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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SIMPSON STRONG-TIE COMPANY, INC.

Petitioner

v.

COLUMBIA INSURANCE COMPANY

Patent Owner

Case PGR2024-00050

Patent 11,920,339

VIDEOCONFERENCE DEPOSITION OF
MICHAEL H. NELSON

TAKEN ON BEHALF OF THE PETITIONER

JULY 18, 2025

(Starting time of the deposition: 8:53 CT.)

Simpson Strong-Tie Company EX1049
Simpson v. Columbia
PGR2024-00050

1	I N D E X	
2	QUESTIONS BY:	PAGE
3	MS. HOLOUBEK	5
4		
5		
6	E X H I B I T S	
7	EXHIBIT	PAGE
8	Exhibit 2059 Nelson declaration	10
9		
10	(The exhibit was retained by counsel.)	
11		
12		
13		
14		
15		
16		
17		
18		
19		
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21		
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3 BEFORE THE PATENT TRIAL AND APPEAL BOARD
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5 SIMPSON STRONG-TIE COMPANY, INC.
6 Petitioner
7
8 v.
9
10 COLUMBIA INSURANCE COMPANY
11 Patent Owner
12 -----
13 Case PGR2024-00050
14 Patent 11,920,339
15
16 VIDEOCONFERENCE DEPOSITION OF MICHAEL H. NELSON,
17 produced, sworn and examined on July 18, 2025,
18 between the hours of eight o'clock CT in the
19 forenoon and eleven o'clock CT in the forenoon of
20 that day, with all attendees via Zoom
21 videoconference, with the Witness physically located
22 in Clayton, Missouri, before William L. DeVries, a
23 Certified Court Reporter (MO), Registered Diplomate
24 Reporter, and Certified Realtime Reporter, in a
25 certain cause now pending in the United States
Patent and Trademark Office, Before the Patent Trial
and Appeal Board, between SIMPSON STRONG-TIE
COMPANY, INC., Petitioner, vs. COLUMBIA INSURANCE
COMPANY, Patent Owner; on behalf of the Petitioner.

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

2 (All appearances via Zoom videoconference.)

3

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24 Court Reporter:
25 William L. DeVries, RDR/CRR
Missouri CCR #566

1 IT IS HEREBY STIPULATED AND AGREED by
2 and between counsel for the Petitioner and counsel
3 for the Patent Owner that this deposition may be
4 taken in shorthand by William L. DeVries, RDR/CRR, a
5 Certified Court Reporter and Certified Shorthand
6 Reporter, and afterwards transcribed into
7 typewriting; and the signature of the witness is
8 expressly reserved.

9 * * * * *

10 MICHAEL H. NELSON,
11 of lawful age, produced, sworn and examined on
12 behalf of the Petitioner, deposes and says:

13 (Starting time of the deposition: 8:52 a.m.)

14 COURT REPORTER: Do you swear or affirm
15 that the testimony you are about to give in this
16 proceeding will be the truth, the whole truth, and
17 nothing but the truth?

18 THE WITNESS: Yes.

19 EXAMINATION

20 QUESTIONS BY MS. HOLOUBEK:

21 Q. All right. Good morning everyone. My
22 name is Michelle Holoubek. Mr. Nelson, I'll be
23 taking your deposition today. Can you please state
24 your full name and address for the record?

25 A. Michael Nelson. My home address?

1 Q. Yes. That's --

2 A. 17096 Centaur Station Drive, Grover,
3 Missouri 63040.

4 Q. Thank you. And you are located
5 physically at the St. Louis office of Stinson; is
6 that correct?

7 (Court reporter interruption.)

8 A. Correct.

9 Q. (By Ms. Holoubek) Okay. Thank you.
10 And Mr. Nelson, you understand that you're here
11 today to have your deposition taken in connection
12 with the testimony that you provided in Post-Grant
13 Review proceeding challenging U.S. Patent Number
14 11,920,339; is that correct?

15 A. I do.

16 Q. Okay. And if are ever talking about
17 the actual patent, I'm just going to talk about it
18 using the last three digits of the patent number, so
19 I'll refer to it as the '339 patent. Is that okay?

20 A. Yes.

21 Q. Okay. Let's just go over some ground
22 rules to make sure we're all on the same page for
23 the deposition to make it a little easier for the
24 court reporter. So will you tell me if you don't
25 understand my question?

1 A. Yes.

2 Q. Okay. And if you don't ask for
3 clarification I'll assume that you understood my
4 question, okay?

5 A. Okay.

6 Q. Okay. And then as the court reporter
7 mentioned, let's make sure we don't speak over each
8 other. Also, all answers have to be verbal because
9 we can't record head nods or head shakes or hand
10 movements. Is that understood?

11 A. Yes.

12 Q. Okay. Is there any reason that you
13 cannot testify truthfully today?

14 A. No.

15 Q. Are you under any medication that may
16 impair your testimony in any way today?

17 A. No.

18 Q. Okay. Do you have a copy of your
19 declaration with you?

20 A. I do.

21 Q. And is it a clean copy with no
22 markings?

23 A. Correct. Yes.

24 Q. Great. And do you understand that
25 during your deposition when I'm asking you questions

1 that your counsel may not communicate with you
2 unless he's telling you not to answer a question.
3 Is that correct?

4 A. I do. Yes.

5 Q. Okay. Because this is a remote
6 deposition just want to remind you that includes any
7 electric form of communication such as e-mail, text
8 messaging and -- and the like. Do you understand?

9 A. I understand.

10 Q. And then also while this deposition is
11 ongoing even on breaks you're not allowed to talk to
12 counsel about anything related to the subject matter
13 of this deposition. Is that understood?

14 A. Understood.

15 Q. Okay. We'll take periodic breaks if
16 needed. Please let me know if you need a break.
17 The only thing is that we can't take a break -- a
18 break while a question is pending and so you have to
19 answer all outstanding questions before we take a
20 break. Is that clear?

21 A. Yes.

22 Q. Okay. So let's just get into a little
23 bit about your preparation for the deposition today.
24 Have you ever been deposed before?

25 A. Yes.

1 Q. About how many times have you been
2 deposed before?

3 A. Once.

4 Q. Okay. Was that deposition in relation
5 to the '339 patent or another matter?

6 A. Yes, it was. Oh, actually, excuse me.
7 It was related to the 501 patent, I believe.

8 Q. Okay. Fine. Okay. Did you review any
9 documents to prepare for today's deposition?

10 A. I did.

11 Q. What documents did you review to
12 prepare for today's deposition?

13 A. My submitted declaration, financial
14 reports, exhibits included in the declaration.

15 Q. Did you review any documentation that
16 was not included in the exhibits for your
17 declaration?

18 A. No.

19 Q. Okay. Did you meet with counsel to
20 prepare for today's deposition?

21 A. I did.

22 MR. SCHROEDER: Real quick, I just want
23 to object to the extent that -- or remind him not to
24 divulge any attorney-client communications.

25 MS. HOLOUBEK: Okay.

1 MR. SCHROEDER: But you may continue.

2 Q. (By Ms. Holoubek) Thanks. So you said
3 you did meet with counsel to prepare for today's
4 deposition; is that correct?

5 A. That's correct.

6 Q. Okay. And when did you meet with
7 counsel to prepare for today's deposition?

8 A. Yesterday and one other instance.
9 Probably 30 days ago.

10 Q. Okay. And who did you meet with on the
11 counsel team?

12 A. John, Julie Scheipeter.

13 (Court reporter interruption.)

14 MR. SCHROEDER: It's Scheipeter.

15 Q. (By Ms. Holoubek) Did you speak with
16 anyone else regarding today's deposition?

17 A. No.

18 Q. Okay. And what else did you do to
19 prepare for today's deposition?

20 A. Nothing else.

21 (Exhibit 2059, Nelson declaration.)

22 Q. (By Ms. Holoubek) Okay. So you
23 mentioned that you have a copy of your declaration
24 in front of you. Can you turn to page six of your
25 declaration. And just for the record, and for the

1 court reporter, this is exhibit -- it's already
2 marked as Exhibit 2059.

3 Mr. Nelson, is that your signature on
4 page six of Exhibit 2059?

5 A. It is.

6 Q. Okay. And you signed this declaration
7 on May 23rd, 2025; is that correct?

8 A. Yes.

9 Q. What documents did you review in
10 preparation of this declaration?

11 A. I reviewed sales reporting data and
12 other documents associated with our firewall hanger.

13 Q. What kind of documents were the other
14 documents associated with your firewall hanger?

15 A. Various marketing materials.

16 Q. Did you at any point review the '339
17 patent?

18 A. The patent itself?

19 Q. Yes.

20 A. No, I did not.

21 Q. Okay. Were you provided with any
22 specific information about the '339 patent?

23 MR. SCHROEDER: I'm going to object to
24 the extent that this question calls for
25 attorney-client privileged communications. But

1 otherwise, the witness may answer.

2 A. Can you repeat the question, please,
3 Michelle?

4 Q. (By Ms. Holoubek) Sure. Were you
5 provided with any specific information about the
6 '339 patent? And I'll note that this isn't asking
7 you what that information was, but just whether you
8 were provided with information about the '339
9 patent.

10 A. Yes.

11 Q. Okay. Are you familiar with the claims
12 of the '339 patent?

13 A. Yes.

14 Q. Okay. What is your understanding of
15 the claims of the '339 patent?

16 MR. SCHROEDER: I'm going to object to
17 scope. This is outside the scope of this
18 declaration. The witness may answer, though.

19 A. I have a general understanding that it
20 refers to the methodology associated with the
21 product.

22 Q. (By Ms. Holoubek) Okay. But you've --
23 have you actually reviewed the claims of the '339
24 patent?

25 A. I have not.

1 Q. Okay. Who provided you with your
2 understanding of the '339 patent?

3 A. It -- I can't recall. It was either
4 the lawyers from Stinson or internal counsel.

5 Q. Okay. Have you reviewed any documents
6 that were filed in this '339 patent PGR, such as the
7 petition or institution decision?

8 A. No.

9 Q. Okay. Turning to this declaration, did
10 you write your declaration or was it written for you
11 by someone else?

12 MR. SCHROEDER: I am going to object to
13 the extent that this calls for attorney-client
14 privileged communications. You may answer.

15 A. It was a joint effort between myself
16 and counsel.

17 Q. (By Ms. Holoubek) Okay. At this time
18 do you have any corrections to be made to your
19 declaration that you identified as you were going
20 back through and preparing for today's deposition?

21 A. No.

22 Q. Turning to kind of the first page of
23 your declaration, you've been employed by MiTek
24 since 2019; is that correct?

