. 16 Q So what facts do you have that support 17 Simpson's contention that the commercial success of 18 MiTek's product does not support non-obviousness? 19 A Well I -- I think we've had commercial success 20 with other products, like the DU series prior to the 21 FWH, shows that -- I don't have access to how 22 commercially successful MiTek's product has been. 23 Q So you don't have any facts or opinions about 24 the commercial success of MiTek's firewall hanger; 25 correct?	Page 93 1 share for most product categories that it competes in, 2 right? As compared to its competitors? 3 MR. MAUCH: Objection. Vague. 4 THE WITNESS: Not most. We certainly 5 could point to our, having been in the -- the concrete 6 sales manager product line, you know, Hilti is a big 7 competitor, and so in some of the adhesives and 8 mechanical anchors, Simpson is not the leader. There's 9 certain -- plenty of -- on the connector side where 10 Simpson is the leader. So it's a mixed bag. 11 BY MS. SCHEIPETER: 12 Q So focusing just on the connector market as 13 compared to MiTek, Simpson is typically the market 14 leader; right? 15 A From our own internal sort of feedback and 16 discussions and understanding of the market, I'd say 17 yes, Simpson usually has more of the market share than 18 MiTek for connectors; not true in truss plates. 19 Q And so the fact that MiTek seemed to have the 20 greater share of the market with respect to these 21 firewall hanger products indicates to you that MiTek has 22 had some commercial success with that product? 23 A What I saw didn't show that MiTek had a 24 greater share of the market; it had a greater share than 25 normal compared to other hangers. So in most cases it

24 (Pages 90 - 93)

Page 94 1 was still showing that Simpson had a greater share of 2 the firewall hanger market as well. Just not -- not 3 leading by as much as other hangers -- 4 Q I see. 5 A -- and other lines. 6 Q So it was just a smaller margin? 7 A A smaller differentiation of -- between the 8 two. 9 Q Did that indicate to you that the product was 10 obtaining commercial success? 11 A Yeah, I mean, it indicated that MiTek was -- 12 was selling their product, and it was accepted by the -- 13 the market. 14 Q Do you have an opinion on whether the MiTek's 15 firewall hanger is commercially successful? 16 MR. MAUCH: Objection. Vague. 17 THE WITNESS: If you want to be more 18 specific about "commercially successful" and, you know, 19 how we're measuring that, I'd be happy to answer. 20 BY MS. SCHEIPETER: 21 Q Well, what does it mean to you to be 22 commercially successful? 23 A I think it sort of varies depending on product 24 line and how much of the market you're -- you're hoping 25 to -- to get, 'cause I don't know if by MiTek standards,	Page 96 1 go after to have a good product, you know; right? Does 2 it meet the dimensions that are needed for the -- the 3 joists that are carried? 4 Does it meet load capacities that are -- 5 that are needed? Is the cost within line to where, you 6 know, they're not going to choose a different assembly 7 option? 8 Does it, obviously in this case, not 9 reduce the fire-rated assembly rating? So those would 10 be the -- the things that I would think would be 11 important for -- for these lines. And just ease of 12 construction, that's probably another factor. 13 BY MS. SCHEIPETER: 14 Q "Ease of construction" meaning what, exactly? 15 A "Ease of construction," are they able to 16 build? Yeah, the -- add the floor assembly in a 17 reasonable amount of -- amount of time. 18 Is it intuitive enough for the installer to -- 19 to do without having to give repeat instructions? Do 20 they have -- are they lacking a bunch of mis-installs 21 because it's, again, not intuitive? Those sorts of 22 things. 23 Q Do you have any opinions about whether 24 Simpson's various firewall hanger products have enjoyed 25 commercial success?
Page 95 1 if they were hoping to capture, you know, a certain 2 percentage of market share or had any goals around how 3 much they would sell or whatnot. So that's sort of the, 4 I think there's -- it could be very, very different 5 depending on who's managing the line and what 6 expectations are set by, you know, different companies, 7 so I'm -- 8 Q So because you don't have that information, 9 you can't offer an opinion on whether MiTek's firewall 10 hanger is commercially successful? 11 MR. MAUCH: Same objections. 12 THE WITNESS: Yeah, I would just say that 13 one probably is -- is in a little bit of the eye of the 14 beholder. It's definitely having -- making sales and -- 15 but I don't know how much -- how much, how profitable. 16 You know, are they getting as many customers as they 17 would hope to have? I don't know what measures they -- 18 they have for commercial success. 19 BY MS. SCHEIPETER: 20 Q Do you have any opinions about what features 21 contribute to any success that the product might be 22 having, the MiTek firewall hanger product? 23 MR. MAUCH: Objection. Vague. 24 THE WITNESS: I -- the only answer I can 25 give to that is probably similar features that we would	Page 97 1 A Based on the sales that we've had for the 2 different product lines? I -- by how I would define 3 "commercial success," like I'd say that these are, yeah, 4 relatively successful. 5 Q And what definition are you using? 6 A Each one of these product lines has enjoyed 7 millions of dollars in sales. We've been able to have 8 wide, wide array of distribution across multiple markets 9 throughout North America. So those kind of be some of 10 the basic tenants. 11 Q Thinking now just about the DG, the DGF and 12 the DGT, so the hangers that can be installed before the 13 sheetrock, do you consider those innovative products for 14 Simpson? 15 MR. MAUCH: I'm sorry, can you repeat the 16 question or have it read back, Julie? I just didn't 17 quite catch the beginning. 18 MS. SCHEIPETER: Could you please read it 19 back? 20 THE OFFICER: Yes, one moment. 21 (The officer repeated the record as 22 requested.) 23 MR. MAUCH: Objection. Vague. 24 You may answer. 25 THE WITNESS: I like to think most of the

25 (Pages 94 - 97)

Page 98 1 products we come out with are pretty innovative, but 2 yes, there are innovative features to those products. 3 BY MS. SCHEIPETER: 4 Q And do you think that part of the success of 5 those products was due to the innovative features? 6 MR. MAUCH: Objection. Vague. 7 THE WITNESS: Part of their success is 8 certainly just meeting the -- the needs of the -- the 9 customers and figuring out features that would hopefully 10 meet those needs and, you know, in some cases just make 11 it simpler, delight them, what have you. 12 BY MS. SCHEIPETER: 13 Q So when defining "commercial success," you 14 said millions in sales, wide array of distribution. Did 15 Simpson acquire any new customers when it introduced the 16 DG? 17 MR. MAUCH: Objection. Vague. Calls for 18 speculation. 19 THE WITNESS: I couldn't say whether we 20 acquired new customers or -- or not based on the 21 introduction of DG. 22 BY MS. SCHEIPETER: 23 Q Thinking again about those innovative features 24 and comparing the DG to prior solutions that existed for 25 getting that two-hour fire-assistive rating, what	Page 100 1 (Wert Exhibit 4 was marked for 2 identification.) 3 And, Mr. Wert, I'll represent that Wert 4 Exhibit 4, which is Bates labeled SST0105219, is a 5 document that was produced after your -- produced by 6 Simpson to MiTek after your last deposition. So it's 7 possible you haven't seen it before. I'll give you a 8 moment to review. 9 MR. MAUCH: And I'll just state for the 10 record that while I think that was accurate, I think 11 this version was not produced until after, but a prior 12 version was. 13 THE WITNESS: Okay. 14 BY MS. SCHEIPETER: 15 Q So Wert Exhibit 4 is a printout of an Excel 16 spreadsheet showing some financial data for the DU, DGT, 17 DGF, and DG; correct? 18 A Yes. This looks to be financial information 19 on those series of hangers. 20 Q Have you seen this before? 21 A I have seen a -- I have seen this before, yes. 22 Q Okay. In looking at the first page -- 23 A The first page being the summary? 24 Q Yes, yes. 25 A Since I don't think this has a --
Page 99 1 specifically was innovative about starting with the DG? 2 MR. MAUCH: Objection. Vague. 3 THE WITNESS: As far as what stood out 4 for the DF? You know, I think one straightforward thing 5 was just had to do with having an offering that met the 6 sequencing request, you know, that was different from 7 the DU. So being able to install prior to the -- the 8 drywall and still be a -- a load-rated hanger that would 9 have load prior to even putting the drywall in. 10 I think the ability to install it on a 11 two-by-four wall made it novel and, you know, just 12 the -- the addition of doing fire testing, which is 13 relatively new in the market for -- for hangers, 14 offering that as something that just would help with 15 getting products approved through the jurisdictions. 16 Probably some of the main reasons, I would say. 17 BY MS. SCHEIPETER: 18 Q In your opinion, was the ability to install 19 the DG before the drywall the primary selling feature of 20 that product? 21 MR. MAUCH: Objection. Vague. 22 THE WITNESS: Primary reason to have the 23 DG was to be able to install it prior to drywall. 24 BY MS. SCHEIPETER: 25 Q Hand you what I've marked as Wert Exhibit 4.	Page 101 1 Q Not the cover sheet; right? 2 A Yeah. 3 Q The first real page of the document, which is 4 the summary. Can you explain in your words what this is 5 showing? 6 A This is showing a comparison of these -- the 7 four different series of firewall hangers that can be 8 used in a two-hour fire-rated assembly offered by 9 Simpson Strong-Tie and showing what I believe to be 10 their total sales in each year from 2014 through 2024. 11 Q So the first year that we have data for a 12 product other than the DU is 2017; correct? For the DG? 13 A Yes. 14 Q And the DG was introduced in July of that 15 year, 2017? 16 A So yes, the first year of sales shown in the 17 document for the DG is in 2017, and I do believe it was 18 mid-year that year. July is probably accurate, but I'd 19 have to double check. 20 Q But to your recollection, this would not be 21 showing a full year's worth of sales; right? It's just 22 partial? 23 A This is -- yeah, the DG was not available the 24 1st of January on 2017. So it's definitely not showing 25 a full year of -- of sales.

26 (Pages 98 - 101)

Page 102 1 Q So then in 2018, that would be a full year's 2 worth of sales of the DG; right? The next column over? 3 A The 2018? Yes, the DG was offered that entire 4 year, as was the DU series hangers. 5 Q So for 2018, when both products have been on 6 the market and you have a full year's worth of financial 7 data, how did the DG compare to the DU? 8 A As -- as far as the financial data shows, it's 9 slightly over 3.1 million in sales of the DG and 10 2 million of the DU. 11 Q And how -- well, let me ask you this: The DG 12 was cheaper than the -- I'm sorry, the DU was cheaper 13 than the DG; right? 14 A The DU series is less expensive than the DG 15 series. Correct. 16 Q So just looking at this without taking into 17 account quantity sold, would it be difficult to compare 18 the overall success of those two products due to the 19 pricing differences between them? 20 A I would not be able to tell from this document 21 the total quantity sold of the DU versus the DG. 22 Q Can you tell from this document which of those 23 two products in 2018 was what you would consider more 24 commercially successful? 25 MR. MAUCH: Objection. Vague.	Page 104 1 Q And then in 2019, midway through the year was 2 the switch from the DG to the DGF; right? 3 A Yes. In 2019 is when we discontinued selling 4 the DG and began selling the -- the DGF -- 5 Q And that's reflected in the data here for 6 2019, a little less than a million for the DG and then 7 almost 4 million for the DGF; right? 8 A The DG does show about 916,000 in sales, and 9 the DGF is just over 3.9 million, and the DU is just shy 10 of 2 million. 11 Q And so same question; is it your understanding 12 that customers that would otherwise buy the DU were 13 buying the DGF or DG instead in 2019? 14 A I don't know the differential of -- of what 15 customers were buying the DG or DGF or DU. I don't -- I 16 don't know if specific customers switched. I -- I don't 17 have that data. 18 Q And then in 2020, the DGF is bringing in 19 5.8 million; right? 20 A In 2020? It does look like the DGF sold 21 slightly over \$5.8 million worth of product. 22 Q As compared to the DU, which brought in close 23 to 1.5 million; right? 24 A In 2020, it looks like the DU sold just shy of 25 1.5 million; correct.
Page 103 1 THE WITNESS: I -- yeah, I can't -- I can 2 say that we sold more of the DG versus the DU from a 3 dollar standpoint. I don't know quantities. I don't 4 know number of jobs. I don't know how, you know -- what 5 territories overall each was in. So it's a little hard 6 to say. 7 BY MS. SCHEIPETER: 8 Q Do you know whether the DG was taking market 9 share from the DU that year? 10 MR. MAUCH: Objection. Vague. 11 BY MS. SCHEIPETER: 12 Q In other words, customers that would normally 13 buy the DU had switched over to the DG? 14 A I don't know of specific customers that might 15 have switched from the DU to the DG, you know, 'cause I 16 couldn't say if the people that bought the DG were 17 using -- using the DU. I'm sure we could probably go 18 find and do a comparison of which customers we were 19 selling to. 20 The -- the difficulty in that is also, again, 21 we sell through distribution. So I don't -- the end 22 user using it, I can't -- I don't have specific 23 knowledge as in to, like, did this contractor decide to 24 use the DG versus a -- a DU or, you know, if they were 25 using a ledger connection prior to or something else.	Page 105 1 Q So the market for the DGF, it grew from 2019 2 to 2020; right? You sold more -- Simpson sold more DGF 3 in 2020 versus 2019? 4 A Simpson did sell more of the DGF series 5 hangers than we did in 2019; yes. 6 Q Do you attribute that to a growth in the 7 overall market for this type of product, or was it your 8 understanding that you were taking market share away 9 from MiTek that year? 10 A I -- I don't have specific knowledge on if we 11 were taking market share from -- from MiTek in -- in 12 2019. I do believe the overall multi-family market was 13 growing still in 2019. 14 Q So it was growing in 2019? 15 A I believe the overall -- if we go back and 16 look at US census data, we would see the multi-family -- 17 the multi-family market overall is growing over what it 18 did in 2018. 19 Q What about in 2020? 20 A 2020 is kind of a -- yeah, that was the year 21 of Covid, so -- but the way multi-family works; right? 22 These are long-term projects compared to, say, single 23 family. So I do believe there was growth at least for a 24 portion of the year, but there could have been some 25 pullback, you know, later in -- in that year after the

27 (Pages 102 - 105)

Page 106 1 pandemic started. 2 Q And did the market continue to grow in 2021? 3 A As far as multi-family goes, I do believe it 4 bottomed out in 2020 a little bit and kept growing. 5 I -- you know, construction was considered essential, 6 right, along with the fund differentiators we had during 7 the pandemic so construction could continue to occur. 8 So I think it began growing again in 2021. 9 Q And what about in 2022; continued to see 10 growth in the market that year? 11 A Multi-family did continue -- continue to see 12 growth in 2022. I think we -- yes. 13 Q What about 2023? 14 A In 2023, I believe we started to see sort of 15 a -- a leveling off of the multi-family market, if not 16 really a cooling overall in the market. 17 Q And that's somewhat reflected in the numbers 18 here; right? It looks like, combining both your DGT and 19 DGF sales, since your product mix was split in that year 20 as compared to 2022, it was a little bit less revenue 21 that you brought it in 2023; right? 22 A Yes, we do show that in 2022, there was just 23 over 18.2 million in sales for firewall hanger products, 24 and in 2023 there was just shy of 17.2 million in total 25 sales.	Page 108 1 THE WITNESS: I'm not aware of any 2 specific customer loss due to the introduction of the 3 DGT. 4 BY MS. SCHEIPETER: 5 Q Does Simpson have any sales projections for 6 the DGT for 2025? 7 MR. MAUCH: Objection. Calls for 8 speculation. 9 THE WITNESS: Yeah, I'd have to ask our 10 different branches what their overall goals are. 11 Usually those are set sort of as a percentage based on 12 how the market overall is expected to do. So I'm not 13 sure if they have a specific goal around that series or 14 if it's just an overall sales projection goal. 15 BY MS. SCHEIPETER: 16 Q Are you expecting the market in 2025 for 17 multi-family to be pretty similar to 2024? 18 A I'd have to look at, you know, our -- we 19 usually reference Zonda for getting sort of market 20 projections and what we're doing or what we should 21 expect for the year. 22 I think there is still a bit of a slowdown 23 projected, and obviously, the difference in what's going 24 on with tariffs and everything in the market right now 25 are having kind of a -- a wait-and-see effect.
Page 107 1 Q And you would attribute that to this leveling 2 off of the market for multi-family? 3 A I'd say the multi-family market cooling off in 4 twenty-twenty -- 2023 a bit probably had some effect on 5 overall sales. 6 Q And then looking at the 2024 column, do you 7 know if that is data for the entire year 2024? 8 A I am fairly confident that that is data for 9 the entire year of 2024. 10 Q Okay. So there's a pretty big drop then 11 between 2023 and 2024; correct? 12 A There is a large drop in -- if you're 13 referring to the sales data, there's also a pretty big 14 pullback in multi-family market overall in 2024. 15 Q And that was going to be my question. What do 16 you attribute that drop to? 17 A There was a pretty big drawback in multi- 18 family. If we looked at the sector and everything we 19 sell into that market, it had a -- had a drawback last 20 year. 21 Q Did Simpson lose customers to MiTek once the 22 DGF was pulled and replaced with the DGT? 23 A I'm not -- 24 MR. MAUCH: Slow down. 25 Objection. Vague.	Page 109 1 So it's very difficult to answer that question 2 at this time. 3 Q Are there any other facts that you have 4 supporting Simpson's contention that the commercial 5 success of MiTek's firewall hanger product does not 6 support non-obviousness that we haven't yet discussed? 7 MR. MAUCH: Objection. Vague and 8 mischaracterization of prior testimony. 9 THE WITNESS: I currently don't have any 10 other specific details I can think of on that line of 11 questioning. 12 MS. SCHEIPETER: Is now an okay time to 13 break for lunch? 14 MR. MAUCH: It is for me. I know lunch 15 is here. 16 MS. SCHEIPETER: Okay. Let's break. 17 THE VIDEOGRAPHER: This marks the end of 18 media unit 2. We're going off the record. It is 11:57 19 a.m. 20 (Off the record.) 21 THE VIDEOGRAPHER: One moment. This 22 marks the beginning of media unit 3. We are going back 23 on the record. The time is 12:38 p.m. 24 BY MS. SCHEIPETER: 25 Q Moving on to the second factor that's listed

28 (Pages 106 - 109)

Page 110 1 for the factors that support or don't support non- 2 obviousness, and that's "Long felt but unresolved need," 3 do you have any opinions about whether the MiTek 4 firewall hanger product solved a long felt but 5 unresolved need? 6 A Yeah, I believe I do have some opinions on 7 that. 8 Q Okay. What are those opinions? 9 A I would say that the -- the need for fire 10 hangers was not one that was long felt and unmet. I 11 think pretty quickly, as people started inquiring about 12 whether or not there could be hangers used in this 13 situation, the need was -- was met, first by the DU 14 series and very quickly thereafter by the FWH and then 15 followed by the DG. 16 Q So in your opinion, what amount of time would 17 amount to "long felt"? 18 A Yeah, I -- I guess that's another one that's 19 in the eye of the beholder, but I think in my mind, the 20 "long felt" would be maybe decades that you'd be 21 searching for it. 22 Q And the need you're defining as "the need for 23 a hanger that can be used on a fire system wall 24 assembly"? 25 A Yeah, in -- in this case, I think the -- the	Page 112 1 this need for that type of hanger arose in the market? 2 A That's the earliest date. You know, I 3 would -- I would say, you know, we started hearing more, 4 I think, that our product development even started 5 working on something to address it. 6 Q Would you say that separate and apart for any 7 type of hanger for use with these type of fire-assistive 8 wall assemblies, do you think there was also at some 9 point a need in the market for a firewall hanger that 10 could be installed prior to the sheetrock? 11 MR. MAUCH: I'm sorry, I didn't -- can 12 you repeat that question? 13 MS. SCHEIPETER: Yeah. 14 BY MS. SCHEIPETER: 15 Q So I think you testified that you -- the need 16 that you're describing is just a need for firewall 17 hangers for this type of wall assembly; correct? 18 A Correct. 19 Q And you said that was partially, or at least 20 in some part, solved with the DU; right? 21 A I did say, yes, partially solved by the DU. 22 Q Which has to be installed after the drywall is 23 already hung on the wall assembly; correct? 24 A The DU series does have to be installed after 25 drywall.
Page 111 1 need is, yeah, a hanger an option for being used in a 2 two-hour fire-rated assembly. 3 Q When do you think that need arose? 4 A I believe the need arose in the 2010s is when 5 we started hearing more about it. 6 Q Can you get more specific than that whole 7 decade? 8 A Early 2010s. 9 Q So the -- what year was the DU introduced? 10 A I think we brought it to market -- I think the 11 first sales were in 2014. I think it might've actually 12 been introduced around the end of December of 2013. 13 Q Would you agree that the need arose as early 14 as 2010? 15 A I would say, you know, what we -- what we 16 spoke about earlier in my testimony, like 2012 IBC is 17 a -- a reference that I've seen in the market multiple 18 times for when people were asking more for solutions in 19 Type III construction. So the 2012 IBC is some of the 20 impetus. So probably not as early as 2010. Maybe, you 21 know, as early as that round of -- or the 2012 IBC 22 coming out, which I do believe it comes out slightly 23 before the year. So maybe late 2011. 24 Q But the release of the 2012 updates to the 25 IBC, that's the earliest date that you would testify	Page 113 1 Q In your opinion, did a separate need arise in 2 the market for a different type of firewall hanger that 3 could be installed before the drywall? 4 MR. MAUCH: Objection. Vague 5 THE WITNESS: I would say -- say yes, 6 eventually there was some feedback for -- from folks in 7 the market that they would like to have a product that 8 could be installed prior to the drywall. 9 BY MS. SCHEIPETER: 10 Q What's the earliest date that you think that 11 particular need arose in the market? 12 A In the -- probably in 2012, 2013. Something 13 in that -- that range. Just thinking about the 14 development of the DU. 15 Q And then the DG was released in the middle of 16 2017; right? 17 A Yes. The DG was released in 2017. 18 Q So the need arose end of 2012, and Simpson 19 first introduced a product that could meet that need in 20 middle of 2017; correct? 21 A Simpson first released the DG in the middle of 22 2017; yes. 23 Q And so that would be the first time that 24 Simpson met that particular need; right? 25 A That would be the first time Simpson had a

