

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 18-12378 (LSS)
WELDED CONSTRUCTION, LP,
et al,
824 Market Street
Wilmington, Delaware 19801
Debtors.
Monday, August 28, 2023
WELDED CONSTRUCTION, LP,
Adv. Proc. No. 19-50194 (LSS)
vs.
THE WILLIAMS COMPANIES,
INC., WILLIAMS PARTNERS
OPERATING, LLC, and
TRANSCONTINENTAL GAS PIPE
LINE COMPANY, LLC.
.

TRANSCRIPT OF TRIAL - DAY FIVE
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

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Proceedings recorded by electronic sound recording,
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1 (Proceedings commence at 9:30 a.m.)

2 (Call to order of the Court)

3 THE COURT: Please be seated. Good morning.

4 UNIDENTIFIED: Good morning.

5 THE COURT: Okay.

6 MR. NEIBURG: Good morning, Your Honor. Michael

7 Neiberg from Young Conaway on behalf of Welded.

8 Your Honor, Welded's first witness today will be

9 Dennis Kakol.

10 THE ECRO: Please raise your right hand.

11 DENNIS KAKOL, WITNESS FOR DEBTOR/PLAINTIFF, AFFIRMED

12 THE ECRO: Please state your full name and spell

13 your last name for the record.

14 THE WITNESS: My full name is Dennis Joseph Kakol.

15 Last name is spelled K-a-k-o-l.

16 THE ECRO: Thank you.

17 MR. NEIBURG: Your Honor, as a brief preview, Mr.

18 Kakol is Welded's schedule analysis expert. He has prepared

19 some demonstratives and I have a witness binder. May I

20 approach?

21 THE COURT: You may. Thank you.

22 (Pause in proceedings)

23 DIRECT EXAMINATION

24 BY MR. NEIBURG:

25 Q Good morning, Mr. Kakol.

1 A Good morning, sir.

2 Q How are you currently employed?

3 A I'm with Construction Technologies Consultants, Inc. or
4 d/b/a as CONTECH.

5 Q And what position do you hold at CONTECH?

6 A I'm the President of CONTECH.

7 Q And how long have you been with CONTECH?

8 A Since its formation about 1990.

9 Q And have you been the President of CONTECH since 1990?

10 A Yes, sir, I have.

11 Q Putting aside any administrative duties, what are your
12 day-to-day responsibilities as President of CONTECH?

13 A Well, I'm the -- the lead senior consultant, and so I
14 analyze or supervise analyses of construction claims that
15 come to us from various clients.

16 Q Do you hold any higher education degrees?

17 A Yes, sir, I do.

18 Q And what are they?

19 A I have a Bachelor's of Science with a major in
20 engineering physics. I have a Master's of Engineering in
21 Nuclear Engineering.

22 Q And when did you get your master's degree?

23 A That would have been 1968.

24 Q And what was your first job after receiving your
25 master's degree?

1 A Well, I was on an NROTC scholarship, so I -- my first
2 job was with the Navy. And then, in the Navy, after some --
3 I was one of Admiral Rickover's submarine people. So, after
4 training, I served on the USS Sea Devil nuclear attack
5 submarine.

6 Q And did you develop any skills during your service in
7 the U.S. Navy that applied to the construction industry?

8 A Yes, sir, I did.

9 Q Can you please describe for the Court the type of work -
10 - sorry, wrong page.

11 Is your Navy training with respect to construction
12 schedules something you continue to use in your professional
13 role today?

14 A As a matter of fact, I do use it, except we've gone a
15 long way since the way we used to schedule in the Navy.

16 Q Okay. Did you submit an expert report in this matter?

17 A Yes, sir, I have.

18 MR. NEIBURG: And Your Honor, I'll just let the
19 record reflect Mr. Kakol's initial report is in the binder at
20 PX-541. We're not seeking to admit it. It's just there in
21 case the Court needs to reference it.

22 Q And is your work history detailed in your expert report,
23 Mr. Kakol?

24 A Yes, sir, it is.

25 MR. NEIBURG: If we could pull up the CV, Mr.

1 Zinkel.

2 BY MR. NEIBURG:

3 Q And Mr. Kakol, is this two-page document your *curriculum*
4 *vitae* that you included with your report?

5 A It appears to be, yes, sir.

6 Q Let's talk about the two most recent jobs that are
7 reflected on here: High Point Schaer and CONTECH.

8 What were your responsibilities at High Point Schaer?

9 A Well, at High Point, I started as a regional manager,
10 but I became the president of the company. We ended up with
11 12 offices and a hundred and -- about 125 people. And our
12 primary service was analyzing construction claims or
13 performing completion work on construction for sureties.

14 Q And did you perform schedule analyses or review contract
15 schedules on construction projects during your time at High
16 Point Share?

17 A I did, many times.

18 Q Do you have an approximation of how many times?

19 A Well, I was there from '85 to '90. We had several
20 hundred claims a year, so it's safe to say at least a
21 thousand that I either looked at, analyzed, or I was managing
22 with people who did.

23 Q In your roles with High Point Share and CONTECH, what
24 documents would you typically reference or review to perform
25 construction schedule analysis?

1 A Well, you always start with the contract because that's
2 the rules of the game.

3 Then you go to -- for the documents you need, you -- you
4 obviously get all the schedules.

5 And then, depending on what the issues are, you go to
6 contemporaneous type documents to determine the causes of any
7 kinds of changes in schedules.

8 Q In your experience, do construction contracts generally
9 include a baseline schedule?

10 A In some form, yes, sir. Although that's typically
11 called an "as-planned schedule" in different industries --
12 industry segments in construction.

13 Q So it's either referred to as an "as-planned schedule"
14 or a "baseline construction schedule"?

15 A That's fair.

16 Q What is the importance of a baseline schedule with
17 respect to performing a schedule analysis?

18 A In general terms, it -- it's the initial meeting of the
19 minds of the two parties, the buyer of the services and the
20 seller of the services. And it gives the seller a roadmap as
21 -- to follow what the work is that the contractor says he's
22 going to do and in what -- what order.

23 Q Now let's talk about the time you've been at CONTECH.

24 Can you describe for the Court what type of work you
25 have done professionally while at CONTECH in connection with

1 scheduling and related claims in the construction industry?

2 A We either analyze construction claims for defendants or
3 we have prepared construction claims for plaintiffs. And
4 that, in simple terms, is what we have been doing.

5 Q All right. Do you have an approximate number of matters
6 in which you have been involved, in which you performed a
7 schedule analysis or reviewed the contract schedule on a
8 construction project?

9 A Yeah. In our company, since 1990, approximately about
10 500.

11 Q Have you ever served as an expert witness with respect
12 to construction claims?

13 A Many times, yes, sir.

14 Q Approximately how many times?

15 A Twenty, thirty times.

16 Q Have your opinions ever been excluded by a court?

17 A No, sir.

18 Q Has a court ever found you unqualified to give an expert
19 opinion?

20 A No, sir.

21 Q Are you a member of any professional organizations?

22 A Yes, sir.

23 Q Which ones?

24 A The Association for the Advancement of Cost Engineers;
25 that's AACEI.

1 I'm also a member of the American Society of
2 Professional Estimators.

3 And I used to be with -- a member of Triple A as a
4 panelist, but that lapsed.

5 Q And are those professional affiliations listed at the
6 bottom of the first page of your CV?

7 A Yes, sir, they are.

8 Q Do you hold any certifications from those organizations?

9 A I do.

10 Q What certifications do you have?

11 A Well, from the American Society of Professional
12 Estimators, I was tested and passed the test to become
13 certified by them as -- the title was "estimator."

14 MR. NEIBURG: Your Honor, I'll seek the admission
15 of Mr. Kakol's CV.

16 MS. EWALD: Your Honor, no objection.

17 I will note for the record that there is a motion
18 in limine with regard to Mr. Kakol's testimony, but it's not
19 as to his qualifications; it's as to his methodology.

20 THE COURT: Okay.

21 MS. EWALD: Thank you.

22 THE COURT: Thank you.

23 And his CV, I take it, is attached to his expert
24 report?

25 MR. NEIBURG: Exactly, Your Honor.

1 THE COURT: Okay. I will admit the CV.

2 (PX-541, *curriculum vitae* only, received in evidence)

3 BY MR. NEIBURG:

4 Q Mr. Kakol, when were you --

5 MR. NEIBURG: Oh, I'm sorry. May I proceed, Your
6 Honor?

7 THE COURT: You may.

8 MR. NEIBURG: Okay.

9 BY MR. NEIBURG:

10 Q Mr. Kakol, when were you first contacted in connection
11 with the Welded matter?

12 A I believe it was the Summer of 2020.

13 Q And was CONTECH ultimately asked to provide an expert
14 opinion?

15 A It was.

16 Q And generally, what was the scope of CONTECH's
17 engagement?

18 A The -- initially, the engagement was to evaluate a claim
19 by the defendant regarding a penalty claim -- charge the --
20 of -- a penalty charge that arose from what's called the
21 "incentive program" against Welded. And then, ultimately, it
22 was to find out what should the incentive penalty or bonus
23 actually have been.

24 Q And did you ultimately form opinions concerning those
25 issues?

1 A Yes, sir, I did.

2 Q At a high level, can you please explain to the Court
3 what your ultimate conclusion was with respect to your
4 schedule analysis?

5 A Yeah. As a result of my analysis, I determined that
6 Welded should get a bonus, not a penalty, that -- arising out
7 of the incentive program. That's essentially ...

8 Q And did you perform a delay damages analysis?

9 A No. Delay damages don't apply in this case. This is
10 simply a determination of math for a particular clause in the
11 contract.

12 Q And is that because the contract itself has a schedule
13 incentive program?

14 A In part, that's correct, yes.

15 Q All right. And is that reflected on Exhibit 5 to the
16 contract?

17 A The schedule is on Exhibit 9. The -- the details of --

18 Q The schedule incentive program.

19 A The schedule incentive program steps are included in
20 Exhibit 5.

21 Q Okay. And do you recall that Transco has retained an
22 expert named Brian Triche?

23 A Yes, sir.

24 Q Do you recall that Mr. Triche submitted a report in this
25 matter?

1 A Yes, sir.

2 Q Did you review Mr. Triche's opinions and his reports?

3 A Yes, sir, I did.

4 Q And did Welded ask you to provide expert opinions to
5 rebut some of the opinions that Mr. Triche will present?

6 A You did.

7 Q Okay. And did you submit a rebuttal report?

8 A I did prepare a rebuttal report.

9 Q So let's focus on the construction schedule analysis
10 that you performed.

11 Is there a primary document that serves as the basis for
12 your analysis?

13 A Absolutely.

14 Q And that's the contract?

15 A Yes, sir, that's correct.

16 MR. NEIBURG: And that's -- Your Honor, that's JX-
17 1, which has been admitted into the record.

18 BY MR. NEIBURG:

19 Q And Mr. Kakol, you talked about that the contract
20 provided for the schedule incentive program. Is that right?

21 A Yes, sir.

22 Q Besides the contract, what category of other documents
23 did you review in connection with your analysis?

24 A Well, certainly, I reviewed the schedules that were
25 produced on the project, and then contemporaneous documents

1 to identify issues, things that pop up in the schedules that
2 may also guide me to changes in the -- in the -- essentially,
3 in the execution of the project.

4 Q And the documents you reviewed are disclosed in your
5 report, right?

6 A Yes, sir.

7 MR. NEIBURG: Okay. Let's pull up JX-846.

8 Q Mr. Kakol, does the contract include a baseline
9 construction schedule?

10 A Yes, sir, it does.

11 MR. NEIBURG: Sorry. We're just going to pull it
12 up.

13 (Pause in proceedings)

14 BY MR. NEIBURG:

15 Q Mr. Kakol, on the screen and in your binder, we're at
16 JX-1.0846. Is this Exhibit 9 to Section 8 of the contract?

17 A Yes, sir, it is.

18 Q And is this the baseline construction schedule you
19 referenced?

20 A It is, sir.

21 Q In your view, what is the purpose of the baseline
22 construction schedule under the contract?

23 A Well, in this case, it's two purposes.

24 One, of course, is the standard purpose: To establish
25 what the method is or the sequence of activities that are --

1 the contractor intends to try to follow to get from the
2 beginning of the project to the end.

3 But in this contract, it also serves to identify an
4 activity from which a target is -- a target date is
5 established for the schedule incentive portion of the
6 incentive program.

7 Q Does the baseline construction schedule change over
8 time?

9 A Only with change orders.

10 MR. NEIBURG: And if we could -- Mr. Zinkel, if you
11 could zoom in on Row 19.

12 BY MR. NEIBURG:

13 Q And Mr. Kakol, what is reflected in Row 19 of the
14 baseline construction schedule?

15 A This is the mechanical completion, all spreads activity.
16 And it has a date that's supposed to finish on or before June
17 14, 2018.

18 Q Can you generally explain for the Court what "mechanical
19 completion" means?

20 A Sure.

21 In industrial-type projects, the term "mechanical
22 completion" has a meaning that the owner of the systems, of
23 the project starts taking over or does take over all the
24 systems, so that it can -- "it," the owner -- can use that --
25 those systems as intended for its own purposes.