25 A. Yes.

1 Q. Where were you employed prior to 2019?

2 A. Dow Chemical.

3 Q. What was your role at Dow Chemical?

4 A. I was a marketer, a product marketer.

5 Q. What products did you handle while at
6 Dow Chemical?

7 A. Products -- silicone products used for
8 the assembly of electronic materials.

9 Q. Were you involved in any kind of
10 construction hangers in your work at Dow Chemical?

11 A. No.

12 Q. Okay. What has been your role at MiTek
13 since you were hired in 2019?

14 A. I was hired as a product portfolio
15 manager in 2019. I had that role until about 2021
16 when I was promoted to a global product portfolio
17 manager, which I held until 2023. And then I moved
18 into a sales role, national account director for
19 distribution, and I've had that role since 2023.

20 Q. Okay. When you first started as a
21 product portfolio manager in 2019, were the FWH
22 hangers in your product portfolio?

23 A. They were.

24 Q. What other kind of products were in
25 your product portfolio?

1 A. Really the full line of structural
2 connector products for light wood framing
3 predominantly, so post bases, angles and straps,
4 other types of hangers, etc.

5 Q. Okay. Have you maintained that -- the
6 same products in your purview since you have become
7 the national account director?

8 A. In a different capacity, but it relates
9 to the same products.

10 Q. Okay. What -- what was the difference
11 between your original role as product portfolio
12 manager and then when you moved to global product
13 portfolio manager? What was the difference in those
14 two roles?

15 A. I assumed some global responsibility.

16 Q. Can you explain that further? What --
17 what was -- was your previous product portfolio
18 manager role primarily national, local, what was the
19 difference between those two?

20 A. It was national. It related
21 specifically to the United States.

22 Q. Okay. And so when you moved to global
23 product portfolio it was just an expansion of the
24 territory you covered?

25 A. Correct.

1 Q. Did you have any other change in roles
2 in that transition?

3 A. No.

4 Q. Okay. And then when you moved to
5 national account director, how did your roles change
6 from global product portfolio manager?

7 A. I became responsible for selling the
8 same portfolio of products through a wholesale
9 distribution channel. So it was a transition from a
10 4P marketing role to a sales management type role.

11 Q. Okay. Can you explain what a 4P
12 marketing role is?

13 A. It's -- it refers to the
14 responsibilities that a -- is traditionally assigned
15 to the marketing function, product, price, place,
16 and promotion.

17 Q. Okay. Returning a little bit before
18 MiTek, you mentioned you were employed by Dow
19 Chemical. Were you with Dow Chemical in 2014?

20 A. I believe so. That was the year I
21 graduated from college. They were my first job out
22 of college, so right about that time is when I
23 started with them.

24 Q. Okay. So prior to 2014 or around that
25 time you were in -- in college?

1 A. Correct.

2 Q. Okay. Would you say that by the time
3 you joined MiTek the existence of the FWH hanger was
4 widely known in the industry?

5 A. Yes.

6 Q. Okay. And on -- if we turn to page two
7 of your declaration, there's -- I guess there's a
8 duplicate numbering so I'm going to refer to
9 paragraph three, but I mean the -- the top paragraph
10 three.

11 A. Okay.

12 Q. So in -- in paragraph three at the top
13 of page two you indicate that based on your
14 experience at MiTek you have knowledge of the market
15 for structural connector products; is that correct?

16 A. Correct.

17 Q. Is paragraph three referring to the
18 current market of 2025 or the market back as it
19 existed in 2014?

20 A. Both.

21 Q. So it's your understanding that -- so
22 you -- you have knowledge of the market in 2014 for
23 structural connector products?

24 A. Yes.

25 Q. How did you obtain that product

1 knowledge since you weren't working in the industry
2 in 2014?

3 A. I studied the industry.

4 Q. Can you elaborate on what you did to
5 study the industry?

6 A. Read research reports, spoke to
7 internal people at MiTek, gathered institutional
8 knowledge, talked to customers, talked to
9 third-party analysts who covered the market,
10 analyzed competitors.

11 Q. Okay. But you yourself were not
12 involved in the market back in 2014; is that
13 correct?

14 A. That's correct.

15 Q. So this knowledge comes from a more
16 recent research into the past market; is that
17 correct?

18 A. That's correct.

19 MR. SCHROEDER: Let me object.

20 THE WITNESS: Sorry.

21 MR. SCHROEDER: I'm going to object to
22 form, but --

23 Q. (By Ms. Holoubek) Okay. How recently
24 did you do your research on the structural connector
25 market in the 2014 time frame?

1 A. It would have been several years ago.
2 I haven't done, you know, primary research on that
3 period of time since I transitioned out of a
4 marketing role.

5 Q. And is it fair to say just based on
6 where you were in your career that prior to 2014 you
7 did not have experience with firewall assembly
8 products?

9 A. That's correct.

10 Q. Was your employment at MiTek in 2019
11 your first exposure to firewall assembly products?

12 A. Correct.

13 Q. Now, moving into the next section
14 that's there on page two, in paragraph two you refer
15 to firewalls; is that correct?

16 A. Yes.

17 Q. How long has the industry been using
18 firewalls?

19 MR. SCHROEDER: I'm going to object to
20 this is outside the scope of his direct testimony.
21 You may answer.

22 A. The code requirement for firewalls is
23 well more than a decade old to the best of my
24 knowledge. Walls have existed between buildings and
25 units for much longer than that.

1 Q. (By Ms. Holoubek) So when you
2 mentioned that the code is more than a decade old,
3 it's currently 2025. A decade ago is 2015. Was the
4 code introduced in 2015?

5 MR. SCHROEDER: Object to the extent
6 that this is outside the scope of his direct
7 testimony. You may answer.

8 A. It was before that.

9 Q. (By Ms. Holoubek) Mr. Nelson, you
10 would agree that paragraph two on page two of your
11 declaration talks about the International Building
12 Code; is that correct?

13 A. That's correct.

14 Q. When did the International Building
15 Code start requiring a two-hour fire rating?

16 A. I don't know when.

17 Q. Okay. Do you have an estimate as to
18 how long ago the International Building Code started
19 requiring a two-hour fire rating?

20 A. I -- it was below -- before 2012.

21 Q. Okay. But you don't know how much
22 before 2012 it was?

23 A. I don't know.

24 Q. Okay. In -- and aside from the
25 International Building Code, do you know how long

1 the industry has been using fire resistant wall
2 assemblies?

3 MR. SCHROEDER: I'm going to object to
4 the line of questioning being outside the scope of
5 his direct testimony. The witness may answer.

6 A. Can you repeat the question, please?

7 Q. (By Ms. Holoubek) Sure. Do you know
8 how long the industry has been using fire resistant
9 wall assemblies?

10 A. Since the building code required them
11 to be used I would assume.

12 Q. You say you assume. Does that mean you
13 don't know for certain?

14 A. I don't know for certain.

15 Q. Okay. Do you know whether firewall
16 assemblies were used before introduction of this
17 International Building Code that required a two-hour
18 fire rating?

19 MR. SCHROEDER: I'm going to object
20 again to the question being outside the scope of his
21 direct testimony. The witness may answer.

22 A. There are references firewalls. I am
23 uncertain when that began.

24 Q. (By Ms. Holoubek) Okay. In that same
25 paragraph you refer to the use of two layers of

1 five-eighths inch gypsum wallboard. Do you see
2 that?

3 A. I do.

4 Q. Was that a well known standard for
5 firewalls in 2014?

6 A. Yes.

7 Q. And are you familiar with any other
8 ways to construct a firewall other than using two
9 layers of five-eighths inch thick gypsum wallboard?

10 MR. SCHROEDER: Object, outside the
11 scope of his direct testimony.

12 A. May you repeat the question, please?

13 Q. (By Ms. Holoubek) Sure. Are you
14 familiar with any other ways to construct a firewall
15 other than using two layers of five-eighths inch
16 thick gypsum wallboard?

17 A. No.

18 Q. Okay. In paragraph three you say that
19 MiTek and Simpson are the only two manufacturers who
20 offer this specific type of hanger; is that correct?

21 A. Yes.

22 Q. Is the type of hanger you're referring
23 to a hanger for a two-hour fire rating?

24 MR. SCHROEDER: Object to form. You
25 may answer.

1 A. Yes.

2 Q. (By Ms. Holoubek) Okay. So no other
3 manufacturers marketed a hanger for a two-hour fire
4 rated wall in -- since 2014?

5 A. None that I was aware of.

6 Q. Do you know whether any manufacturers
7 marketed a hanger for a two-hour fire rated wall
8 assembly before 2014?

9 MR. SCHROEDER: Object to the extent it
10 is outside the scope of his direct testimony. You
11 may answer.

12 A. I'm -- I'm not aware of another company
13 offering that before 2014.

14 Q. (By Ms. Holoubek) Okay. How do you
15 know what competitive products were around in 2014?

16 A. From talking to my internal MiTek
17 colleagues, speaking to customers and other industry
18 veterans.

19 Q. Okay. So you spoke to customers
20 specifically about products that were available
21 before 2014; is that correct?

22 A. Yes.

23 Q. How did -- were -- were those
24 conversations part of this particular case or was
25 that just part of your business and marketing

1 products post-2019?

2 A. The latter. It was a part of my role
3 as a product portfolio manager.

4 Q. Okay. So you indicate in paragraph
5 four on page -- so the -- this is the second
6 paragraph four at the bottom of page two. But you
7 indicate in paragraph four that there was a market
8 need for a hanger that could be installed before the
9 fire resistant sheathing so that the entire building
10 could be framed and roofed before the drywall was
11 installed; is that correct?

12 A. That's correct.

13 Q. So prior to 2014 were joist hangers
14 ever installed before drywall installation?

15 A. Ever as in absolute? In a firewall
16 assembly, not typically in my experience.

17 Q. So what was your experience with
18 firewalls installed before 2014?

19 A. That the structure was framed, drywall
20 was installed, and then the hangers were installed
21 on top of the dry -- drywall.

22 Q. Do you have any direct experience with
23 firewall installation before 2014?

24 MR. SCHROEDER: Object to form.

25 Witness may answer.

1 A. No direct experience.

2 Q. (By Ms. Holoubek) Okay. And when you
3 say that typically the drywall was installed and
4 then the hangers were installed on top of the
5 drywall, is that every time?

6 A. That was certainly the most prevalent
7 method by and far that I was experienced with.

8 Q. Okay. But you also indicated that you
9 didn't have experience prior to 2014 with firewall
10 assemblies; is that correct?

11 A. You asked if I had direct experience
12 and I answered no, I did not have direct experience.

13 Q. So where is your understanding of how
14 drywall was installed prior to 2014 coming from?

15 A. Coming from conversations with MiTek
16 colleagues, customers, and industry veterans.

17 Q. Before introduction -- well, let me
18 back up. Are you familiar with the Simpson DU
19 product?

20 A. Yes.

21 Q. When was the Simpson DU product
22 introduced?

23 A. I don't know the specific date.

24 Q. Okay. Is it your understanding that
25 between the introduction of the International

1 Building Code that required a two-hour fire rating
2 and the introduction of the FWH hanger, that all
3 firewalls constructed had the firewall -- the
4 drywall hung first with the joist hanger after the
5 drywall?