Page 114 1 product that could be installed prior to drywall as a 2 hanger for firewall assemblies; yes. 3 Q Do you have any opinions about whether the 4 failure of others to make the invention that's embodied 5 by the MiTek firewall hanger or solve the problem 6 address, supports, or doesn't support non-obviousness in 7 this case? 8 A I -- I would say yes, I have an -- an opinion 9 there. 10 Q What is that opinion? 11 A My opinion would be that I don't believe many 12 others tried. I think MiTek tried and -- and succeeded, 13 and Simpson tried and succeeded to meet this need. 14 Q You're not aware of any other competitors? 15 A There's one other whose name I'm forgetting 16 that's out there, but I'm forgetting the name of that -- 17 that other one. And I --they're -- they're kind of a 18 smaller player. 19 Q When you say "out there," you mean they were 20 successful in developing a product, or they -- you just 21 know that they tried? 22 A No, there's another firewall hanger product 23 that's out there. I just forget the name of that 24 company at the moment. 25 Q And I assume you don't have any details on	Page 116 1 any facts regarding, or are you knowledgeable about that 2 development timeline and the details about that 3 development that ultimately led to the release of the 4 DG? 5 A That's probably not my best area of expertise. 6 Q And you don't intend to testify regarding 7 facts on that timeline or development at trial? 8 A I believe other experts will be utilized 9 for -- for that line of question. 10 Q Do you have any opinions about whether others 11 in the field were skeptical about MiTek's firewall 12 hanger invention? 13 A Yes. 14 Q What are those opinions? 15 A I don't think people were skeptical about the 16 ability for there to be a hanger that could be installed 17 prior to drywall and utilized -- installed prior to 18 drywall and then, you know, utilized further in 19 construction. 20 Q Do you have opinions about whether Simpson 21 itself was skeptical about the actual invention, MiTek's 22 firewall hanger? 23 A About the -- could you be more specific about 24 what you mean? 25 Q Yeah. It wasn't a great question. I'm trying
Page 115 1 their product development timeline? 2 A I do not. 3 Q So it's your opinion that because not many 4 others in the industry tried to make the invention, that 5 does not support non-obviousness in this case? 6 A I would say because I don't believe many 7 others tried, or at least that I'm aware of that tried, 8 and the fact that both MiTek and Simpson, in my opinion, 9 were able to address the need rather quickly. 10 Q How many years did Simpson spend working on a 11 solution for a firewall hanger that could be installed 12 prior to the drywall? 13 MR. MAUCH: Objection. Calls for 14 speculation. 15 THE WITNESS: Yeah, I would say I'd have 16 to go back and confer with others to give you a -- a 17 pretty exact timeline. I can tell you I was aware that 18 Simpson was looking at different solutions to address 19 the -- the need for firewall hangers in 2013. I can 20 think of some testing that was done -- done then, and 21 obviously the DU was released then, but I know there was 22 also options being looked at that that could be 23 installed prior to the drywall. 24 BY MS. SCHEIPETER: 25 Q And I can possibly shortcut this. Do you have	Page 117 1 to distinguish between -- I think the way you just 2 answered was establishing that you don't believe people 3 in the industry were skeptical that a product could be 4 developed that could be installed before the drywall; 5 right? Is that what you were trying to say? 6 A I believe that that encompasses what I was 7 saying, yes. 8 Q Okay. And so now what I'm trying to figure 9 out is, did anyone at Simpson, or do you have an opinion 10 about whether others at Simpson were skeptical about the 11 MiTek firewall hanger itself, about any of its features 12 or claimed benefits or load capacities, skepticism 13 regarding what that product was intended to do, how it 14 was going to perform, anything along those lines? 15 MR. MAUCH: Objection. Vague. 16 THE WITNESS: So you -- you mentioned 17 quite a few different possible, I guess, features of -- 18 of the product. I would say -- I would say I recall -- 19 you know, I don't think anybody was skeptical of, "Hey, 20 there's a product of a hanger that can be installed 21 prior to the drywall and -- and utilized in -- in a 22 firewall hanger assembly." 23 I recall skepticism around the load 24 capacities, but that was charged by multiple different 25 documents being published by MiTek with different load

Page 118 1 ratings within a very short duration of time. 2 BY MS. SCHEIPETER: 3 Q So there was confusion regarding what the load 4 capacities actually were for the product? 5 A Yes. Understanding what the actual load 6 rating was going to be of the capacities that they were 7 standing behind and why would it be changing within a 8 very short duration after launch. 9 Q Are you aware of anyone at Simpson being 10 skeptical that an installer could cut a slit in the 11 drywall and maintain that required fire rating? 12 A I am not aware of anybody specifically being 13 skeptical about that. I mean, people could talk about 14 sloppiness being a factor; that could happen, but 15 drywall's cut constantly. So be hard to be skeptical 16 about the ability to cut drywall. 17 Q And if that was one of the potential designs 18 that was presented to you during the R&D leading to the 19 ultimate design of the DG, that particular type of 20 design would not have worried you at all? One that 21 would require a slit in the firewall? 22 MR. MAUCH: Objection. Incomplete 23 hypothetical. 24 You can answer. 25 THE WITNESS: Worried me in in what way?	Page 120 1 BY MS. SCHEIPETER: 2 Q You're not aware one way or the other whether 3 customers were hesitant to change their construction 4 practices? 5 A I can't currently think of an example of 6 somebody specifically saying that they didn't want to 7 change their practices in that vein. 8 Q Do you have any information or facts regarding 9 Simpson salespeople believing that municipalities would 10 not be willing to change their codes to require the type 11 of firewall hanger that MiTek had designed? 12 MR. MAUCH: Objection. Assumes facts not 13 in evidence. Lacks foundation. 14 THE WITNESS: Trying to think back to 15 your question. The -- you asked if any Simpson Strong- 16 Tie employees thought that jurisdictions would not -- 17 would be skeptical or would approve the use of a 18 firewall -- of a hanger? I'm sorry. 19 BY MS. SCHEIPETER: 20 Q Yeah, that's fair. Are you aware of any -- or 21 do you have any facts about Simpson salespeople being 22 skeptical that municipalities would change their codes 23 to actually require the type of product that MiTek 24 designed, one that can be installed before the drywall? 25 MR. MAUCH: Same objections, also vague.
Page 119 1 I guess, if you could be more specific. 2 BY MS. SCHEIPETER: 3 Q In that -- or concern you or made you 4 skeptical about the ability of the product to maintain 5 that two-hour firewall rating with a slit in it. 6 A No, that wouldn't concern me 'cause there's 7 testing that can be done to -- to prove out that 8 consideration. 9 Q Do you have any facts regarding customers not 10 wanting to change their construction practices to 11 install hangers before sheetrock? 12 MR. MAUCH: Objection. Lacks foundation. 13 Assumes facts not in evidence. 14 THE WITNESS: So going back to your 15 question, do I have any facts related to customers not 16 wanting to change their practice to -- yeah, that would 17 be speculating to see if somebody would be like, "I 18 don't want to use these hangers." 19 'Cause that could happen if a contractor 20 is used to a certain type of detailing, yet they get a 21 plan that required something new. 22 They could always try to argue with the 23 designer and the owner to do something different. 24 That -- that happens consistently in construction, but 25 I'm not aware of anything specific.	Page 121 1 THE WITNESS: I'm not -- I'm not 2 remembering specific skepticism towards that at this 3 time. 4 BY MS. SCHEIPETER: 5 Q Did certain municipalities change their codes 6 to require firewall hangers that could be installed 7 before the drywall? 8 THE WITNESS: I'm not aware of any 9 municipalities actually changing their codes. I believe 10 most municipalities would just interpret -- look at the 11 code reports and the firewall or fire-testing reports 12 and then decide if it met their codes. 13 I don't know of any specific actual 14 changes to a municipality's code. 15 BY MS. SCHEIPETER: 16 Q So you don't believe that the industry was 17 skeptical about MiTek's firewall hanger or the ability 18 to maintain the rating with a slit cut in. 19 Is there anything else that we haven't 20 discussed relating to that particular factor of 21 skepticism or disbelief that we haven't discussed that 22 you intend to offer at trial? 23 MR. MAUCH: Objection. Vague, compound. 24 THE WITNESS: Yeah, I don't have any 25 other facts that are currently coming to mind that -- in

Page 122 1 relation to that topic. 2 BY MS. SCHEIPETER: 3 Q Nothing else that supports your opinion that 4 the industry was not skeptical of the invention? 5 A I guess the thing that would support that 6 opinion would probably be how, I believe, MiTek had 7 sales in their first year, and don't have any idea what 8 those sales are, but the fact that product sold would -- 9 Q Do you have any opinions or facts supporting a 10 Simpson position that MiTek receiving or not receiving 11 positive recognition for its invention does not support 12 non-obviousness in this case? 13 A I truly love the double negatives that are 14 used in all these questions. 15 Q It's not my fault; it's to the legal standard. 16 A I can speak to this. 17 Q Okay. What are your opinions? 18 A I believe there was positive recognition of 19 having a solution that could be installed prior to the 20 drywall. I don't think that that contributes to it 21 being non-obvious. 22 Q And what is the basis for that opinion? 23 A I believe people are pretty used to installing 24 hangers and using them, you know, to attach floor 25 systems to wall systems. Having something that could do	Page 124 1 recognition, disbelief, we've been talking about "the 2 industry"; I've used that term loosely. How would you 3 define "the industry" in terms of is it the specifiers? 4 Is it the end users? Is it your distributors? When 5 you're thinking about those factors, what are you 6 defining as "the industry"? 7 A I would define "the industry" as the 8 construction industry. So it's going to include 9 specifiers, whether it's architects, engineers, its 10 distribution channel. So our customers, MiTek's 11 customers, us, MiTek, building officials, contractors, 12 building owners; yeah. 13 Q It's all the stakeholders. 14 A Quite a few stakeholders. Sure. 15 Q It's important to Simpson to have buy-in from 16 all of those individual stakeholders? 17 MR. MAUCH: Objection. Calls for 18 speculation. 19 THE WITNESS: Buy-in for what, exactly? 20 BY MS. SCHEIPETER: 21 Q I guess in terms of the positive recognition. 22 When you debut a product, you're looking for positive 23 recognition of that product; right? 24 A When we debut a product, yes, we want -- we 25 want folks to like the product and want to purchase it,
Page 123 1 so and maintain a two-hour fire rating is not a large, 2 large leap. 3 Q Anything else? 4 A No. 5 Q Do you have any specific facts about 6 MiTek's -- I'm sorry. Do you have any specific facts 7 regarding positive recognition in the industry for 8 MiTek's invention? 9 A The positive recognition I could say is just 10 feedback from some sales folks saying, "We have a hanger 11 that installs after the drywall. When are we coming out 12 with our hanger that installs prior to the drywall?" 13 Q Did Simpson receive positive recognition when 14 it also introduced a product that could be installed 15 before the drywall? 16 A Yes. 17 Q Anything specific that you intend to testify 18 about the positive recognition Simpson received for that 19 product? 20 A I suppose I would just be answering questions 21 related to sales for the product, customers purchasing 22 the product, seeing the product installed in the field. 23 Those would be the type of things I'd be talking about 24 on trial if asked about it. 25 Q As we've been discussing skepticism, positive	Page 125 1 install it, utilize it, that type of positive 2 recognition. Yes. 3 Q By all of those stakeholders in the 4 construction industry? 5 A We reach all of those stakeholders. So we 6 would want -- we want positive feedback from all if we 7 can obtain it. 8 Q Do you know who Gary Pugmire is? I might be 9 saying that wrong -- Pugmire? 10 A Gary Pugmire is one of Simpson's salespeople. 11 Q Are you familiar with him at all? 12 A I have met him once or twice. Actually, 13 trying to think if he's still working for us, but yes, 14 I'm somewhat familiar. He doesn't -- never worked at 15 the same branch or anything but -- 16 Q Did you work with him? 17 A Worked for the same company; like, I didn't 18 work closely with -- with Gary. 19 Q You weren't frequently interacting with him? 20 A I was not. 21 Q Do you have any opinions on whether he was a 22 good employee for Simpson? 23 MR. MAUCH: Objection. Vague. Calls for 24 speculation. 25 THE WITNESS: I do not have opinions on

32 (Pages 122 - 125)

Page 126 1 that. 2 BY MS. SCHEIPETER: 3 Q Do you have any opinions about whether others 4 copying MiTek's firewall hanger invention does or does 5 not support non-obviousness in this case? 6 A I'm not aware of others copying MiTek's 7 invention. 8 Q I take it your position is that copying is not 9 a factor that supports non-obviousness; right? 10 MR. MAUCH: Objection. Calls for a legal 11 conclusion. 12 THE WITNESS: Yeah. The phrasing of 13 these questions is killing me. 14 BY MS. SCHEIPETER: 15 Q I know, I apologize. It is a -- you're right; 16 it is a double negative. 17 Do you want me to repeat it? 18 A Please. 19 Q Is it your position or your opinion that the 20 factor of copying does not support non-obviousness of 21 Claim 40 or the 510 patent in this case? 22 MR. MAUCH: Objection. Calls for a legal 23 conclusion. 24 THE WITNESS: I believe my -- my thoughts 25 in this are that copying didn't occur so --	Page 128 1 counsel that can review that patent and let you know 2 that the designs you are creating, if they're in the 3 same genre, do or do not infringe on that -- that 4 patent; if you were -- you were advised they are not, 5 then you would not consider yourself to be, you know, 6 copying any of that solution, and then -- 7 Q And then on the other hand, if someone did 8 infringe a patent that covers the MiTek firewall hanger, 9 that would be copying? 10 MR. MAUCH: Objection. Calls for a legal 11 conclusion. Vague. 12 You can answer. 13 THE WITNESS: I would -- I would say if 14 someone is willfully using claims by others and 15 designing a -- a product to -- that -- that 16 intentionally infringes on a patent would be considered 17 copying. 18 BY MS. SCHEIPETER: 19 Q What if it was unintentional, but the product 20 that was ultimately introduced does infringe? 21 A Yeah, I guess -- I think that's probably 22 beyond my capacity as far as understanding the legal 23 standard. 24 Q You don't have any opinions about that? 25 A I do not.
Page 127 1 BY MS. SCHEIPETER: 2 Q So in your opinion, there's no facts that 3 would support that type of analysis because no copying 4 incurred? 5 A Yes. I would agree that there's no facts to 6 support that 'cause copying didn't occur. 7 Q And with respect to that opinion, how are you 8 defining "copy"? 9 A I would say the most obvious way you could see 10 somebody copying something is if you saw an exact 11 replica of something. That's one factor, which I don't 12 believe exists, at least that I am aware of. Otherwise, 13 I would say somebody -- or knowing facts around a patent 14 or a patent pending, making sure that you are not -- 15 utilizing legal counsel and others that understand 16 patent law to help inform design choices to make sure 17 you are not infringing, you know, in any way that could 18 be considered copying another's patent. 19 Q Okay, so explain that a little bit more. I 20 understood the first one, creating an exact replica, 21 that would be considered copying. The second thing you 22 said, is your testimony that as long as you are trying 23 not to infringe a patent, then that's not copying? 24 A What I'm saying is, if you are aware of a -- a 25 patent and have access to resources such as legal	Page 129 1 Q Do you have -- I'm sorry, one more thing about 2 your definition of "copying." What about just copying 3 the features of MiTek's patented firewall hanger? Could 4 that be a way to copy it? 5 A I'd say that's a -- depends. It's probably 6 way too broad of a -- of an example, 'cause then we 7 could go back to, you know, who invented the first 8 hanger, and then it would just go on forever so -- 9 Are you having problems with audio? 10 THE VIDEOGRAPHER: Yeah. 11 Counselor, can you -- your microphone? 12 MS. SCHEIPETER: Oh, shoot, sorry. 13 THE VIDEOGRAPHER: -- move your -- 14 BY MS. SCHEIPETER: 15 Q Do you have any opinions on whether the DGF 16 infringed Claim 40 of MiTek's 510 patent? 17 MR. MAUCH: Objection to the extent it 18 seeks a legal conclusion. 19 THE WITNESS: From the feedback we've 20 gotten from counsel, my understanding is that we have 21 not infringed on the 510 patent. 22 BY MS. SCHEIPETER: 23 Q Do you have an independent assessment or 24 opinion about that that does not come from information 25 you've received from counsel?