1 Q Does the contract itself, aside from this exhibit,
2 provide for a mechanical completion date?

3 A Yes, sir.

4 MR. NEIBURG: Mr. Zinkel, if you could pull up JX-
5 1.0837

6 (Pause in proceedings)

7 BY MR. NEIBURG:

8 Q And Mr. Kakol, this is Section 8, Article 5 of the
9 contract.

10 Is the mechanical completion date reflected in that
11 provision of the contract?

12 A Yes, sir, it is.

13 MR. NEIBURG: Now if we could go to JX-1.0842.

14 Q And Mr. Kakol, could you briefly describe for the Court
15 what is reflected in Exhibit 5 --

16 A Yes.

17 Q -- to Section 8 of the contract?

18 A Yeah. Under Section 8 of the contract, in the incentive
19 program, there are three exhibits. This one is Exhibit 5.
20 There's also a 6 and 7, they all look similar.

21 In any event, looking at Exhibit 5, this explains how
22 the total incentive is calculated and, in particular, how the
23 schedule incentive portion of the total incentive is
24 calculated.

25 MR. NEIBURG: Okay. Your Honor, do you need a --

1 THE COURT: If you'd give me a minute.

2 MR. NEIBURG: Oh, sure. Is there a document that
3 maybe we can help you --

4 THE COURT: No, it's my copy of the contract that's
5 probably, when Ms. Johnson cleaned up, she put somewhere.

6 (Pause in proceedings)

7 THE COURT: Oh, well, let's go ahead.

8 MR. NEIBURG: Do you have --

9 THE COURT: I --

10 MR. NEIBURG: Do you still have a copy of JX-1,
11 Your Honor?

12 THE COURT: Yeah. No, I know what this is. I had
13 just blown it up and -- okay.

14 MR. NEIBURG: Okay.

15 THE COURT: It's fine.

16 BY MR. NEIBURG:

17 Q Now, Mr. Kakol, with reference to the lower-right corner
18 of Exhibit 5, does Exhibit 5 to the contract reflect a target
19 mechanical completion date of June 15, 2018?

20 A Yes, sir, it does.

21 Q And that's slightly different than the June 14 date that
22 we just saw in the contract itself, correct?

23 A Yes, sir, that's correct.

24 Q Of the two dates, the target mechanical completion date
25 of June 15 or the mechanical completion date reflected in the

1 contract itself, which did you use for your analysis?

2 A I used the mechanical completion date that was in the
3 contract; in other words, June 14, 2018.

4 Q And why did you do that?

5 A Two reasons:

6 One, that's the contract date.

7 The second reason is because it's more conservative than
8 using the June 15 date. In other words, with my
9 calculations, Welded would lose a day in -- in the math.

10 Q And in connection with your schedule analysis, did you
11 form an opinion as to whether the baseline construction
12 schedule in the contract could be changed?

13 A Yes, sir, I did.

14 Q And what was your opinion?

15 A My conclusion was it could be changed with change
16 orders.

17 Q And as part of your schedule analysis, did you form an
18 opinion as to whether the baseline construction schedule
19 under the contract should be changed?

20 A Yes, sir, I did.

21 Q Can you generally describe for the Court why it is your
22 opinion that the baseline construction schedule should have
23 been changed?

24 A Well, first of all, in the contract, there's a
25 description about how change orders are to occur.

1 There's also a development in the project about the
2 process for changes.

3 And then I went to the Transco documents to see if there
4 were -- if it saw a basis for changes to the contract dates,
5 and I did.

6 Q As part of your analysis, did you seek to identify
7 scheduling issues that were Welded issues, as well as
8 scheduling issues that were Transco issues?

9 A This was to some degree, yes. But really, what I was
10 looking for was Transco issues because, to make a change to
11 the baseline schedule, it had to have been changes that were
12 non-Welded or out of the control of Welded purview. It had
13 to have been other types of issues.

14 Q And how did you determine whether or not an issue was a
15 non-Welded issue?

16 A Well, first, I went to the Transco documents to see if
17 there was any mention in those as to non-Welded issues that
18 may impact the project.

19 And from there, then I went to look to see if Welded, in
20 its documentation, had tracked or given any notice to Transco
21 about some of these issues.

22 Q And as part of your analysis of the non-Welded issues
23 you may have identified, did you seek to distinguish between
24 insignificant or significant non-Welded issues?

25 A I did. Some things were only a day or two impact; some

1 things were significantly longer. And it was the ones that
2 were much longer that I -- I spent my effort on.

3 Q So did the significance depend on the number of days of
4 delay?

5 A Yes, but nothing -- in general terms, yes. I didn't
6 have an absolute cutoff.

7 Q So what -- Mr. Kakol, to your understanding, what is a
8 "trend" in this matter?

9 A Well, a trend is essentially a notice document that
10 provides -- in which Welded notifies Transco of a possible
11 issue that could be a Welded or a non -- presumably a non-
12 Welded issue, but it could be a Welded issue, to be
13 considered by Transco for disposition, ultimately, ideally,
14 to become part of a change.

15 Q And what does the term "critical path" mean to you in
16 the context of this case?

17 A Well, the critical path is a term that applies to
18 schedule and especially what's called "logic-link schedules,"
19 schedules in which the activities have a relationship between
20 each other.

21 AACEI defines it in a couple of ways:

22 One is the longest path; in other words, it's the
23 longest path in which, if you had an activity, a time -- a
24 day to any one of the activities on the critical path, the
25 end of the path shifts by a day.

1 It also has a definition that says that the float is
2 zero in critical path. That definition becomes a little red
3 herring in a -- in a project schedule.

4 Anyway, that's the definition.

5 Q And as part of your analysis, do you recall reviewing a
6 Transco document that discussed trends and other critical
7 path activities associated with the ASR project?

8 A I do, sir.

9 MR. NEIBURG: And Mr. Zinkel, if you could pull up
10 PX-271.

11 BY MR. NEIBURG:

12 Q And Mr. Kakol, is your recollection that the document
13 you referred to is the attachment to this June 21, 2018 email
14 from David Sztroin to Chris Springer?

15 A Yes, sir.

16 Q Is it your understanding that David Sztroin and Chris
17 Springer are Transco personnel?

18 A Yes, sir, that was my understanding.

19 MR. NEIBURG: And if we could go to the attachment,
20 Mr. Zinkel?

21 BY MR. NEIBURG:

22 Q Mr. Kakol, this document, what did you understand this
23 document to be?

24 A From reading and getting the testimony from --
25 deposition testimony from Mr. Sztroin, I understood it to be

1 a document that essentially gave the information to Transco's
2 upper management, so that additional funding would be
3 allotted to the project to pay Welded and whoever else
4 Transco had to pay.

5 Q And your -- it's your understanding this is an internal
6 Transco document?

7 A That is my understanding.

8 Q And what was the importance of this document to your
9 analysis?

10 A A couple of things.

11 First of all, it discussed some non-Welded issues that
12 were beyond their control.

13 It also talked about some trends.

14 And it also talked about the types of -- some types of
15 issues that later appear -- when I did my analysis, appear in
16 -- in the trends and in the doc -- other Welded
17 documentation.

18 MR. NEIBURG: Mr. Zinkel, if you could turn to PX-
19 271, Page 11, .0011.

20 BY MR. NEIBURG:

21 Q And Mr. Kakol, I'll read from the first paragraph:

22 "The object was to explain the reasons for this lag
23 between the plan and actual results. Some of those
24 claims were clearly justified and could not have
25 been foreseen by the contractor."

1 Do you see that?

2 A I do.

3 Q And does this document also discuss the trends and EWRs
4 that you reference?

5 A Yes, sir, it does.

6 MR. NEIBURG: If we can go to .0015, please.

7 (Pause in proceedings)

8 MR. NEIBURG: And at the top, the two bullet
9 points.

10 BY MR. NEIBURG:

11 Q Would you briefly explain your understanding of the
12 points being made with the trends and the extra work request
13 section of this Transco document?

14 A Well, as I mentioned before, in general terms, the
15 trends were notices, and that's what this says, the trends
16 are noted.

17 In addition, it says:

18 "These changes will be reflected as part of the
19 forecast and will affect the contractor's incentive
20 bonus calculation."

21 Which told me that that would also have to become a
22 change order, based on the other language in the contract.

23 Q When you say "change order," is that synonymous with
24 "extra work request," as used on this project?

25 A Extra work request, according to -- it's our

1 understanding from Mr. Sztroin, was a change, and I think
2 even the contract says that. And so that's as far as I can
3 go.

4 MR. NEIBURG: And if we could go to Page 22, under
5 the section called "risks."

6 BY MR. NEIBURG:

7 Q And Mr. Kakol, is it your understanding that this
8 section references non-Welded delays that would impact the
9 baseline construction schedule?

10 A It did. And in particular, Bullet 2 and Bullet 3
11 indicated that variances were something that appear -- at
12 least it appears to be promoted by Transco to improve the
13 project.

14 It also mentioned certain areas, like I-81 and I-76.

15 And the third bullet talked about variance approval from
16 PADEP indicating that they had risk, depending on how long it
17 takes PADEP to approve the variances.

18 Q And through your analysis, did you identify any
19 specific, significant non-Welded schedule issues that
20 affected the contract's identified mechanical completion
21 date?

22 A I did.

23 Q Can you briefly disguise -- or can you briefly discuss
24 those issues?

25 A Sure.

1 Because trends came up by Mr. Sztroin's document, I went
2 to a schedule -- or a spreadsheet log of trends that was
3 prepared by Welded that tracked all the trends and their
4 status. And in that, I spotted some trends that also were --
5 appeared to be in this document, the Sztroin document.

6 I also went to the weekly reports that Welded would give
7 to Transco. And in those reports, there's a section in there
8 about issues or delaying issues or impacting issues. And I
9 looked there, too, to see if there were issues that appear to
10 be affecting the schedule that also showed up -- or were
11 similar to what I saw in the Sztroin document and in the
12 trends, in the trend list.

13 Q And did you identify any particular permit or permit
14 variance delays --

15 A I did.

16 Q -- that were important to your analysis?

17 A Yes, sir, I did.

18 Q And could you describe those for the Court?

19 A Yeah. There were three issues that involved permits or
20 permit variances that I was -- I considered significant. And
21 the three of them were:

22 The getting the permit for the Amtrak crossing;

23 Getting the permit variances for Pequea Creek;

24 And getting the permit variances for Interstate 76.

25 Q And do you recall that Marcus Hood of Welded testified

1 last week?

2 A Yes, sir, I --

3 Q And you're --

4 A I'm aware --

5 Q -- aware --

6 A -- of that.

7 Q -- that Mr. Hood was the senior project manager for
8 Welded?

9 A Yes, sir.

10 Q And are these non-Welded permit -- or permit variance
11 delays that you just discussed the same issues that Mr. Hood
12 testified about last week?

13 A They are, sir.

14 Q Now, Mr. Kakol, with reference to your initial expert
15 report.

16 In that report, you also discussed a fourth non-Welded
17 delay related to the I-81 crossing. Do you recall that?

18 A Yes, sir, I do recall.

19 Q And since you issued your expert report, has your
20 opinion changed with respect to whether that issue was a non-
21 Welded or Welded issue?

22 A Yes, my opinion changed.

23 Q And can you briefly describe how your opinion changed
24 and why?

25 A Sure.

1 Initially, I thought it was -- it was a delay, a
2 significant delay; it went over a month or more. But I found
3 that, of that time period, the non-Welded portion of the
4 delay was only about four or five days. The rest of it was,
5 essentially, self-imposed by a problem that was generated by
6 Welded.

7 Q And was that just -- was that issue like a fracking
8 issue --

9 A Yes --

10 Q -- a frack-out?

11 A Yes, sir. And that was in the method of boring that
12 wasn't included in the permit.

13 Q So, with respect to the permits and permit variances
14 that related to your analysis, after reviewing the contract,
15 did you form a view as to who was required to obtain those
16 work permits and permit variances under the contract?

17 A Yes, sir. I came to an opinion as to who was supposed
18 to do that.

19 MR. NEIBURG: And Mr. Zinkel, if you could go to
20 JX-1.0022.

21 BY MR. NEIBURG:

22 Q And what was your conclusion as to who was required to
23 obtain the permits and the permit variances that are relevant
24 to your analysis?

25 A That would be Transco.

1 MR. NEIBURG: And Mr. Zinkel, it's the second full
2 paragraph, starting with "company will obtain." And I'll
3 just read that first sentence.

4 And Your Honor, this is Section 1, Article 19 of
5 the contract.

6 THE COURT: Uh-huh.

7 MR. NEIBURG: "Company will obtain all necessary
8 certificates, permits, and licenses relating to
9 sites or places for which a governmental
10 certificate, permit, or license is required."

11 BY MR. NEIBURG:

12 Q Did I read that correctly, Mr. Kakol?

13 A Yes, sir, you did.

14 Q And is this the provision that you considered means that
15 Transco, as the company, is required to obtain the permits
16 and permit variances that are relevant to your analysis?

17 A Yes, sir, it is.

18 Q And do you recall when Transco was required to obtain
19 permits?

20 A Yes. Well, the answer is yes. And it is a function of
21 the -- based on the construction schedule.

22 Q And could you just explain briefly what you mean by
23 that?

24 A The baseline construction schedule has activities in it
25 for Welded to begin and to execute and finish. There are

1 some activities there that cannot begin unless a permit is
2 obtained.