6 MR. SCHROEDER: I'm going to object to
7 the extent that this is outside the scope of his
8 direct testimony. The witness may answer.

9 A. It is my understanding that that was
10 far and away the most common method.

11 Q. (By Ms. Holoubek) You say most common.
12 Does that mean there were some instances where
13 drywall was installed after the joist hanger was
14 hung?

15 MR. SCHROEDER: I'm going to repeat my
16 objection that it is outside the scope of his direct
17 testimony. The witness may answer.

18 A. None that I have direct experience
19 with.

20 Q. (By Ms. Holoubek) Okay. Setting aside
21 firewalls, wasn't it a common practice to frame and
22 roof a building before installing drywall?

23 MR. SCHROEDER: Object to form.

24 (Court reporter interruption.)

25 A. Can you be more specific, please?

1 Q. (By Ms. Holoubek) So prior to 2014 and
2 just in typical building construction, were joist
3 hangers ever installed before drywall installation?

4 A. Yes.

5 Q. And wasn't it a common practice to
6 frame and roof a building before installing drywall?

7 MR. SCHROEDER: Real quick, I want to
8 object to the extent this is outside the scope of
9 his direct testimony. The witness may answer.

10 A. Yes.

11 Q. (By Ms. Holoubek) Did MiTek offer any
12 joist hangers prior to the introduction of the FWH
13 series of hangers?

14 A. Yes.

15 Q. So prior to 2014 did all of MiTek's
16 joist hangers need to be installed after drywall
17 installation?

18 MR. SCHROEDER: Object to form.

19 A. No.

20 Q. (By Ms. Holoubek) Okay. So prior to
21 2014 MiTek's joist hangers would be installed before
22 drywall installation; is that correct?

23 A. In nonfirewall assemblies, yes.

24 Q. Okay. Were MiTek hangers other than
25 the FWH ever used in firewalls prior to the

1 introduction of the FWH?

2 MR. SCHROEDER: Object to the extent
3 that this is outside the scope of his direct
4 testimony. The witness may answer.

5 A. Yes.

6 Q. (By Ms. Holoubek) So firewalls were
7 constructed before introduction of the FWH using
8 other MiTek hangers; is that correct?

9 A. That's correct.

10 Q. Okay. Were those MiTek hangers
11 installed before or after drywall installation prior
12 to the FWH?

13 MR. SCHROEDER: Object to the extent
14 this is outside the scope of his direct testimony.
15 The witness may answer.

16 A. They were installed after the drywall
17 was installed.

18 Q. (By Ms. Holoubek) So you're not aware
19 of situations where MiTek hangers were used in
20 firewalls before installation of the drywall; is
21 that correct?

22 MR. SCHROEDER: Object to form.

23 A. Can you repeat the question, please?

24 Q. (By Ms. Holoubek) Sure. So you're not
25 aware of situations where MiTek hangers were used in

1 firewalls before installation of the drywall; is
2 that correct?

3 A. I'm -- yeah, I can't think of scenarios
4 in which that was the case --

5 Q. Okay.

6 A. -- prior to the firewall hanger being
7 introduced.

8 Q. But you would agree that hangers not
9 specified for firewall use were used in firewalls
10 before introduction of the FWH; is that correct?

11 A. That's correct.

12 MR. SCHROEDER: Object to form and also
13 object to the extent it's outside the scope of his
14 direct testimony.

15 Q. (By Ms. Holoubek) Do you know what
16 kind of MiTek hangers were used in firewalls before
17 introduction of the FWH hanger?

18 MR. SCHROEDER: Object to outside the
19 scope of his direct testimony. You may answer.

20 A. Yes.

21 Q. (By Ms. Holoubek) So what kind of
22 MiTek hangers were used in firewalls before
23 introduction of the FWH hanger?

24 A. Generally speaking our preexisting
25 hangers that met the load requirements and beam size

1 requirements of the application.

2 Q. Do you have an example of what those
3 hangers would be?

4 A. I can give you two examples. Our BPH
5 series and our THO series.

6 Q. What was different between the BPH
7 series and the FWH series of hangers?

8 A. The difference between the BPH series
9 and the FWH series was that the FWH series was
10 specifically designed for firewall hanger
11 application where you could install the hanger prior
12 to the drywall being installed.

13 Q. Was the BPH series specifically
14 designed for firewall applications?

15 A. Was not specifically designed for
16 firewall applications.

17 Q. So even though it wasn't -- sorry.
18 Even though the BPS series of hangers was not
19 specifically designed for firewall applications, it
20 was nonetheless used in firewall applications; is
21 that correct?

22 A. That's correct.

23 Q. And the THO series of hangers, were
24 those designed for firewall applications?

25 A. They were not.

1 Q. So even though they -- the TH0 series
2 of hangers were not designed for firewall
3 assemblies, they were regularly used for firewall
4 assemblies; is that correct?

5 MR. SCHROEDER: Object to form. You
6 may answer.

7 A. Correct.

8 Q. (By Ms. Holoubek) Okay. On page three
9 of your declaration, paragraph seven, you mention
10 that customers communicated a preference for FWH; is
11 that correct?

12 A. Yes.

13 Q. About how many customers did you hear
14 this from?

15 MR. SCHROEDER: Object to form. You
16 may answer.

17 A. Dozens, I believe.

18 Q. (By Ms. Holoubek) Okay. Did you ever
19 hear any negative feedback about the FWH hanger?

20 A. Yes.

21 Q. What was the negative you received
22 about the FWH hanger?

23 A. Cost.

24 Q. What were the concerns about cost with
25 the FWH hanger?

1 A. FWH hanger was priced at a significant
2 premium relative to preexisting hangers.

3 Q. When you say relative to preexisting
4 hangers, are these hangers such as the BPH and THO
5 series hangers?

6 A. That's correct.

7 Q. Okay. Why did they -- why did the FWH
8 hangers cost so much more than the other series of
9 hangers?

10 MR. SCHROEDER: Object to the extent
11 this is outside the scope of his testimony -- his
12 direct testimony. The witness may answer.

13 A. They were priced at a premium to
14 capture the significant value achieved by installing
15 prior to the drywall.

16 Q. (By Ms. Holoubek) Did the increased
17 price have anything to do with the gauge of the
18 metal used in the FWH hanger?

19 MR. SCHROEDER: Object, outside scope
20 of his direct testimony. The witness may answer.

21 A. The steel used in the manufacturing of
22 hangers is a consideration across the product line.

23 Q. (By Ms. Holoubek) So in the FWH hanger
24 did the increased price have anything to do with the
25 gauge of metal versus the gauge of metal used in say

1 the BPH or TH0 series of hangers?

2 MR. SCHROEDER: Object, outside the
3 scope of his direct testimony.

4 A. It was not a primary factor.

5 Q. (By Ms. Holoubek) Okay. Are you
6 familiar with how the FWH hanger is installed on
7 firewall assemblies?

8 A. Yes.

9 Q. Does the FWH hanger penetrate the
10 gypsum wallboard in the completed firewall assembly?

11 MR. SCHROEDER: Object to form.

12 A. Can you define penetrate, please?

13 Q. (By Ms. Holoubek) In the firewall
14 industry, is the term penetration a standard term?

15 A. I cannot recall the term penetration.

16 Q. Are you as a product -- as a former
17 product manager, now an accounts manager, are you
18 familiar with MiTek product literature advertising
19 that the FWH hanger had specific penetration
20 aspects?

21 MR. SCHROEDER: Object to form.

22 A. I cannot recall.

23 Q. (By Ms. Holoubek) So you can't tell me
24 whether or not the FWH hanger penetrates gypsum
25 wallboard in a completed firewall assembly; is that

1 correct?

2 MR. SCHROEDER: Object to form.

3 A. Repeat the question, please?

4 Q. (By Ms. Holoubek) Sure. So you can't
5 tell me whether or not the FWH hanger penetrates
6 gypsum wallboard in a completed firewall assembly;
7 is that correct?

8 MR. SCHROEDER: Repeat my objection.

9 A. Without further explanation of what you
10 mean by penetration, no, I cannot.

11 Q. (By Ms. Holoubek) And as one of the
12 marketers of MiTek products you can't tell me what
13 penetration means in the firewall industry; is that
14 correct?

15 A. That's correct.

16 Q. Okay. On page three, paragraph ten --
17 and in paragraph ten kind of spans page three and
18 four of your declaration. That refers to housing
19 starts. Do you see that?

20 A. Yes.

21 Q. What do you mean by housing starts?

22 A. That's a very standard economic term.
23 It is a -- the beginning of a construction on a
24 house.

25 Q. How is a housing start measured?

1 A. Be more specific, please.

2 Q. Well, you provide in your declaration
3 numbers of housing starts. How do you identify what
4 a housing start is?

5 A. This is a widely accepted economic
6 measure. I am not an economist. I use the data
7 provided by census bureau, department of housing and
8 urban development, etc.

9 Q. So you gathered the housing start data
10 from these external sources; is that correct?

11 A. That's correct.

12 Q. When you said -- said earlier that it
13 refers to the beginning of construction on a house,
14 is that construction of a new house or does that
15 also include remodeling?

16 A. New home.

17 Q. Okay. So that term would not include
18 remodeling; is that correct?

19 A. As far as I know, yes.

20 Q. Okay. Looking on page four, the figure
21 that's on page four, what does the left vertical
22 axis represent?

23 A. Dollars.

24 Q. Dollars of what?

25 A. Firewall hanger sales.

1 Q. Okay. And by sales do you mean the
2 actual revenue from the sale of a firewall hanger?

3 A. Yeah, MiTek's gross revenue of firewall
4 hanger sales.

5 Q. Okay. And is that the gross revenue of
6 firewall hanger sales across all of MiTek's firewall
7 product lines?

8 A. Correct. It is.

9 Q. Okay. And what does the right vertical
10 axis represent?

11 A. That represents housing starts of
12 fire -- five or more units.

13 Q. Okay. And is that across the United
14 States that that is being measured against?

15 A. Yes, that's referring to the United
16 States.

17 Q. Okay. You would agree that MiTek's
18 revenue for firewall hangers was pretty flat up
19 until 2020; is that correct?

20 MR. SCHROEDER: Object to form. You
21 may answer.

22 A. I would disagree with that statement.

23 Q. (By Ms. Holoubek) Okay. How would you
24 describe the MiTek FWH revenue per year from 2016 to
25 2020?

1 MR. SCHROEDER: Object to form. You
2 may answer.

3 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7 Q. (By Ms. Holoubek) Okay. So you agree
8 that even before the pandemic the revenue was
9 falling from 2018 to 2019 and then to 2020; is that
10 correct?