Page 130 1 A I mean, my only, you know, opinion on that 2 would be, you know, looking at the -- the hangers 3 that -- that we have; they look very different from the 4 FWH. But overall, as far as any infringement, I'd be 5 looking for the advice of counsel since that's not my 6 area of expertise. 7 Q You haven't looked at the claims and made an 8 assessment of whether the limitations are found in the 9 DGF? 10 A I have not. 11 Q Are you aware of anyone at Simpson having an 12 opinion, besides yourself, I guess, that the DGF does 13 not infringe Claim 40 or the 510? 14 A I am not aware of the opinions of others 15 and -- and their response to that question. 16 Q Do you know how many different designs or 17 potential designs Simpson considered when doing its 18 research and development related to a firewall hanger 19 that could be installed before the drywall? 20 MR. MAUCH: Objection. Vague. 21 THE WITNESS: I am not. 22 BY MS. SCHEIPETER: 23 Q Okay. So just so I'm clear on this, your 24 opinion is that Simpson did not copy MiTek's invention, 25 and that opinion is based upon the fact that you've been	Page 132 1 different from the stops that are provided in the -- the 2 DGF. The DGF has its funnel flange features that are 3 not apparent in the FWH. There's minor things like, you 4 know, galvanization differences, the amount of zinc 5 available on the DGF versus the FWH. 6 Q Did Simpson copy the feature of an extension 7 portion that's configured to extend through the drywall 8 with the DGF? 9 MR. MAUCH: Objection. Calls for 10 speculation. 11 THE WITNESS: No. Their feature is 12 different, requiring, you know, the way that you -- you 13 cut the drywall, slit the drywall is different from what 14 is done for the DGF. 15 BY MS. SCHEIPETER: 16 Q And does the DGF have an extension portion 17 that's configured to extend through drywall? 18 MR. MAUCH: Objection to the extent that 19 seeks a legal conclusion. 20 THE WITNESS: It's -- the DGF is 21 separated from the framing to allow two -- two layers of 22 drywall. I don't -- whether you would call it an 23 extension or whatnot may be legal phrasing but -- 24 BY MS. SCHEIPETER: 25 Q Are you saying you can't answer because you're
Page 131 1 advised by counsel that the DGF does not infringe Claim 2 40 of MiTek's 510 patent; is that accurate? 3 MR. MAUCH: Objection. Misstates 4 testimony. 5 THE WITNESS: I don't believe that we -- 6 that Simpson copied the FWH, and based on feedback from, 7 you know, legal interpretations of the -- the claims, 8 that reinforces my belief that we did not. 9 BY MS. SCHEIPETER: 10 Q Are there any other factual bases for that 11 opinion aside from the legal aspect and the legal advice 12 that you've received from counsel? 13 A I would just say if you look at the two parts, 14 you would see that they're very different products in 15 how they achieve the ability to install prior to the 16 drywall and be a hanger. 17 Q What specific differences are you referring 18 to? 19 A If you look at the two hangers, you will see 20 that the FWH, the -- the separation created between the 21 wood framing and the seat of the hanger, the FWH, those 22 flanges are adjacent to each other. The -- to whereas 23 if you look at Simpson's, like, they're apart. 24 If you look at how the FWH stops the joist and 25 where it sits in it, the back flanges are -- are	Page 133 1 not sure what an extension portion means legally? 2 A Correct. 3 Q Do you have any opinions on whether the MiTek 4 firewall hanger had any unexpected results or 5 properties? 6 A Unexpected? Yeah, I would say yes. 7 Q What are those opinions? 8 A I don't -- I would not say that there was 9 anything specifically unexpected of -- of the FWH. 10 Q And what's the basis for that opinion? 11 A Just that it's -- in many ways it's very 12 similar to a lot of other hangers in that it meets 13 dimensional requirements, has load capacities and a 14 range that could meet a lot of floor joist demands. You 15 know, with it being designed to address the two-hour 16 firewall need and wanting to be installed prior to the 17 drywall, how that was obtained is not -- it doesn't 18 strike me as unexpected. It's like you see it; it seems 19 fairly obvious that it could do that. 20 Q Was the ease with which the MiTek firewall 21 hanger can be installed unexpected or surprising to 22 Simpson? 23 MR. MAUCH: Objection. Calls for 24 speculation. 25 THE WITNESS: I guess I'd be asking what

Page 134 1 ease you're referring to. I mean -- 2 BY MS. SCHEIPETER: 3 Q Well, do you have an opinion on whether 4 MiTek's firewall hanger is easy to install? 5 A It installs with, you know, nails and a -- and 6 a hammer or a palm nailer, which is a fairly typical 7 method of construction. So that's -- I -- I think 8 that's probably simple enough. And then, you know, 9 using a drywall saw to cut drywall is pretty simple as 10 well. So I think it's pretty straightforward. 11 Q Thinking back to that PowerPoint presentation 12 that we reviewed earlier, it seems that at least at the 13 time the DGT was introduced, Simpson believed that the 14 MiTek firewall hanger was actually going to be installed 15 more quickly than the Simpson competitive products; 16 right? 17 MR. MAUCH: Objection. Misstates 18 documented testimony. 19 THE WITNESS: The -- the -- what was that 20 exhibit? I'll just reference it. Exhibit 3 just states 21 that it would be faster, likely faster to do the drywall 22 cutting portion for the FWH versus the -- the DGT. 23 BY MS. SCHEIPETER: 24 Q So sitting here today, you don't have any 25 opinions about whether the MiTek firewall hanger overall	Page 136 1 asked about the facts. 2 Q So the topic sets forth -- or in that topic is 3 stated "Simpson's understanding of the level of 4 technical knowledge, schooling, experience" and so on. 5 What is Simpson's understanding of the level of 6 technical knowledge, schooling, experience, training, 7 and expertise of a POSITA? 8 A So for Simpson's understanding, you know, this 9 is going to be somebody that has at least a -- a 10 bachelor's in civil structural or mechanical engineering 11 and has at least four years of experience working in the 12 construction industry in order to understand the 13 products used in that industry. 14 Q Anything else? 15 A No, I -- I believe -- you know, if you wanted 16 me to reference something specific, I think another 17 expert's Andrew Fennell. Like, we -- we have that 18 document somewhere that we could grab if we needed to 19 look at that. 20 Q Do you have any specific facts supporting that 21 understanding that you intend to discuss at trial with 22 respect to the types of problems encountered in the art? 23 A I guess I could only speak to is if somebody 24 has that -- that experience and background, how they 25 would -- would be able to use that experience and
Page 135 1 installs more quickly or more easily than the DGF? 2 A I have not done any time studies comparing the 3 two. In general, it seems like the FWH and DGT -- or 4 DGF, sorry -- that's what you asked on -- are fairly 5 close on install time and, you know, using nails to 6 install and drywall saw to -- to cut the drywall. 7 Q Is there anything else that we haven't yet 8 discussed that supports your opinion that the MiTek 9 firewall hanger did not achieve any unexpected results 10 or properties? 11 A I don't believe so, no. 12 Q Okay. If you want to refer back to Exhibit 1, 13 I'm going to move on to that fourth bullet point. 14 A Okay. 15 Q Which is a bit of a mouthful. It's "Facts 16 relating to Simpson's understanding of the level of 17 technical knowledge, schooling, experience, training and 18 expertise of a person having ordinary skill in the art 19 of the subject matter of that claim and the factual 20 basis for that contention, including identifying the 21 following," and I'll stop there. Do you have any 22 opinions related to this topic? 23 A Let's see. Let me read through it one more 24 time. Yes, I believe I could speak to facts related to 25 this question and provide opinions based on questions	Page 137 1 background to understand -- understand the encountered 2 art. 3 Q And I can attempt to shortcut this. Do you 4 have any specific facts that you intend to offer at 5 trial related to any of those other categories that come 6 after the colon there in the fourth bullet point, or are 7 you deferring to Mr. Fennel's testimony? 8 A I'll -- I'd likely be deferring to that 9 testimony. 10 Q Okay. The final topic is "Comparing and 11 contrasting Simpson's DU series, DG series, DGF series, 12 DGT series, and MiTek's FWH series." Do you intend to 13 offer any facts or opinions comparing and contrasting 14 those various products at trial that we haven't already 15 covered in our prior discussions? 16 A I believe the earlier discussions that we had 17 for the second bullet likely covered everything that 18 would come up in trial related to that topic. 19 Q As you sit here today, do you have any 20 opinions that you intend to offer at trial rebutting any 21 of MiTek's experts? 22 A I am not aware of what opinions are going to 23 be offered by MiTek's experts. So I can't answer that 24 with a "yes" or "no." 25 Q Well, if you had opinions -- if you had

Page 138 1 rebuttal opinions, you'd have to disclose them today. I 2 take it you don't have any opinions today; correct? 3 A I do not have -- as I'm sitting here today. I 4 see how you phrased that. I understand that. 5 Q And that makes sense because I think you 6 testified you haven't read any of the expert reports in 7 this case; correct? 8 A I have not read any of the expert opinions in 9 this case. 10 Q Is there anything else related to your expert 11 disclosure in Wert Exhibit 1 that you feel has been not 12 touched or not discussed that you intend to discuss at 13 trial? 14 A No. 15 Q Any other opinions that you intend to offer 16 the jury related to this case at all? 17 A No additional opinions on any topics outside 18 of what we've discussed so far. 19 Q No opinions on whether the MiTek 510 patent is 20 valid or invalid? 21 A Nothing additional from what I've stated so 22 far. 23 MS. SCHEIPETER: Can we go off the record 24 for a few minutes? 25 THE VIDEOGRAPHER: Sure.	Page 140 1 relation to this -- this case. 2 Q And did you agree with Mr. Fennell's opinion 3 regarding what he believed the qualifications and 4 criteria of a person of skill in the art in this case 5 would consist of? 6 A I do agree with that opinion. 7 MR. MAUCH: No further questions. 8 MS. SCHEIPETER: I don't have any more 9 questions either. 10 Thank you very much for your time today. 11 THE WITNESS: Thank you for your time. 12 THE OFFICER: And then before we go off 13 the record, would you like to order a copy of the 14 transcript? 15 MR. MAUCH: Yes. 16 THE OFFICER: Okay. And then would you 17 like it expedited as well? I know you got the one 18 yesterday expedited. 19 MR. MAUCH: If I could have Mr. Wert's at 20 the same time as the other, which I've been emailing 21 with today, so -- 22 MS. SCHEIPETER: What's the standard 23 turnaround time? 24 THE OFFICER: It is ten business days. 25 MS. SCHEIPETER: Okay. I think standard
Page 139 1 This marks the end of media unit 3. 2 We're going off the record. The time is 1:26 p.m. 3 (Off the record.) 4 THE VIDEOGRAPHER: All right. This marks 5 the beginning of media unit 4. We we're going back on 6 the record. The time is 1:41 p.m. 7 MS. SCHEIPETER: Mr. Wert, I don't have 8 any further questions for you. I believe your counsel 9 might have a few. 10 MR. MAUCH: I do. 11 EXAMINATION 12 BY MR. MAUCH: 13 Q Mr. Wert, you recall some questions from 14 Ms. Scheipeter regarding the fourth topic related to 15 personal skill in the art? Do you recall that? 16 A Yes, I recall we had questions around that. 17 Q And do you also recall Ms. Scheipeter asking 18 some questions about your review of any report by an 19 expert witness in this case? 20 A I do recall her asking questions around that. 21 Q Did you review any portion of a report by 22 Andrew Fennell in this matter? 23 A I did. And I -- I believe I mentioned that in 24 my reply to her, saying that I -- I recall seeing that 25 one paragraph that described what a POSITA was in	Page 141 1 is fine. 2 THE OFFICER: Okay. All right. Thank 3 you. 4 THE VIDEOGRAPHER: Okay. We are off the 5 record at 1:43 p.m., and this concludes today's 6 testimony given by Bryan Wert. The total number of 7 media used was four and will be retained by Veritext 8 Legal Solutions. 9 (Signature waived.) 10 (Whereupon, at 1:43 p.m., the proceeding 11 was concluded.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25

36 (Pages 138 - 141)

Page 142 1 CERTIFICATE OF DEPOSITION OFFICER 2 I, ARIANA CRISAFULLI, the officer before whom 3 the foregoing proceedings were taken, do hereby certify 4 that any witness(es) in the foregoing proceedings, prior 5 to testifying, were duly sworn; that the proceedings 6 were recorded by me and thereafter reduced to 7 typewriting by a qualified transcriptionist; that said 8 digital audio recording of said proceedings are a true 9 and accurate record to the best of my knowledge, skills, 10 and ability; that I am neither counsel for, related to, 11 nor employed by any of the parties to the action in 12 which this was taken; and, further, that I am not a 13 relative or employee of any counsel or attorney employed 14 by the parties hereto, nor financially or otherwise 15 interested in the outcome of this action. 16 <i>Ariana Crisafulli</i> 17 ARIANA CRISAFULLI 18 Notary Public in and for the 19 State of California 20 21 22 23 24 25	
Page 143 1 CERTIFICATE OF TRANSCRIBER 2 I, CHERYL NELSON, do hereby certify that this 3 transcript was prepared from the digital audio recording 4 of the foregoing proceeding, that said transcript is a 5 true and accurate record of the proceedings to the best 6 of my knowledge, skills, and ability; that I am neither 7 counsel for, related to, nor employed by any of the 8 parties to the action in which this was taken; and, 9 further, that I am not a relative or employee of any 10 counsel or attorney employed by the parties hereto, nor 11 financially or otherwise interested in the outcome of 12 this action. 13 14 <i>Cheryl Nelson</i> CHERYL NELSON 15 16 17 18 19 20 21 22 23 24 25	

0	2	2020 21:24	33255 143:14
0.9 83:23	2 3:11 12:2	22:20 104:18	3:19 1:8
04683 1:8	55:25 76:5,7	104:20,24	4
1	102:10 104:10	105:2,3,19,20	4 3:13 10:7,16
1 3:9 9:20,21	109:18	106:4	10:21 11:2
10:11 31:18	2000 46:22	2021 21:24	37:12 56:4
32:5,22 34:17	47:3	22:20 106:2,8	99:25 100:1,4
36:5 37:13	2007 21:17	2022 23:8	100:15 104:7
52:12 55:21	2010 111:14,20	106:9,12,20,22	139:5
56:4 83:23	2010s 111:4,8	2023 22:4,21	40 91:11,12,14
84:14,15 86:7	2011 111:23	79:22 106:13	126:21 129:16
90:6 135:12	2012 47:16	106:14,21,24	130:13 131:2
138:11	48:10,10,13	107:4,11	415 2:20
1.05 84:14	49:24 50:3,11	2024 3:13	421-6500 2:20
1.5 104:23,25	111:16,19,21	101:10 107:6,7	425 1:16 2:17
1.75 60:24	111:24 113:12	107:9,11,14	5
10 55:1	113:18	108:17	5 3:3 10:8,16
100 3:13	2013 111:12	2025 1:13 4:9	10:21 11:3
10:14 55:22	113:12 115:19	108:6,16	5.8 104:19,21
10:30 56:1	2014 3:13	23 76:23	510 91:7,10,11
11th 1:16 2:17	21:18,20	259-4589 2:12	91:13,14
12:38 109:23	101:10 111:11	26 10:14 37:20	126:21 129:16
139 3:4	2015 50:1,11	3	129:21 130:13
16 1:13	2017 101:12,15	3 3:12 10:15	131:2 138:19
16th 4:9	101:17,24	12:2 79:12,15	6
17.2 106:24	113:16,17,20	109:22 134:20	63105 2:8
18 12:22 63:3	113:22	139:1	7
18.2 106:23	2018 50:2	3.1 102:9	702 37:21
1:26 139:2	102:1,3,5,23	3.9 104:9	7228509 1:19
1:41 139:6	105:18	3/28/2019 3:11	76 3:11
1:43 141:5,10	2019 104:1,3,6	314 2:11,12	7700 2:7
1st 101:24	104:13 105:1,3	31894 142:16	
	105:5,12,13,14		

79 3:12	above 10:2	adding 18:7	alike 11:19
8	23:2,5 41:20	addition 53:17	allow 46:18
800 63:15	49:14,20	99:12	47:20 132:21
863-0800 2:11	absent 4:13	additional	allowance
9	accepted 94:12	138:17,21	48:24
9 3:10	access 35:13	additionally	allowed 42:2
90 61:20	91:21 127:25	4:13	46:7 50:18
916,000 104:8	account 22:17	address 112:5	allowing 50:16
94105 1:17	102:17	114:6 115:9,18	allows 26:6
2:18 4:10	accurate 22:19	133:15	55:5 82:9
9:02 1:14 4:5	79:2 100:10	adhesives	alternative
a	101:18 131:2	17:20 93:7	70:24 71:2
	142:9 143:5	adjacent	america 14:15
a.m. 1:14 4:5	achieve 131:15	131:22	14:19 97:9
55:22 56:1	135:9	administer	american 46:5
109:19	acknowledge...	4:12	57:25
ability 49:3	4:12	advantage 62:8	amount 63:7
61:2 66:5 74:2	acquire 98:15	88:17 92:15	85:1 96:17,17
86:19 99:10,18	acquired 98:20	advice 130:5	110:16,17
116:16 118:16	action 142:11	131:11	132:4
119:4 121:17	142:15 143:8	advised 128:4	analysis 85:13
131:15 142:10	143:12	131:1	92:4,12,17
143:6	actual 15:24	ago 12:22	127:3
able 37:4 44:8	39:7 116:21	32:17	anchors 17:20
48:18 54:23	118:5 121:13	agree 4:15 79:6	93:8
63:14 71:9	actually 28:20	79:8 86:2,4	andrew 136:17
72:18 73:6,15	81:15 82:3	111:13 127:5	139:22
73:25 75:3,6	89:2,3 111:11	140:2,6	angle 61:20
77:22 80:17	118:4 120:23	ahead 36:8	angles 19:6
90:15 96:15	121:9 125:12	62:7	another's
97:7 99:7,23	134:14	ahold 33:14	127:18
102:20 115:9	actuated 17:20	aid 50:25	answer 6:8,9
136:25	add 69:11	aligned 26:23	9:8 11:21 13:4
	96:16		17:7 31:2,11

33:10 38:17 39:7,13 46:16 63:8 65:19 89:14 94:19 95:24 97:24 109:1 118:24 128:12 132:25 137:23 answered 39:2 39:16 40:7 117:2 answering 123:20 anybody 53:14 87:11 88:24 89:2 117:19 118:12 anymore 12:20 anytime 54:22 87:1 anyway 55:12 apart 112:6 131:23 apologize 28:1 85:25 126:15 apparent 71:9 132:3 appeared 45:15 appears 81:14 applicable 4:19 application 78:11 apply 59:23	applying 26:14 appreciate 76:4 appropriate 31:2 approve 62:1 120:17 approved 51:4 99:15 approving 51:18 approximately 21:6,16 april 1:13 4:9 79:22 architects 13:11 14:9 124:9 area 116:5 130:6 areas 8:21 10:18 12:14 25:17 26:22 argue 119:22 ariana 1:18 4:3 142:2,17 arose 111:3,4 111:13 112:1 113:11,18 array 97:8 98:14 art 28:22 135:18 136:22 137:2 139:15 140:4	articles 47:13 57:14 aside 79:11 89:18 131:11 asked 8:21 25:9 30:21 37:4 38:10 39:2,15 40:6 45:19,24 69:1 89:2,3 120:15 123:24 135:4 136:1 asking 39:5 41:8 46:15 87:23 92:4,20 111:18 133:25 139:17,20 aspect 131:11 aspects 34:13 assemblies 12:12 22:8 26:7,8 27:8 29:17 38:20 40:15,18,22 43:19 44:18,23 50:13 52:15,23 56:7 57:16 58:20 112:8 114:2 assembly 42:1 42:5,11 44:17 45:2,23 46:2 53:9,19 60:16 67:11 75:15,15 86:19 96:6,9	96:16 101:8 110:24 111:2 112:17,23 117:22 assessment 129:23 130:8 assigned 4:3 assistive 40:14 40:22 52:15 58:19 98:25 112:7 association 30:9,10 associations 57:22 assume 29:21 45:20 58:7 84:6 114:25 assumes 32:7 71:14 119:13 120:12 assumption 78:3 88:6 assumptions 34:5,8,10,15 attach 50:12 122:24 attached 42:21 42:23 attachment 77:5,16 attempt 137:3 attendance 5:2 80:21
---	--	--	--

attorney 142:13 143:10	108:1 114:14 115:7,17 118:9	43:3,11,13,23 43:25	belief 131:8
attorneys 27:16 58:16	118:12 119:25 120:2,20 121:8	base 30:20 47:25 48:5	believe 8:20 14:22 21:18,24 35:16 36:21 42:18 44:5 46:22 48:4 58:14 59:15 60:9,13,16,17 60:21 61:11,22 70:10,19 71:16 72:1 75:3,5,7 75:20 76:12 77:13 78:16 79:25 80:16,20 80:24 81:5,8 85:4 101:9,17 105:12,15,23 106:3,14 110:6 111:4,22 114:11 115:6 116:8 117:2,6 121:9,16 122:6 122:18,23 126:24 127:12 131:5 135:11 135:24 136:15 137:16 139:8 139:23
attribute 72:19 105:6 107:1,16	126:6 127:12 127:24 130:11 130:14 137:22	based 14:18 42:10 66:3 92:7 97:1 98:20 108:11 130:25 131:6 135:25	
audience 14:6 80:23,24	awc 50:8 57:25		
audio 129:9 142:8 143:3	b		
author 30:4	b 2:4 3:6	bases 131:10	
authority 42:17 44:10 51:18 62:1 90:14	bachelor's 25:18 136:10	basic 97:10	
authorized 4:11	back 23:12 24:13 34:25 44:13 55:25 60:11,11 64:4 64:16 65:18 73:14 86:13,13 90:6 97:16,19 105:15 109:22 115:16 119:14 120:14 129:7 131:25 134:11 135:12 139:5	basically 18:2 19:4 28:20 92:16	
authorizing 50:5		basis 7:16,21 8:9,13 35:14 122:22 133:10 135:20	
availability 60:2 61:19 62:18,24,25 63:20 64:6,22 64:23 66:2,4 66:13	background 25:8 136:24 137:1	bates 81:10,11 100:4	
available 27:1 61:5,13 63:4,8 63:11 67:7 70:15 71:1,2 71:23 72:7,9 75:11 101:23 132:5	backwards 21:23	bearing 43:23 43:24 44:1	
aware 6:25 24:1 57:7,10 68:3 74:19	bad 88:4 bag 93:10 balloon 41:13 41:15,17 42:20	began 26:3 104:4 106:8	
		beginning 5:3 55:25 62:18 97:17 109:22 139:5	
		begins 81:10	
		behalf 2:2,14 5:8	
		beholder 95:14 110:19	
			believed 92:21 134:13 140:3 believing 120:9 beneath 42:15 beneficial 68:25