3 And so, for my purposes, I assumed that, if a permit
4 could be obtained on a certain day, that, that day or the
5 next day, Welded, as a minimum, should be able to start its
6 work on that activity.

7 Q Okay. And in connection with the Amtrak crossing, the
8 Pequea crossing, and the I-76 crossing, did you form an
9 opinion or come to an understanding as to whether Transco
10 timely obtained the necessary permits or permit variances?

11 A They were not timely.

12 Q And did you form an opinion as to the effect that
13 Transco's inability to timely obtain the necessary permits or
14 variances had on the contract's mechanical completion date?

15 A I did.

16 Q And what is that opinion?

17 A Well, because they weren't timely, when they became --
18 when they were not timely enough, so that they ultimately
19 started affecting the critical path and they starting
20 affecting the -- the end of the critical path, which was
21 completion -- mechanical completion on all spreads and
22 started pushing out the date for mechanical completion on all
23 spreads.

24 MR. NEIBURG: Let's turn to the baseline
25 construction schedule, which is JX-1.846. And Mr. Zinkel, if

1 you could like zoom in and highlight that top row, like where
2 the hash tag is, activity ID, activity name, the orig. dur.

3 BY MR. NEIBURG:

4 Q Mr. Kakol, could you briefly describe for the Court the
5 column headers and the information that's reflected in each
6 of those columns?

7 A Sure.

8 The hash down -- hash sign only reflects a row number
9 for a page.

10 The activity ID is established by the scheduler and it's
11 an alphanumeric code to identify an activity.

12 The next column is activity name. And that -- generally
13 in there is a description of the work that's supposed to be
14 performed for that activity.

15 You have an "orig. dur.", that's the original duration,
16 and it includes number of schedule days that Welded, in this
17 case, would have anticipated requiring to complete that task.

18 You have a start date, you have a finish date. You have
19 a start date for that activity and a finish date for that
20 activity.

21 Then you have a total float number.

22 Q And can you describe for the Court what it means by
23 "float"?

24 A Sure.

25 If you -- if you would, go up to that activity C8150,

1 for example, that's about --

2 MR. NEIBURG: Row 5, Mr. Zinkel. If we can
3 highlight and zoom in on that row.

4 THE WITNESS: This is an example. In this case,
5 this activity, welding procedures, had a duration of 20 days.
6 It had a July 10, 2017 start. And if you notice, there's a
7 little asterisk by that. That means that there's a
8 constraint on that date. Typically, it would start on or
9 before that date, but it depends on the schedule.

10 And then the next part is the finish date of August
11 1, 2017, and a float of 82 schedule days.

12 What that means is, if the start actually slipped
13 by 82 days or if the finish slipped by 82 schedule days, it
14 would have no effect on the end of the critical path of the
15 schedule, which in this case is mechanical completion, all
16 spreads, until the eighty-third day.

17 Once you hit the 82, you're now at -- that activity
18 then becomes critical. And any extra day later to finish it
19 in this case would push out the critical path string ending
20 with mechanical completion on all spreads.

21 BY MR. NEIBURG:

22 Q And do you know what software was used to create the
23 baseline construction schedule?

24 A Yes, sir. This was Primavera software.

25 Q And did you use Primavera when conducting your schedule

1 analysis?

2 A I did.

3 Q When you have access to Primavera, are there columns
4 available other than what we see here on the baseline
5 construction schedule attached as Exhibit 9 to the contract?

6 A Yes, sir, there are.

7 Q Could you describe some of the more important ones?

8 A Well, the schedule, as we -- when you decide to print
9 the schedule -- I mean, we're looking at a print of the
10 schedule here -- has the option of which columns you want to
11 show or not show.

12 One of the columns you could have shown was -- and that
13 I did for my analysis, is late start. That would be the
14 latest day that an activity could start before it start -- or
15 if it was later than that, it would start pushing the
16 critical path and, therefore, push the end date of mechanical
17 completion.

18 Q And once you identified the late start date in
19 Primavera, what did you do next?

20 A Well, the next thing I would do is determine how long --
21 or when did the permit arrive to allow the start of that
22 activity.

23 Q So, when you determined the date on which it arrived,
24 you were able to determine whether it was late or not,
25 correct?

1 A That's correct.

2 Q And once you identified that there was a delay in
3 obtaining a necessary permit or permit variance to allow
4 Welded to begin a particular activity, what did you do next?

5 A Well, I determined how many calendar days that delay was
6 and then I added that to the original contract mechanical
7 completion date of June 14, 2018. So you'd add the day to it
8 and you would, ultimately, come up with a revised mechanical
9 completion date.

10 Q And after you determined the revised mechanical
11 completion date based upon any given permit or permit
12 variance delay, what did you do next?

13 A Well, that's one of two points that are needed for
14 determining the schedule incentive portion of the incentive
15 program.

16 The other point is the actual mechanical completion
17 date.

18 And you determine whether or not the actual mechanical
19 completion date finished before or after the revised
20 mechanical -- revised mechanical completion date in the
21 revised baseline schedule. And that number determines the
22 value of the bonus or penalty.

23 Q And the mechanical -- the actual mechanical completion
24 date on the project was September 19, 2018. Is that right?

25 A Yes, sir, that's correct.

1 Q And then the steps that you just described, did you
2 follow those steps for each of the three scenarios relating
3 to Amtrak, Pequea Creek, and I-76?

4 A Yes, sir, I did.

5 Q Mr. Kakol, did you employ a particular methodology when
6 performing your schedule analysis?

7 A Yes, I did.

8 Q And what methodology was that?

9 A That was the impacted as-planned method.

10 Q Is that an accepted methodology in the construction
11 industry?

12 A It's one of many, yes.

13 Q Is there a publication in the construction industry that
14 provides acceptable or industry-recognized methodologies for
15 conducting schedule analyses?

16 A There is -- there are. The one I used was the
17 publication the American -- Association for the Advancement
18 of Cost Engineers. It's Recommended Practice 29 -- I think
19 it's 29-3, forensic schedule analysis.

20 Q Did the contract itself provide for or determine which
21 methodology should be used to determine whether the baseline
22 construction schedule should be revised?

23 A It did not.

24 Q And aside from the impacted as-planned methodology that
25 you used, did you consider any other methods identified by

1 AACE?

2 A I did.

3 Q And what methods did you also consider?

4 A Well, there's as-planned, as-built; there's what's
5 called a "time impact analysis" method. So there's numerous
6 methods.

7 Q And did you consider using the as-planned versus as-
8 built methodology here?

9 A No, sir, I did not.

10 Q Why not?

11 A Because remember this is not a delay analysis. This is
12 an analysis to determine how to establish -- how to do the
13 math for the schedule incentive portion of the incentive
14 program.

15 The math needs two number -- two dates: It needs a date
16 for mechanical completion, a planned date for mechanical
17 completion and an actual date for mechanical completion.

18 The planned date means that you have use either the
19 existing plan or, per the directions of the incentive
20 program, you get -- revise that by change order. Once
21 revised, that establishes a new target mechanical completion
22 date. And it is that new mechanical completion date that is
23 used in the -- in the calculation.

24 Q To figure out a new mechanical completion date, you have
25 to take the old mechanical completion date; i.e., in the

1 original plan, and impact it with whatever the delays are
2 that would cause it to be impacted.

3 Q Now, during the course of the ASR project, did the
4 construction of Spreads 5, 6, and 7, did Transco utilize any
5 AACE methodologies to revise the baseline schedule?

6 A It appeared that they did, although it wasn't specified.

7 Q And can you explain that a little bit more?

8 A Sure.

9 Well, for example, there is an EWR Number 12. EWR
10 Number 12, in the trend, the -- Welded asked for six days
11 because the schedule date could not be met. The reason was a
12 non-Welded reason. And it held up that activity by a certain
13 number of days. So, in the EWR that was signed, six days was
14 given for that E -- in that EWR.

15 And ultimately, Mr. Triche used that six days as part of
16 his determination of his -- what I'll call, for his math, it
17 would be the "adjustment of the original mechanical
18 completion spread date."

19 MR. NEIBURG: And if we could turn to Exhibit D-
20 860.

21 BY MR. NEIBURG:

22 Q This is an email dated February 25, 2018, from David
23 Sztroin to Mary Lynn Murphy attaching approval for EWR 12.
24 Do you see that on the first page?

25 A Yes, sir.

1 Q And if you go to 860-2 through 4, the first page -- I'm
2 sorry -- 2 through 3. Is this the EWR 12 that you
3 referenced?

4 A It is.

5 Q And could you briefly describe for the Court what is
6 happening with EWR 12?

7 A Well, there's a description of the work. But what I
8 focused on was down towards the bottom, revised contractual -
9 - contract completion date, the three boxes. And one box
10 says increase number of days by six.

11 Q And if you could turn to the next page, Trend Number 21.
12 Do you see that document?

13 A I do.

14 Q Is it your understanding that Trend 21 was the basis for
15 EWR 12?

16 A Yes, sir, that is my understanding.

17 Q Now let's specifically talk about the Amtrak crossing
18 delay that you referenced earlier in your testimony.

19 MR. NEIBURG: If we could go to JX-1.856, please,
20 specifically, Row 439. If you can highlight and blow that
21 up, Mr. Zinkel, that would be great.

22 BY MR. NEIBURG:

23 Q Mr. Kakol, is the Amtrak crossing construction activity
24 included in the baseline construction schedule as Activity
25 M1980?

1 A Yes, sir, it is.

2 Q Can you briefly describe this activity for the Court?

3 A Well, you can see from the schedule description, M1980
4 has its -- under the activity name, it says "road bore," so
5 it's going to be a bore under -- under the track.

6 It's located at Station 1460 plus 62, which is a footage
7 mark along the -- along the pipeline.

8 It's going to be -- it will be for Amtrak railroad and
9 it's going to be a bore of 295 linear feet.

10 Q And based upon this, the planned start date was January
11 6, 2018. Is that right?

12 A Yes, sir, that's correct.

13 Q And there were 26 days of float?

14 A Yes, sir, that's correct, as well.

15 Q And Mr. Kakol, were any permits required before Welded
16 could begin this construction activity?

17 A Yes, sir, there were.

18 Q And is it your understanding that it was Transco's
19 responsibility to obtain this permit?

20 A Yes, sir, that is correct.

21 Q And is that based upon the contract section that we
22 pulled up before, Section 1, Article 19?

23 A Yes, sir.

24 Q To your understanding, was Welded permitted to start the
25 work associated with the Amtrak crossing before Transco

1 obtained the permit?

2 A No. Welded could not start until they got that permit.

3 MR. NEIBURG: And Mr. Zinkel, if you could pull up
4 briefly JX-1, Page 22. And there's one sentence on the
5 bottom, if you could highlight and blow that up.

6 And Your Honor, this is, again, Section 1, Article
7 19 of the contract.

8 THE COURT: Uh-huh.

9 MR. NEIBURG: "Contractor shall not commence work
10 until necessary certificates, permits, and licenses
11 have been procured."

12 BY MR. NEIBURG:

13 Q Do you see that, Mr. Kakol?

14 A Yes, sir, I do.

15 Q Is it your understanding that this is the contract
16 provision that prohibited Welded from starting the work on
17 the Amtrak crossing until the permit was obtained from
18 Amtrak?

19 A Yes, sir, that -- that's exactly what I was referring
20 to.

21 MR. NEIBURG: So, Your Honor, if we could turn to
22 Slide 1 of the demonstratives that I handed up. And just let
23 me know when you -- when everyone ...

24 BY MR. NEIBURG:

25 Q Do you have that, Mr. Kakol?

1 A Okay. I have it.

2 Q Mr. Kakol, did you prepare this demonstrative?

3 A Yes, sir, I did.

4 MR. NEIBURG: Sorry, Your Honor. Technical
5 difficulties. May we have a brief pause?

6 THE COURT: Uh-huh.

7 (Participants confer)

8 MR. NEIBURG: Your Honor, I think -- why don't we
9 fix that? But we can continue since everyone has a hard
10 copy. Is that all right, Your Honor?

11 THE COURT: It's okay with me.

12 MR. NEIBURG: Sure.

13 BY MR. NEIBURG:

14 Q Mr. Kakol, do you have the hard copy?

15 A I do, sir.

16 Q Okay. Could you briefly describe for the Court what
17 generally is reflected in this demonstrative?

18 A Yes. And the purpose of me preparing this was to show
19 key dates associated with the Amtrak delay, *vis-a-vis* the
20 contract schedule, the baseline construction schedule; and,
21 also, at the bottom, to show how I -- that I obtained
22 specific dates from the Primavera schedules that came -- the
23 Welded Primavera schedules that essentially had tracked the
24 dates that I'm talking about.

25 Q So, earlier in your testimony, you talked about the fact

1 that Primavera had columns available, in addition to what was
2 reflected in the baseline construction schedule, right?

3 A Yes, sir.

4 Q Are these two screenshots at the bottom, are they
5 screenshots that you used of the prima -- using the Primavera
6 software?

7 A Yes, sir, they are.

8 Q And these screenshots were also included within your
9 expert report, correct?

10 A Yes, sir.

11 Q And with reference to the first, the top screenshot,
12 where the circle -- is circled "late start." Do you see
13 that? What is the late start date for the Amtrak crossing
14 activity?