11 MR. SCHROEDER: Object to form.

12 A. Yes, I'm showing that revenue decreased
13 from 2018 to 2020.

14 Q. (By Ms. Holoubek) Okay. Also on this
15 figure the housing starts are shown by a red line;
16 is that correct?

17 A. Yes.

18 Q. Why did housing starts decrease
19 dramatically after 2022?

20 A. There was --

21 MR. SCHROEDER: Object, outside the
22 scope of his testimony. The witness may answer.

23 A. Economists and industry analysts have
24 covered that topic extensively. To the best of my
25 knowledge, there was an incredible run-up of

1 multifamily construction in the early days of COVID
2 and there -- it got to a point where they were a bit
3 overbuilt in the multifamily segment and also the
4 interest rates were prohibitive to developers
5 beginning in about that period of time.

6 Q. (By Ms. Holoubek) In the figure on
7 page five, this refers to unit sales as opposed to
8 revenue; is that correct?

9 A. That's correct.

10 Q. And are these unit sales of all models
11 of the FWH series hanger?

12 MR. SCHROEDER: Object to form. You
13 may answer.

14 A. All MiTek series, yes.

15 Q. (By Ms. Holoubek) Okay. And in this
16 case the left vertical axis represents sales, unit
17 sales; is that correct?

18 A. That's correct.

19 Q. And the right vertical axis still
20 represents the number of housing starts, five or
21 more; is that correct?

22 A. That's correct.

23 Q. Okay. The charts underneath paragraphs
24 15 and 16 of your declaration compare the various
25 models of the FWH hanger with the BPH hanger; is

1 that correct?

2 A. Underneath 15 -- underneath 15, on top
3 of 16, yes.

4 Q. Well, there's -- also on page six
5 there's another chart underneath paragraph 16; is
6 that right?

7 A. Okay. Yes, I'm looking at both of them
8 now. Yes, I see both of them.

9 Q. Okay. Great. What was the BPH hanger
10 primarily used for?

11 A. To install beams and purloins.

12 Q. What's the difference between a beam
13 and a purloin?

14 A. A purloin is, you know, a type of
15 construction. A -- it's just referring to basically
16 both of those that it connects to.

17 Q. When you say a purloin is a type of
18 construction, what do you mean by that?

19 A. A type of construction is probably an
20 inaccurate term. Probably more accurate is that
21 it's a type of structural member used in
22 construction.

23 Q. Okay. What's the difference between a
24 beam and purloin?

25 A. A purloin generally runs horizontally

1 to beams.

2 Q. What do you mean by runs horizontally
3 to beams?

4 A. If you're -- crosses a beam at a
5 90-degree angle often.

6 Q. So a purloin crosses -- sorry, a
7 purloin crosses a beam at a 90-degree angle?

8 MR. SCHROEDER: I'm going to object.
9 It feels like we're going outside the scope of his
10 testimony, but the witness may answer.

11 A. It can, yes.

12 Q. (By Ms. Holoubek) Okay. Is there any
13 structural difference between a beam and a purloin?

14 MR. SCHROEDER: I will object, outside
15 the scope of his direct testimony.

16 A. There can be.

17 Q. (By Ms. Holoubek) What's the
18 structural difference between a beam and a purloin?

19 MR. SCHROEDER: Again, object outside
20 the scope of direct testimony.

21 A. I'm not an engineer. I can't
22 specifically address that question.

23 Q. (By Ms. Holoubek) Is a purloin
24 shape -- is a purloin shaped differently from a
25 beam?

1 MR. SCHROEDER: Objection, outside of
2 the scope of direct testimony.

3 A. Both beams and purloins can be in
4 different shapes.

5 Q. (By Ms. Holoubek) Okay. Let's take a
6 look at Exhibit 1 of your declaration. So Exhibit 1
7 shows revenue data for each FWH item number; is that
8 correct?

9 A. Correct.

10 Q. And then Exhibit 2 shows the unit sales
11 data for each of those same FWH item numbers; is
12 that correct?

13 A. Yes.

14 Q. And then Exhibit 3 shows the profit
15 margin for each of those same FWH item numbers; is
16 that correct?

17 A. Yes.

18 Q. So let's just talk about Exhibit 1 for
19 now. There are about 116 different item numbers
20 listed for the FWH series; is that correct?

21 A. That sounds about right. I don't know
22 exactly.

23 Q. Okay. Why are there so many different
24 item numbers for the FWH hanger?

25 A. To accommodate various member sizes and

1 load value requirements in a given structure.

2 (Court reporter interruption.)

3 A. Various member size requirements and
4 load value requirements in a given structure.

5 Q. (By Ms. Holoubek) So different hangers
6 might have different load value requirements; is
7 that correct?

8 A. Correct.

9 Q. How would a hanger account for
10 different load value requirements?

11 MR. SCHROEDER: Objection, outside the
12 scope of his direct testimony.

13 A. The hanger could be made with a thicker
14 gauge of steel. There could be various design
15 considerations within the particular hanger itself
16 as far as geometry is concerned. There could be
17 additional fasteners required in the use of that
18 hanger as well.

19 Q. (By Ms. Holoubek) So that's something
20 that the designer of the individual hangers would
21 account for in the final hanger product; is that
22 correct?

23 MR. SCHROEDER: Objection, outside the
24 scope of his direct testimony.

25 A. Yes. When we design a hanger we

1 consider the load value requirements of the hanger.

2 Q. (By Ms. Holoubek) Okay. In looking at
3 the product listing and I apologize because I don't
4 think the pages are numbered here, so I'm going to
5 go probably by -- by year, but what's the difference
6 say between the FWH 3520 and the FWH 3518? These
7 are the first two firewall hangers in year 2014 that
8 show a revenue, just first by --

9 A. Okay.

10 Q. -- order in the -- in the chart. But
11 what's the difference between the FWH 3520 and the
12 FWH 3518?

13 A. They're very similar. It refers to the
14 dimension of the member that that hanger holds.

15 Q. So each hanger is designed for a
16 different dimension member; is that correct?

17 A. That's correct.

18 Q. And when you refer to the dimension, do
19 you mean the length or the width? What are you
20 referring to when you talk about the dimension of
21 the member?

22 MR. SCHROEDER: Objection, outside the
23 scope of his direct testimony.

24 A. The width and the height of the
25 structural member the beam holds.

1 Q. (By Ms. Holoubek) Okay. And is the
2 load value also different for some of these firewall
3 hangers?

4 MR. SCHROEDER: Objection, outside the
5 scope of his direct testimony.

6 A. Yes. The load value often changes
7 across the product series.

8 Q. (By Ms. Holoubek) Some of the hangers
9 in the description have the letters BP, such as
10 firewall hanger BP. Do you see that?

11 A. Yes.

12 Q. Do you know what the BP stands for?

13 A. Purloin.

14 Q. Okay. So there are some firewall
15 hangers that are designed for beams and purloins; is
16 that correct?

17 A. Correct.

18 MR. SCHROEDER: Objection, outside the
19 scope of his direct testimony.

20 Q. (By Ms. Holoubek) So when you have a
21 firewall hanger such as the FWH 3520 and then you
22 have another one that is labeled with a BP, does
23 that mean that the non-BP labeled firewall hanger is
24 not suitable for a beam or purloin?

25 MR. SCHROEDER: Objection, outside the

1 scope of his direct testimony.

2 A. No. It's a bit of a misnomer. All
3 firewall hangers can be used with beams by
4 definition. The BP was used to signify a series of
5 firewall hangers that generally is going to provide
6 a higher load value.

7 Q. (By Ms. Holoubek) Are beams and
8 purloins heavier than other types of structural
9 members?

10 MR. SCHROEDER: Objection, outside the
11 scope of his direct testimony.

12 A. No.

13 Q. (By Ms. Holoubek) So why do you need a
14 firewall hanger with a higher load value such as the
15 ones designated with a BP?

16 MR. SCHROEDER: Objection, outside the
17 scope of his direct testimony.

18 A. To meet the unique engineering
19 requirements as specified by an engineer of record
20 when designing a structure.

21 Q. (By Ms. Holoubek) Okay. Some of the
22 hangers have an FM at the beginning, such as FM
23 firewall hanger. Do you see that?

24 A. In the descriptions?

25 Q. In the descriptions, yes.

1 A. Yes, I see that.

2 Q. Do you know what the FM stands for?

3 MR. SCHROEDER: Objection, outside the
4 scope of his direct testimony.

5 A. I don't.

6 Q. (By Ms. Holoubek) Okay. Would it make
7 sense for the FM to refer to face mount? Does that
8 sound familiar?

9 A. That sounds reasonable. I don't know
10 that to be a fact.

11 Q. Okay. Do all of these firewall hangers
12 have a top flange or are some of them face mounted
13 only?

14 A. I believe we had both top mount and a
15 face mount option.

16 Q. What's the difference between a
17 firewall hanger as listed in the description and a
18 firewall hanger light as listed in the descriptions
19 here?

20 MR. SCHROEDER: Objection, outside the
21 scope of his direct testimony.

22 A. The firewall hanger light refers to the
23 FWHL product series, which was designed for lower
24 load value applications.

25 Q. (By Ms. Holoubek) So what was the

1 difference between a regular firewall hanger, FWH,
2 and a firewall hanger light? Other than -- like it
3 was fine for overloads, but how did they achieve
4 that?

5 (Court reporter interruption.)

6 MS. HOLOUBEK: We can -- we can leave
7 it there. Maybe you can tell me that.

8 MR. SCHROEDER: Objection, outside the
9 scope of direct testimony.

10 A. That the firewall hanger light in the
11 application had lower load values.

12 Q. (By Ms. Holoubek) What was
13 structurally different between the firewall hanger
14 light and a regular firewall hanger that allowed it
15 to be used with lower load values?

16 MR. SCHROEDER: Objection, outside the
17 scope of direct testimony.

18 A. Some of the geometry of the hanger was
19 different. The gauge of the steel was thinner as
20 well.

21 Q. (By Ms. Holoubek) What kind of
22 geometry was different?

23 MR. SCHROEDER: Objection, outside the
24 scope of direct testimony.

25 A. I'm not a structural engineer. I don't

1 feel equipped to answer that question.

2 Q. (By Ms. Holoubek) Okay. In the charts
3 here if a particular model had sales in earlier
4 years but no sales in later years, does that mean
5 that the model was discontinued?

6 A. Not necessarily, no.

7 Q. Okay. Why might there be models that
8 had no sales in later years?

9 A. It could be because nobody purchased
10 those products from us.

11 Q. Understood. Why would those products
12 not be purchased if they existed on the market?

13 MR. SCHROEDER: Objection, outside the
14 scope of direct testimony. Also object to form.

15 A. A customer did not need a hanger of
16 that particular description or choose to buy it from
17 MiTek.

18 Q. (By Ms. Holoubek) Okay. So if you
19 look at -- for example, let's look at the last page
20 of Exhibit 1. Do you see the line for the FWH 2016
21 hanger? It's about ten rows down-ish.