benefit 55:14 57:6 60:3 62:19,24 66:2 67:11 68:4,10 68:13 69:9,11 70:7,11,12 71:9 72:14 73:8,9 79:6,9 83:3 benefited 38:23 56:11,25 57:2 benefits 56:17 57:12 58:24 59:1,13,16,18 59:22,23 62:14 62:16 70:16,22 71:4,24 73:22 79:2 86:2 87:21 88:2,15 88:16 89:20,25 117:12 bent 21:3 best 9:7 116:5 142:9 143:5 better 53:2,3 65:2,13,16 beyond 30:12 128:22 big 23:14 52:21 93:6 107:10,13 107:17 billy 76:21 bit 8:24 16:10 19:23 35:25	60:22 65:13 72:20,23 73:3 91:6 95:13 106:4,20 107:4 108:22 127:19 135:15 blog 27:5 28:24 28:25 29:1,2 29:13 30:3 47:14 board 41:24,25 43:3,21 bottomed 106:4 bought 103:16 boulevard 2:7 branch 14:19 14:20,25 15:12 15:16,17,18,19 16:8,11,15,18 16:25 17:11 19:21 20:6 21:7,9,10,14 63:8 76:16,19 76:20,23 81:5 81:6 125:15 branches 15:14 15:23 108:10 breadth 85:14 break 6:11,11 55:1,19 56:3 76:2 109:13,16 breaks 6:10	brian 5:10 briefly 15:7 bring 14:4 bringing 104:18 broad 129:6 brought 104:22 106:21 111:10 bruce 29:20 30:1,6 47:15 bryan 1:12 4:6 5:16 41:9 141:6 build 30:20 40:17 47:20 48:24 49:12,23 50:17 96:16 builders 53:4 53:10 building 8:25 13:3,3,6,10,14 13:21 14:8 17:7,8 19:14 25:19 26:6 29:23 30:19 44:7,21 45:3 46:10,13 47:21 47:23 48:18,19 49:6,11 51:15 51:24 53:10 63:10 68:8,10 86:18 87:4 124:11,12	buildings 30:14 30:16,17 46:7 built 53:21 bullet 10:21 31:18 32:14,16 32:19 37:12,14 39:8,12 56:4,5 58:11 78:6,8 78:24 86:3,7 86:11 135:13 137:6,17 bulletin 45:21 75:13,18 bullets 78:15 bunch 12:20 96:20 business 17:18 87:16 140:24 buy 103:13 104:12 124:15 124:19 buying 104:13 104:15 c c 2:1 4:1 ca 1:17 2:18 calculated 41:25 california 1:2 4:10,12 12:18 16:7 46:25 142:19
---	---	---	--

call 14:1,7 15:13 34:15 37:11 48:3 51:24 63:15 132:22 called 5:17 calling 20:7 callout 86:6 calls 20:5,6 27:13 45:16 64:18 74:17 87:8 98:17 108:7 115:13 124:17 125:23 126:10,22 128:10 132:9 133:23 capacities 19:16 72:2,7,8 72:16 75:6,12 88:20,23 96:4 117:12,24 118:4,6 133:13 capacity 15:1 53:2,12 67:17 128:22 capture 95:1 carbon 18:5,7 career 15:8 carried 96:3 case 1:7 7:1,25 8:17,19 12:15 22:7 24:25 26:15 30:24	34:13 36:3 96:8 110:25 114:7 115:5 122:12 126:5 126:21 138:7,9 138:16 139:19 140:1,4 cases 35:11 42:6 45:23 50:8 61:15,23 70:5 75:5 93:25 98:10 catalog 65:12 catalogs 35:19 catch 33:6 97:17 categories 10:22 82:20,24 93:1 137:5 category 82:25 92:13 cause 22:14,22 23:25 48:14 49:4 50:2 64:7 71:2,7 72:3 75:7 81:18 82:4 89:10 94:25 103:15 119:6,19 127:6 129:6 cavity 41:19 cbc 46:25 census 105:16	centers 18:17 64:2,8 certain 48:23 67:17 73:5,7 83:9 93:9 95:1 119:20 121:5 certainly 23:25 31:24 50:3 51:17 52:18 58:5 61:23 67:1 68:25 79:4 93:4 98:8 certificate 142:1 143:1 certifications 25:16 certified 4:15 certify 142:3 143:2 chance 33:10 change 23:14 46:14,15,18 52:20 53:4,7 60:16 67:21 119:10,16 120:3,7,10,22 121:5 changed 12:19 15:9 29:18 38:22 52:13,17 56:7,9 changes 8:25 9:3 13:3,9,14 18:15 20:2	29:24 48:21 53:23 54:8 56:11,24 57:2 67:22 72:6 77:18,19 121:14 changing 46:11 118:7 121:9 channel 70:3 124:10 char 41:24 42:24 charge 80:9,11 charged 117:24 cheaper 84:3 102:12,12 check 60:12,17 68:19 92:17 101:19 chemicals 52:21,25 53:1 cheryl 143:2,15 chile 14:15 choice 61:9 choices 127:16 choose 60:5 96:6 chooses 53:14 chosen 60:5 cities 48:2 civil 10:13 25:18,20 136:10
--	--	---	---

claim 25:22 91:11,12,12,14 126:21 129:16 130:13 131:1 135:19 claimed 25:17 117:12 claiming 26:11 26:13 claims 128:14 130:7 131:7 clarification 28:2 49:15 clarifications 47:9,17 49:2 49:24 50:5,10 50:11 58:4 clarified 49:1 50:1 clarify 55:2 clarifying 57:23 clear 6:4 37:21 37:23 83:14 130:23 close 104:22 135:5 closely 125:18 code 8:25 13:3 13:4,6,14,21 17:8 26:6 29:18,23,24 42:19 44:9,11 44:18,24 45:8	46:7 47:10,12 48:1,3,4,5,9,20 49:15,23 50:10 53:11,22 57:24 58:4 63:10 121:11,14 codes 46:10,14 47:21 120:10 120:22 121:5,9 121:12 cold 44:20 collated 17:24 colon 137:6 color 83:19 colorblind 83:6 83:8 columbia 1:4 2:2 4:7 column 83:3,18 83:19 102:2 107:6 combining 106:18 combustible 47:7 come 9:6 25:7 28:13 31:17 98:1 129:24 137:5,18 comes 13:18 111:22 comfortable 11:7 12:5 50:5	coming 33:9 58:21 111:22 121:25 123:11 commercial 12:25 18:10,14 18:16 22:3,22 22:25 23:1,7 30:17 49:13 91:1,2,4,17,19 91:24 93:22 94:10 95:18 96:25 97:3 98:13 109:4 commercially 91:22 94:15,18 94:22 95:10 102:24 common 54:14 55:11 63:2,3 67:13 companies 95:6 company 1:4,8 2:2,14 3:10 4:7 4:8 5:9,11 10:12 12:19 23:15 80:1 114:24 125:17 compare 37:4,5 65:18,19 74:25 102:7,17 compared 67:5 70:18,25 81:22 82:21 83:5,23 92:22 93:2,13	93:25 104:22 105:22 106:20 comparing 82:20 92:4 98:24 135:2 137:10,13 comparison 65:4 74:20 82:4,20 84:12 85:4,7 101:6 103:18 comparisons 66:25 82:24 compensated 25:12 competes 93:1 competition 64:21 competitive 68:5 134:15 competitor 93:7 competitors 92:23,24 93:2 114:14 complain 88:20 88:25 complained 89:3 complaining 89:6 complete 6:18 6:22
---	---	--	--

completed 25:25	connections 18:2	29:9,11,25 30:14 44:9,19	contractors 13:11 14:8
compound 50:14 121:23	connector 17:18 92:10,19	44:19,20,22 46:3,19,20,21	17:6 66:14,15 70:4 124:11
concern 37:18 89:1 119:3,6	93:9,12	47:4,6,8 49:3 49:17,20 50:17	contrast 37:5
concerned 89:9	connectors 13:2 18:25	50:19,23,25 51:3 53:6	contrasting 137:11,13
concluded 141:11	19:5 50:12 65:22 93:18	57:16,18,23,24 58:3,8 67:14	contribute 95:21
concludes 141:5	consider 69:6 97:13 102:23	96:12,14,15 106:5,7 111:19	contributes 122:20
conclusion 65:8 126:11,23	128:5	116:19 119:10 119:24 120:3	control 20:23
128:11 129:18 132:19	consideration 119:8	124:8 125:4 134:7 136:12	conversation 83:7
concrete 17:16 17:19 18:1,2,8	considerations 90:17,18	contacts 66:14	conversations 87:19,22
18:14 21:21 22:1,10 23:9	considered 22:25 43:16	contain 34:18	converted 18:14
23:19,23 24:18 24:20,21 25:3	106:5 127:18 127:21 128:16	contends 90:7 90:24 91:2	cooling 106:16 107:3
25:13 49:17 93:5	130:17	content 10:20	copied 78:2 131:6
conditions 6:21	consist 140:5	contention 91:17 109:4	copy 127:8 129:4 130:24
confer 27:19 33:2 115:16	consistent 61:11 85:17	135:20	132:6 140:13
confident 107:8	consistently 119:24	continue 60:5 106:2,7,11,11	copying 126:4 126:6,8,20,25
configured 132:7,17	constantly 118:15	continued 106:9	127:3,6,10,18 127:21,23
confusion 118:3	constitute 4:23	continues 50:2	128:6,9,17 129:2,2
connect 33:10	construct 44:25	contractor 69:24 70:6	cord 43:23,24 44:1
connection 53:14 103:25	construction 8:23 9:1,2	72:21 103:23 119:19	
	12:11 16:14 26:3 27:6,7		

core 17:18 71:12 correct 7:6 8:4 10:18 11:3,4 13:7 17:2 20:14 21:11 26:12 29:1 30:6 33:15 55:13,17 56:16 67:12 70:25 72:11 77:10 80:3,7 83:25 85:11 91:25 100:17 101:12 102:15 104:25 107:11 112:17 112:18,23 113:20 133:2 138:2,7 cost 50:19,23 60:3 61:9 66:22 69:14 73:18 85:9,12 85:14,16,19 96:5 costs 85:17 council 46:5 57:25 counsel 9:23 26:17,21 27:10 27:14 32:25 34:14 78:13 127:15 128:1 129:20,25	130:5 131:1,12 139:8 142:10 142:13 143:7 143:10 counselor 129:11 counties 48:1 country 14:13 couple 41:12,13 42:13 92:18 court 1:1 cover 92:2 101:1 covered 16:15 58:14 69:8 89:25 137:15 137:17 covers 128:8 covid 105:21 crane 52:7 created 131:20 creates 49:19 creating 127:20 128:2 crisafulli 1:18 4:3 142:2,17 criteria 140:4 current 19:2 20:9 26:25 67:5,5 currently 12:17 26:9 37:2 62:11,12 109:9 120:5 121:25	custom 12:24 customer 17:11 19:15,23 20:5 71:7 75:9 82:25 83:22 84:3 85:11 86:15,16 88:9 108:2 customers 9:5 16:9 18:16 19:13,18 20:3 20:8 22:14,23 23:3 33:21 45:24 63:22,25 63:25 64:25 66:2,6 67:23 68:4,21 70:18 70:24 71:5,20 71:22 72:15 77:8,18,25 84:5 87:5,20 87:24 88:1,5 89:6 95:16 98:9,15,20 103:12,14,18 104:12,15,16 107:21 119:9 119:15 120:3 123:21 124:10 124:11 cut 43:25 82:6 84:22 89:1 118:10,15,16 121:18 132:13	134:9 135:6 cutting 81:18 85:3 134:22 cv 1:8 cycle 47:10 cycles 13:4
d			
d 3:1 4:1 21:3 60:23 daily 20:4 darn 61:8 dash 75:24 data 100:16 101:11 102:7,8 104:5,17 105:16 107:7,8 107:13 date 1:13 21:16 79:23 111:25 112:2 113:10 dates 23:12 day 6:10 13:25 14:22 87:12 days 140:24 deal 64:8 dealing 15:23 15:25 deals 64:1 debut 124:22 124:24 decade 111:7 decades 53:5 110:20			

december 111:12	density 49:8	designated 90:23	113:14 115:1
decide 103:23 121:12	department 78:14	designed 54:2 120:11,24	116:2,3,7 130:18
decided 71:12	depend 51:17	133:15	developments 58:18
defendant 1:10 2:14 3:9 5:8 10:12	depending 22:23 24:12 42:17 44:9 53:15 54:17 63:1 94:23 95:5	designer 119:23	df 99:4
deferring 137:7 137:8	depends 62:6 67:16,18 71:7 129:5	designers 48:18	dg 3:13 24:13 27:2 58:25 60:7,10,23 61:11,12 62:5 62:10 67:9 68:5 70:23,23 71:1,4,10,13,17 71:24 72:3,7 72:10,13,15,16 72:17 73:11 75:8 77:9,19 77:23 97:11 98:16,21,24 99:1,19,23 100:17 101:12 101:14,17,23 102:2,3,7,9,11 102:13,14,21 103:2,8,13,15 103:16,24 104:2,4,6,8,13 104:15 110:15 113:15,17,21 116:4 118:19 137:11
define 97:2 124:3,7	deposition 1:12 4:6,21 5:25 7:14 8:6 26:19 27:22 28:4,5 28:11 32:18 35:7,22 36:1 36:12,20 92:2 100:6 142:1	designing 12:23 13:2 67:24 128:15	
defined 35:5		designs 118:17 128:2 130:16 130:17	
defining 98:13 110:22 124:6 127:8		detail 7:5 29:12 35:4	
definitely 95:14 101:24		detailing 9:3 44:4,6 119:20	
definition 28:12 97:5 129:2		details 40:17 41:5 52:5 109:10 114:25 116:2	
definitions 34:22	depositions 28:16	develop 45:13 71:12	
degree 25:18 25:20	describe 19:1 29:12 77:4,18	developed 71:17 117:4	
degrees 25:16 61:20	described 20:13 139:25	developing 26:1 114:20	
delight 98:11	describing 112:16	development 12:11 15:22,24 16:5,20,21 19:11 20:1,21 56:13 68:2 80:11 112:4	
demand 50:12 50:19,22,24 51:5 67:16	description 3:7		dgbf 75:8 79:9
demands 133:14	design 25:22 86:13,18 118:19,20 127:16		dgf 3:13 24:13 24:14 27:2

58:25 60:7,11 60:23 61:11,12 62:5,10 67:10 68:5 72:10,12 72:14,17 73:10 73:11,23 74:8 74:13 75:2 77:6,9,12,14,18 77:19,22 78:8 78:10,12,18 79:2,7,9 80:5 81:16,20,23 82:15,21,23 83:5,23 84:6 84:15,18,23 85:9,15,20,22 87:21 88:2,15 97:11 100:17 104:2,4,7,9,13 104:15,18,20 105:1,2,4 106:19 107:22 129:15 130:9 130:12 131:1 132:2,2,5,8,14 132:16,20 135:1,4 137:11 dghf 61:16 79:9 dght 3:12 dgt 3:12,13 26:3,25 52:1 54:1 55:3 56:12,20 58:25 60:7,11,20,24	61:2,7,14,16,21 62:5,11 67:10 68:5 69:9,13 69:15 73:22,24 74:7,15 75:1 75:20 80:5,9 80:11 81:15,22 82:9,15,21,23 83:18,22 84:2 84:23 85:1,9 85:15,19,21 86:2,4,5 87:21 88:2,5,15 97:12 100:16 106:18 107:22 108:3,6 134:13 134:22 135:3 137:12 dgt's 73:25 dhu 62:8 71:8 72:5 die 20:23 21:1 21:2 56:21 61:8 dies 21:3 difference 70:14 74:5 85:11 108:23 differences 42:3 58:24 59:2,3 61:10 62:3 70:21 71:24 83:14 89:20 102:19	131:17 132:4 different 8:21 11:17 12:21 13:2,19,25 14:13 15:4 16:2,2 19:6 25:6 26:5 27:7 29:16 31:23 37:5 40:17 41:5,12,13 42:10 44:7,18 44:25 45:6,10 45:13,14 48:13 51:9 52:19,25 52:25 53:7,24 54:19 60:7 63:19 69:17 72:4,7 82:20 82:24 83:19,21 88:12 92:5 95:4,6 96:6 97:2 99:6 101:7 108:10 113:2 115:18 117:17,24,25 119:23 130:3 130:16 131:14 132:1,12,13 differential 104:14 differentiate 64:20 differentiates 82:13	differentiating 69:3 70:11 differentiation 94:7 differentiator 68:20 differentiators 64:7 106:6 difficult 102:17 109:1 difficulty 103:20 digital 142:8 143:3 dimensional 133:13 dimensions 53:15 96:2 direct 15:1 19:17 20:6 39:7 63:23 68:6 73:5,6 78:2 86:22 89:2,6 directly 20:7,15 20:16 25:11 42:23 44:24 48:19 70:5 72:6 87:11 88:1,5,8,12,24 89:8 director 18:24 directors 81:6
--	--	---	---

disbelief 121:21 124:1 disclose 138:1 disclosed 6:25 7:8 37:24 disclosure 3:10 7:10,19 8:3 9:11 10:13 11:6,23,24 12:3,4,8 32:5 36:5 37:20 39:3 40:6 59:6 138:11 discontinued 104:3 discount 70:1 discrepancies 28:11 discuss 10:9 35:3 41:4 56:18 58:15 136:21 138:12 discussed 26:23 33:16,20 58:12 67:9 69:10 89:22 109:6 121:20,21 135:8 138:12 138:18 discusses 56:6 discussing 56:3 123:25 discussion 34:13	discussions 93:16 137:15 137:16 distance 73:14 distinction 62:4 distinguish 117:1 distribution 70:3 97:8 98:14 103:21 124:10 distributors 124:4 district 1:1,2 divided 17:17 division 17:22 divisions 15:13 18:18 20:20 80:22 document 10:5 10:9 11:10 26:23 31:20 32:10 35:1 76:24 79:14,18 79:23 81:9,10 100:5 101:3,17 102:20,22 136:18 documented 84:20 134:18 documents 12:20 35:17 36:18 57:8 117:25	doing 49:7 74:19,25 78:2 99:12 108:20 130:17 dollar 103:3 dollars 97:7 double 60:12 68:19 73:14 101:19 122:13 126:16 dozen 92:18 draft 77:16 drawback 107:17,19 drawbacks 66:10 drilling 43:8 drive 17:24 drop 61:16 107:10,12,16 drops 61:18 drywall 42:14 42:14,22 43:6 45:22 54:16 62:7,10 71:10 71:18,23 73:15 81:18 82:7 84:9,11,12,22 85:3,6 89:1 99:8,9,19,23 112:22,25 113:3,8 114:1 115:12,23 116:17,18	117:4,21 118:11,16 120:24 121:7 122:20 123:11 123:12,15 130:19 131:16 132:7,13,13,17 132:22 133:17 134:9,9,21 135:6,6 drywall's 118:15 du 3:13 26:25 38:21 40:18,21 40:22 41:3 45:7,9 58:24 60:4 61:10 62:4,8 66:22 66:23 67:3,5 70:25 71:1,5,8 71:25 72:4,4 75:10,21 91:20 99:7 100:16 101:12 102:4,7 102:10,12,14 102:21 103:2,9 103:13,15,17 103:24 104:9 104:12,15,22 104:24 110:13 111:9 112:20 112:21,24 113:14 115:21 137:11
---	--	--	--

due 66:13 85:20 98:5 102:18 108:2 duly 5:17 142:5 duration 118:1 118:8 duties 17:1,3 duty 24:23	easy 134:4 eaten 82:10 economical 74:2 educate 27:5 30:16 educated 32:1 education 14:7 16:12 29:8 effect 107:4 108:25 effective 50:20 50:23 61:9 69:14 effectiveness 60:3 66:22 efforts 20:10 eidson 2:4 5:6 eight 86:25 eighteen 15:3 eights 42:13 73:14 either 21:24 24:13 37:22 49:6,9,12 54:10 60:13 70:15 76:22 78:13 80:25 88:11 140:9 elapsed 45:4 email 3:11 76:11,14 77:4 80:15	emailing 140:20 emails 64:17 embodied 114:4 emphasis 25:19 25:21 employed 142:11,13 143:7,10 employee 30:5 30:7 125:22 142:13 143:9 employees 13:8 120:16 encompasses 117:6 encountered 136:22 137:1 endeavor 91:9 ends 61:9 88:21 engineer 12:16 12:23 15:12,15 16:8,11 17:11 21:11 25:15 61:25 engineering 12:10 15:1,16 16:24 17:13 20:22 21:9,14 21:19 25:19,20 25:21 29:2,15 44:5 51:23 76:16,20 78:20	136:10 engineers 13:11 14:2,9 14:10 15:18,18 16:18,22,25 17:7 20:6 33:21 53:11 63:8 124:9 enjoy 88:18 enjoyed 96:24 97:6 ensure 60:15 entailed 16:10 entire 91:9 102:3 107:7,9 entities 9:1 equivalent 85:10 es 142:4 especially 23:1 52:22 esquire 2:4,5 2:15 essential 106:5 establish 24:22 establishing 117:2 estimate 82:4 evans 3:11 77:10,11,13 eventually 113:6 everybody 68:11
e			
e 2:1,1 3:1,6 4:1 4:1 21:3 earlier 25:14 28:6,7 30:21 33:6 52:6 57:21 61:1,7 68:20,23 79:1 79:5 111:16 134:12 137:16 earliest 111:25 112:2 113:10 early 111:8,13 111:20,21 ease 59:2 62:2 73:8,9 74:4 96:11,14,15 133:20 134:1 easier 53:19 61:24 63:18 65:11 72:20 73:12 78:10 79:7 easily 135:1			