15 A That's February 14, 2018.

16 Q And do you know when Transco obtained the required
17 permit related to the Amtrak crossing activity?

18 A I do. It was June 12th, 2018.

19 MR. NEIBURG: And Mr. Zinkel, if you could pull up
20 PX-604.

21 BY MR. NEIBURG:

22 Q And I'll just -- this is a June 12, 2018 email from
23 Aaron Blair to others, and it says:

24 "Attached, executed copy of the temporary permit to
25 enter."

1 Do you see that?

2 A Yes, sir, I do.

3 MR. NEIBURG: And if you could turn to the next,
4 605.

5 BY MR. NEIBURG:

6 Q And Mr. Kakol, is it your understanding that this is the
7 temporary permit to enter upon property that Amtrak provided
8 to Transco on June 12, 2018?

9 A Yes, sir, this is it.

10 MR. NEIBURG: Your Honor, I'll seek the admission
11 of PX-604 and 605.

12 MS. EWALD: No objection, Your Honor.

13 THE COURT: They're admitted.

14 (PX-604 and PX-605 received in evidence)

15 BY MR. NEIBURG:

16 Q Mr. Kakol, is it your understand whether or not a permit
17 variance was required for the Amtrak crossing activity?

18 A Not to get the initial permit, none -- it -- I that is
19 not my understanding at all. It was a permit.

20 Q And again, the contract provided for a mechanical
21 completion date of June 14, 2018, right?

22 A Yes, sir, that's correct.

23 Q So is it your understanding that Transco obtained the
24 necessary permit only two days before the June 14 mechanical
25 completion date?

1 A Yes, sir, that's -- that's my understanding.

2 Q And with reference to the February 14, 2018 late start
3 date that you testified about. How many days passed between
4 February 14 and June 12, which is when Transco obtained the
5 necessary permit to enter from Amtrak?

6 A Well, you can see on my demonstrative I showed 118 days
7 for that period.

8 Q And in your opinion, is it appropriate to revise the
9 contract's identified June 14 mechanical completion date by
10 the same hundred-and-eighteen-day period?

11 A Yes.

12 Q Why is that?

13 A Because it -- once you hit the late start date, every
14 day thereafter is a delay to the critical path and it's the
15 longest path, and which ends with mechanical completion, all
16 spreads.

17 So, if you -- if you push out the late start by 118
18 days, you're going to push out mechanical completion by the
19 same 118 days.

20 Q So what should have the contract's mechanical completion
21 date been adjusted to, based on Transco's delay in obtaining
22 the necessary permit?

23 A Yeah. For the Amtrak permit delay, that would have
24 revised -- created a revised mechanical completion date of
25 October 10, 2018.

1 MR. NEIBURG: And could we go to DX-1987?

2 (Pause in proceedings)

3 (Participants confer)

4 MR. NEIBURG: Sorry, Your Honor.

5 BY MR. NEIBURG:

6 Q Mr. Kakol, do you have DX-1987 in your binder?

7 (Pause in proceedings)

8 A You said 1987 or 1985?

9 MR. NEIBURG: Actually, Your Honor, I think this is
10 D-9 -- D-1987A. I apologize.

11 Your Honor, for context, this was a document that
12 Mr. Hood discussed during his testimony and it was admitted
13 into the record.

14 BY MR. NEIBURG:

15 Q Mr. Kakol, do you recognize this document?

16 A I do, sir.

17 Q And can you generally describe for the Court your
18 understanding of what this document is?

19 A Yeah, this is one -- this is a trend, Trend Number 230 -
20 - 231.

21 Q And in this 231 trend, did Welded identify any delays?

22 A It -- it does.

23 Q Can you briefly describe those for the Court?

24 A Well, under "Description of Change," it says to include
25 delays, move-arounds, et cetera. And it gives at least four

1 supplemental trends or other trends that also addressed
2 Amtrak issues.

3 Q And you'll also note it said in the category of change,
4 the little boxes underneath, you'll notice that one has a
5 check for schedule, indicating that that is -- could be an
6 anticipated change that Welded is asking Transco to consider.

7 Q And that relates to Amtrak delays and permits. Is that
8 right?

9 A That is correct.

10 Q And do you recall that Mr. Hood testified about a trend
11 log that reflected, as of October 2018, Trend 231 remained
12 subject to client review?

13 A Yes, sir, I do recall that.

14 Q So, Mr. Kakol, let's talk about the Pequea Creek
15 crossing.

16 Did you undertake a similar analysis with regard to the
17 permit variance delay relating to Pequea Creek?

18 A Yes, sir, I did.

19 MR. NEIBURG: And if we could go to JX-855.

20 (Participants confer)

21 MR. NEIBURG: Yeah. I'm sorry. JX-1, Page 855.

22 Sorry.

23 If you can highlight Row 398, Mr. Zinkel.

24 BY MR. NEIBURG:

25 Q Mr. Kakol, is the Pequea Creek construction activity

1 included in the baseline construction schedule as Activity
2 M5830?

3 A It's included in that activity. It's not stated as
4 Pequea Creek alone.

5 Q And how did you determine that Pequea Creek was part of
6 Activity M5830?

7 A Well, this activity talks about stream crossings between
8 two footage points on the pipeline. And the two footage
9 points are 431 plus 25, and the other end of it is 1275 plus
10 48.

11 So what I did was I went to the Transco topographical
12 plans for -- that had this stretch of footage. And I also
13 went to the listing of stream crossings that -- that I had,
14 that was a Welded document. And I looked for the stream
15 crossing to identify where did it fall in the plans and found
16 that it fell within this, the band between 432/25 and 1275 --

17 Q And --

18 A -- plus 48.

19 Q And can you briefly describe this activity for the
20 Court?

21 A Yeah. It's a crossing for Pequea Creek, a particular
22 crossing for Pequea Creek.

23 Q And what was the start date for this construction
24 activity?

25 A The start date here is December 13, 2017.

1 Q And that's reflected to the right on Row 398?

2 A Yes, sir, it is.

3 Q And how many days of float did this activity have?

4 A This activity had 20 days of float.

5 MR. NEIBURG: If we could pull up Slide Number 2 of
6 the demonstratives.

7 BY MR. NEIBURG:

8 Q And Mr. Kakol, similar to the Amtrak crossing, did you
9 prepare this demonstrative?

10 A Yes, sir, I did.

11 Q And as reflected on the top screenshot down below from
12 the Primavera software, what was the late start date for
13 activity M5380?

14 A The late start was January 16, 2018.

15 Q Do you recall when Welded intended to start its work on
16 the Pequea Creek crossing?

17 A Yes, sir, I do.

18 MR. NEIBURG: If we could pull up PX-613, please.

19 (Pause in proceedings)

20 BY MR. NEIBURG:

21 Q And Mr. Kakol, these are emails on October 27, 2017,
22 between Jim Ambler and Afshin Pourmir of Williams.

23 Do you recall reviewing these emails in connection with
24 your analysis?

25 A I do, sir.

1 Q And what I'll read from the first email, October 27,
2 2017, where Mr. Pourmir says:

3 "Jim, could you please confirm road, water body
4 crossing look-ahead on Monday, October 30, before
5 noon, for items below."

6 Do you see that?

7 A Yes, sir, I do.

8 Q And where on this document is the Pequea Creek crossing
9 identified?

10 A It's on the second page. There's a -- in bold, you'll
11 see "water body crossing, three weeks." And then, down
12 towards the bottom, Spread 7. And the top one is 11/11,
13 November 11. Type dam and pump. And it's WWT31-003, Pequea
14 Creek.

15 Q So it's your understanding that, reflected here, that
16 Welded intended to begin its work on the Pequea Creek
17 crossing on November 11, 2017?

18 A That's correct.

19 MR. NEIBURG: And if we could go back just to the
20 top email on that first page.

21 BY MR. NEIBURG:

22 Q And that's where, on October 30, 2017, Mr. Ambler of
23 Welded responds:

24 "Below road/water body crossings have been
25 confirmed with each construction team."

1 Do you see that?

2 A I do.

3 MR. NEIBURG: Your Honor, I'll move PX-613 into
4 evidence.

5 MS. EWALD: No objection, Your Honor.

6 THE COURT: It's admitted.

7 (PX-613 received in evidence)

8 (Participants confer)

9 BY MR. NEIBURG:

10 Q Mr. Kakol, do you know whether Transco needed to obtain
11 a permit variance for the Pequea Creek crossing?

12 A Yes, sir, it did.

13 Q Do you know why?

14 A Yes, sir, there were several reasons.

15 Q Can you explain what those reason were?

16 A Sure.

17 One of them was, the big one was that there was an eagle
18 nest within a mile of the -- of the crossing; and, therefore,
19 depending on the method of getting the ground excavated, we
20 couldn't use blasting. Blasting would destroy the eagles.
21 And so we had to have a consideration by the --the applicable
22 governmental parties to make sure that that wasn't -- or was
23 or wasn't a problem.

24 Secondly is you needed a crossing just to get the
25 equipment across, and that had been attempted several times

1 and they kept getting washed out. So there was a flume being
2 suggested by PADEP as an appropriate method to direct the
3 water, so that you could get equipment across.

4 Q And you're --

5 A Those are --

6 Q -- saying --

7 A -- two reasons.

8 Q I'm sorry, Mr. Kakol.

9 You said "PADEP." Do you know -- can you explain for
10 the Court what that means?

11 A Yeah. That's Pennsylvania Department of Environmental
12 Protection.

13 MR. NEIBURG: Okay. Mr. Zinkel, could you go back
14 to Slide 2 on the demonstrative.

15 BY MR. NEIBURG:

16 Q And Mr. Kakol, I'll direct your attention to the lower
17 screenshot from Primavera.

18 MR. NEIBURG: If we -- Mr. Zinkel, if you could
19 highlight the two rows that are at the bottom? Yeah, that's
20 fine, that's perfect.

21 BY MR. NEIBURG:

22 Q Mr. Kakol, was what you discussed about requiring PADEP
23 approval for an eagle variance, was that reflected in the
24 Primavera screenshot?

25 A Yes, sir, it is.

1 Q Do you know when Transco obtained the necessary permit
2 variances for this crossing?

3 A Well, I have June 15, 2018, with a little "a," which
4 means an actual date. So that's the date -- the date I used.

5 Q So how many days passed between the January 16, 2018
6 late start date, as shown in Primavera, and June 15, which is
7 the date when Transco obtained the necessary permit variance
8 for Pequea Creek?

9 A It was 150 days.

10 Q And again, the mechanical completion date on the
11 contract was June 14, 2018?

12 A Yes, sir, that's correct.

13 Q So it's your understanding that Transco obtained the
14 necessary permit variance the day after the mechanical
15 completion date?

16 A Yes, sir, that's correct.

17 Q In your opinion, is it appropriate to revise the
18 contract's identified mechanical completion date by the same
19 hundred-and-fifty-day period?

20 A Yes, sir.

21 Q And why is that?

22 A Again, because you used up all the float. Now a day-
23 for-day delay to an activity on the critical path pushes the
24 end of the critical path by the same number of days. So a
25 hundred-and-fifty-day delay to the stream crossing beginning

1 pushes it 150 days to revise the mechanical completion date,
2 as well.

3 Q So, based upon your analysis, what should the contract's
4 mechanical completion date have been adjusted to based on the
5 delay in obtaining the permit variances for this crossing?

6 A Well, because of the delay for getting the variances for
7 Pequea Creek, the revised mechanical completion date
8 calculates out to be November 11, 2018.

9 MR. NEIBURG: Okay. And if we could turn to DX-
10 1985.

11 Your Honor, this is Trend 163 that Mr. Hood
12 testified about the other day and was admitted into the
13 record.

14 BY MR. NEIBURG:

15 Q Mr. Kakol, do you recognize this document?

16 A Yes, sir, I do.

17 Q And what is this document?

18 A This is Trend 163 for the Pequea Creek.

19 Q Can you briefly describe for the Court your
20 understanding of the purpose of Trend 163?

21 A Yes. Like all trends, it's to give notice to Transco
22 that there's an issue that will impact either money or time
23 or both.

24 In this case, you can see from the category change that
25 they -- they said it will change the execution and schedule.

1 Q And do you see the "Description of Change" section,
2 where it reads:

3 "Welded was awaiting updated and corrected creek
4 flossing" -- "creek crossing flume design requested
5 by PADEP after previous engineered crossing washed
6 out multiple times."

7 Do you see that?

8 A I do.

9 Q And do you see the bottom line in the same section:

10 "Welded was awaiting approval for blasting at the
11 creek due to eagles within a mile of crossing."

12 Do you see that?

13 A Yes, sir.

14 Q Do you recall that Mr. Hood testified about these two
15 issues last week?

16 A I do.

17 Q And to your understanding, were either of these Welded
18 issues?

19 A It's my understanding that they were not Welded issues.

20 Q And do you also recall that Mr. Hood testified about the
21 trend log, that Trend 163 was subject to, quote/unquote,
22 "client review"?

23 A I do recall that.

24 Q And let's turn to I-76.

25 Did you also perform a similar analysis for the I-76

1 crossing activity?

2 A Yes, sir, I did.

3 MR. NEIBURG: And if we could turn to JX-1.856,
4 please? In particular, Mr. Zinkel, if you could highlight
5 Row 447.

6 BY MR. NEIBURG:

7 Q Is the I-76 crossing construction activity included in
8 Activity M2120?

9 A Yes, sir, it is.

10 Q Can you briefly describe this activity for the Court?

11 A Well, this is another road bore. It occurs at Station
12 1976 plus 05. And it's going to be across Interstate 76,
13 which is the Pennsylvania Turnpike. And there will be a bore
14 of 240 linear feet.