22 A. Going to take me a minute to find that
23 page.

24 Q. Okay. And actually, that was 2025. So
25 really I want to look at the end of the 2024 data.

1 A. 2024, okay.

2 Q. Yeah. And yeah, unfortunately the
3 pages aren't numbered.

4 A. So does that page start FWH 2518?

5 Q. Yes, that's the end of the 2024 data.
6 Let's turn one page prior to the page starting
7 FWHFM5214.

8 (Court reporter interruption.)

9 MS. HOLOUBEK: M5214.

10 Q. (By Ms. Holoubek) So about ten up from
11 the bottom of that page do you see the line for FWH
12 2016?

13 A. Yes, I do.

14 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

1 [REDACTED]
[REDACTED]
[REDACTED]

4 Q. Okay. Are hangers ever discontinued in
5 the FWH series?

6 A. Yes.

7 Q. Why would a hanger be discontinued?

8 MR. SCHROEDER: Objection, outside the
9 scope of direct testimony.

10 A. It would be discontinued for a variety
11 of reasons due to low sales, due to changing customs
12 in the design of these structures, etc.

13 Q. (By Ms. Holoubek) And in these
14 documents FWH-T is described as the firewall hanger
15 template; is that correct?

16 A. Can you tell me what page that's on to
17 confirm, please?

18 Q. Sure. I think its first occurrence is
19 on page two, about a third of the way up from the
20 bottom. There's the item number FWH-T with a
21 description of firewall hanger template. Do you see
22 that?

23 A. Yes, I do.

24 Q. Is the same template used for all the
25 FWH hangers?

1 A. As far as -- as far as I know, yes.

2 Q. Okay. Exhibit 2 identifies how many of
3 each model of the FWH hanger and template are sold
4 in a given year; is that correct?

5 A. Can you repeat question, please?

6 Q. Sure. Exhibit 2, the unit sales, that
7 identifies how many of each of these models of
8 hangers are sold in a given year; is that correct?

9 A. That's correct.

10 Q. Okay. So you would agree that the
11 number of templates sold is pretty low in comparison
12 with the number of hangers sold; is that correct?

13 A. Correct.

14 Q. Just -- just for example -- sorry, you
15 said correct?

16 A. Yes, I did.

17 Q. Okay. So for example, in 2024, so if
18 we look kind of closer to the end of Exhibit 2 and
19 2024, if you can find the sales data for FWH-T in
20 2024?

21

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3 Q. Was it common for customers to install
4 drywall around these FWH hangers without using a
5 template?

6 MR. SCHROEDER: Objection, outside the
7 scope of direct testimony.

8 A. It was.

9 Q. (By Ms. Holoubek) Okay. How precise
10 would a cutout be if you're not using a template, do
11 you know?

12 A. Can't say.

13 Q. Okay. Are you familiar with sales data
14 of Simpson's DU hanger?

15 A. No.

16 Q. Okay. So is it fair to say that in
17 your discussion of the FWH sales data you did not
18 provide a comparison with the sales data for Simpson
19 DU hanger; is that correct?

20 A. Can you be more specific, please?

21 Q. So your declaration does not compare
22 the sales data of the FWH hanger and the sales data
23 of the DU hanger; is that correct?

24 A. That's correct.

25 Q. Okay. Does your declaration anywhere

1 identify the share of the total hanger market that's
2 captured by the FWH hanger?

3 A. Did you hear that response?

4 Q. No. I didn't.

5 A. Oh. I said it does not.

6 Q. Okay. Great. Thanks. Sorry.

7 (Court reporter interruption.)

8 MS. HOLOUBEK: We've been going about
9 an hour, a little over. Shall we take a break,
10 maybe about a 15-minute break?

11 THE WITNESS: Yes.

12 MS. HOLOUBEK: Okay.

13 (WHEREIN, a recess was taken from
14 10:01 a.m. to 10:16 a.m.)

15 MS. HOLOUBEK: That's all the questions
16 I have and John, I'll pass the witness to you.

17 MR. SCHROEDER: All right. You mind if
18 I take about five-, ten-minute break just to go
19 through my notes and make sure whether I want to ask
20 anything?

21 MS. HOLOUBEK: Sure. That's fine.

22 MR. SCHROEDER: All right.

23 (WHEREIN, a recess was taken from
24 10:16 a.m. to 10:29 a.m.)

25 MR. SCHROEDER: I'm going to keep this

1 really short, though. I have no further questions.

2 COURT REPORTER: Okay.

3 MR. SCHROEDER: I want to talk about
4 the order before you drop off. That's all.

5 COURT REPORTER: Okay. So Michelle,
6 can I confirm, other than the real time feed, the
7 rough draft at the conclusion of the deposition,
8 electronic final in five days, Friday next week,
9 correct?

10 MS. HOLOUBEK: Yes, that's correct.

11 COURT REPORTER: Okay. And John, other
12 than the real time, a five-day electronic final next
13 Friday, correct?

14 MR. SCHROEDER: Actually, that's where
15 I was changing it. I -- I don't have any
16 requirement for five days. I do want a rough.

17 COURT REPORTER: Rough and normal
18 turnaround?

19 MR. SCHROEDER: Correct.

20 (Ending time of the deposition: 10:30 a.m.)

21

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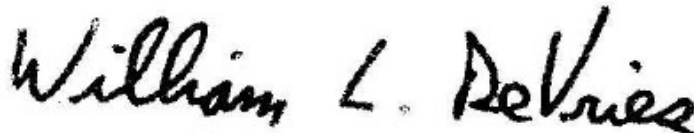
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CERTIFICATE OF REPORTER

I, William L. DeVries, a Certified Court Reporter (MO), Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me pursuant to Section 492.010 RSMo; that the testimony of said witness was taken by me to the best of my ability and thereafter reduced to typewriting under my direction; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken, and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Certified Court Reporter
within and for the State of Missouri

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\$3 37:4 \$4 37:4	16:19, 24 17:19, 22 18:2, 12, 25 19:6 22:5 23:4, 8, 13, 15, 21 24:13, 18, 23 25:9, 14 27:1, 15, 21 43:7	3 41:14 30 10:9 339 6:19 9:5 11:16, 22 12:6, 8, 12, 15, 23 13:2, 6	a.m. 5:13 53:14, 24 54:20 absolute 24:15 accepted 35:5 accommodate 41:25 account 14:18 15:7 16:5 42:9, 21
1	2015	3518	accounts
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2	2020	4	achieve
2 41:10 51:2, 6, 18 2012 20:20, 22	2021 14:15 2022 37:19 2023 14:17, 19 49:18, 24 2024 48:25 49:1, 5, 15, 24 50:2 51:17, 19, 20 2025 11:7 17:18 20:3 48:24 2059 10:21 11:2, 4 23rd 11:7 2518 49:4	4P 16:10, 11	achieved 32:14 across 32:22 36:6, 13 44:7 actual 6:17 36:2 additional 42:17 address 5:24, 25 40:22 advertising 33:18 affirm 5:14 afterwards 5:6 age 5:11 ago 10:9 19:1 20:3, 18 agree 20:10 29:8
2	2025	5	actual
2 41:10 51:2, 6, 18 2012 20:20, 22	2026 10:21 11:2, 4 23rd 11:7 2518 49:4	501 9:7	additional 42:17 address 5:24, 25 40:22 advertising 33:18 affirm 5:14 afterwards 5:6 age 5:11 ago 10:9 19:1 20:3, 18 agree 20:10 29:8
2	2027	6	address
2 41:10 51:2, 6, 18 2012 20:20, 22	2028 10:21 11:2, 4 23rd 11:7 2518 49:4	63040 6:3	advertising 33:18 affirm 5:14 afterwards 5:6 age 5:11 ago 10:9 19:1 20:3, 18 agree 20:10 29:8
2	2029	8	affirm
2 41:10 51:2, 6, 18 2012 20:20, 22	2030 10:21 11:2, 4 23rd 11:7 2518 49:4	8:52 5:13	afterwards 5:6 age 5:11 ago 10:9 19:1 20:3, 18 agree 20:10 29:8
2	2031	9	affirm
2 41:10 51:2, 6, 18 2012 20:20, 22	2032 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	afterwards 5:6 age 5:11 ago 10:9 19:1 20:3, 18 agree 20:10 29:8
2	2033	9	afterwards
2 41:10 51:2, 6, 18 2012 20:20, 22	2034 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	affirm 5:14 afterwards 5:6 age 5:11 ago 10:9 19:1 20:3, 18 agree 20:10 29:8
2	2035	9	age
2 41:10 51:2, 6, 18 2012 20:20, 22	2036 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	afterwards 5:6 age 5:11 ago 10:9 19:1 20:3, 18 agree 20:10 29:8
2	2037	9	ago
2 41:10 51:2, 6, 18 2012 20:20, 22	2038 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2039	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2040 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2041	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2042 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2043	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2044 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2045	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2046 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2047	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2048 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2049	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2050 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2051	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2052 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2053	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2054 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2055	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2056 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2057	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2058 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2059	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2060 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2061	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2062 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2063	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2064 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2065	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2066 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2067	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2068 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2069	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2070 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2071	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2072 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2073	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2074 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	agree 20:10 29:8
2	2075	9	agree
2 41:10 51:2, 6, 18 2012 20:20, 22	2076 10:21 11:2, 4 23rd 11:7 2518 49:4	90-degree 40:5, 7	