evidence 32:8 37:22 71:15 119:13 120:13 evidentiary 4:20 evolution 15:8 57:3 evolved 62:15 70:23 exact 23:12 32:10 69:21 115:17 127:10 127:20 exactly 7:15 8:8 44:16 96:14 124:19 examination 3:2 5:21 139:11 examined 5:19 example 34:19 64:13 69:24 120:5 129:6 examples 50:7 64:15 exceeded 61:12 72:16 excel 100:15 exception 22:10,12 excuse 38:7 89:11 exhibit 3:9,11 3:12,13 9:20	9:21 10:11 31:18 32:5,22 34:17 36:5 37:13 52:12 56:4 76:5,7 79:12,15 90:6 99:25 100:1,4 100:15 134:20 134:20 135:12 138:11 existed 98:24 existence 58:2 existing 16:1 20:2 47:1 exists 127:12 expect 108:21 expectations 95:6 expected 84:13 84:17,22 108:12 expecting 108:16 expedited 140:17,18 expensive 56:23 66:23 67:3 68:9 69:16 84:5 102:14 experience 12:10,14 135:17 136:4,6 136:11,24,25	expert 3:10 7:1 7:2,15,24 10:12,17,22 11:7 12:5 26:16 35:10 38:13 39:12,14 40:3,3 65:5 138:6,8,10 139:19 expert's 136:17 expertise 25:17 25:22 26:11,13 26:17 58:5 116:5 130:6 135:18 136:7 experts 7:4 27:20 116:8 137:21,23 expire 12:18 explain 7:21 13:18 44:14,15 72:22 101:4 127:19 explaining 80:5 explanations 69:17 explicitly 85:5 extend 41:18 132:7,17 extension 132:6 132:16,23 133:1 extensive 35:25	extent 8:11 11:9 13:13 31:19 32:21 129:17 132:18 exterior 47:7 48:15 49:22 externally 29:3 eye 95:13 110:19 f f 75:24 fabricate 21:3 facing 17:11 19:15,23 29:3 88:9 fact 12:5 16:3 28:5 78:15 85:21 93:19 115:8 122:8 130:25 factor 69:3 96:12 109:25 118:14 121:20 126:9,20 127:11 factors 52:25 85:8 90:9,23 110:1 124:5 facts 11:11 26:15 31:3,5 32:7 34:14 38:9 39:17 40:9,10 52:15
--	---	--	--

59:8,15 71:15 89:19 90:7,24 91:16,23 109:3 116:1,7 119:9 119:13,15 120:8,12,21 121:25 122:9 123:5,6 127:2 127:5,13 135:15,24 136:1,20 137:4 137:13 factual 7:16 8:2 8:8,13 34:5,8 35:14 39:25 40:12 41:1 131:10 135:19 failure 114:4 fair 23:16,18 24:10,10 30:24 33:19 35:24 65:19 88:9 120:20 fairly 26:7 107:8 133:19 134:6 135:4 fall 11:2 familiar 6:2 10:20 26:8 32:15 34:20 37:7,9 72:23 72:25 77:1 79:18 125:11 125:14	familiarize 76:6 79:13 family 9:2 12:24 22:24 23:24 27:6 29:25 30:12 49:6 51:3 66:11 69:18,22 87:2,15 105:12 105:16,17,21 105:23 106:3 106:11,15 107:2,3,14,18 108:17 far 10:8 24:15 25:11 31:1 32:9 38:18 54:14 88:16 99:3 102:8 106:3 128:22 130:4 138:18 138:22 fashion 63:6 fast 61:8 69:13 fastener 16:2 17:22 85:8,12 85:14 fasteners 17:21 43:7,7 faster 54:21,23 56:21 74:1,23 134:21,21 fault 122:15	feature 67:23 68:7 71:21 86:14,20 87:4 87:7,12,15 88:18 99:19 132:6,11 features 37:3 57:13 78:9,18 78:25 79:6,8 86:2,3,4,5 95:20,25 98:2 98:5,9,23 117:11,17 129:3 132:2 february 21:17 federal 10:13 37:21 feedback 63:24 64:1 66:13,17 66:19 68:3,6 71:20 84:7 87:6,20,24 88:10,14,19,22 89:6 92:7 93:15 113:6 123:10 125:6 129:19 131:6 feel 11:7 12:5 13:4 50:5 53:20 88:4 138:11 felt 41:11 110:2 110:4,10,17,20	fennel's 137:7 fennell 136:17 139:22 fennell's 140:2 fiber 18:6,7 field 15:18 17:5 19:25 64:19 66:10 84:7 88:3,5 92:8 116:11 123:22 figure 117:8 figuring 98:9 filed 78:11 fill 64:8,10,11 final 70:7 137:10 financial 100:16,18 102:6,8 financially 142:14 143:11 find 44:23 52:6 54:7 58:19 65:11,12 67:8 75:19 78:14 87:13 103:18 fine 40:1 76:4 141:1 finish 6:7,9 89:13 fire 8:22 12:12 22:8 25:24 26:1 38:19 40:14,17,22
---	--	--	---

42:5,10,25	114:2,5,22	127:20 129:7	123:10 124:25
43:10,18 44:14	115:11,19	fit 47:24 73:15	followed 75:25
44:17 45:2,8	116:11,22	five 8:21 10:18	110:15
47:4,5,5,19	117:11,22	10:21 11:2,5	following 28:1
48:16,16,22,23	118:21 119:5	15:6 31:17	90:8,25 135:21
48:25 49:18,22	120:11,18	32:13,16,19	follows 5:19
50:13 52:14,14	121:6,11,17	36:15 42:13	footage 87:3
52:19 53:9,18	126:4 128:8	73:14	foregoing
56:6 58:19	129:3 130:18	flange 45:21	142:3,4 143:4
59:3 60:16,18	133:4,16,20	52:7 73:2,3	foremost 59:25
60:19,21 62:3	134:4,14,25	86:13 132:2	forever 129:8
68:13,14,24	135:9	flanges 72:18	forget 114:23
75:15 86:19	firewalls 26:7	72:23,24 79:3	forgetting
96:9 98:25	26:10 27:9	131:22,25	114:15,16
99:12 101:8	44:8	floor 1:16 2:17	form 31:7
110:9,23 111:2	firm 12:23 44:3	41:19,20,21	35:14 44:20
112:7 118:11	44:6 52:6	42:7,8,15	77:25
121:11 123:1	firms 14:13	43:21 44:8	formatting
firewall 3:12	45:7 51:24	53:5 54:17	65:4
22:18 23:3	52:4	63:3,3 96:16	formed 7:24
24:11 25:22	first 5:17 21:10	122:24 133:14	8:17,19 31:10
26:8 29:17	21:15 28:15,16	floors 42:5	31:24 40:3
35:20 42:1,4	32:4,13 35:8	florida 12:18	56:21
46:1 57:15	37:12,14 45:12	flyers 35:20	forming 35:18
62:19 70:8,17	46:23 52:11	69:6	formulated
75:15 77:6	56:4 58:10	focus 60:21	30:23
89:21 90:1,1	59:25 66:9,16	focused 18:2,5	formulating
91:24 92:5,14	78:10 82:25	18:11,12,15,18	33:3
92:20 93:21	83:2 88:1 91:1	focusing 93:12	forsyth 2:7
94:2,15 95:9	100:22,23	folks 14:2	forth 7:19
95:22 96:24	101:3,11,16	18:13 27:6	10:22 136:2
101:7 106:23	110:13 111:11	30:16 58:6	forward 32:2
109:5 110:4	113:19,21,23	63:7,11 68:1	found 130:8
112:9,16 113:2	113:25 122:7	79:25 113:6	

foundation 32:7 119:12 120:13 four 48:22 60:9 67:10,15,20 99:11 101:7 136:11 141:7 fours 68:9 fourth 81:9 86:11 135:13 137:6 139:14 frame 19:8,8 42:20 43:3,11 43:13,23,25 framed 37:19 51:3 framers 66:15 framing 41:13 41:14,16,17,23 42:7 86:21 131:21 132:21 francisco 1:17 2:18 4:9 frequency 14:16 frequently 125:19 friese 1:15 2:16 5:8 full 10:9 14:22 82:4,4 101:21 101:25 102:1,6 fully 6:8 83:9	fun 23:13 49:5 function 15:17 fund 106:6 funnel 72:18,23 72:24 73:2,3,4 79:3 132:2 further 49:2 50:1 82:10 87:17 116:18 139:8 140:7 142:12 143:9 fwh 36:22 37:7 38:21 40:19 45:9 52:1 59:1 59:14,16 60:10 60:13,14 61:3 62:5,11,17,20 66:7,16,23 67:2,6 69:16 70:8,18 74:16 82:22,23 84:8 84:15,18,23 91:21 110:14 130:4 131:6,20 131:21,24 132:3,5 133:9 134:22 135:3 137:12	garage 49:7 gary 125:8,10 125:18 gatherings 13:25 gauge 61:16 75:7 85:21 general 25:1 62:25 66:15,15 135:3 generally 31:1 genre 128:3 geometry 72:25 getting 20:6 31:1 66:14 71:20 95:16 98:25 99:15 108:19 give 6:3 10:6 14:3 16:11 21:15 31:5 39:18 42:15 45:10 50:8 64:15 65:3,19 76:2 77:8 87:17 95:25 96:19 100:7 115:16 given 35:8 43:20 80:14,14 80:16 81:1,5 141:6 giving 65:10	go 14:22 19:20 19:24 21:23 22:17 23:12 24:13 30:18 34:25 41:6 43:19 45:21 46:21 51:9 59:20 60:17 61:17 64:16 65:18 68:18 70:21 75:20 86:24,25 87:13 96:1 103:17 105:15 115:16 129:7,8 138:23 140:12 goal 108:13,14 goals 95:2 108:10 goes 62:2 106:3 going 6:3 9:19 10:16 14:22 20:2 21:22 23:13 37:11,14 41:22 43:13,14 43:15,17 53:14 54:23,25 55:21 55:25 58:3 62:13 68:9 69:22,25 77:15 81:15 84:3,4,5 84:14 88:10,11 96:6 107:15 108:23 109:18
	g 4:1 galvanization 132:4		

109:22 117:14 118:6 119:14 124:8 134:14 135:13 136:9 137:22 139:2,5 good 4:2 5:23 5:24 6:14 8:24 28:2 49:15 53:20 96:1 125:22 gotten 88:21 129:20 grab 136:18 great 116:25 greater 8:7 84:14 93:20,24 93:24 94:1 green 83:3,6,8 grew 105:1 group 76:17 grow 106:2 growing 105:13 105:14,17 106:4,8 growth 105:6 105:23 106:10 106:12 guess 9:6 25:3 33:10 52:3,13 56:19 62:4 65:21 81:25 110:18 117:17 119:1 122:5 124:21 128:21	130:12 133:25 136:23 guest 30:4 gun 54:2,7,12 54:14,22 55:5 55:9,15,15 61:3,5 69:9 74:3 82:10 88:17 gut 92:17 gyp 43:1 gypsum 43:3 43:13,14,16,19 43:21	hanger 22:18 26:3 36:22 37:6,9 51:25 54:1,8,10,18,21 60:2,6 62:10 63:5 67:17 70:17 73:6 77:7 90:1 91:24 93:21 94:2,15 95:10 95:22 96:24 99:8 106:23 109:5 110:4,23 111:1 112:1,7 112:9 113:2 114:2,5,22 115:11 116:12 116:16,22 117:11,20,22 120:11,18 121:17 123:10 123:12 126:4 128:8 129:3,8 130:18 131:16 131:21 133:4 133:21 134:4 134:14,25 135:9 hangers 3:12 8:23 12:11 19:5 22:7,8 23:4 24:12,24 25:10 26:9 35:21 38:21	40:14,21 41:3 43:15,18 45:21 45:25 52:14,18 53:3,5,8,25 57:17 59:18,23 62:19 63:1,13 70:8 72:19 73:1 75:13,16 89:21 92:6,14 92:20 93:25 94:3 97:12 99:13 100:19 101:7 102:4 105:5 110:10 110:12 112:17 115:19 119:11 119:18 121:6 122:24 130:2 131:19 133:12 happen 22:19 118:14 119:19 happening 29:24 happens 119:24 happy 31:5 38:17 39:6 40:16 68:18 76:2 94:19 hard 69:19 103:5 118:15 head 6:5 35:4 54:6,15 55:11 74:11
	h		
	h 3:6 half 23:11 32:17 61:4,6 63:2 hammer 54:11 82:14 134:6 hammered 74:4 hand 5:14 9:19 28:23 54:24 99:25 128:7 handed 32:10 handing 76:5 79:12 handle 29:16 hands 49:5 hang 86:19		

health 6:21 heard 63:24 64:1 65:10 66:10,17,19 68:6 69:17 84:1 87:11 88:7,16,24 89:7 90:19,21 hearing 5:12 64:19 111:5 112:3 heavier 61:16 held 21:16 66:12 73:14 help 9:11 17:7 25:9 57:11,12 57:18 58:6 63:8,9,12 73:6 99:14 127:16 helpful 45:5 76:3 83:7 helping 18:6 19:13 58:4 helps 61:23 73:4,4 hensen 11:13 11:14,24 33:6 33:13,17 hensen's 11:10 hereto 142:14 143:10 hesitant 25:4 120:3	hey 45:25 117:19 hi 33:7 hierarchies 92:5,9,19 hierarchy 19:5 high 7:8 8:16 higher 30:18 41:22 46:19 49:8 72:3,8 75:5,10,12,16 92:6 hilti 93:6 hmms 6:6 hold 21:25 25:16 33:23 51:7 holding 12:17 hole 54:7 home 16:22 18:17 19:22,22 64:2,8 homes 12:25 honesty 87:10 hope 95:17 hopefully 98:9 hoping 94:24 95:1 hour 42:1,3,4 42:10,16,25 43:10,12,12,16 43:20 44:14,17 45:2,8,23 46:1 49:18 52:22	53:18 55:1 60:23 98:25 101:8 111:2 119:5 123:1 133:15 hours 43:13 45:4 60:25 house 27:14 houston 44:3 hung 112:23 hypothetical 118:23	47:6,8,18 50:16 57:16 111:19 iiia 27:7 49:20 50:6 impact 50:11 impede 43:10 impetus 111:20 important 58:19 64:9 86:14,15,20 87:7 96:11 124:15 inc's 3:10 inc.'s 10:12 inch 61:4 63:3 inches 61:6 include 14:7 51:6 78:10 124:8 including 38:20 47:4 59:1 60:14 63:12 135:20 incomplete 91:6 118:22 incorporates 87:20 increase 50:18 50:22,24 51:5 87:1 increased 56:14 81:21,24
		i	
		ibc 46:18,22,23 47:16,24 48:3 48:7,9,11,13 49:25 111:16 111:19,21,25 idea 86:9 122:7 identification 9:22 76:8 79:16 100:2 identified 12:4 12:9 45:6 identifies 10:17 identify 5:3 30:21 identifying 135:20 iii 8:23 9:2 29:9 29:11 30:14,16 30:19 46:3,19 46:20,21 47:4	

increases 55:15 56:13 incurred 127:4 independent 129:23 indicate 81:14 87:14 94:9 indicated 79:23 94:11 indicates 93:21 indicating 86:9 indicia 90:20 indirect 23:17 individual 80:23 124:16 industry 13:12 14:1 22:24 30:8,10 41:6 57:22 115:4 117:3 121:16 122:4 123:7 124:2,3,6,7,8 125:4 136:12 136:13 inform 127:16 information 10:7 24:1 35:13 65:22 66:3,5,8 67:4 69:15 74:22 78:7,17 87:17 95:8 100:18 120:8 129:24	informed 32:1 infringe 127:23 128:3,8,20 130:13 131:1 infringed 129:16,21 infringement 130:4 infringes 128:16 infringing 127:17 inner 43:14 innovative 86:12 97:13 98:1,2,5,23 99:1 inquiring 110:11 inside 63:14 87:3 install 17:24 43:4 54:23 56:15 71:10 74:15,23 78:10 79:7,9 82:14 82:15 84:18 85:1 99:7,10 99:18,23 119:11 125:1 131:15 134:4 135:5,6 installation 54:20 55:16	59:2 62:3 71:11 73:8,9 74:5,20 81:15 81:16,17,21 82:11 84:9,11 84:13 85:6 86:13 installed 55:9 60:9 61:3 67:10 69:9 71:18,23 74:2 97:12 112:10 112:22,24 113:3,8 114:1 115:11,23 116:16,17 117:4,20 120:24 121:6 122:19 123:14 123:22 130:19 133:16,21 134:14 installer 54:9 96:18 118:10 installers 33:21 56:15 installing 45:25 72:20 122:23 installs 96:20 123:11,12 134:5 135:1 instructed 13:8 13:10	instructions 96:19 insurance 1:4 2:2 4:7 intend 11:1 31:17 38:14 40:1,12,24 58:12 89:22 116:6 121:22 123:17 136:21 137:4,12,20 138:12,15 intended 4:18 117:13 intentionally 128:16 interacting 125:19 interaction 19:17 interested 78:8 142:15 143:11 interesting 48:14 interfere 37:16 interior 86:18 internal 78:14 80:17 85:16 93:15 internet 80:17 interpret 121:10 interpretation 42:3,18 63:10
--	---	---	--

interpretations 131:7	53:19 57:13,23 58:1,3,5 68:1	julie 2:5 5:5 37:18 97:16	22:17,23 23:3 26:5,6,8,25
interpreted 44:10	68:11 73:25 81:19,20	julie.scheipeter 2:10	27:6 28:10,19 29:20 30:15,25
interrupt 44:2	involvement 23:17,24	july 101:14,18	31:3,25 34:15
interrupting 41:22	ironically 33:8	jurisdiction 42:18 44:10	36:14 37:3,3,4 38:9,9,10 39:6
introduce 77:22	issue 22:6 24:24	47:21 51:18 62:1	39:8,13,21 40:9 41:4 42:4
introduced 46:22 66:17 98:15 101:14 111:9,12 113:19 123:14 128:20 134:13	it'd 31:10 italicized 48:16 items 12:3	jurisdictions 42:2 47:23 48:6 50:4,9,16 51:21 53:11 60:21 99:15 120:16	42:12,25 43:17 43:25 44:1,2 44:21 46:3,4,8 47:10,13 49:19 50:8 51:4 52:21 53:8,10 53:12,15,20,25 54:17 57:4,15 58:3,7 59:8 60:15 61:25 62:3 63:1,12 63:21 64:2,14 64:17,17,20 66:9,12 67:1 68:7 69:20,21 71:6 73:4,13 74:10,12 75:19 76:13 78:2,21 81:5 82:1,1,14 85:5 87:15 89:8,9 90:13 92:9 93:6 94:18,25 95:1 95:6,15,16,17 96:1,6 98:10
introduction 45:7 53:3 77:6 98:21 108:2	j	jury 138:16	
introductions 52:20	january 28:6 35:7 101:24	k	
intuitive 96:18 96:21	jmauch 2:19	keep 19:14 kept 106:4	
invalid 138:20	job 1:19 21:10 21:14 39:21 63:6 88:4	killing 126:13 kind 15:11,25 16:20 27:4 29:22 49:3,17 50:3 53:13 70:20 73:2,4 92:3 97:9 105:20 108:25 114:17	
invented 129:7	jobs 15:4 103:4	know 8:12 10:8 13:24 14:1,4,7 14:18 16:1,15 17:20 18:6 19:6,12 20:1,4	
invention 114:4 115:4 116:12 116:21 122:4 122:11 123:8 126:4,7 130:24	joining 13:1 joist 12:11 22:7 22:7 24:24 41:21 42:8,8 61:19,19 63:4 73:13 131:24 133:14		
inventory 20:22	joists 43:21 53:5 72:20 86:20 96:3		
involve 20:10	joke 15:11		
involved 16:5 16:19 22:9	joseph 2:15 5:7		