15 Q And what is the state -- start date for this activity?

16 A Yeah, the start date was February 19, 2018.

17 Q And how many days of float?

18 A Forty-one days of float.

19 Q Did you also prepare a demonstrative related to the I-76
20 issue?

21 A Yes, sir, I did.

22 MR. NEIBURG: Mr. Zinkel, if we could do Slide 3 of
23 the demonstratives?

24 BY MR. NEIBURG:

25 Q Now, with reference to the top screenshot at the bottom.

1 What is the late start date for the I-76 crossing
2 activity?

3 A The late start date was April 6, 2018.

4 Q And with reference to the bottom screenshot from
5 Primavera.

6 What is your understanding of when Transco obtained the
7 required permit variances related to the I-76 crossing
8 activity?

9 A They obtained that variance on May 31, 2018.

10 Q So how many days passed between the April 6, 2018 late
11 start date and May 31, 2018, which is when Transco obtained
12 the necessary PADEP permit variance?

13 A It would have been 55 calendar days.

14 Q In your opinion, is it appropriate to revise the
15 contract's mechanical completion date by the same fifty-five-
16 day period?

17 A Yes, sir, it is.

18 Q So what should have been contract's mechanical
19 completion date been adjusted to based on Transco's delay in
20 obtaining the permit variance related to this activity?

21 A Based on this activity in getting the late permit for I-
22 76, the revised mechanical completion date would have become
23 August 8, 2018.

24 Q You testified earlier that, once you determined what the
25 revised mechanical completion date should have been changed

1 to under each scenario, you calculated a schedule incentive
2 amount, correct?

3 A Yes, sir.

4 Q Did you prepare a demonstrative for the schedule
5 incentive payment calculations for each of those scenarios?

6 A I did, sir.

7 MR. NEIBURG: And if we could turn -- oh, before we
8 get there.

9 BY MR. NEIBURG:

10 Q Mr. Kakol, so you discussed three scenarios and that,
11 under each scenario, you determined that a schedule incentive
12 payment is owed to Welded, right?

13 A Yes.

14 Q Are those payments cumulative?

15 A No, sir, they're not.

16 Q So they're simply alternative scenarios?

17 A Yes, sir, they are alternative scenarios --

18 Q Can you brief --

19 A -- standalone --

20 Q All right. Can you briefly explain for the Court why
21 you addressed three alternative scenarios?

22 A Well, I looked for significant ones that were non-Welded
23 issues that -- that appeared to be clearly non-Welded issues,
24 that were the basis for change, that also seem to have had
25 the support of trend -- of Transco documents. And that's why

1 I picked the top three.

2 Q And the permit and permit variance delays related to
3 Amtrak, Pequea Creek, and I-76, those are on either Spread 6
4 or 7, right?

5 A Actually, all three of them are on -- were on Spread 7.

6 Q And it's your understanding that the last spread on the
7 project -- or Welded's portion of the project to achieve
8 mechanical completion was Spread 5, right?

9 A That's correct.

10 Q Does that fact impact your analysis here?

11 A No, it -- it -- the answer is no because the fact that
12 it ends on Spread 5 or whatever spread it ends on establishes
13 the actual mechanical completion date. I'm interested in
14 what's the revised planned completion date.

15 MR. NEIBURG: And now, if we could turn to Slide 4
16 of the demonstratives.

17 BY MR. NEIBURG:

18 Q Mr. Kakol, does this slide reflect the schedule
19 incentive payment that you calculated based upon the Amtrak
20 crossing delay?

21 A Yes, sir, it is.

22 Q And what is -- before you get to how we get there. What
23 is your ultimate conclusion as to the schedule incentive
24 payment owed to Welded in relation to the Amtrak crossing
25 delay?

1 A Well, my conclusion is, if the -- based on the
2 construction schedule should have been changed and would have
3 been changed for the dates that I came up with for the Amtrak
4 delay, then the total incentive for the schedule incentive
5 portion would be \$8 mullion.

6 Q And could you briefly describe for the Court, with
7 reference to the demonstrative, how you determined that
8 amount?

9 A Sure.

10 If you look at the text that's in the righthand upper
11 side, that's essentially a copy from either Exhibit 5, 6, or
12 7 to Section 8 of Amendment Number 2 of the contract.

13 And what it tells you is, on the second bullet, it says:

14 "If Welded meets or beats the target mechanical
15 completion date, they get \$5 million.

16 And the next line says:

17 "Additionally, for every week that Welded finishes
18 before the target date, the five-million-dollar
19 target schedule incentive is augmented by a million
20 dollars each week."

21 And the third one, the third bullet down -- yeah, that -
22 - says, "Conversely" -- and here's the -- the penalty.

23 "Conversely, for every week that Welded finishes
24 after the target date, the five-million-dollar
25 target schedule incentive is reduced by half a

1 million dollars."

2 So that's the formula and the words that I followed.

3 Q All right. And as you testified earlier, based upon the
4 delay in Transco obtaining the necessary Amtrak permit, you
5 believe the revised mechanical completion date should be
6 October 10, 2018, right?

7 A Yes, sir.

8 Q So, after, you determined that Welded saved 3 weeks or
9 21 days, what did you do next to determine the schedule
10 incentive payment due in connection with this scenario?

11 A Well, once I knew the revised mechanical completion date
12 of October 10, and I knew the actual mechanical completion
13 date of September -- September 19, I knew that's 21 days or 3
14 weeks.

15 So, if you see in the formula, schedule incentive equals
16 number of -- of weeks saved times a million dollars, plus the
17 base 5 million, and that ends up getting you to \$8 million.

18 Q And could you please describe for the Court the safety
19 modifier --

20 A Sure.

21 Q -- that is reflected.

22 A Yeah. There's a second part to the incentive. You have
23 to multiply it by a safety multiplier, and the safety --
24 modifier.

25 And the modifier, you'll see a table over on the

1 lefthand side, on the bottom, which comes also from Exhibit 5
2 or 6 or 7 from the contract.

3 And to determine what the safety modifier is, you've got
4 to know what the TRIR is, which is "total reportable incident
5 rate."

6 And I calculated the TRIR using the data that -- and the
7 end of the product. You need the total -- there's a formula
8 from OSHA. I used that formula and it ended up -- I needed
9 to know the total man hours. I need to know the number of
10 reportable or medical cases. And I, therefore, was able to
11 calculate TRIR to be 0.93.

12 Well, if you look at the little chart over on the
13 bottom-left, you'll see that 0.93 is less than the top value
14 of 1.85; and, therefore, the safety modifier used is 100
15 percent or 1.

16 So now go down to the bottom, righthand corner, and
17 you'll see \$8 million times the 100 percent, and that's how
18 you get \$8 million.

19 Q And did the -- Exhibit 5 to the contract provide an
20 example of calculation?

21 A It did.

22 MR. NEIBURG: Mr. Zinkel, could you pull up JX-
23 1.842?

24 BY MR. NEIBURG:

25 Q And this is Exhibit 5 to Section 8.

1 So, right in the middle, is that what you're referring
2 to, that box called "schedule incentive examples"?

3 A The -- yes, sir, that's exactly what I'm talking about.

4 MR. NEIBURG: And let's pull up PX-615.

5 Q I think, Mr. Kakol, during your testimony, you
6 referenced source documents that you relied on to come up
7 with the TRIR. Is that right?

8 A I did.

9 MR. NEIBURG: It should be a native Excel.

10 Q And Mr. Kakol, could you briefly explain to the Court
11 what this document reflects and what information in it was
12 important to your analysis?

13 A Yeah. This was a -- appeared to be a Transco document
14 tracking a lot of data for the three spreads. And there was
15 some data in here concerning man hours, which is where I
16 would have gotten the man -- number of man hours.

17 Q And were you able to pull information from this document
18 to determine the safety multiplier?

19 A Yes. Like I said, the man hours.

20 And there should be a section on here -- I don't think
21 it's this one, but in another document that shows all the
22 different reportable incidents.

23 MR. NEIBURG: And I'll move PX-615, Your Honor.

24 MS. EWALD: Your Honor, I don't think I have any
25 objection to the admission of the document, although I

1 believe the witness said it was a Transco document.

2 MR. NEIBURG: Oh --

3 MS. EWALD: I --

4 BY MR. NEIBURG:

5 Q Is it your understanding this is actually a Welded
6 document?

7 A It could have been. I mean, I -- I thought it was
8 Transco, but it could be Welded. You can usually tell
9 because of the --

10 MR. NEIBURG: So, Your Honor, with --

11 A -- Bates Stamp.

12 MR. NEIBURG: He doesn't recall at this time
13 whether it was a Welded or Transco document. But he relied
14 on this --

15 THE COURT: He relied --

16 MR. NEIBURG: -- document.

17 THE COURT: -- on it?

18 MR. NEIBURG: Yeah.

19 THE COURT: It's --

20 MR. NEIBURG: I don't think it's important, but I
21 understand your wanting to raise that for the record.

22 MS. EWALD: I don't have any objection to the
23 admission of it.

24 THE COURT: Thank you. It's admitted.

25 (PX-615 received in evidence)

1 MR. NEIBURG: And if you could pull up PX-640, the
2 native, Mr. Zinkel.

3 BY MR. NEIBURG:

4 Q Do you see at the top, Mr. Kakol, it says "CONTECH
5 Analysis of Safety Modifier"?

6 A Yes, sir.

7 Q Do you see that?

8 A I do.

9 Q Can you briefly describe for the Court what this Excel
10 was intended to do and how you prepared it?

11 A Yes.

12 What I was trying to do -- and my work is highlighted in
13 the -- the sea blue. It was the CONTECH analysis over on
14 Column T and U over to the right.

15 In this analysis, I had determined the man hours, the
16 direct labor for Spreads 5, 6, and 7 and added them up, and I
17 got three million, six hundred and sixty-three million and
18 change.

19 Like I said, there was another source that gave me the
20 number of medical cases at 17.

21 And then, where you have the TRIR of point -- 0.93.

22 It may show up in this one, if you were able to act --
23 no, I think this is a PDF. But if it was an Excel, you'll
24 see the formula that comes from the OSHA formula.

25 MR. NEIBURG: Your Honor, I'll seek to admit PX-640

1 as source material that -- and material that mister CONTECH -
2 - or -- mister CONTECH -- Mr. Kakol prepared in connection
3 with his analysis.

4 MS. EWALD: Your Honor, I would note that the
5 witness doesn't have, I think, an underlying foundation for
6 this document, but I have no objection to its admission.

7 THE COURT: Okay. Then it's admitted.

8 (PX-640 received in evidence)

9 THE COURT: Thank you.

10 MR. NEIBURG: And Mr. Zinkel, if we can go back to
11 Slide 4 of the demonstratives?

12 BY MR. NEIBURG:

13 Q And Mr. Kakol, just to confirm, based upon the
14 calculations and information that is -- you just discussed,
15 your ultimate conclusion in connection with the Amtrak
16 crossing permit delay was that Welded was entitled to a
17 schedule incentive payment of 8 million, correct?

18 A Yes, sir, that is correct.

19 Q And do you -- did you perform the same type of
20 calculation in connection with the Pequea crossing permit
21 variance delay, as well as the I-76 permit variance delay?

22 A Yes, sir, I did that.

23 MR. NEIBURG: And if we could just turn to Slide 5.

24 Q And I think briefly here, if you could -- did you
25 prepare this demonstrative, Mr. Kakol?

1 A Yes, sir, I did.

2 Q And could you describe for the Court and explain for the
3 Court what your ultimate conclusion was with respect to a
4 schedule incentive payment owed to Welded in connection with
5 the Pequea Creek permit variance delay?

6 A Yes.

7 In this case, because the Pequea Creek revised
8 mechanical completion date is further out into November, when
9 you do the mathematics, you get a higher number than we did
10 for Amtrak. You get \$12,570,000.

11 MR. NEIBURG: And if we could turn to Slide 6.

12 Q And is this the demonstrative you prepared in connection
13 with your opinion concerning the schedule incentive payment
14 owed to Welded in connection with the I-76 permit variance
15 delay?

16 A Yes, sir, it is.

17 Q Could you briefly explain for the Court what this slide
18 shows?

19 A Yeah. This shows that, in this case, for the I-76
20 scenario, even though there was a revised mechanical
21 completion date that I believe should be entitled to be given
22 to Amtrak -- to Welded, that Welded still didn't meet that
23 date and was delayed by 42 days. And as a result, that
24 reduced the five-million-dollar base schedule incentive
25 number down to 2 million.

1 Q And Mr. Kakol, just to confirm, of the three scenarios
2 that you analyzed, Amtrak, Pequea Creek, and I-76, was Amtrak
3 crossing the one that did not require a permit variance?

4 A Yes, sir, that's the one.

5 Q And as you testified earlier, based upon the contract,
6 Welded could not start work on that crossing until the permit
7 was obtained, correct?