36:17 37:7 51:10 AGREED 5:1 allowed 8:11 47:14 analysts 18:9 37:23 analyzed 18:10 angle 40:5,7 angles 15:3 answer 8:2,19 12:1, 18 13:14 19:21 20:7 21:5,21 22:25 23:11 24:25 26:8, 17 27:9 28:4,15 29:19 31:6, 16 32:12,20 36:21 37:2, 22 38:13 40:10 48:1 50:2 answered 25:12 answers 7:8 anyone 10:16 apologize 43:3 appears 37:3,5 application 30:1,11 47:11 applications 30:14,16,19, 20,24 46:24 around 16:24 23:15	52:4 asked 25:11 asking 7:25 12:6 aspects 33:20 assemblies 21:2,9,16 25:10 27:23 31:3,4 33:7 assembly 14:8 19:7,11 23:8 24:16 33:10,25 34:6 assigned 16:14 associated 11:12,14 12:20 assume 7:3 21:11,12 assumed 15:15 attorney- client 9:24 11:25 13:13 available 23:20 aware 23:5,12 28:18,25 axis 35:22 36:10 38:16,19	bases 15:3 basically 39:15 beam 29:25 39:12, 24 40:4,7, 13,18,25 43:25 44:24 beams 39:11 40:1,3 41:3 44:15 45:3,7 began 21:23 beginning 34:23 35:13 38:5 45:22 behalf 5:12 believe 9:7 16:20 31:17 46:14 below 20:20 best 19:23 37:24 bit 8:23 16:17 38:2 45:2 bottom 24:6 49:11 50:20 BP 44:9,10,12, 22 45:4,15 BPH 30:4,6,8,13 32:4 33:1 38:25 39:9 BPS 30:18 break 8:16,17,18, 20 53:9,10, 18	breaks 8:11,15 building 20:11,14,18, 25 21:10,17 24:9 26:1,22 27:2,6 buildings 19:24 bureau 35:7 business 23:25 buy 48:16
<hr/>			
C			
<hr/>			
calls 11:24 13:13 capacity 15:8 capture 32:14 captured 53:2 career 19:6 case 23:24 29:4 38:16 census 35:7 Centaur 6:2 certain 21:13,14 certainly 25:6 Certified 5:5 challenging 6:13 change 16:1,5			

changes 44:6 changing 50:11 54:15 channel 16:9 chart 39:5 43:10 charts 38:23 48:2 Chemical 14:2, 3, 6, 10 16:19 choose 48:16 claims 12:11, 15, 23 clarification 7:3 clean 7:21 clear 8:20 closer 51:18 code 19:22 20:2, 4, 12, 15, 18, 25 21:10, 17 26:1 colleagues 23:17 25:16 college 16:21, 22, 25 comes 18:15 common 26:10, 11, 21 27:5 52:3 communicate 8:1 communicated 31:10 communication 8:7	communication s 9:24 11:25 13:14 company 23:12 compare 38:24 52:21 comparison 51:11 52:18 competitive 23:15 competitors 18:10 completed 33:10, 25 34:6 concerned 42:16 concerns 31:24 conclusion 54:7 confirm 50:17 54:6 connection 6:11 connector 15:2 17:15, 23 18:24 connects 39:16 consider 43:1 consideration 32:22 consideration s 42:15 construct 22:8, 14 constructed 26:3 28:7 construction 14:10 27:2 34:23 35:13, 14 38:1	39:15, 18, 19, 22 continue 10:1 conversations 23:24 25:15 copy 7:18, 21 10:23 correct 6:6, 8, 14 7:23 8:3 10:4, 5 11:7 13:24 15:25 17:1, 15, 16 18:13, 14, 17, 18 19:9, 12, 15 20:12, 13 22:20 23:21 24:11, 12 25:10 27:22 28:8, 9, 21 29:2, 10, 11 30:21, 22 31:4, 7, 11 32:6 34:1, 7, 14, 15 35:10, 11, 18 36:8, 19 37:10, 16 38:8, 9, 17, 18, 21, 22 39:1 41:8, 9, 12, 16, 20 42:7, 8, 22 43:16, 17 44:16, 17 49:15, 19, 25 50:15 51:4, 8, 9, 12, 13, 15 52:1, 2, 19, 23, 24 54:9, 10, 13, 19 corrections 13:18 cost 31:23, 24 32:8	counsel 5:2 8:1, 12 9:19 10:3, 7, 11 13:4, 16 court 5:5, 14 6:7, 24 7:6 10:13 11:1 26:24 42:2 47:5 49:8 53:7 54:2, 5, 11, 17 covered 15:24 18:9 37:24 COVID 38:1 crosses 40:4, 6, 7 current 17:18 customer 48:15 customers 18:8 23:17, 19 25:16 31:10, 13 52:3 customs 50:11 cutout 52:10
D			
			data 11:11 35:6, 9 41:7, 11 48:25 49:5 51:19 52:13, 17, 18, 22 date 25:23 days 10:9 38:1 54:8, 16 decade 19:23 20:2, 3

decision 13:7	50:12	33:3 40:15, 20 41:2	drops 37:5
declaration 7:19 9:13, 14,17 10:21, 23,25 11:6, 10 12:18 13:9,10,19, 23 17:7 20:11 31:9 34:18 35:2 38:24 41:6 52:21,25	designated 45:15	42:12,24	dry 24:21
decrease 37:18	designed 30:10,14,15, 19,24 31:2 43:15 44:15 46:23	43:23 44:5, 19 45:1,11, 17 46:4,21 47:9,17,24 48:14 50:9 52:7	drywall 24:10,14,19, 21 25:3,5,14 26:4,5,13,22 27:3,6,16,22 28:11,16,20 29:1 30:12 32:15 52:4
decreased 37:12	designer 42:20	director 14:18 15:7 16:5	DU 25:18,21 52:14,19,23
define 33:12	designing 45:20	disagree 36:22	due 50:11
definition 45:4	developers 38:4	discontinued 48:5 50:4,7, 10	duplicate 17:8
department 35:7	development 35:8	discussion 52:17	<hr/>
deposed 8:24 9:2	Devries 5:4	distribution 14:19 16:9	E
deposes 5:12	difference 15:10,13,19 30:8 39:12, 23 40:13,18 43:5,11 46:16 47:1	divulge 9:24	<hr/>
deposition 5:3,13,23 6:11,23 7:25 8:6,10,13,23 9:4,9,12,20 10:4,7,16,19 13:20 54:7, 20	different 15:8 30:6 41:4,19,23 42:5,6,10 43:16 44:2 47:13,19,22	documentation 9:15	e-mail 8:7
describe 36:24	differently 40:24	documents 9:9,11 11:9, 12,13,14 13:5 50:14	earlier 35:12 48:3
described 50:14	digits 6:18	Dollars 35:23,24	early 38:1
description 44:9 46:17 48:16 50:21	dimension 43:14,16,18, 20	Dow 14:2,3,6,10 16:18,19	easier 6:23
descriptions 45:24,25 46:18	direct 19:20 20:6 21:5,21 22:11 23:10 24:22 25:1, 11,12 26:8, 16,18 27:9 28:3,14 29:14,19 32:12,20	down-ish 48:21	economic 34:22 35:5
design 42:14,25		Dozens 31:17	economist 35:6
		draft 54:7	Economists 37:23
		dramatically 37:19	effort 13:15
		Drive 6:2	either 13:3
		drop 54:4	elaborate 18:4
			electric 8:7
			electronic 14:8 54:8,12

employed 13:23 14:1 16:18	experience 17:14 19:7 24:16, 17, 22 25:1, 9, 11, 12 26:18	35:19 42:16 51:1	3, 6, 18 43:7 44:2, 10, 14, 21, 23 45:3, 5, 14, 23
employment 19:10		fasteners 42:17	46:11, 17, 18, 22 47:1, 2, 10, 13, 14 50:14, 21 51:25
end 48:25 49:5 51:18	experienced 25:7	feed 54:6	firewalls 19:15, 18, 22 21:22 22:5 24:18 26:3, 21 27:25 28:6, 20 29:1, 9, 16, 22
ending 54:20	explain 15:16 16:11	feedback 31:19	first 13:22 14:20 16:21 19:11 26:4 43:7, 8 50:18
engineer 40:21 45:19 47:25	explanation 34:9	feel 48:1	five 36:12 38:7, 20 54:8, 16
engineering 45:18	exposure 19:11	feels 40:9	five- 53:18
entire 24:9	expressly 5:8	figure 35:20 37:15 38:6	five-day 54:12
equipped 48:1	extensively 37:24	filed 13:6	five-eighths 22:1, 9, 15
estimate 20:17	extent 9:23 11:24 13:13 20:5 23:9 26:7 27:8 28:2, 13 29:13 32:10	final 42:21 54:8, 12	flange 46:12
everyone 5:21	external 35:10	financial 9:13	flat 36:18
exactly 41:22		find 48:22 51:19, 21	FM 45:22 46:2, 7
EXAMINATION 5:19	F	fine 9:8 47:3 53:21	form 8:7 18:22 22:24 24:24 26:23 27:18 28:22 29:12 31:5, 15 33:11, 21 34:2 36:20 37:1, 11 38:12 48:14 49:20
examined 5:11	face 46:7, 12, 15	fire 20:15, 19 21:1, 8, 18 22:23 23:3, 7 24:9 26:1 36:12	
examples 30:4	fact 46:10	firewall 11:12, 14 19:7, 11 21:15 22:8, 14 24:15, 23 25:9 26:3 29:6, 9 30:10, 14, 16, 19, 20, 24 31:2, 3 33:7, 10, 13, 25 34:6, 13 35:25 36:2,	
excuse 9:6	factor 33:4		
exhibit 10:21 11:1, 2, 4 41:6, 10, 14, 18 48:20 51:2, 6, 18	fair 19:5 52:16		
exhibits 9:14, 16	fall 37:6		
existed 17:19 19:24 48:12	falling 37:9		
existence 17:3	familiar 12:11 22:7, 14 25:18 33:6, 18 46:8 52:13		
expansion 15:23	far 25:7 26:10		

four 24:5, 6, 7 34:18 35:20, 21 frame 18:25 26:21 27:6 framed 24:10, 19 framing 15:2 Friday 54:8, 13 front 10:24 full 5:24 15:1 function 16:15 FWH 14:21 17:3 26:2 27:12, 25 28:1, 7, 12 29:10, 17, 23 30:7, 9 31:10, 19, 22, 25 32:1, 7, 18, 23 33:6, 9, 19, 24 34:5 36:24 38:11, 25 41:7, 11, 15, 20, 24 43:6, 11, 12 44:21 47:1 48:20 49:4, 11, 21, 23 50:5, 25 51:3, 25 52:4, 17, 22 53:2 FWH-T 50:14, 20 51:19 FWHFM5214 49:7 FWHL 46:23	<hr/> G <hr/> gathered 18:7 35:9 gauge 32:17, 25 42:14 47:19 general 12:19 generally 29:24 39:25 45:5 geometry 42:16 47:18, 22 give 5:15 30:4 given 42:1, 4 51:4, 8 global 14:16 15:12, 15, 22 16:6 going 6:17 11:23 12:16 13:12, 19 17:8 18:21 19:19 21:3, 19 26:6, 15 40:8, 9 43:4 45:5 48:22 53:8, 25 Good 5:21 graduated 16:21 Great 7:24 39:9 53:6 gross 36:3, 5 ground 6:21 Grover 6:2	guess 17:7 gypsum 22:1, 9, 16 33:10, 24 34:6 <hr/> H <hr/> hand 7:9 handle 14:5 hanger 11:12, 14 17:3 22:20, 22, 23 23:3, 7 24:8 26:2, 4, 13 29:6, 17, 23 30:10, 11 31:19, 22, 25 32:1, 18, 23 33:6, 9, 19, 24 34:5 35:25 36:2, 4, 6 38:11, 25 39:9 41:24 42:9, 13, 15, 18, 21, 25 43:1, 14, 15 44:10, 21, 23 45:14, 23 46:17, 18, 22 47:1, 2, 10, 13, 14, 18 48:15, 21 49:14, 21, 23 50:7, 14, 21 51:3, 25 52:14, 19, 22, 23 53:1, 2 hangers 14:10, 22 15:4 24:13, 20 25:4 27:3, 12, 13, 16, 21, 24 28:8, 10, 19, 25 29:8, 16, 22, 25 30:3, 7, 18, 23 31:2 32:2, 4, 5, 8, 9, 22 33:1 36:18 42:5, 20 43:7 44:3, 8, 15 45:3, 5, 22 46:11 50:4, 25 51:8, 12 52:4 head 7:9 hear 31:13, 19 53:3 heavier 45:8 height 43:24 held 14:17 higher 45:6, 14 hired 14:13, 14 holds 43:14, 25 Holoubek 5:20, 22 6:9 9:25 10:2, 15, 22 12:4, 22 13:17 18:23 20:1, 9 21:7, 24 22:13 23:2, 14 25:2 26:11, 20 27:1, 11, 20 28:6, 18, 24 29:15, 21 31:8, 18 32:16, 23 33:5, 13, 23 34:4, 11 36:23 37:7, 14 38:6, 15
---	--	--