99:4,6,11 103:3,4,4,4,8 103:14,15,24 104:14,16 105:25 106:5 107:7 108:18 109:14 111:15 111:21 112:2,3 114:21 115:21 116:18 117:19 121:13 122:24 125:8 126:15 127:17 128:1,5 129:7 130:1,2 130:16 131:7 132:4,12 133:15 134:5,8 135:5 136:8,15 140:17 knowing 127:13 knowledge 12:9,13 48:6,8 51:13,19,23 61:5 63:23 77:24 80:12,13 89:5,7 91:12 103:23 105:10 135:17 136:4,6 142:9 143:6 knowledgeable 116:1 known 14:3	l lab 15:19,21 16:6 labeled 81:11 82:17 100:4 lacking 96:20 lacks 32:7 119:12 120:13 large 63:25 80:23,24 107:12 123:1,2 larger 30:17 81:4 las 12:23 44:6 late 111:23 lateral 17:18 18:25 19:7 launch 3:12 80:9 118:8 launched 26:3 84:16,21 law 26:12,13,15 26:18 127:16 laws 4:20 layer 42:15 43:14,15,17,19 45:22 layers 42:13 43:1 132:21 lead 13:22 59:17 78:16 85:9,12,14	leader 93:8,10 93:14 leadership 81:1 leading 94:3 118:18 leads 9:2 leap 123:2 learned 27:3 28:12,17 31:25 learning 16:20 learns 14:3 led 116:3 ledger 42:21,23 42:23 43:4 103:25 leet 2:23 5:1 legal 7:16 28:15 34:10,13 34:18,23 35:5 65:8 78:14 122:15 126:10 126:22 127:15 127:25 128:10 128:22 129:18 131:7,11,11 132:19,23 141:8 legally 133:1 lesser 56:22 letter 48:22 77:8,16,21,24 letters 75:25 level 7:8 8:16 63:21 64:6,14	70:14 135:16 136:3,5 leveling 106:15 107:1 levels 67:19 72:4 licensed 12:16 25:15 licenses 12:17 life 53:21 lift 9:23 likely 24:1 31:25 45:19 46:8 52:8 86:24 134:21 137:8,17 likewise 6:8 limit 61:6 limitations 130:8 lindsey 29:20 30:1 47:15 line 19:7 20:12 22:9 23:17 24:11 25:13 28:1 42:25 68:12 79:1 92:8,10,19 93:6 94:24 95:5 96:5 109:10 116:9 lines 19:4,12,12 73:21 94:5 96:11 97:2,6
---	---	--	---

117:14 linked 29:5 list 8:18 9:7 86:3 listed 11:25 56:8 59:13 69:5 78:7,25 90:9 92:24 109:25 lists 86:1 literature 16:13,14,16 26:24 27:1 57:11 63:17 65:2,2 69:4,7 75:21 little 16:10 19:23 35:25 60:22 65:13 72:23 73:3 84:17 86:6 89:14 91:6 95:13 103:5 104:6 106:4,20 127:19 live 33:8 80:14 80:16,19 llp 1:15 2:6,16 5:6 load 53:12,15 59:2 61:10 62:3 67:16,17 72:2,8,16 75:6 85:12 96:4	99:8,9 117:12 117:23,25 118:3,5 133:13 loaded 67:18 loads 61:13 75:10,16 85:9 85:14 local 14:2 location 1:15 16:7 long 15:2 21:25 45:23 48:25 105:22 110:2,4 110:10,17,20 127:22 longer 61:4 74:3 81:16 84:22 look 8:21 10:6 11:19 23:12 26:24 28:10 35:1 64:17 70:13 76:2 81:25 83:21 92:21 104:20 105:16 108:18 121:10 130:3 131:13,19,23 131:24 136:19 looked 27:4 35:20 36:21 51:15 66:25 107:18 115:22 130:7	looking 11:23 12:3 29:7,10 36:25 37:2 58:10 68:17 76:15,20 78:21 78:21 83:17 84:12 85:13 90:22 92:3,18 100:22 102:16 107:6 115:18 124:22 130:2,5 looks 77:16 84:13 85:10 100:18 104:24 106:18 loosely 124:2 lose 107:21 loss 108:2 lot 21:3 44:15 47:12 51:21 63:11,19 65:17 75:22,24 87:1 133:12,14 lots 63:17 louis 2:8 love 83:10 122:13 lovely 28:16 46:24 lowe's 64:3,13 lower 67:20 74:7,12 85:19 88:19,20,22	lumber 47:5 48:16,17 52:19 52:23 lunch 14:3,4 109:13,14 lvl 43:6
			m
			made 49:15 61:8 99:11 119:3 130:7 main 16:6 47:7 53:13 62:4 70:19 73:17 74:6,6 77:13 99:16 maintain 45:8 118:11 119:4 121:18 123:1 major 64:7,24 majority 61:15 70:5 90:3 92:25 make 21:4 33:25 37:23 44:8 48:2,17 50:19,22 54:9 54:20 55:8,13 63:18 65:21 72:18,20 78:3 82:5 86:23 87:25 89:11 98:10 114:4 115:4 127:16

makes 53:19 56:21 61:8,24 69:14 79:7 138:5 making 78:10 88:3 95:14 127:14 manage 19:3 managed 18:4 management 18:25 20:24 22:5 26:4 manager 15:16 16:25 17:13,17 18:1,9,10 21:7 21:9,14,19,21 22:1,3,10,22 23:7,10,19,23 24:18 25:13 29:15 77:12,14 78:20 80:8,10 93:6 managers 20:18 66:11 76:16,21 81:5 81:6 87:15,20 87:23 88:8,12 managing 95:5 manner 4:21 manufacture 61:9 69:13 85:18 manufactured 74:1	margin 94:6 mark 9:15,17 marked 9:20 9:21 76:5,7 79:12,15 99:25 100:1 market 1:16 2:17 18:12,18 18:21,22 23:14 44:4 45:15 69:2 92:3,7,15 92:21,23,25 93:12,13,16,17 93:20,24 94:2 94:13,24 95:2 99:13 102:6 103:8 105:1,7 105:8,11,12,17 106:2,10,15,16 107:2,3,14,19 108:12,16,19 108:24 111:10 111:17 112:1,9 113:2,7,11 marketing 20:22 69:6 markets 92:22 97:8 marks 55:20,24 109:17,22 139:1,4 masonry 44:21 mass 26:2 30:11,17,17	master's 25:20 match 79:4 material 30:20 43:9 44:22 85:16,19,21 materials 44:25 matter 4:7 7:9 135:19 139:22 mauch 2:15 3:4 5:7,7 11:8,13 11:18 23:21 24:6 27:11,17 27:24 31:8,19 32:6,21 33:4 33:23 34:6,11 36:4,13 37:16 38:5,15 39:2 39:15 40:5 41:8 45:16 46:12 50:14 51:1 52:2 57:9 59:5 65:7 71:14 74:17 84:19 87:8 89:11 93:3 94:16 95:11,23 97:15,23 98:6 98:17 99:2,21 100:9 102:25 103:10 107:24 108:7 109:7,14 112:11 113:4 115:13 117:15 118:22 119:12	120:12,25 121:23 124:17 125:23 126:10 126:22 128:10 129:17 130:20 131:3 132:9,18 133:23 134:17 139:10,12 140:7,15,19 mcentee 29:14 mckinney 78:21 mean 19:19 23:18 24:8 34:12 48:14 57:10 62:23 66:23 75:14 83:17 87:25 94:11,21 114:19 116:24 118:13 130:1 134:1 meaning 61:19 75:14 96:14 means 4:22 27:4 44:16 83:3,4 133:1 meant 45:2 82:1 84:2,4,10 measures 95:17 measuring 94:19 mechanical 17:20 93:8
--	---	---	---

136:10 media 55:21,25 109:18,22 139:1,5 141:7 medications 6:17 meet 9:5 27:16 42:1,24 44:9 53:9 57:4 96:2 96:4 98:10 113:19 114:13 133:14 meeting 32:25 53:21 98:8 meetings 27:13 81:7 88:12 meets 133:12 mentioned 25:14 28:24 35:19 48:10 52:6 56:13 61:7 65:20 66:21 68:23 117:16 139:23 met 61:12 72:16 99:5 110:13 113:24 121:12 125:12 metal 21:4 method 52:8 134:7 methods 44:7 45:6,11 51:14 51:25	microphone 9:24 129:11 mid 101:18 middle 86:7 113:15,20,21 midway 104:1 might've 88:7 111:11 million 102:9 102:10 104:6,7 104:9,10,19,21 104:23,25 106:23,24 millions 97:7 98:14 mind 58:22 110:19 121:25 minor 48:14 55:12 132:3 minorly 15:24 minute 7:20 55:1 minutes 138:24 mis 96:20 mischaracteri... 109:8 mischaracteri... 11:9 31:20 32:22 36:5 38:6,16 39:3 40:6 59:6 84:19 missed 18:19	misstates 32:6 131:3 134:17 mitek 1:5 2:3 4:8 36:18 37:7 40:19 57:13 58:7 59:14,18 60:17 62:20 63:22 64:3 65:2,23 68:14 70:18 84:7 90:1 92:6,15 92:23 93:13,18 93:19,21,23 94:11,25 95:22 100:6 105:9,11 107:21 110:3 114:5,12 115:8 117:11,25 120:11,23 122:6,10 124:11 128:8 133:3,20 134:14,25 135:8 138:19 mitek's 36:21 38:21 58:25 59:16 64:14 65:16,17 66:5 68:5 74:16 82:22 89:21 91:7,18,22,24 94:14 95:9 109:5 116:11 116:21 121:17	123:6,8 124:10 126:4,6 129:3 129:16 130:24 131:2 134:4 137:12,21,23 mix 52:5 106:19 mixed 93:10 mm 6:6 mo 2:8 model 48:3,4,9 84:6 85:25 models 85:22 modifications 48:2 modified 46:25 modify 47:23 moment 19:8 37:13 58:21 76:6 79:13 89:24 90:4 97:20 100:8 109:21 114:24 month 32:17 monthly 81:7 morning 4:2 5:23,24 mouth 39:21 64:18 mouthful 135:15 move 21:20 58:23 80:5 90:5 129:13
--	---	---	---

135:13 moved 18:20 19:21 21:18 22:2,4 moving 109:25 multi 9:1 12:24 22:24 23:24 27:6 29:25 49:6 51:3 66:10 69:18,22 87:2,15 105:12 105:16,17,21 106:3,11,15 107:2,3,14,17 108:17 multiple 12:17 13:4 26:2 42:10 63:5 97:8 111:17 117:24 municipalities 120:9,22 121:5 121:9,10 municipality's 121:14 murphy 80:8 80:10	55:15 61:5 82:10,14 134:6 nailers 54:13 54:14 nailing 54:24 88:17 nails 17:23,23 54:2 61:3,4 69:9 74:3,3 134:5 135:5 name 4:2 15:11 76:15,23 114:15,16,23 named 78:22 national 16:16 nature 11:10 31:20 32:22 36:6 38:6 88:14 near 79:24 necessarily 37:25 necessary 89:13 need 6:5 8:12 19:14 39:13 53:16 55:10 110:2,5,9,13,22 110:22 111:1,3 111:4,13 112:1 112:9,15,16 113:1,11,18,19 113:24 114:13 115:9,19	133:16 needed 6:10 12:20 35:14 75:9,16 96:2,5 136:18 needs 9:5 57:4 63:13 98:8,10 negative 83:5 88:22 126:16 negatives 122:13 neither 142:10 143:6 nelson 143:2,15 never 28:13 125:14 new 16:5 19:25 52:20 78:9 81:22 82:21 83:18,22 98:15 98:20 99:13 119:21 non 37:22 47:6 75:15 90:8,10 90:12,13,17,18 90:20,25 91:3 91:5,6,18 109:6 110:1 114:6 115:5 122:12,21 126:5,9,20 normal 93:25 normally 103:12	north 14:19 97:9 northern 1:2 notary 4:11 142:18 notch 81:19 notches 81:19 82:6 notching 82:3 notes 32:20,24 novel 78:17 99:11 number 12:2 39:16 63:15 78:6 81:10 83:2 86:7 90:9 90:23 103:4 141:6 numbers 75:25 83:19 85:10 106:17
o			
o 4:1 oaths 4:12 object 11:8 33:23 89:14 objection 4:13 5:13 23:21 24:6,10 31:8 31:19 32:6,21 33:4 34:1,6,11 36:4,13 38:5 38:15 45:16			

46:12 50:14 51:1 52:2 57:9 59:5 65:7 71:14 74:17 84:19 87:8 93:3 94:16 95:23 97:23 98:6,17 99:2 99:21 102:25 103:10 107:25 108:7 109:7 113:4 115:13 117:15 118:22 119:12 120:12 121:23 124:17 125:23 126:10 126:22 128:10 129:17 130:20 131:3 132:9,18 133:23 134:17 objections 39:3 39:15 40:5 95:11 120:25 objective 90:20 obligation 24:19 obtain 75:6 125:7 obtained 133:17 obtaining 94:10 obvious 90:13 90:15 122:21	127:9 133:19 obviously 20:22 53:13 57:11,14 67:21 68:8 82:6 96:8 108:23 115:21 obviousness 90:8,11,12,17 90:18,20,25 91:3,5,7,18 109:6 110:2 114:6 115:5 122:12 126:5,9 126:20 occur 106:7 126:25 127:6 occurred 28:11 50:15 oem 18:17 offer 7:1 10:18 11:1 14:21 31:17 38:14 58:12 59:8,19 61:2,2 75:4 84:5 87:5 89:22 90:24 95:9 121:22 137:4,13,20 138:15 offered 13:15 13:16 14:20 40:18,19,20 43:18 53:8 62:11 66:9	67:1 70:18,24 71:3 72:12 73:24 74:7,12 75:1 101:8 102:3 137:23 offering 11:7 12:5 61:11 66:1 68:5 71:2 71:17 74:13 85:15 99:5,14 offerings 53:24 60:8 offers 14:17 62:11,12 65:23 90:1 office 16:22 19:22,22 officer 4:2 5:12 5:20 9:13,16 17:4 20:25 41:15 64:10 97:20,21 140:12,16,24 141:2 142:1,2 offices 14:2 official 48:19 officials 13:10 14:8 17:7 124:11 officiated 1:18 oh 25:4 129:12 ok 12:8 okay 6:13 8:6 8:11,16 9:10	9:16,18,18 10:4,11,24 17:15 18:8,22 20:19 21:13,20 22:6 23:9,16 24:22 28:8,24 32:18 33:13 35:10 37:11 38:3 40:12 41:1,10,10 45:5,12 48:10 54:25 55:7,18 56:17 57:7 59:20,21 62:22 66:19 67:13 70:11,20 72:10 73:22 76:1,13 76:18 77:3,15 78:6 79:11,17 79:20 81:14 83:12,15,22 84:1 88:6 89:16 90:5 92:11 100:13 100:22 107:10 109:12,16 110:8 117:8 122:17 127:19 130:23 135:12 135:14 137:10 140:16,25 141:2,4 old 44:5 83:4
--	--	---	---

older 59:1 once 19:22 107:21 125:12 ones 29:10 49:8 70:19 73:17 74:6 ongoing 8:23 open 31:11 39:6 opens 73:2 opinion 10:22 11:7,11,11 12:6 37:20,22 37:22 38:6 39:7,22 59:17 65:1,3,5,6,9,10 65:15 66:1 94:14 95:9 99:18 110:16 113:1 114:8,10 114:11 115:3,8 117:9 122:3,6 122:22 126:19 127:2,7 129:24 130:1,12,24,25 131:11 133:10 134:3 135:8 140:2,6 opinions 7:2,5 7:9,15,17,18,24 8:2,8,9,12,17 8:19 9:7 10:18 11:1 12:15 26:16 30:22,23	30:25 31:4,6,7 31:10,16,24,25 32:20 33:3,16 34:5 35:14,15 35:18,25 36:2 36:8,10,19 37:15,25 38:3 38:10,13,25 39:12,14,18,22 39:25 40:3,3,9 52:15 57:1,8 59:3,9,11,12 89:19 90:24 91:23 95:20 96:23 110:3,6 110:8 114:3 116:10,14,20 122:9,17 125:21,25 126:3 128:24 129:15 130:14 133:3,7 134:25 135:22,25 137:13,20,22 137:25 138:1,2 138:8,15,17,19 opposed 11:11 opposite 86:22 option 43:2,22 53:4 75:10 96:7 111:1 options 41:13 41:14 42:2,11 42:20 43:11	45:14 46:1 51:12 54:19 75:11,17 115:22 order 9:5 22:18 23:3 49:22 63:13 71:17 77:7 86:23 136:12 140:13 ordinary 28:22 135:18 organization 13:15 organizations 30:13 organizing 18:20 outcome 142:15 143:11 outgoing 81:22 82:21 83:5,23 outside 13:14 14:10 138:17 overall 9:6 24:19 50:24 55:14 69:19 81:18 82:2,19 83:13 85:1,6 85:20 92:3 102:18 103:5 105:7,12,15,17 106:16 107:5 107:14 108:10 108:12,14	130:4 134:25 overflow 16:6 overseeing 16:25 own 27:24,25 93:15 owned 22:17 owner 68:11 119:23 owners 48:18 124:12
p			
p 2:1,1 4:1 p.m. 109:23 139:2,6 141:5 141:10 package 69:22 page 3:2,7 10:7 10:8,15 12:2 28:21 36:22 37:12 56:4 77:15 81:9,11 82:17 86:1 100:22,23 101:3 pages 10:16,21 11:2 36:23 82:16 palm 82:14 134:6 pandemic 106:1,7			

paragraph 139:25 parallel 86:22 parking 49:7 49:10,13 part 20:9 29:19 52:11,18 56:10 56:18,24 58:1 63:25 64:1 75:3 76:17 85:3,5 98:4,7 112:20 partial 101:22 partially 112:19,21 participating 14:24 particular 25:16 27:7 29:7,10 36:25 38:13 51:19 54:20 56:15,18 57:7 69:11 86:14 92:13 113:11,24 118:19 121:20 particularly 76:24 parties 4:14 33:20 53:19 142:11,14 143:8,10 parts 21:4 131:13	party 25:24 patent 26:11,13 26:14,18 78:9 78:11,15,18,23 78:25 91:7,10 91:11,13 126:21 127:13 127:14,16,18 127:23,25 128:1,4,8,16 129:16,21 131:2 138:19 patented 129:3 paul 29:14 pause 33:25 62:13 pausing 89:12 pending 6:12 78:9,16,25 127:14 people 22:13 47:11 80:17 83:10 88:8 103:16 110:11 111:18 116:15 117:2 118:13 122:23 percentage 92:7 95:2 108:11 perfect 83:10 perform 117:14 performance 24:5,8,16	permitted 4:18 person 13:17 13:23 22:18 28:21 63:15 90:14 135:18 140:4 personal 65:6 65:10 139:15 personnel 18:15 perspective 56:8 73:18 phone 64:18 phrase 90:19 90:21 phrased 138:4 phrasing 126:12 132:23 piece 43:5 pieces 26:24 place 73:5,7 74:4 placement 54:3 54:6,13,15 55:4,10 plaintiff 5:6 plaintiffs 1:6 2:2 plan 119:21 plans 51:15,24 87:13 plates 41:19 42:21 43:15 93:18	platform 41:13 41:23 42:7 player 114:18 pleasanton 16:7,22 please 5:3,14 97:18 126:18 plenty 51:9 93:9 podium 23:2 49:3,11,19 podiums 47:19 point 32:2 37:12,14 39:9 39:12 45:1 46:18 48:8 50:8 55:12,12 56:4,5 57:19 58:11 64:2 78:8 86:7,11 89:8 92:1,12 93:5 112:9 135:13 137:6 points 10:21 31:18 32:14,16 32:19 78:7,24 86:3 popular 46:4 portion 17:2 56:5 81:24 105:24 132:7 132:16 133:1 134:22 139:21
---	---	--	---