8 A Yes, sir, that's correct.

9 MR. NEIBURG: Your Honor, no further questions at
10 this time.

11 THE COURT: Okay. Let's take a break here and
12 we'll com back at 11.

13 You're under oath. Please don't speak with anyone
14 about your testimony.

15 THE WITNESS: Understood, Your Honor.

16 THE COURT: Thank you.

17 (Recess taken at 10:50 a.m.)

18 (Proceedings resume at 11:02 a.m.)

19 (Call to order of the Court)

20 THE COURT: Please be seated.

21 Ms. Ewald.

22 MS. EWALD: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. EWALD:

25 Q Good morning, Mr. Kakol. My name is Shelly Ewald and I

1 represent the Defendant Transcontinental Gas Pipe Line
2 Company. And I'd like to ask you a few questions about your
3 testimony today. Good morning.

4 A Good morning.

5 Q Mr. Kakol, as I understand it, you have not previously
6 performed a delay analysis of a pipeline project prior to the
7 ASR project, correct?

8 A You are correct, not a delay analysis.

9 Q And you have not previously testified as an expert in
10 relation to a pipeline project then, as well.

11 A That would be accurate.

12 Q And I believe as you testified here today, the schedule
13 analysis that you prepared is described as an "impacted as-
14 planned analysis," correct?

15 A I think those are the words I used, yes.

16 Q And that's because this analysis looks at the -- only
17 the original baseline schedule, correct?

18 A As opposed to what?

19 Q As opposed to also looking at the actual or as-built
20 schedule.

21 A That would be correct.

22 Q And you have not previously utilized an impacted as-
23 planned analysis before in your work as an expert, correct?

24 A I haven't done one myself, but I've add -- I've
25 evaluated them.

1 Q But you have not done one yourself, correct?

2 A No.

3 Q And in preparing your analysis for Welded, you did not
4 analyze any Welded-caused delays to the project, correct?

5 A Not for the purpose of the -- determining the adjustment
6 to the mechanical as-planned, but I did look at them.

7 Q Well, you did not analyze those delays because they were
8 -- you did not analyze the Welded-caused delays to the actual
9 mechanical completion date because you considered them
10 irrelevant to your analysis, correct?

11 A If that's my words, it's -- I -- it doesn't make sense
12 because all delays, including Welded delays, and
13 accelerations establish the ultimate actual mechanical
14 completion date.

15 Q And you didn't take the actual mechanical completion
16 date into consideration in your analysis with regard to the
17 bonus that you quantified, correct?

18 A No, that's quite the opposite. You have to use the
19 actual mechanical completion date as one of the two dates to
20 establish that bonus or penalty.

21 Q And in your analysis, Mr. Kakol, you did not quantify
22 any number of days of delay that Welded was responsible for
23 to the actual mechanical completion date, correct?

24 A Not specifically for Welded. That is correct.

25 Q And that is because you considered it to be irrelevant,

1 correct?

2 A Irrelevant to the as-planned adjustment, yes, but not to
3 the actual completion date.

4 Q Well, Mr. Kakol, do you recall that I took your
5 deposition in November of 2022?

6 A I do.

7 MS. EWALD: And Your Honor, may I approach?

8 THE COURT: You may. Thank you.

9 (Participants confer)

10 BY MS. EWALD:

11 Q Mr. Kakol, I turn your attention to Page 102 of the
12 condensed transcript of the deposition taken in November of
13 2022. And I'd like to draw your attention to Lines 11
14 through 14. Do you see that?

15 A I do.

16 Q And I asked you:

17 "Have you quantified a number of days of delay that
18 Welded was responsible for to the actual mechanical
19 completion date."

20 Do you see that?

21 A I sure do.

22 Q And at that time, you indicated -- you said -- answered:

23 "No. It's irrelevant."

24 Correct?

25 A That's correct.

1 Q Thank you.

2 And Mr. Kakol, also, you did not consider the critical
3 path that was -- that actually occurred in the as-built
4 schedule to the project, correct?

5 A That's correct.

6 Q And as I believe you testified here today, the critical
7 path of the as-built schedule was based on Spread 5.

8 A I don't think I ever said that.

9 Q Well, do you know that the -- do you know that Spread 5
10 was the final spread to be completed?

11 A That is correct.

12 Q And the delays that you have addressed in your analysis
13 were delays that did not -- that were not on Spread 5,
14 correct?

15 A That's correct.

16 Q And the Amtrak delay was Spread 7. Is that right?

17 A No, I thought that was Spread 6. Yes, Spread 7. That's
18 correct.

19 Q And the I-76 delay was also Spread 7?

20 A Yes, ma'am.

21 Q And the Pequea Creek was spread -- which spread was
22 that, mister --

23 A 7, Spread 7, yeah.

24 Q Spread 7.

25 And I believe also, Mr. Kakol, that you did not know

1 whether Welded or Transco developed the baseline schedule or
2 established the stream/road and crossing sequences or dates.
3 Is that right?

4 A The order of the work was or should have been
5 established by Transco, by contract. The establishment of
6 the baseline schedule included the data in it. That most
7 definitely was probably Welded.

8 Q So you believe that the dates that were established in
9 the baseline schedule regarding the stream/road and
10 crossings, the durations, those would have been established
11 by Welded, you believe.

12 A Yes, ma'am.

13 Q And with regard to the three delays that you identified
14 today in your direct testimony, other than the trend sheets
15 that we looked at, did you see any request for a time
16 extension by Welded for any certain number of days related to
17 any of these three issues?

18 A Other than the trends, the trend logs, the fact that
19 they were mentioned as being delays in the weekly report, I
20 think the answer is no, ma'am.

21 Q And so you also did not see any request for a schedule
22 bonus related to any of these three delays, correct?

23 A That would be correct.

24 Q And let's take a look at the permit delay that you did
25 not address in your testimony today, except briefly, I did,

1 but you did address in your original report.

2 And I'd like you to turn to PX-541, your original
3 report, and to take a look at Page 22.

4 A You said Page 22, ma'am?

5 Q It's in your -- and Mr. Kakol, it's Page 22 at the top
6 is where -- is the numbers I'm going to be referring you to.
7 It's PX-541, 22. Do you see that?

8 A I do.

9 Q And in your original report, you prepared an opinion
10 that Transco was responsible for a ninety-one-day permit
11 delay related to the I-81 crossing. Is that correct?

12 A I think that's what's included in the report. Yes,
13 ma'am.

14 Q And that was because you believed that this was a non-
15 Welded-caused delay, correct?

16 A At the time, you are correct, ma'am.

17 Q And so you identified in your report at PX-24 [sic] that
18 the I-81 permit delay pushed out the mechanical completion
19 all spreads date by the same 91 calendar days. Do you see
20 that?

21 A Let's see.

22 Q It's in the third -- or I apologize -- the fourth
23 paragraph from the top of the page.

24 A Yes, ma'am, that's what it says.

25 Q And you concluded that the I-81 permit delay would

1 change the mechanical completion all spreads date and the
2 target date for the incentive program to September 13, 2018,
3 correct?

4 A Yes, ma'am.

5 Q And I believe you calculated a schedule bonus for the I-
6 81 permit delay of \$8 million. Is that right?

7 A I don't know. I have to take a look.

8 Q I think we can find that in your report if we turn to
9 Page 30. It's PX-541, Page 30.

10 And I apologize. I might have overstated the amount of
11 the bonus.

12 Do you see your calculation with regard to the I-81
13 permit variance delay?

14 A You're on Page 30, correct?

15 Q I am at page -- PX-541, Page 30.

16 A Okay.

17 Q And I'm directing your attention to the analysis that
18 you did with regard to the I-81 permit variance delay. Do
19 you see that?

20 A I do.

21 Q And you calculated a total incentive amount of
22 4,571,429. Do you see that?

23 A I do, yes, ma'am.

24 Q And have you -- and Mr. Kakol, you would agree that the
25 -- are you aware that the I-81 delay related to Welded

1 utilizing a non-permitted method of crossing at that area?

2 A Part of the delay did apply to that.

3 Q And part of the delay was due to Welded using a
4 horizontal directional drill methodology, rather than the
5 road bore methodology that had been permitted by PADEP,
6 correct?

7 MR. NEIBURG: Your Honor, I'll just object. I
8 think that mischaracterizes Mr. Hood's testimony on this
9 issue. I think it was the very specific method didn't
10 necessarily cause the frack-out. I think it was established
11 that that method was not within the permit.

12 THE COURT: I think that's what he did testify to,
13 the method wasn't within the permit, right?

14 MS. EWALD: And I'm asking --

15 THE COURT: Not whether it caused it or not.

16 MS. EWALD: Then I'll -- let me ask -- re-ask the
17 question, Your Honor.

18 BY MS. EWALD:

19 Q Mr. Kakol, do you -- were you aware that Welded was
20 utilizing an HDD methodology for crossing I-81?

21 A I was.

22 Q And are you aware that that was not the method that was
23 provided for in the permit for crossing I-81?

24 A Yes, ma'am.

25 Q And are you also aware that the -- during the HDD

1 operation, there was what's known as a "frack-out" or
2 inadvertent return of drilling fluids?

3 A I am aware of that.

4 Q And are you aware that there was an investigation by
5 PADEP due to that issue?

6 A Yeah, that is something I am aware of. Yes, ma'am.

7 Q And the -- that investigation caused delay to the
8 crossing of the I-81 -- of I-81, correct?

9 A Yes, ma'am, it did.

10 Q And with regard to the Amtrak permit delay. Let's take
11 a look at that.

12 That was a crossing on Spread 7, correct?

13 A Yes, ma'am.

14 Q And that affected Spread 7 only, correct?

15 A No, ma'am.

16 Q Well, it -- this Amtrak permit delay, Mr. Kakol, did it
17 have any impact on the main line pipe crews?

18 A No, ma'am, not to my knowledge.

19 Q And you did -- and you did not determine whether this
20 permit delay impacted the critical path of the as-built
21 critical path for the project, correct?

22 A No, I determined whether it impacted the revision to the
23 plan, to the baseline schedule.

24 Q But you did not determine whether this alleged permit
25 delay impacted the critical path of the as-built critical

1 path for the project, correct?

2 A Actually, I may have at one time because I looked at
3 every single update of the schedules. And the driving
4 critical activity for each of those updates moved. It didn't
5 stay at Spread 5, it moved around. Sometimes it was in 7;
6 sometimes it was in 6.

7 It may -- I know that it was in 7. I do not recall, as
8 I sit here, whether or not it was the Amtrak delay that
9 brought it up as the driving critical activity during that
10 period, but it could have been.

11 Q And Mr. Kakol, I draw your attention to your deposition
12 transcript. Do you have that in front of you?

13 A I do.

14 Q And I draw your attention to the -- Page 119 of your
15 deposition transcript and draw your attention to Lines 10 to
16 15.

17 And in this portion of the deposition, I was asking you
18 about the Amtrak permit issue. Do you recall that?

19 A Well, it says what it says.

20 Q And I asked you:

21 "And did you determine -- when you looked at the
22 impact on the mechanical completion date, did you also
23 determine whether it was -- whether this alleged permit delay
24 impacted the critical path of the as-built critical path of
25 the project?"

1 And your answer was no, correct?

2 A That's correct.

3 Q And Mr. Kakol, the Amtrak -- the completion of this
4 Amtrak crossing. You don't have the as-built date on your
5 project -- on your demonstrative, correct?

6 A Would you repeat the question for me, please?

7 Q Yes.

8 You don't have the actual date that the Amtrak work was
9 completed on Page 1 of your demonstrative, do you?

10 A No, I do not.

11 Q And the actual date that the Amtrak work was completed
12 was on or about August 11th, correct?

13 A I don't know. I'm not -- I think I did at one time, but
14 I don't know as I sit here.

15 Q And at the time that the Amtrak crossing was completed,
16 was the I-76 crossing still incomplete?

17 A I'd have to look at the dates. It could have been.

18 Q And are you aware that the I-76 crossing did not -- was
19 not completed until on or about August 21st?

20 A I do not know.

21 Q And with regard to the I-76 crossing, I see on your
22 demonstrative you have -- it's a little difficult to read.
23 But there's a schedule activity that's been added to the
24 schedule. Do you see that at the bottom of the page?

25 A For I-76 --

1 Q Yes.

2 A -- or Amtrak?

3 Q If you look at the very bottom of the page, you see --
4 it looks like an activity identified as M2120V. Do you see
5 that?

6 A Well, I'm looking at Amtrak right now.

7 Q Oh, I'm -- I'd ask you to turn to Page 3 of your
8 demonstrative to look at I-76.

9 A Now I see it.

10 And I -- please repeat the question, ma'am.

11 Q Certainly.

12 Do you see at the bottom of this demonstrative there's a
13 schedule activity that you've shown here on this page,
14 correct?

15 A I do.

16 Q And that's the schedule activity M2120V.

17 A What's the question?

18 Q Do you see that?

19 A Yes, I do.

20 Q And that indicates:

21 "PADEP approval required for I-76 stream variance."

22 Do you see that?

23 A I do.

24 Q And are you aware, Mr. Kakol, that Welded requested a
25 variance to the I-76 crossing to include the streams adjacent

1 to the crossing in the road bore?

2 A I am.

3 Q And are you aware that Transco then submitted that
4 request to PADEP?

5 A I -- yes, I am.

6 Q And that request was being made at the -- at -- that
7 request came from Welded, right?

8 A It -- it is my understanding that what you're saying is
9 correct.

10 Q And Transco was able to obtain that variance for
11 Welded's use, correct?

12 A That is correct.

13 Q And then Welded was unable to complete the crossing
14 using a road bore to cross both the stream area and I-76,
15 correct?