40:12, 17, 23 41:5 42:5, 19 43:2 44:1, 8, 20 45:7, 13, 21 46:6, 25 47:6, 12, 21 48:2, 18 49:9, 10, 21 50:13 52:9 53:8, 12, 15, 21 54:10 home 5:25 35:16 horizontally 39:25 40:2 hour 53:9 house 34:24 35:13, 14 housing 34:18, 21, 25 35:3, 4, 7, 9 36:11 37:15, 18 38:20 hung 26:4, 14	includes 8:6 increased 32:16, 24 increases 37:3 incredible 37:25 indicate 17:13 24:4, 7 indicated 25:8 individual 42:20 industry 17:4 18:1, 3, 5 19:17 21:1, 8 23:17 25:16 33:14 34:13 37:23 information 11:22 12:5, 7, 8 install 30:11 39:11 52:3 installation 24:14, 23 27:3, 17, 22 28:11, 20 29:1 installed 24:8, 11, 14, 18, 20 25:3, 4, 14 26:13 27:3, 16, 21 28:11, 16, 17 30:12 33:6 installing 26:22 27:6 32:14 instance 10:8 instances 26:12 institution 13:7	institutional 18:7 interest 38:4 internal 13:4 18:7 23:16 International 20:11, 14, 18, 25 21:17 25:25 interruption 6:7 10:13 26:24 42:2 47:5 49:8 53:7 introduced 20:4 25:22 29:7 introduction 21:16 25:17, 25 26:2 27:12 28:1, 7 29:10, 17, 23 involved 14:9 18:12 item 41:7, 11, 15, 19, 24 50:20	<hr/> K <hr/> keep 53:25 kind 11:13 13:22 14:9, 24 29:16, 21 34:17 47:21 51:18 know 8:16 19:2 20:16, 21, 23, 25 21:7, 13, 14, 15 23:6, 15 25:23 29:15 35:19 39:14 41:21 44:12 46:2, 9 51:1 52:11 knowledge 17:14, 22 18:1, 8, 15 19:24 37:25 known 17:4 22:4
<hr/> I <hr/> identified 13:19 identifies 51:2, 7 identify 35:3 53:1 impair 7:16 inaccurate 39:20 inch 22:1, 9, 15 include 35:15, 17 included 9:14, 16		<hr/> J <hr/> job 16:21 John 10:12 53:16 54:11 joined 17:3 joint 13:15 joist 24:13 26:4, 13 27:2, 12, 16, 21 Julie 10:12	<hr/> L <hr/> labeled 44:22, 23 lawful 5:11 lawyers 13:4 layers 21:25 22:9, 15 leave 47:6 left 35:21 38:16 length 43:19 letters 44:9

light 15:2 46:18, 22 47:2,10, 14	15	matter 8:12 9:5	million 37:4,6
line 15:1 21:4 32:22 37:15 48:20 49:11	<hr/> M <hr/>	mean 17:9 21:12 26:12 34:10, 21 36:1 39:18 40:2 43:19 44:23 48:4	mind 53:17
lines 36:7	M5214 49:9	means 34:13	minute 48:22
listed 41:20 46:17, 18 51:21	made 13:18 42:13	measure 35:6	misnomer 45:2
listing 43:3	maintained 15:5	measured 34:25 36:14	Missouri 6:3
literature 33:18	make 6:22,23 7:7 46:6 53:19	medication 7:15	Mitek 13:23 14:12 16:18 17:3, 14 18:7 19:10 22:19 23:16 25:15 27:11,24 28:8,10,19, 25 29:16,22 33:18 34:12 36:24 38:14 48:17
little 6:23 8:22 16:17 53:9	management 16:10	meet 9:19 10:3,6, 10 45:18	Mitek's 27:15,21 36:3,6,17
load 29:25 42:1, 4,6,10 43:1 44:2,6 45:6, 14 46:24 47:11,15	manager 14:15,17,21 15:12,13,18 16:6 24:3 33:17	member 39:21 41:25 42:3 43:14, 16,21,25	model 48:3,5 51:3
local 15:18	manufacturers 22:19 23:3,6	members 45:9	models 38:10,25 48:7 51:7
located 6:4	manufacturing 32:21	mention 31:9	morning 5:21
long 19:17 20:18, 25 21:8	margin 41:15	mentioned 7:7 10:23 16:18 20:2	mount 46:7,14,15
longer 19:25	marked 11:2	messaging 8:8	mounted 46:12
look 41:6 48:19, 25 51:18	market 17:14,18,22 18:9,12,16, 25 24:7 48:12 53:1	met 29:25	moved 14:17 15:12, 22 16:4
looking 35:20 39:7 43:2	marketer 14:4	metal 32:18,25	movements 7:10
Louis 6:5	marketers 34:12	method 25:7 26:10	moving 19:13
low 50:11 51:11	marketing 11:15 16:10, 12,15 19:4 23:25	methodology 12:20	multifamily 38:1,3
lower 46:23 47:11,	markings 7:22	Michael 5:10,25	
	materials 11:15 14:8	Michelle 5:22 12:3 54:5	

N	15, 19, 24 O	12, 18 8:5, 15, 22 9:4, 8, 19, 25 10:6, 10, 18, 22 11:6, 21 12:11, 14, 22 13:1, 5, 9, 17 14:12, 20 15:5, 10, 22 16:4, 11, 17, 24 17:2, 6, 11 18:11, 23 20:17, 21, 24 21:15, 24 22:18 23:2, 14, 19 24:4 25:2, 8, 24 26:20 27:20, 24 28:10 29:5 31:8, 18 32:7 33:5 34:16 35:17, 20 36:1, 5, 9, 13, 17, 23 37:7, 14 38:15, 23 39:7, 9, 23 40:12 41:5, 23 43:2, 9 44:1, 14 45:21 46:6, 11 48:2, 7, 18, 24 49:1 50:4 51:2, 10, 17, 23 52:9, 13, 16, 25 53:6, 12 54:2, 5, 11	opposed 38:7 option 46:15 order 43:10 54:4 original 15:11 outside 12:17 19:20 20:6 21:4, 20 22:10 23:10 26:7, 16 27:8 28:3, 14 29:13, 18 32:11, 19 33:2 37:21 40:9, 14, 19 41:1 42:11, 23 43:22 44:4, 18, 25 45:10, 16 46:3, 20 47:8, 16, 23 48:13 50:8 52:6 outstanding 8:19 overbuilt 38:3 overloads 47:3 Owner 5:3
name 5:22, 24 national 14:18 15:7, 18, 20 16:5 necessarily 48:6 need 8:16 24:8 27:16 45:13 48:15 50:1 needed 8:16 negative 31:19, 21 Nelson 5:10, 22, 25 6:10 10:21 11:3 20:9 nods 7:9 non-bp 44:23 nonetheless 30:20 nonfirewall 27:23 normal 54:17 note 12:6 notes 53:19 number 6:13, 18 38:20 41:7 50:20 51:11, 12 numbered 43:4 49:3 numbering 17:8 numbers 35:3 41:11,	object 9:23 11:23 12:16 13:12 18:19, 21 19:19 20:5 21:3, 19 22:10, 24 23:9 24:24 26:6, 23 27:8, 18 28:2, 13, 22 29:12, 13, 18 31:5, 15 32:10, 19 33:2, 11, 21 34:2 36:20 37:1, 11, 21 38:12 40:8, 14, 19 48:14 49:20 objection 26:16 34:8 41:1 42:11, 23 43:22 44:4, 18, 25 45:10, 16 46:3, 20 47:8, 16, 23 48:13 50:8 52:6 obtain 17:25 occurrence 50:18 offer 22:20 27:11 offering 23:13 office 6:5 okay 6:9, 16, 19, 21 7:2, 4, 5, 6,	Once 9:3 one 10:8 34:11 44:22 49:6 ones 45:15 ongoing 8:11	P page 6:22 10:24 11:4 13:22 17:6, 13 19:14 20:10 24:5, 6 31:8 34:16, 17 35:20, 21 38:7 39:4 48:19, 23

49:4, 6, 11 50:16, 19 51:24 pages 43:4 49:3 51:24 pandemic 37:8 paragraph 17:9, 12, 17 19:14 20:10 21:25 22:18 24:4, 6, 7 31:9 34:16, 17 39:5 paragraphs 38:23 part 23:24, 25 24:2 particular 23:24 42:15 48:3, 16 49:14 pass 53:16 past 18:16 patent 5:3 6:13, 17, 18, 19 9:5, 7 11:17, 18, 22 12:6, 9, 12, 15, 24 13:2, 6 pending 8:18 penetrate 33:9, 12 penetrates 33:24 34:5 penetration 33:14, 15, 19 34:10, 13 people 18:7 period 19:3 38:5	periodic 8:15 petition 13:7 Petitioner 5:2, 12 PGR 13:6 physically 6:5 place 16:15 please 5:23 8:16 12:2 21:6 22:12 26:25 28:23 33:12 34:3 35:1 50:17 51:5 52:20 point 11:16 38:2 portfolio 14:14, 16, 21, 22, 25 15:11, 13, 17, 23 16:6, 8 24:3 post 15:3 post-2019 24:1 Post-grant 6:12 practice 26:21 27:5 precise 52:9 predominantly 15:3 preexisting 29:24 32:2, 3 preference 31:10 premium 32:2, 13 preparation 8:23 11:10	prepare 9:9, 12, 20 10:3, 7, 19 preparing 13:20 pretty 36:18 51:11 prevalent 25:6 previous 15:17 price 16:15 32:17, 24 priced 32:1, 13 primarily 15:18 39:10 primary 19:2 33:4 prior 14:1 16:24 19:6 24:13 25:9, 14 27:1, 12, 15, 20, 25 28:11 29:6 30:11 32:15 49:6 50:1 privileged 11:25 13:14 probably 10:9 39:19, 20 43:5 proceeding 5:16 6:13 produced 5:11 product 12:21 14:4, 14, 16, 21, 22, 25 15:11, 12, 17, 23 16:6, 15 17:25 24:3 25:19, 21 32:22 33:16, 17, 18	36:7 42:21 43:3 44:7 46:23 products 14:5, 7, 24 15:2, 6, 9 16:8 17:15, 23 19:8, 11 23:15, 20 24:1 34:12 48:10, 11 profit 41:14 prohibitive 38:4 promoted 14:16 promotion 16:16 provide 35:2 45:5 52:18 provided 6:12 11:21 12:5, 8 13:1 35:7 purchased 48:9, 12 purloin 39:13, 14, 17, 24, 25 40:6, 7, 13, 18, 23, 24 44:13, 24 purloins 39:11 41:3 44:15 45:8 purview 15:6 <hr/> Q <hr/> question 6:25 7:4 8:2, 18 11:24 12:2 21:6, 20 22:12 28:23 34:3 40:22
---	---	--	---