portions 26:6	pre 9:17 19:10	122:23 134:9	116:17 117:21
posed 31:3	preassembled	134:10	122:19 123:12
posita 27:3	19:10	prevent 6:18,22	131:15 133:16
28:13 34:19,24	prefer 51:24	previous 27:2	137:15 142:4
35:4 136:7	preference 62:6	35:11,21 92:2	probably 9:7
139:25	preferred	previously	22:11 23:8
position 19:20	71:11	20:12 32:14	45:24 57:19
122:10 126:8	preparation	34:20 51:12	63:3 75:5 81:3
126:19	26:21 27:14	price 67:5,5	87:13 95:13,25
positive 54:3,6	35:24 36:1	69:21 70:3	96:12 99:16
54:13,15 55:3	prepare 26:19	74:7,12 83:1	101:18 103:17
55:10 81:2	39:21	83:22 84:4	107:4 111:20
122:11,18	prepared 9:7	pricing 66:24	113:12 116:5
123:7,9,13,18	36:15 143:3	69:17 73:18,20	122:6 128:21
123:25 124:21	preparing	84:7 88:19	129:5 134:8
124:22 125:1,6	32:18 36:11,19	102:19	problem 45:14
possible 48:1	36:19	primary 99:19	114:5
50:20,23 82:8	present 2:22	99:22	problems 129:9
100:7 117:17	18:23,24 80:18	principles	136:22
possibly 115:25	presentation	26:14	procedural
post 29:7 30:3	80:3,14,18,19	printout 80:2	4:19
posts 27:5	80:22 81:1	100:15	procedure
28:24,25 29:13	84:1 134:11	prior 10:9 32:6	10:13
potential	presentations	38:20 40:18	proceed 5:20
118:17 130:17	83:11	41:3 45:6	proceeding 4:4
potentially	presented	46:24 62:10	4:17,25 141:10
77:17	79:25 81:25	71:10,18,23	143:4
powder 17:20	118:18	85:17 91:20	proceedings
powerpoint	pretty 61:8	98:24 99:7,9	142:3,4,5,8
79:25 80:2	67:13 79:1	99:23 100:11	143:5
134:11	86:20 87:7	103:25 109:8	produce 56:22
practice 119:16	98:1 107:10,13	112:10 113:8	produced 4:16
practices 12:11	107:17 108:17	114:1 115:12	100:5,5,11
119:10 120:4,7	110:11 115:17	115:23 116:17	

product 15:22 15:24 16:1,5 16:19 18:5,11 18:20,24 19:4 19:5 20:1,12 20:18,24 22:4 22:9 23:14,17 24:4,8 26:4 37:3 45:13 51:4,9 54:24 56:15 58:9,9 64:7 65:1,2 66:4,5,9 71:21 71:23 74:22 77:12,13 80:8 80:10 84:16 91:18,22 92:5 92:8,9,10,13,18 93:1,6,22 94:9 94:12,23 95:21 95:22 96:1 97:2,6 99:20 101:12 104:21 105:7 106:19 109:5 110:4 112:4 113:7,19 114:1,20,22 115:1 117:3,13 117:18,20 118:4 119:4 120:23 122:8 123:14,19,21 123:22,22 124:22,23,24	124:25 128:15 128:19 products 13:21 13:22 17:8,19 17:19 19:11 20:2 22:6 23:20 24:10,20 24:21 25:2,12 25:25 26:2 50:24 51:5,6 55:4,6 59:13 60:19 62:15 63:18 67:25 68:16 69:25 70:17,17,22 91:20 92:19 93:21 96:24 97:13 98:1,2,5 99:15 102:5,18 102:23 106:23 131:14 134:15 136:13 137:14 professional 12:16 13:10 25:15 61:25 professionals 13:25 profitable 95:15 progressed 16:24 project 69:23 69:25 70:1,2	projected 108:23 projection 108:14 projections 108:5,20 projects 13:2 18:16 51:4 66:12 69:19 105:22 promote 30:19 58:2 promoting 30:10 46:6 57:24 properties 133:5 135:10 protection 78:19 prove 119:7 provide 9:8 37:24 41:4 58:6 62:20 63:5 71:4 72:14 77:7,17 78:7 135:25 provided 7:10 29:8 34:4,7,8 34:10,22,24 35:10,22 57:13 72:17 73:10 77:25 132:1 provides 63:22 64:24	providing 6:18 6:22 16:8 provision 49:16 provisions 49:21 public 142:18 published 28:25 117:25 pugmire 125:8 125:9,10 pullback 105:25 107:14 pulled 16:19 107:22 purchase 124:25 purchasing 123:21 purpose 7:14 8:6 78:4,5 purposes 36:11 pursuant 10:13 37:21 push 57:22 pushing 30:13 put 8:3 39:20 54:10 57:11 62:7,9 63:16 69:4,4 82:5 putting 71:10 99:9
---	---	---	--

q	139:13,16,18	rather 18:16	99:22
qualifications	139:20 140:7,9	41:20 62:9	reasonable
140:3	quick 6:3 17:24	81:19 115:9	96:17
qualified 7:1	55:19 89:15	rating 42:16,25	reasons 64:5
10:17 13:4	quickly 63:6	43:10 44:15	99:16
142:7	64:4 110:11,14	45:8 60:16,18	rebuttal 138:1
quantities	115:9 134:15	60:20,22,22,24	rebutting
103:3	135:1	68:14,14,15,18	137:20
quantity	quite 19:6	68:24 69:2	recall 35:17,23
102:17,21	25:25 44:4	96:9 98:25	70:14 74:11
quarter 43:6	61:17 97:17	118:6,11 119:5	75:23 117:18
question 6:7,9	117:17 124:14	121:18 123:1	117:23 139:13
6:12 11:20	quote 70:4	ratings 59:3	139:15,16,17
24:16 31:12	quoted 69:19	61:24 62:3	139:20,24
37:17 39:6,7	70:2	118:1	receive 79:22
39:11 40:23	r	reach 33:5,13	123:13
78:11 89:2,4	r 2:1 4:1	63:14 125:5	received 68:4
89:13 97:16	r&d 20:10,15	read 27:22,25	85:10 87:6
104:11 107:15	20:16 29:15	36:14 38:1	89:5 123:18
109:1 112:12	118:18	97:16,18	129:25 131:12
116:9,25	raise 5:14	135:23 138:6,8	receiving
119:15 120:15	ran 43:2	readily 67:7	122:10,10
130:15 135:25	range 21:16	reading 11:5,14	recent 53:25
questioning	113:13 133:14	ready 59:7 76:9	66:8
28:2 109:11	rate 41:24	real 101:3	recently 5:25
questions 6:15	42:24 64:8,10	realize 54:25	51:16 52:4
9:8 13:5 17:7	64:11	really 30:23	66:19
20:8 25:8 31:2	rated 40:17	42:17 62:6	recipient 76:13
37:17,19,19	44:17 53:9,18	64:18 67:16,18	recognition
38:18 58:15	86:19 96:9	71:7,12 83:10	122:11,18
63:9,9 122:14	99:8 101:8	106:16	123:7,9,13,18
123:20 126:13	111:2	reason 25:3	124:1,21,23
135:25 139:8		53:13 58:1	125:2
		60:4 71:12	

recognize 10:4 10:7 recollection 45:18 73:20 101:20 record 4:4,5,14 5:3 10:11 11:9 55:21,23 56:1 81:9 97:21 100:10 109:18 109:20,23 138:23 139:2,3 139:6 140:13 141:5 142:9 143:5 recorded 4:21 4:25 142:6 recording 142:8 143:3 recordings 4:16 red 83:4,6,8 reduce 53:1,2 53:18 96:9 reduced 142:6 reducing 87:3 reduction 52:24 refer 15:21 34:18 90:6 135:12 reference 47:16 108:19 111:17 134:20 136:16	referring 24:11 27:10 28:4 31:16 59:23 85:2 107:13 131:17 134:1 refers 52:13 84:25 reflected 104:5 106:17 regard 13:5 65:24 regarding 7:19 32:20 40:13 41:2 58:19 59:2 116:1,6 117:13 118:3 119:9 120:8 123:7 139:14 140:3 regards 66:7 region 21:8 regional 16:14 regular 14:16 54:14 rehabilitate 18:6 reilly 2:23 5:1 reinforces 131:8 related 29:8 31:4 38:3,9,13 38:18,19 39:1 39:8,12,18 40:4,10 58:15	59:4,8 75:21 89:19 92:19 119:15 123:21 130:18 135:22 135:24 137:5 137:18 138:10 138:16 139:14 142:10 143:7 relates 28:22 relating 40:14 40:21 41:2 52:14 90:7 121:20 135:16 relation 81:18 122:1 140:1 relative 142:13 143:9 relatively 92:17 97:4 99:13 relayed 87:24 release 41:3 111:24 116:3 released 113:15 113:17,21 115:21 relevant 12:14 25:17 rely 26:17 34:4 remaining 85:8 remember 23:6 35:5 68:19 remembered 68:17	remembering 121:2 reminder 6:3 removing 43:8 repeat 7:23 11:20 48:12 96:19 97:15 112:12 126:17 repeated 97:21 rephrase 24:16 replaced 61:12 77:9 107:22 replacement 61:14 72:12 75:2 77:23 replica 127:11 127:20 reply 139:24 report 7:6 20:15,16,23 53:17 139:18 139:21 reporter 4:3 reports 24:2 53:11 121:11 121:11 138:6 represent 100:3 reps 76:23 request 6:11 68:21 99:6 requested 67:24 97:22
--	--	--	--

requesting 71:22 requests 20:1 require 55:5 85:22,23 118:21 120:10 120:23 121:6 required 43:1 118:11 119:21 requirement 42:4,5 requirements 42:1 47:8,20 53:9,16,22 133:13 requires 60:10 61:4 86:18 requiring 132:12 reread 37:14 research 16:21 20:21 130:18 residential 18:17 22:25 23:2,4 30:12 49:14 resistance 42:10 51:7 resistive 12:12 22:8 38:19 50:13 56:6 resources 127:25	respect 24:19 24:24 26:15 31:6 56:12 62:16 88:15 92:13 93:20 127:7 136:22 responding 20:4 response 130:15 responses 6:5 responsibilities 16:23 26:22 responsibility 24:19 25:5 responsible 24:4 25:2 restructured 18:11 results 56:22 133:4 135:9 retained 7:4 141:7 retardant 47:5 48:16,16 49:22 52:19 revenue 106:20 review 16:16 28:8 36:18 37:8 50:9 51:16 100:8 128:1 139:18 139:21	reviewed 26:5 28:9,9 91:14 134:12 reviewing 32:19 35:18 riding 64:19 right 5:4,14,25 7:2,25 10:22 11:14,25 20:5 22:13 24:11 25:1 28:6 30:9 34:18 36:3 39:20 45:9 46:20 47:22 49:3 51:20 54:11 55:19 56:15 58:23 62:15,20 63:2 63:15 67:11,16 67:19 70:9 71:13 72:5 73:1 75:2 77:20 80:12 81:16,21 82:22 83:24 85:18 86:25 91:8,11 93:2,14 96:1 101:1,21 102:2 102:13 104:2,7 104:19,23 105:2,21 106:6 106:18,21 108:24 112:20 113:16,24	117:5 124:23 126:9,15 134:16 139:4 141:2 rim 41:24,25 robin 41:11 robocalling 63:16 rod 51:7 role 12:19 15:8 15:20 16:10 17:15,16 18:23 18:24 19:2,3 20:9 21:15,16 21:19,21 22:3 22:5 23:7 24:23 26:4 roles 22:9 25:6 roll 19:7 rolled 15:19 roughly 22:20 23:9 32:17 round 41:11 111:21 rule 10:13,14 37:20,21 rules 4:20 6:3 37:22 running 24:2
			s
			s 2:1 3:6 4:1 safer 19:14

safety 53:21 saint 2:8 sales 3:13 14:2 17:6,16 18:1,3 18:8,10,11,20 19:13 21:21 22:1,3,10,12,22 23:7,10,13,19 23:20,23 24:18 24:20 25:13 63:14,24 76:23 77:7,21 81:1,6 81:6 87:19,23 88:8,11,12,25 92:12 93:6 95:14 97:1,7 98:14 101:10 101:16,21,25 102:2,9 104:8 106:19,23,25 107:5,13 108:5 108:14 111:11 122:7,8 123:10 123:21 salesmen 88:25 salespeople 20:5 63:7 64:17,19 77:17 81:4 88:13 89:9 92:4 120:9,21 125:10 salesperson 19:25	sam 33:6 san 1:17 2:18 4:9 saved 87:12 savings 82:9 saw 10:9 32:4 32:13,16 79:24 93:23 127:10 134:9 135:6 saying 92:11 117:7 120:6 123:10 125:9 127:24 132:25 139:24 says 53:18 56:24 78:9 83:18 86:12 scenarios 15:25 scheipeter 2:5 3:3 5:5,5,22 9:14,17,25 10:3 11:22 17:10 21:5 24:3,9 28:3 31:13 32:3,12 33:1,12 34:3,9 34:16 36:9,17 38:2,11,24 39:10,19 40:11 44:12 46:9,17 50:21 51:11 52:10 55:18 56:2 57:20 59:10 64:12	65:14 71:19 74:21 84:24 87:18 89:12,17 93:11 94:20 95:19 96:13 97:18 98:3,12 98:22 99:17,24 100:14 103:7 103:11 108:4 108:15 109:12 109:16,24 112:13,14 113:9 115:24 118:2 119:2 120:1,19 121:4 121:15 122:2 124:20 126:2 126:14 127:1 128:18 129:12 129:14,22 130:22 131:9 132:15,24 134:2,23 138:23 139:7 139:14,17 140:8,22,25 schooling 135:17 136:4,6 science 25:19 scott 2:4 5:6 scott.eidson 2:9 screws 17:23 17:24,24	se 29:1,1 81:2 searching 110:21 seat 73:13 131:21 second 10:6 21:14 43:16,20 44:14 62:14 66:21 77:15 78:8 83:3,17 89:19 109:25 127:21 137:17 secondary 90:17,18 secondhand 88:7,11 section 49:16 75:21 sector 107:18 see 15:6 20:3 21:22 35:1 47:24 62:16 68:18 69:5 70:13 76:15,16 76:21 78:1 80:17 83:18 86:6 94:4 105:16 106:9 106:11,14 108:25 119:17 127:9 131:14 131:19 133:18 135:23 138:4
--	---	--	--

seeing 32:9 45:20 63:4 69:20 76:23 85:6 123:22 139:24 seek 45:13 seeking 78:18 seeks 65:7 129:18 132:19 seemed 93:19 seems 133:18 134:12 135:3 seen 10:24 35:21 43:22 76:11,24 79:20 100:7,20,21,21 111:17 sell 95:3 103:21 105:4 107:19 selling 58:9 70:5 94:12 99:19 103:19 104:3,4 seminars 16:13 sense 55:8 82:5 138:5 sent 77:7 92:18 separate 112:6 113:1 separated 132:21 separation 49:18 131:20	sequence 71:11 sequencing 62:5,12 71:9 99:6 series 27:1,2 29:20 37:5 53:8 58:25,25 58:25,25 59:1 59:16 60:1,2,4 60:6 61:10,18 61:22 62:9 67:3 71:2 72:3 72:13,13 77:7 77:9,9,22,23 80:6,11 81:22 81:23 82:19 85:20,25 91:20 100:19 101:7 102:4,14,15 105:4 108:13 110:14 112:24 137:11,11,11 137:12,12 served 8:3 service 60:1 62:18,23 63:21 64:6,14,22,23 services 16:9 63:19 serving 18:16 session 14:21 sessions 14:7 14:17	set 7:19 10:21 79:11 89:18 95:6 108:11 sets 136:2 setup 6:2 several 82:20 sflaw.com 2:19 shades 83:9,21 shakes 6:5 shape 73:1 share 31:3 92:7 92:15,22,23 93:1,17,20,24 93:24 94:1 95:2 103:9 105:8,11 shared 80:16 shartsis 1:15 2:16 5:7 shear 19:10 51:8 sheathing 41:20 54:17,17 sheet 101:1 sheetrock 97:13 112:10 119:11 shepherd 52:7 shoot 129:12 short 118:1,8 shortcut 115:25 137:3 shortly 28:10 28:11	show 82:23 87:13 92:6 93:23 104:8 106:22 showing 52:4 83:1 85:5 94:1 100:16 101:5,6 101:9,21,24 shown 85:7 101:16 shows 20:2 82:19 91:21 102:8 shy 104:9,24 106:24 side 18:14,14 19:22 25:3 86:23 93:9 signature 141:9 142:16 143:14 similar 24:23 44:6 57:14 65:11 73:19,20 95:25 108:17 133:12 similarly 58:7 simple 87:25 92:17 134:8,9 simpler 54:9 65:22 98:11 simply 39:11 simpson 1:8 2:14 3:9 4:8 5:8,10 6:25 7:8
---	--	--	---

7:10 8:3 9:4	115:8,10,18	sitting 38:12	skills 142:9
10:17 12:8,22	116:20 117:9	41:21 42:9	143:6
13:1,8,15,20	117:10 118:9	46:24 134:24	slew 20:20
14:10,17 15:1	120:9,15,21	138:3	slide 81:14
15:2,5 16:9	122:10 123:13	situation 16:20	82:19
17:8,17 18:11	123:18 124:15	110:13	slides 81:3
18:19 20:10	125:22 130:11	situations	slight 61:17
23:20 27:14	130:17,24	19:24	92:15
28:25 29:15	131:6 132:6	six 44:7 45:6,10	slightly 72:3
30:4,6 33:2	133:22 134:13	45:14 51:12,13	88:20 92:6
35:17,19 40:18	134:15	60:10,12 67:21	102:9 104:21
40:20 45:12	simpson's 7:4	86:14	111:22
58:4 59:12	10:12 13:22	sixes 68:10	slit 118:10,21
60:2 61:22	14:21 15:10	sizes 75:4	119:5 121:18
62:17,19,25	24:11 27:19	skeptical	132:13
63:11 64:3,4	38:21 53:25	116:11,15,21	sloppiness
64:24 65:20	58:9,24 60:19	117:3,10,19	118:14
66:1 67:9,24	62:14 65:1,15	118:10,13,15	slow 107:24
68:3,15,22	66:4 67:23	119:4 120:17	slowdown
69:2,4,25 70:8	82:21 91:17	120:22 121:17	108:22
70:17,22,24	92:14 96:24	122:4	smaller 94:6,7
71:12,16 74:14	109:4 125:10	skepticism	114:18
75:9,13 77:17	131:23 135:16	117:12,23	sold 69:22
78:18 80:13,14	136:3,5,8	121:2,21	102:17,21
87:6 89:5,21	137:11	123:25	103:2 104:20
89:25 90:7,24	single 12:24	skew 70:15	104:24 105:2,2
91:2 92:21,25	30:12 45:22	72:1	122:8
93:8,10,13,17	80:23 81:19	skewable 71:25	solution 56:23
94:1 97:14	105:22	skewed 61:18	115:11 122:19
98:15 100:6	sit 36:2 43:24	70:8,9 72:1	128:6
101:9 105:2,4	70:16 137:19	skews 24:2	solutions 50:19
107:21 108:5	sites 63:6	skill 12:10,13	98:24 111:18
113:18,21,24	sits 131:25	28:22 135:18	115:18 141:8
113:25 114:13		139:15 140:4	

solve 45:13 114:5 solved 110:4 112:20,21 somebody 63:13 68:7 78:2 119:17 120:6 127:10 127:13 136:9 136:23 somewhat 19:19 22:11 106:17 125:14 sorry 7:23 11:13,18,20 17:4 18:19 27:25 31:14 41:10,15 59:11 72:22 75:8 76:19,19 77:19 80:13 97:15 102:12 112:11 120:18 123:6 129:1,12 135:4 sort 13:18 14:16 15:7 24:23 25:3 30:3 41:21 49:8 63:16 73:5 92:17 93:15 94:23 95:3 106:14 108:11,19	sorts 96:21 sound 6:12 87:1 sounded 30:22 sounds 6:14 36:1 south 14:15,15 southeast 14:20 14:25 15:16,19 18:4 21:7 space 49:13 spacing 67:21 speak 122:16 135:24 136:23 special 49:16 specialists 18:5 specialized 12:9,13 specific 24:2 30:23 31:11 36:2 38:25 44:18 46:15 52:4 54:3 59:22 64:14 85:2 94:18 103:14,22 104:16 105:10 108:2,13 109:10 111:6 116:23 119:1 119:25 121:2 121:13 123:5,6 123:17 131:17 136:16,20	137:4 specifically 22:7 27:8 44:2 56:5 66:22 82:1 89:23 99:1 118:12 120:6 133:9 specification 65:21 specifier 61:24 specifiers 65:11 65:23 124:3,9 specify 61:25 63:18 specifying 51:25 speculating 119:17 speculation 45:17 74:18 87:9 98:18 108:8 115:14 124:18 125:24 132:10 133:24 speed 55:16 56:13,14 spend 115:10 spent 84:10 split 106:19 spoke 61:1 111:16 spreadsheet 100:16	sprinkler 48:24 sprinklers 47:19 48:23,25 49:21 square 87:3 sst0069540 81:10 sst0069543 81:12 sst0069545 82:17 sst0105219 100:4 stainless 17:23 stakeholders 124:13,14,16 125:3,5 stamp 12:20 standard 42:7 82:25 122:15 128:23 140:22 140:25 standards 94:25 standing 29:2 91:13 118:7 standpoint 16:17 23:14 62:12 103:3 stands 47:11 68:24 start 46:10 47:25 75:24 89:14
---	---	--	--