16 A That is correct, as well.

17 Q And after they were -- Welded was unable to perform the
18 crossing based on their requested variance, the variance had
19 to be changed -- or the methodology had to be changed back to
20 the -- there had to be a variance obtained to go back to the
21 original methodology, correct?

22 A I would assume so, but I had not seen it.

23 Q And you have ascribed the entire responsibility for the
24 variance requested by Welded, the time to get the variance
25 requested by Welded, the time for Welded to be unable to

1 accomplish the crossing using that methodology, and the time
2 to get the variance back to its original state, you've
3 ascribed that entire time period to Transco, correct?

4 A That's absolutely false.

5 Q Is that entire time period included in the -- in your
6 analysis for the I-76 delay?

7 A No, ma'am, it is not.

8 Q And how did you exclude it?

9 A Simple. I just got to the start dates, not to the
10 duration of the activity itself.

11 Q So you didn't look at how long the -- you just looked at
12 the start date, the planned start date of the activity,
13 correct?

14 A That's correct.

15 Q And you just looked at the planned start date and then
16 the actual start date and added that to the mechanical
17 completion date. Is that right?

18 A Well, my testimony today was that I looked at what the -
19 - I used the start date as the soonest that Welded could
20 start after it got its variance, and that the date that it
21 finally did its variance, then the -- the soonest it could
22 start would, of course, be the day after that. And that's
23 how I determined the delay.

24 Q So let me be clear then, Mr. Kakol.

25 The delay that you ascribed to Transco did include the

1 first requested variance to go -- to include the streams
2 within the crossing. Is that right?

3 A That is correct, ma'am.

4 Q Thank you.

5 And you ascribed that delay to Transco, even though it
6 was requested by Welded, correct?

7 A That's correct.

8 Q And the I-76 crossing occurred after the Amtrak
9 crossing, correct?

10 A You indicated a little while ago that it did. From my
11 memory, I don't recall.

12 Q And if you would assume for the moment, Mr. Kakol, that
13 the I-76 crossing actually occurred on August 21st, and
14 assume that the Amtrak crossing occurred on August 11th, then
15 the delay that was impacting the completion of Spread 7 would
16 have been the I-76 crossing, correct?

17 A Not necessarily. There were many activities that were
18 going on during that period. We'd have to look at the
19 contemporaneous schedule to see what the shortest path was
20 during which that -- during Spread 7 at the time. It could
21 have been something as simple as doing some tie-ins, some --
22 in a different place.

23 Q And you did not look at that for your analysis, correct?

24 A I did look at it in my analysis. But it became part of
25 the overall result of what the actual date was --

1 Q But --

2 A -- for the mechanical completion.

3 Q And you did not -- in your -- and your analysis does not
4 take into account any Welded-caused delays that may have been
5 concurrent with the delays that you're identifying here,
6 correct?

7 A No, that's false.

8 Remember, the as-built critical -- the as-built date of
9 mechanical completion on September 19th was the result of all
10 delays, all accelerations, be it Welded or be it Transco, and
11 the efforts to improve. We take them all together and that's
12 how the -- the actual date ended up.

13 (Pause in proceedings)

14 Q And Mr. Kakol, you did not analyze any of the Welded-
15 caused delays that may have been concurrent with the four
16 alleged permit delays in your first report, correct?

17 A I thought I just answered that. The answer is yes. And
18 it's incorporated in what's the resulting actual mechanical
19 completion date of September 19.

20 Q Mr. Kakol, I'd like you to turn to your deposition at
21 Page 68. And I draw your attention to Lines 12 through 20.

22 (Pause in proceedings)

23 Q And I asked you:

24 "So, with regard to -- and let me step back. With
25 regard to other Welded-caused delays that may have been

1 concurrent with the four alleged permit delays you described,
2 you did not analyze any of those for your first report,
3 correct?"

4 And your answer at that time was:

5 "I did not specifically analyze any Welded delays,
6 whether concurrent or not, for the purpose of preparing my
7 first report."

8 A Yeah.

9 Q Is that accurate?

10 A Yeah, that's accurate.

11 Q And I also believe that you did not review any of the
12 as-built schedules to determine how road bores and road
13 crossings were re-sequenced by Welded during the project,
14 correct?

15 A I -- I apologize. But would you repeat that, please,
16 ma'am?

17 Q Certainly.

18 In your first report, you did not review the Welded as-
19 built schedules to determine how road bores and road
20 crossings were re-sequenced, correct?

21 A You are correct that, in the first report, I did not
22 analyze Welded delays of any type to see how they were re-
23 sequenced for the -- for the purpose of writing the first
24 report.

25 Q And following up on my questions, Mr. Kakol, with regard

1 to the Amtrak permit issue -- or the Amtrak crossing and the
2 I-76 crossing.

3 Do you know whether both of these crossings were in the
4 same test section for the purpose of hydro-testing the
5 pipeline?

6 A Well, I knew at one time, but I -- I don't recall right
7 now.

8 Q And if both of these crossings were in the same test
9 section, that would -- would they both need to be completed
10 for the purpose of hydro-testing this portion of the
11 pipeline?

12 A Yes, ma'am., they would.

13 Q So, even if the Amtrak crossing had occurred on the
14 originally planned date, if the I-76 crossing was not
15 completed until August 21, the hydro-testing could not have
16 been completed a day earlier than that, correct?

17 A That's a true statement.

18 Q And turning to the Pequea Creek delay, Mr. Kakol.

19 Which spread was Pequea Creek on?

20 A Spread 7.

21 Q And I believe you testified that there were -- you
22 discussed a PADEP approval required for the eagle variance.
23 Do you see that?

24 A On the -- do you mean on the demonstrative? Yes, ma'am.

25 Q Yes.

1 And are you aware whether the -- whether Welded
2 requested a variance regarding the change of the methodology
3 from a dam and pump method to a dam and flume method?

4 A I'm aware that there was no change to the crossing that
5 is specified for -- from a dam and pump to a flume.

6 The flume, I think, applied to a different crossing.

7 Q So it's your understanding that the dam -- a dam and
8 flume methodology was not used at the Pequea Creek crossing.

9 A No. The dam and pump method was used. The dam -- the
10 flume method was requested by PADEP. And from my
11 understanding from Mr. Marcus, the purpose of that was
12 because of a separate crossing that is needed to get the
13 equipment on to the other side of the -- of the creek.

14 And that particular crossing was having problems with
15 flooding. Several times, they tried it and it -- it kept
16 flooding out. So a flume, according to PADEP, was -- is
17 something they recommended that they -- we -- the
18 Transco/Welded team consider.

19 Q And Mr. Kakol, are you aware that the -- Spread 5 was
20 the last of the three spreads to achieve mechanical
21 completion?

22 A I am aware of that.

23 Q And the delays that you identify in your analysis, those
24 did not impact Spread 5, correct?

25 A Well, actually, they did, indirectly, according to Mr.

1 Marcus -- Marcus Hood.

2 Q Well, you -- in your analysis, you did not -- you did
3 not analyze the Spread 5 construction, correct?

4 A Not for the purposes of the report.

5 Q And so you're -- are you -- you did not include any
6 analysis of potential Welded-caused delays to the Spread 5
7 mechanical completion date, correct?

8 A Indirectly, I did, because I included the actual
9 mechanical completion date, which incorporates all Welded
10 delays, as well as any Transco delays and weather delays and
11 any other kind of delay or acceleration.

12 Q Mr. Kakol, for purposes of your rep -- analysis with
13 regard to the schedule bonus and the days of delay to be
14 added to the mechanic -- the planned mechanical completion
15 date, your report does not describe any delays that -- any
16 delays to Spread 5, correct?

17 A I think that's accurate. Yes, ma'am.

18 Q And you also performed no analysis regarding the actual
19 weather, compared to the anticipated weather in the baseline,
20 correct?

21 A That's correct.

22 Q And I think I understand your testimony here today.

23 But the -- you did not -- it wasn't important to your
24 analysis to look at the critical path of the as-built
25 project, correct? The as-built critical path.

1 A Yeah, that's correct.

2 Q And I noticed that you referred to the AACE a few times
3 in your testimony. Do you recall that?

4 A Yes, ma'am.

5 Q Oh, I'm sorry. Before I turn to that, I have one more
6 question with regard to the Pequea Creek work.

7 Are you aware that Welded -- once the variance was
8 received for the Pequea Creek, that Welded did not begin that
9 work until two weeks later?

10 A I am aware of that.

11 Q And I'd like to turn to the issue of the -- your use of
12 the impacted as-planned schedule analysis.

13 And I believe you testified you had not previously used
14 this analysis, correct?

15 A I think that was my testimony. Yes, ma'am.

16 Q And I have a copy of the AACE recommended practice that
17 you referred to in your testimony.

18 MS. EWALD: If I could approach, Your Honor.

19 THE COURT: Please.

20 (Pause in proceedings)

21 MS. EWALD: Your Honor, may I approach?

22 THE COURT: You may. Thank you.

23 THE WITNESS: Thank you.

24 BY MS. EWALD:

25 Q And Mr. Kakol, is this the -- this is the -- described

1 as the "AACE International Recommended Practice 29R-03."

2 Do you see that?

3 A I do see that.

4 Q And you're familiar with this publication. Is that
5 correct?

6 A Yes, ma'am, I am.

7 Q And I believe you testified you're a member of AACE,
8 correct?

9 A Yes, ma'am, that's correct.

10 Q And do you often refer to the -- this AACE protocol or
11 recommended practice for preparing your schedule analysis?

12 A Well, I did say that I used a method that's described in
13 here. Yes, ma'am.

14 Q And we can turn to Page 16 -- or I'm sorry. It's D2052,
15 Page 17, and the number is at the bottom. Do you see that?

16 A (No verbal response)

17 Q And this is in a section of the AACE recommended
18 practice that's identified as "D. Layer 4: Basic
19 Implementation." Do you see that on Page 16?

20 A I do.

21 Q And at the top of Page 17, the recommended practice
22 indicates:

23 "A single base additive modeling method is

24 typically called the 'impacted as-planned.'"

25 Is the -- does the AACE refer to the impacted as-planned

1 methodology as a single base additive modeling method?

2 A It -- the sentence says what it says.

3 Also in this document is, if you do a word search on
4 "impacted as-planned," you may find that different methods
5 also had that as a common name.

6 Q But at least the AACE recommended practice equates the -
7 - a single base additive modeling method with the impacted
8 as-planned methodology, correct?

9 A Well, it says what it says, ma'am.

10 Q And turning to Page 74 of the recommended practice,
11 there's a discussion about the use of the impacted as-planned
12 methodology for determining compensable delays.

13 Are you familiar with that section?

14 A I am.

15 Q And I think, Mr. Kakol, you would agree with me that the
16 delays that you are identifying here, it's your opinion that
17 Welded is entitled compensation related to these delays,
18 correct?

19 A Not compensation, no, not to the delay.

20 I'm actually referring to Page 128, which shows that
21 it's applicable for a bonus calculation. It says
22 "entitlement to early completion bonus." And the method is
23 accepted for that.

24 Q And do you -- Mr. Kakol, is it your testimony that
25 you're not -- that Welded is not seeking compensation for

1 these delays?

2 A That's right.

3 They are seeking compensation under the contract for
4 what's called the "bonus incentive" -- the "incentive
5 program," and that's it. This is not a delay claim.

6 Q And we see at the bottom of Page 74 and over to the top
7 of 75, it indicates:

8 "An additive model schedule by itself does not
9 account for concurrent delays and is, therefore,
10 unsuitable for determining compensability to the
11 respondent or liquidated, stipulated damages."

12 Do you see that?

13 A I sure do. And it's not applicable in this case.

14 Q And if you turn to the next page at Page 2052, at 76, it
15 indicates:

16 "This method can be used to quantify non-
17 compensable time extensions, but cannot, by itself,
18 quantify compensable delays because it does not
19 account for concurrent or pacing delays."

20 Do you see that?

21 A Which bullet was that, ma'am?

22 Q It's the second bullet under Section L.

23 A Yeah, I see it. And again, we're not doing a delay
24 claim, we're not -- we're doing a calculation of an incentive
25 bonus payment.

1 Q And Mr. Kakol, once you determined that the
2 responsibility, for example, for the I-81 crossing delay was
3 due, at least in part, to Welded, did you do any analysis of
4 the impact of that -- whether that was a concurrent delay
5 that impacted the mechanical completion date?

6 A Yeah. And that's all consumed in the fact that the
7 ultimate completion date was September 19, 2018.

8 Q And that mechanical completion date was the date that
9 Spread 5 achieved mechanical completion, correct?

10 A It could have been. But it certainly was the date that
11 all spreads was -- achieved mechanical completion.

12 Q So, if Welded was responsible for 91 delays -- days of
13 delay related to the I-81 crossing, is it still your
14 testimony that they may be entitled to a schedule bonus,
15 despite responsibility for that delay?

16 MR. NEIBURG: Your Honor, I'll just object. During
17 his testimony here today, Mr. Kakol said he is withdrawing
18 his opinion with respect to I-81.