48:1 49:22 51:5 questioning 21:4 questions 5:20 7:25 8:19 53:15 54:1 quick 9:22 27:7	5:24 7:9 10:25 45:19 red 37:15 refer 6:19 17:8 19:14 21:25 43:18 46:7 references 21:22 referring 17:17 22:22 36:15 39:15 43:20 refers 12:20 16:13 34:18 35:13 38:7 43:13 46:22 regarding 10:16 regular 47:1, 14 regularly 31:3 related 8:12 9:7 15:20 relates 15:8 relation 9:4 relative 32:2, 3 remind 8:6 9:23 remodeling 35:15, 18 remote 8:5 repeat 12:2 21:6 22:12 26:15 28:23 34:3, 8 51:5 report 49:16 50:3	reporter 5:5, 6, 14 6:7, 24 7:6 10:13 11:1 26:24 42:2 47:5 49:8 53:7 54:2, 5, 11, 17 reporting 11:11 reports 9:14 18:6 represent 35:22 36:10 represents 36:11 38:16, 20 required 21:10, 17 26:1 42:17 requirement 19:22 54:16 requirements 29:25 30:1 42:1, 3, 4, 6, 10 43:1 45:19 requiring 20:15, 19 research 18:6, 16, 24 19:2 reserved 5:8 resistant 21:1, 8 24:9 response 53:3 responsibilit ies 16:14 responsibilit y 15:15 responsible 16:7	restart 49:22 Returning 16:17 revenue 36:2, 3, 5, 18, 24 37:8, 12 38:8 41:7 43:8 49:18, 23, 24 50:2 review 6:13 9:8, 11, 15 11:9, 16 50:1 reviewed 11:11 12:23 13:5 right 5:21 16:22 36:9 38:19 39:6 41:21 53:17, 22 rise 37:6 role 14:3, 12, 15, 18, 19 15:11, 18 16:10, 12 19:4 24:2 roles 15:14 16:1, 5 roof 26:22 27:6 roofed 24:10 rough 54:7, 16, 17 rows 48:21 rules 6:22 run-up 37:25 runs 39:25 40:2
<hr/>			
R			
<hr/>			
rated 23:4, 7 rates 38:4 rating 20:15, 19 21:18 22:23 26:1 RDR/CRR 5:4 Read 18:6 real 9:22 27:7 54:6, 12 reason 7:12 reasonable 46:9 reasons 50:11 recall 13:3 33:15, 22 received 31:21 recent 18:16 recently 18:23 recess 53:13, 23 record			

s	53:17, 22, 25 54:3, 14, 19	seven 31:9	situations 28:19, 25
sale 36:2	scope 12:17 19:20 20:6 21:4, 20 22:11 23:10 26:7, 16 27:8 28:3, 14 29:13, 19 32:11, 19 33:3 37:22 40:9, 15, 20 41:2 42:12, 24 43:23 44:5, 19 45:1, 11, 17 46:4, 21 47:9, 17, 24 48:14 50:9 52:7	several 19:1	size 29:25 42:3
sales 11:11 14:18 16:10 35:25 36:1, 4, 6 38:7, 10, 16, 17 41:10 48:3, 4, 8 49:14 50:11 51:6, 19, 25 52:13, 17, 18, 22		shakes 7:9	sizes 41:25
says 5:12		shape 40:24	sold 51:3, 8, 11, 12
scenarios 29:3		shaped 40:24	sound 46:8
Scheipeter 10:12, 14	second 24:5	shapes 41:4	sounds 41:21 46:9
SCHROEDER 9:22 10:1, 14 11:23 12:16 13:12 18:19, 21 19:19 20:5 21:3, 19 22:10, 24 23:9 24:24 26:6, 15, 23 27:7, 18 28:2, 13, 22 29:12, 18 31:5, 15 32:10, 19 33:2, 11, 21 34:2, 8 36:20 37:1, 11, 21 38:12 40:8, 14, 19 41:1 42:11, 23 43:22 44:4, 18, 25 45:10, 16 46:3, 20 47:8, 16, 23 48:13 49:20 50:8 52:6	section 19:13	share 53:1	sources 35:10
	see 22:1 34:19 39:8 44:10 45:23 46:1 48:20 49:11 50:21	sheathing 24:9	spans 34:17
	segment 38:3	short 54:1	speak 7:7 10:15
	selling 16:7	shorthand 5:4, 5	speaking 23:17 29:24
	sense 46:7	show 43:8	specific 11:22 12:5 22:20 25:23 26:25 33:19 35:1 52:20
	series 27:13 30:5, 7, 8, 9, 13, 18, 23 31:1 32:5, 8 33:1 38:11, 14 41:20 44:7 45:4 46:23 50:5	showing 37:12 49:16 50:2 51:21	specifically 15:21 23:20 30:10, 13, 15, 19 40:22
		shown 37:15	specified 29:9 45:19
		shows 41:7, 10, 14	spoke 18:6 23:19
		signature 5:7 11:3	St 6:5
		signed 11:6	standard 22:4 33:14 34:22
		significant 32:1, 14	stands 44:12 46:2
		signify 45:4	start 20:15 34:25 35:4, 9 49:4
		silicone 14:7	started 14:20 16:23 20:18
		similar 43:13	
		Simpson 22:19 25:18, 21 52:18	
	Setting 26:20	Simpson's 52:14	

starting 5:13 49:6 starts 34:19, 21 35:3 36:11 37:15, 18 38:20 state 5:23 statement 36:22 States 15:21 36:14, 16 Station 6:2 steel 32:21 42:14 47:19 Stinson 6:5 13:4 STIPULATED 5:1 straps 15:3 structural 15:1 17:15, 23 18:24 39:21 40:13, 18 43:25 45:8 47:25 structurally 47:13 structure 24:19 42:1, 4 45:20 structures 50:12 studied 18:3 study 18:5 subject 8:12 submitted 9:13	suitable 44:24 sure 6:22 7:7 12:4 21:7 22:13 28:24 34:4 50:18 51:6 53:19, 21 swear 5:14 sworn 5:11 <hr/> T <hr/> take 8:15, 17, 19 41:5 48:22 53:9, 18 taken 5:4 6:11 53:13, 23 taking 5:23 talk 6:17 8:11 41:18 43:20 54:3 talked 18:8 talking 6:16 23:16 talks 20:11 team 10:11 tell 6:24 33:23 34:5, 12 47:7 50:16 telling 8:2 template 50:15, 21, 24 51:3 52:5, 10	templates 51:11 ten 34:16, 17 48:21 49:10 ten-minute 53:18 term 33:14, 15 34:22 35:17 39:20 territory 15:24 testify 7:13 testimony 5:15 6:12 7:16 19:20 20:7 21:5, 21 22:11 23:10 26:8, 17 27:9 28:4, 14 29:14, 19 32:11, 12, 20 33:3 37:22 40:10, 15, 20 41:2 42:12, 24 43:23 44:5, 19 45:1, 11, 17 46:4, 21 47:9, 17, 24 48:14 50:9 52:7 text 8:7 Thank 6:4, 9 Thanks 10:2 53:6 thick 22:9, 16 thicker 42:13 thing 8:17	think 29:3 43:4 50:18 thinner 47:19 third 50:19 third-party 18:9 THO 30:5, 23 31:1 32:4 33:1 three 6:18 17:9, 10, 12, 17 22:18 31:8 34:16, 17 37:6 time 5:13 13:17 16:22, 25 17:2 18:25 19:3 25:5 38:5 54:6, 12, 20 times 9:1 today 5:23 6:11 7:13, 16 8:23 today's 9:9, 12, 20 10:3, 7, 16, 19 13:20 top 17:9, 12 24:21 25:4 39:2 46:12, 14 topic 37:24 total 53:1 traditionally 16:14 transcribed 5:6
--	---	---	--

transition 16:2,9 transitioned 19:3 truth 5:16,17 truthfully 7:13 turn 10:24 17:6 49:6 turnaround 54:18 Turning 13:9,22 two 15:14,19 17:6,13 19:14 20:10 21:25 22:8, 15,19 24:6 30:4 43:7 50:19 51:24 two-hour 20:15,19 21:17 22:23 23:3,7 26:1 type 16:10 22:20, 22 39:14,17, 19,21 types 15:4 45:8 typewriting 5:7 typical 27:2 typically 24:16 25:3 <hr/> U <hr/> U.S. 6:13 uncertain 21:23	underneath 38:23 39:2,5 understand 6:10,25 7:24 8:8,9 understanding 12:14,19 13:2 17:21 25:13,24 26:9 understood 7:3,10 8:13, 14 48:11 unique 45:18 unit 38:7,10,16 41:10 51:6 United 15:21 36:13, 15 units 19:25 36:12 51:23 urban 35:8 <hr/> V <hr/> value 32:14 42:1, 4,6,10 43:1 44:2,6 45:6, 14 46:24 values 47:11,15 variety 50:10 various 11:15 38:24 41:25 42:3, 14 verbal 7:8 versus 32:25 51:23	vertical 35:21 36:9 38:16,19 veterans 23:18 25:16 <hr/> W <hr/> wall 21:1,9 23:4, 7 wallboard 22:1,9,16 33:10,25 34:6 Walls 19:24 want 8:6 9:22 27:7 48:25 53:19 54:3, 16 way 7:16 50:19 ways 22:8,14 week 54:8 wholesale 16:8 widely 17:4 35:5 width 43:19,24 William 5:4 witness 5:7,18 12:1, 18 18:20 21:5,21 24:25 26:8, 17 27:9 28:4,15 32:12,20 37:22 40:10 53:11,16	wood 15:2 work 14:10 working 18:1 write 13:10 written 13:10 <hr/> Y <hr/> yeah 29:3 36:3 49:2 year 16:20 36:24 43:5,7 51:4, 8 years 19:1 48:4,8 50:1 Yesterday 10:8 <hr/> Z <hr/> zero 50:2
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