started 15:10 15:15 21:17 23:6 46:4 47:11 64:3 106:1,14 110:11 111:5 112:3,4 starting 8:16 10:15 12:2,22 40:20 70:21,23 99:1 state 29:23 38:8,20 40:13 40:21 41:2 46:25 52:12,16 56:6 57:15 58:19 59:15 68:8 80:22 100:9 142:19 stated 10:16 136:3 138:21 statement 22:19 states 1:1 12:17 12:21 14:14 16:15 47:2 48:1,7,8 134:20 stating 68:7,7 steel 44:20 steels 72:6 stenographic 4:22	step 44:13 stickers 9:13 stinson 2:6 5:6 stinson.com 2:9 2:10 stipulation 4:23 stood 35:6 64:7 68:8 99:3 stop 42:22 73:13 135:21 stops 73:10,11 73:11 79:3 131:24 132:1 straightforward 48:17 99:4 134:10 straps 19:6 25:10 street 1:16 2:17 strength 52:24 strike 133:18 strong 1:8 2:14 3:9 4:8 5:8,11 10:12 19:8,9 29:15 30:4,6 58:5 60:2 101:9 120:15 stronger 19:14 structural 12:10,23 14:2 25:21 29:2 43:6,7 50:12 54:16 136:10	structure 23:4 30:20 49:10,10 49:12,14,18 53:20 67:19 structures 12:24,25 18:6 18:7 19:14 23:1 30:11 49:6,7 50:6 51:8,10 87:2 stud 41:22 44:20 studies 135:2 studs 41:18 42:21 67:21 subject 7:9 28:23 40:10 58:17 90:14 135:19 subjects 31:23 substrate 16:3 18:3 succeeded 114:12,13 success 91:1,3 91:4,17,19,24 93:22 94:10 95:18,21 96:25 97:3 98:4,7,13 102:18 109:5 successful 91:22 94:15,18 94:22 95:10 97:4 102:24	114:20 summarize 7:5 summary 7:9 8:2 100:23 101:4 super 83:14 support 16:9 16:14,16 20:8 20:21 25:5 51:5 53:5 57:8 59:16 63:7 90:8,25 91:3,5 91:16,18 109:6 110:1,1 114:6 115:5 122:5,11 126:5,20 127:3 127:6 supporting 19:12 22:14 23:13 41:19 90:24 109:4 122:9 136:20 supportive 9:1 supports 19:4 114:6 122:3 126:9 135:8 suppose 8:20 123:20 supposed 73:13 sure 7:24 9:10 9:12 13:19 15:10 30:25 31:9,14 33:25 34:21 55:13,14
--	---	--	---

58:7 66:24 69:24 74:24 76:22 82:8,12 84:25 87:25 89:12 103:17 108:13 124:14 127:14,16 133:1 138:25 surprised 52:6 surprising 133:21 swear 5:13 swing 82:14 switch 104:2 switched 103:13,15 104:16 sworn 4:14 5:17 35:8 142:5 system 17:24 42:15 110:23 systems 17:19 18:25 19:7 51:7 122:25,25	79:13 84:17,22 126:8 138:2 taken 4:7 5:25 142:3,12 143:8 takes 74:15 82:6 85:1 talk 14:4 37:11 39:17 40:2,8 40:16 42:12 44:24 48:18 57:17 59:7 62:16 66:11,11 78:13 87:15 118:13 talked 16:12 57:21 86:11 87:11,23 88:1 88:5 talking 29:23 47:11 48:15 91:7 123:23 124:1 taller 30:14 46:6,6,22 47:20 48:24 49:23 50:6,17 tariffs 108:24 taught 13:3,6 teaching 13:13 team 17:6 18:3 18:12,13,20 19:3,11,13,17 19:19 20:7,15 20:16 22:16	23:13,24 25:1 25:9,11 26:1 63:25 64:1 76:22 77:7,21 88:12 92:12 teams 22:12 tech 75:12,18 technical 45:20 135:17 136:4,6 technically 22:16 43:8 technological 58:18 technologies 59:1 technology 5:1 38:19,20,22,23 40:13,21 41:2 52:12,13,14,16 52:20 53:4,23 56:6,9,12,14,25 tell 5:18 16:9 21:6 83:13 87:11 102:20 102:22 115:17 telling 64:20 temperature 60:20,22,24 68:14,15,18 69:2 ten 140:24 tenants 64:24 97:10	term 27:3 28:13,15,17,18 34:24 35:5 44:14 48:4,22 90:10,12,16 105:22 124:2 terms 34:18,20 34:23 85:12 124:3,21 territories 103:5 test 15:19,21 53:17 tested 60:15 74:15 testified 5:19 32:14 51:13 79:1 112:15 138:6 testify 40:1,13 40:24 111:25 116:6 123:17 testifying 142:5 testimony 6:19 6:23 11:10 31:21 32:7,23 35:8,10 36:6 37:21,23,24 38:7,16 39:4 39:25 40:6,12 41:1 48:12 58:13 79:4 84:20 85:17 109:8 111:16
t			
t 3:6 table 85:7 take 4:4,11 6:10,11 18:23 32:19 37:13 44:13 55:1,19 62:8 76:6			

127:22 131:4 134:18 137:7,9 141:6 testing 25:23 25:25 26:1 35:21 53:9 74:14,20 99:12 115:20 119:7 121:11 texas 12:18 33:8,9 thank 5:12 10:2 11:14 18:22 45:5 73:16 79:11 140:10 140:11 141:2 theirs 66:8 thicker 41:24 thickness 61:17 72:5 87:2 thicknesses 72:8 thing 52:21 56:19 66:21 73:5 92:1 99:4 122:5 127:21 129:1 things 17:25 19:7 23:4 27:5 47:19 48:15 57:19 58:14 65:11,11 73:5 73:7 96:10,22 123:23 132:3	think 10:9 14:18 21:23 23:23 24:12,14 28:20 29:17 31:6 32:14 34:7,14 35:19 35:21 36:10 37:20 39:5 41:14 44:3,7 45:10 47:13,15 47:16 48:17 49:4 50:7 52:7 52:19 55:2 56:22 60:4,24 61:15 62:2,17 62:18,22 68:23 68:23 69:8,18 72:2 78:22,25 80:25 82:5 83:13 89:23 90:3 91:19 94:23 95:4 96:10 97:25 98:4 99:4,10 100:10,10,25 106:8,12 108:22 109:10 110:11,19,25 111:3,10,10,11 112:4,8,15 113:10 114:12 115:20 116:15 117:1,19 120:5 120:14 122:20	125:13 128:21 134:7,10 136:16 138:5 140:25 thinking 8:20 22:6 82:8 97:11 98:23 113:13 124:5 134:11 thinner 43:5,5 75:7 third 33:20 86:7 88:7 90:5 90:6,22 thought 21:10 30:23 31:1 120:16 thoughts 126:24 three 43:6 46:14 49:18 61:4 63:2 72:4 72:7 78:24 thrown 44:15 tie 1:8 2:14 3:9 4:8 5:8,11 10:12 29:15 30:4,6 58:5 60:2 101:9 120:16 timber 26:2 30:11,17,18 47:5 49:22	time 1:14 5:2 7:20 8:24 9:3 17:17 22:16 23:25 26:24 28:16,16 29:21 31:10 32:4,13 33:17 35:8 36:8 38:22 41:6,24 45:4 45:23 50:7 52:13,17 55:21 56:1,7 62:8 68:2,17 70:23 71:3 74:15,20 74:25 76:17 78:20 79:24 81:15,16,17,22 82:2,3,6,9,11 84:10,17 85:1 85:2,6,9,12,14 96:17 109:2,12 109:23 110:16 113:23,25 118:1 121:3 134:13 135:2,5 135:24 139:2,6 140:10,11,20 140:23 timeline 24:14 115:1,17 116:2 116:7 timely 63:6 times 16:4 25:8 39:16 69:21
--	--	---	---

111:18	43:23,24 44:1	136:6	truly 122:13
title 21:25	45:21 52:7	transcriber	truss 42:9 63:3
23:10 75:18,22	58:21 72:24	143:1	93:18
titles 15:4	73:1,6 74:11	transcript 4:16	trusses 43:24
today 6:5,17,23	86:12	6:4 28:5,8	43:24 44:1
7:14,18 8:7,13	topic 14:5	140:14 143:3,4	52:7
10:10 26:20	37:12 38:4,9	transcriptionist	truth 5:18,18
27:14 32:11	38:13,18 39:1	142:7	5:19
36:1 38:12	39:8,18 40:4	transcripts	truthful 6:18
51:14,17 67:8	52:11 56:10,18	27:22	6:22
69:15 70:16	56:24 57:8	transfer 53:13	try 46:15 51:16
134:24 137:19	58:10,11,23	53:16	119:22
138:1,2,3	59:4,8,13	transition	trying 23:23
140:10,21	89:20 90:5,7	23:13	24:22 39:24
today's 66:24	90:22 122:1	travel 19:25	40:2,23 57:4
141:5	135:22 136:2,2	traveling 17:3	80:25 82:2
together 22:13	137:10,18	17:5 33:7,9	116:25 117:5,8
82:5	139:14	treated 47:5	120:14 125:13
told 64:5	topics 7:19	trees 15:13	127:22
tom 3:11 77:10	8:12 10:8 11:2	trial 11:2 31:17	tsh 1:8
77:11,13 79:25	11:5 33:17,20	38:14 58:13	tuck 10:1
80:8,10 81:25	34:17 36:15	74:25 89:22	turn 81:8,11
82:3	138:17	116:7 121:22	82:16 86:1,21
tom's 84:6	total 70:1,2	123:24 136:21	turnaround
85:13	74:15 101:10	137:5,14,18,20	140:23
took 26:23	102:21 106:24	138:13	twenty 107:4,4
32:24,25	141:6	tried 33:13	twice 89:1
tool 20:23,25	touched 138:12	114:12,12,13	125:12
21:2	towards 121:2	114:21 115:4,7	two 13:25 23:9
tools 63:18	tracking 23:20	115:7	23:18 29:19
65:20,21,23	23:25	tries 30:15	42:1,3,10,25
top 10:7 35:4	trade 20:2	true 93:18	43:1,5,10,13
41:19,21 42:9	training 15:18	142:8 143:5	44:14,17 45:1
42:21 43:3,15	16:12 135:17		45:3,8 46:1

52:22 53:18 57:19 60:9,10 60:11,23 61:6 64:23 65:18 67:10,15,20,20 68:9,10,20 73:21 74:20,25 81:19 82:6,16 83:20 85:22,25 86:13,25 94:8 98:25 99:11 101:8 102:18 102:23 111:2 119:5 123:1 131:13,19 132:21,21 133:15 135:3 type 8:23 9:2 27:6 29:8,11 30:14,14,16,19 42:13 43:1 46:3,19,19,21 47:3,6,8,18 48:23 49:9,17 49:20 50:6,16 52:23 53:6 57:16,18,22,24 67:13 105:7 111:19 112:1,7 112:7,17 113:2 118:19 119:20 120:10,23 123:23 125:1 127:3	types 13:2,20 14:17 23:20 29:16 44:18 51:6,8,9 54:8 58:2 63:2 136:22 typewriting 142:7 typical 43:4,18 45:2 75:13,14 134:6 typically 41:20 42:12 46:14 54:23 92:25 93:13	73:12 77:8 127:15 136:12 137:1,1 138:4 understanding 7:12,13 8:4,5,7 28:18 77:3 83:2 84:2,10 90:10,12,16 91:2,4 92:14 93:16 104:11 105:8 118:5 128:22 129:20 135:16 136:3,5 136:8,21 understood 8:10,14,15 25:14 34:2 127:20 unexpected 133:4,6,9,18,21 135:9 unfortunately 33:7 unintentional 128:19 unique 70:21 unit 55:21,25 109:18,22 139:1,5 united 1:1 14:14 48:7 unmet 110:10 unresolved 110:2,5	updated 29:18 updates 111:24 upper 67:19 usable 87:3 use 9:2 13:22 30:11,16,20 38:19 40:21 41:23 45:21 46:6,21 47:3,4 47:17,18 48:15 48:23,25 49:3 49:21 50:6 51:18 52:23 54:2,2,5,11,11 54:18,22 55:15 57:16 58:2 69:25 74:3 83:10 87:13 103:24 112:7 119:18 120:17 136:25 used 16:1 21:3 22:8 26:2,9 27:8 40:17 42:16 44:4,25 45:7 48:4 51:7 51:14,17 52:7 52:21 53:6 54:13,16 60:11 75:14 81:3 83:19 101:8 110:12,23 111:1 119:20 122:14,23
	u u 73:1 ubc 46:23 ultimate 118:19 ultimately 56:22 116:3 128:20 unaware 68:2 74:24 under 4:19 underneath 23:2 understand 4:15 7:15,22 8:9 20:1 26:22 39:24 40:2 57:12 65:12		

124:2 136:13 141:7 useful 57:5 58:8 87:4,14 user 38:23 56:23 61:10 62:6 103:22 user's 57:4 users 55:14 56:11,25 57:2 57:12 60:3,5 63:12 124:4 uses 4:18 17:8 using 40:14 42:7 43:6 46:19,20 48:9 52:8,14 53:5 55:9 64:3 67:15 71:8 82:13 97:5 103:17,17,22 103:25 122:24 128:14 134:9 135:5 usually 15:25 47:24,25 49:4 49:7,17 50:2 61:5,6 72:6 75:23 88:11 93:17 108:11 108:19 utilize 29:25 30:15 77:22 125:1	utilized 25:9 41:5 116:8,17 116:18 117:21 utilizing 127:15 v v 1:7 2:15 vague 23:21 24:6 31:8 33:24 34:6,11 36:4 38:5,15 39:3 40:5 46:12 51:1 52:2 57:9 59:5 65:7 71:14 93:3 94:16 95:23 97:23 98:6,17 99:2 99:21 102:25 103:10 107:25 109:7 113:4 117:15 120:25 121:23 125:23 128:11 130:20 valid 138:20 values 85:12 variance 47:25 varies 14:18 94:23 various 14:6 16:23 62:14 89:20 96:24 137:14	vary 47:21 67:19 69:18 vast 61:15 70:5 90:2 vegas 12:23 44:6 vein 120:7 verbal 6:5 verify 53:12 veritext 4:4 141:7 version 48:7,11 49:25 53:25 82:15 100:11 100:12 versions 47:1 versus 51:25 62:17 68:5 71:25 74:16 82:13,15 84:23 85:20,22 89:21 90:1,1 92:8 102:21 103:2 103:24 105:3 132:5 134:22 viars 76:21 video 5:1 videographer 2:23 9:23 10:1 55:20,24 109:17,21 129:10,13 138:25 139:4 141:4	videotaped 1:12 virtual 14:21 visited 52:4 vs 4:8 w wait 108:25 waiting 89:12 waived 141:9 walk 15:7 wall 8:23 12:12 19:9 22:8 38:19 40:14,17 40:22 41:21,22 42:3,9,9,22,24 43:4,13,25 44:2,8,25 45:1 45:3 47:7 50:13 52:15 56:7 58:20 60:9,10,12 61:20 67:10,18 86:19,22,24 87:2 99:11 110:23 112:8 112:17,23 122:25 walls 19:10 43:23 47:5 48:15 49:22 51:8 52:22,24 67:15 86:14
---	---	---	--

want 9:14 37:13,16,18,23 39:20 55:2,13 62:15 70:20 89:18 90:6 94:17 119:18 120:6 124:24 124:25,25 125:6,6 126:17 135:12 wanted 22:18 71:21 136:15 wanting 62:7 119:10,16 133:16 ward 89:11 warehouses 63:5 warranted 9:3 way 9:9 22:12 30:18 36:16 43:3,14 76:22 105:21 117:1 118:25 120:2 127:9,17 129:4 129:6 132:12 ways 29:16 56:8 133:11 we've 14:1 26:1 26:23,25 27:5 45:20 54:25 58:14 60:8 88:21,24 89:25 90:2 91:19	97:1,7 123:25 124:1 129:19 138:18 web 63:17 65:20,21,23 webinar 13:17 13:23 webinars 13:20 webpage 75:21 website 29:5 36:21 37:1,8 63:17 65:15,16 65:17 69:7 wednesday 1:13 4:9 weeds 87:16 week 14:23 28:9 33:6 welcome 88:19 welding 73:24 85:22,23 went 36:21 46:23 wert 1:12 3:8 4:6 5:10,10,16 5:23 9:20,21 10:4,11 11:12 11:14,18 27:24 31:18 32:5 34:1,17 35:7 37:13 52:11 56:3,4 76:4,5,7 79:12,15 90:6 99:25 100:1,3	100:3,15 138:11 139:7 139:13 141:6 wert's 31:21 32:22 36:6 140:19 whatnot 95:3 132:23 wide 97:8,8 98:14 wider 86:24 willfully 128:14 willing 120:10 witness 4:14,15 5:13,17 11:12 11:16,19 17:5 21:2 23:22 24:7 27:25 28:5 31:9,22 32:9,24 33:5 34:2,7,12 36:7 36:14 38:1,8 38:17 39:5,17 40:8 41:10,17 45:18 46:13 50:15 51:2 52:3 57:10 59:7 64:11 65:9 71:16 74:19 84:21 87:10 89:16 93:4 94:17 95:12,24 97:25 98:7,19 99:3	99:22 100:13 103:1 108:1,9 109:9 113:5 115:15 117:16 118:25 119:14 120:14 121:1,8 121:24 124:19 125:25 126:12 126:24 128:13 129:19 130:21 131:5 132:11 132:20 133:25 134:19 139:19 140:11 142:4 wood 9:1 29:25 30:11,20 44:19 46:5,6,20 47:18,20 48:25 50:17 51:3 57:25 58:2,8 131:21 woodworks 29:22 30:8,10 30:15 46:5 47:12,15 48:12 50:7 57:21 word 64:18 words 39:20 101:4 103:12 work 16:13 17:6 19:25 22:12 28:13 44:9 45:7 46:1 86:23 125:16
--	--	--	--

125:18	y	101:16,18,18
worked 13:1	yeah 8:10 9:9	101:25 102:4
44:3 125:14,17	10:1 11:23	103:9 104:1
working 9:4	17:2,12 18:24	105:9,20,24,25
14:19,25 19:21	21:2 22:4,11	106:10,19
19:21 22:13	23:11,22 24:7	107:7,9,20
26:21 29:22	24:15 25:1	108:21 111:9
45:15 112:5	29:1 31:2,9,10	111:23 122:7
115:10 125:13	31:22 39:11	year's 101:21
136:11	44:23 46:13	102:1,6
works 19:11,12	50:1 51:5 52:9	years 12:22
105:21	54:18,22 59:22	14:20 15:3
worried 118:20	64:11 70:13	23:9,18 29:18
118:25	74:5 76:23	31:24 46:14
worth 101:21	82:12 84:4,12	47:10 60:8
102:2,6 104:21	87:4,10 89:10	63:24 115:10
wrap 49:11	92:16 94:11	136:11
wraparound	95:12 96:16	yesterday
49:9	97:3 101:2,23	140:18
write 36:2,7	103:1 105:20	z
51:24	108:9 110:6,18	zeitgeist 50:4
writing 30:3	110:25 111:1	zinc 132:4
written 4:23	112:13 115:15	zonda 108:19
7:5 28:21	116:25 119:16	
29:14 47:13	120:20 121:24	
57:15	124:12 126:12	
wrong 88:6	128:21 129:10	
125:9	133:6	
wrote 29:22	year 21:7,20	
x	22:2 23:11	
x 3:1,6 42:13	24:12 28:6,7	
43:1	46:10,23	
	101:10,11,15	

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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