19 THE COURT: Can you ask your question again?

20 MS. EWALD: Yes, I'll try to do so, Your Honor.

21 And my point is that the -- not that he hasn't
22 withdrawn that opinion, but that it -- he has not looked at
23 what impact it would have on the bonuses that he has
24 calculated.

25 THE COURT: Uh-huh.

1 BY MS. EWALD:

2 Q Mr. Kakol -- and if Welded is responsible for the 91
3 days of delay that you identified that related to I-81 in
4 your opening report, is it still your testimony that they
5 would entitled to the schedule bonuses you've identified with
6 regard to the other crossings?

7 A Well, the answer -- the answer to your question is yes,
8 they would because that delay and accelerations by Welded
9 ultimately caused the completion date to be September 19. So
10 any delay, including the one you're describing, is considered
11 by me and it's -- and it's what makes the August -- or the
12 September 19th actual completion date the actual completion
13 date. It has nothing to do with correcting a plan.

14 THE COURT: Okay. I'll overrule your objection, to
15 the extent it was to that question. I'll accept it as
16 framed.

17 MR. NEIBURG: I think that was a different
18 question, but I understand, Your Honor.

19 THE COURT: Slightly different, yeah.

20 BY MS. EWALD:

21 Q And I believe, Mr. Kakol, that you did not determine the
22 critical path in the as-built schedule, correct?

23 A I think I testified to that, that I have not.

24 MS. EWALD: All right. Thank you, Your Honor. I
25 have no more questions.

1 THE COURT: Thank you.

2 MR. NEIBURG: Just a very brief redirect, Your
3 Honor.

4 THE COURT: Redirect.

5 (Pause in proceedings)

6 REDIRECT EXAMINATION

7 BY MR. NEIBURG:

8 Q Good morning again, Mr. Kakol. Just a couple of items I
9 want to hit based upon the cross-exam.

10 Let's talk about the I-76 permit variance.

11 It's your understanding that Welded requested a permit
12 variance, correct?

13 A Yes, sir.

14 Q Is it your understanding that Transco must have agreed
15 with that permit variance request because it then went to
16 PADEP to get a permit variance?

17 A That is correct, sir.

18 Q And if we could turn back to your deposition at page --
19 you were asked about a question on Page 102. But I just want
20 to back up one question. Just let me know when you're on
21 Page 101 in the condensed version, starting at Line 20.

22 A I am there, sir.

23 Q Okay.

24 "Sitting here today, you have not allocated any of
25 the delay in failure to achieve the targeted mechanical

1 completion date to Welded, correct?"

2 And you answered:

3 "No, that's not true because I used an end date for
4 calculating the incentive plan of September 19, 2018, which
5 was achieved, rather than the original date, in part because
6 anything that happened on the project, whether it would have
7 been Welded or Transco, that ended up contributing to that
8 end date. So, for the as-built, for the as-built mechanical
9 completion date, all spreads, actual date, yeah, I considered
10 Welded's delays."

11 Do you see that?

12 A I do.

13 Q Can you explain for the Court how the actual mechanical
14 completion date of September 19, 2018 accounts for all
15 delays, whether Welded, non-Welded, whether it accounts for
16 Transco, you know, acceleration activities or Welded's
17 acceleration activity? How does that actual mechanical
18 completion date account for everything?

19 A Well, the activities, the -- the project starts on the
20 notice to proceed date and the intention and best wishes of
21 all is that the project follow the activities that are in the
22 original baseline schedule.

23 But what happens is you don't -- there are problems.
24 You either don't get permits or you find out that the weather
25 was an impact. Where, in one case, you find that the owner

1 wants to go to one place in particular because of concern
2 about push-back, the local push-back, monitoring, not exactly
3 in the record. Anyway, it makes the schedule change. So, as
4 you move through the project, different things are occurring.

5 So what does -- if you can't move in one direction, what
6 you do is you try to move in another direction. If you -- if
7 your main line is moving or can't move and you wanted to make
8 progress on the schedule, you look for activities that you
9 can also do that are planned later down.

10 All right. The more you do that, the more you
11 accomplish more work that was not -- that's being done early
12 but doesn't affect the critical path yet. And as you get
13 closer to the end, the fact that you did that means that
14 there's probably less things you have to do to get to the
15 end.

16 All right. Everything -- everything in the what happens
17 through the project establishes how you got to the end and
18 that -- what that end is. And in this case, the end was
19 September 19, 2018 --

20 Q Okay.

21 A -- regardless -- for all issues.

22 Q Thank you.

23 So let's just make a specific example. Let's say the I-
24 81 frack-out didn't occur and you didn't have the 91 days of
25 delay. Okay? So let's say, without that delay, actual

1 mechanical completion date occurred on September 1, 2018.

2 Wouldn't your calculated schedule incentive payments have
3 been higher for each of the scenarios we discussed?

4 A They would because the actual completion date would have
5 been earlier.

6 Q So that accounts for -- the actual mechanical completion
7 date accounts for that Welded delay, correct?

8 A That's -- that is correct.

9 MR. NEIBURG: And just a last question, Your Honor.

10 Q Mr. Kakol, just in your own words, why do you believe
11 the impacted as-planned method is appropriate here?

12 A The impacted as-planned mentioned -- as I mentioned, if
13 you go through 29R-1, this document that was handed me, it
14 emphasizes that the contract dictates the method. And as I
15 told you before, in this case, the contract didn't have a
16 method.

17 So if I was doing delay claim for compensation, the type
18 of thing that the opposing attorney brought up, I would have
19 used a different method.

20 But in this case, because there's an incentive program
21 and the incentive program is based on a -- on a planned date,
22 the question is: Does the planned date change? Can it
23 change and should it change?

24 And I determined that to move that plan date you've got
25 to follow the contract. And the contract says you can do it

1 with a change order. All right. So that's the plan date.

2 And the -- and the incentive program also says you've
3 got an actual date. And what determines the bonus is the
4 difference between the actual date and the ultimate plan
5 date. And that's the formula, I mean, that's what the
6 contract says.

7 So what method do you use to figure out how a plan date
8 could change? The answer: Impacted as-planned method.
9 That's exactly what I did.

10 MR. NEIBURG: No further questions, Your Honor.

11 THE COURT: Thank you.

12 MS. EWALD: I have no further questions.

13 THE COURT: Thank you.

14 Thank you for your testimony, Mr. Kakol. You can
15 step down.

16 THE WITNESS: Thank you, ma'am.

17 (Witness excused)

18 MR. NEIBURG: So, Your Honor, next, the debtors
19 will call Frank Pometti, the former Chief Restructuring
20 Officer from AlixPartners.

21 I think we're going to -- we're going to get him.

22 THE COURT: Okay. So let's take five minutes while
23 you go get him.

24 MR. NEIBURG: Thank you, Your Honor.

25 THE COURT: Thank you.

1 (Participants confer)

2 MR. NEIBURG: Your Honor, just a little bit of
3 housekeeping?

4 THE COURT: Uh-huh.

5 MR. NEIBURG: Mr. Pometti, at least on direct, will
6 probably go a smidge past 1. Would you -- would it be okay
7 if we just finish up with his direct --

8 THE COURT: Yes.

9 MR. NEIBURG: -- and then maybe broke for lunch?

10 THE COURT: Makes sense.

11 MR. NEIBURG: All right.

12 THE COURT: Thank you.

13 (Recess taken at 11:51 a.m.)

14 (Proceedings resume at 11:58 a.m.)

15 (Call to order of the Court)

16 THE COURT: Please be seated.

17 MR. NEIBURG: Thank you, Your Honor.

18 At this time, Welded calls Frank Pometti.

19 THE COURT: Mr. Pometti.

20 (Pause in proceedings)

21 THE ECRO: Please remain standing and be sworn.

22 Raise your right hand.

23 FRANK POMETTI, WITNESS FOR THE DEBTORS/PLAINTIFF, AFFIRMED

24 THE ECRO: Please state your full name and spell
25 your last name for the record.

1 THE WITNESS: Frank Pometti, P-o-m-e-t-t-i.

2 THE ECRO: Thank you. You may be seated.

3 MR. NEIBURG: May I proceed, Your Honor?

4 THE COURT: You may.

5 MR. NEIBURG: Thank you.

6 DIRECT EXAMINATION

7 BY MR. NEIBURG:

8 Q. Mr. Pometti, what was your role during Welded's Chapter
9 11 cases?

10 A So, during the Chapter 11 proceedings, I was serving as
11 Chief Restructuring Officer.

12 Q And when were you appointed as the Chief Restructuring
13 Officer at Welded?

14 A At -- at the time Welded filed for -- for bankruptcy.

15 Q And the petition date was October 22, 2018. Is that
16 right?

17 A That is correct.

18 Q Can you generally describe your day-to-day
19 responsibilities as CRO?

20 A Generally, I was responsible for overseeing the
21 proceedings on behalf of the estate, helped drive
22 monetization of the assets at the end of the case, and also
23 continue to oversee cash management and liquidity in
24 compliance with all of the bankruptcy reporting processes.

25 Q And when did you stop serving as the debtors' CRO?

1 A Upon a plan of liquidation being confirmed.

2 Q Have you served as CRO for other Chapter 11 debtors?

3 A Yes, I have.

4 Q Approximately how many times?

5 A Approximately four times.

6 Q Are you currently serving as the CRO for another Chapter
7 11 debtor?

8 A I am.

9 Q And where is that?

10 A I am a CRO for the Vice Media Chapter 11 proceeding in
11 the Southern District of New York.

12 Q What is your educational background?

13 A Undergraduate studies, I attended the United States
14 Military Academy at West Point. And then, after serving in
15 the Army, I attended Columbia Business School and received my
16 MBA.

17 A And please briefly describe your professional
18 experience.

19 A Aside from serving as a military intelligence officer,
20 after receiving my MBA, I served as a management consultant
21 for a number of years for a company called A.T. Kearney.

22 I worked for Marsh & McLennan as a chief procurement
23 officer and director of corporate operations, but then
24 subsequently worked for Zolfo Cooper and now AlixPartners as
25 a restructuring adviser.

1 Q And how long have you been at AlixPartners?

2 A AlixPartners acquired Zolfo Cooper in November of 2018,
3 so since the end of 2018.

4 Q So when did Zolfo Cooper first become involved with
5 Welded?

6 A Early in 2018, I believe it was March of 2018, we were
7 engaged by Welded Construction when I was with Zolfo Cooper.

8 Q Can you generally ascribe -- describe what welded
9 engaged Zolfo Cooper to do at that time?

10 A At that time, we were primarily asked to help with cash
11 forecasting, liquidity management, and also contingency
12 planning.

13 Q And what was your personal role in the engagement?

14 A I was one of the managing directors overseeing the
15 engagement, along with a colleague of mine, Kevin Nystrom.

16 Q So let's focus on the October 22, 2018 petition date.

17 Was Welded working on projects other than the ASR
18 project at the time they filed for bankruptcy?

19 A Yes, they were.

20 Q Approximately how many other projects?

21 A There were three other major client -- customers. Some
22 had multiple projects at that point in time. But three --
23 three major customers beyond Transco.

24 Q And did Welded negotiate agreements to complete work
25 post-petition for other project owners?

1 A Yes, they did.

2 Q Were you involved in those negotiations?

3 A Yes, I was.

4 Q And did Welded ultimately reach completion agreements
5 with Columbia Gas and Consumers Energy?

6 A Yes, we did.

7 Q And were -- can you generally describe the terms of the
8 completion agreements?

9 Q The completion agreements generally provided for funding
10 that would be provided to Welded Construction in advance to
11 cover all of our post-petition administrative expenses or
12 actual expenses that would be being incurred completing those
13 contracts.

14 I believe both of those customers had provisions that
15 also afforded us the ability to pay what we would be called
16 "critical vendors" of some pre-petition amounts for third
17 parties, subcontractors associated with those projects.

18 And ultimately, we agreed to have their cash put into a
19 segregated account. And if there was any excess proceeds at
20 the end of that term, it would be returned to those
21 customers.

22 Q And were those two completion agreements approved by the
23 Bankruptcy Court?

24 A Yes, they were.

25 Q Did Welded discuss a potential completion agreement with

1 Transco?

2 A Yes, we did.

3 Q Did Welded and Transco enter into a completion
4 agreement?

5 Q Ultimately, they were referred to as "commitment
6 letters," that -- I think there were three and they covered
7 defined periods of time each.

8 Q And each of those three commitment letters were approved
9 by the Bankruptcy court, correct?

10 A Correct.

11 Q As CRO, were you involved in the negotiation with
12 Transco regarding the commitment letters?

13 A Yes, I was.

14 Q And I think you said it. But each post-petition
15 commitment letter related to specific time periods of work,
16 right?

17 A That is correct.

18 Q Did the post-petition commitment letters provide for the
19 scope of work that Welded would perform under the commitment
20 letters?

21 A I believe the -- the commitment letters had a defined
22 scope of work.

23 MR. NEIBURG: If we could pull up D-1609.

24 Q Do you have --

25 MR. NEIBURG: Oh, Your Honor, I apologize. I got

1 ahead of myself.

2 May I approach with the witness binder?

3 THE COURT: Yes.

4 MR. NEIBURG: Counsel for Transco has already seen
5 it.

6 (Participants confer)

7 THE COURT: Thank you.

8 (Pause in proceedings)

9 BY MR. NEIBURG:

10 Q Okay. D-1609 is an email on October 28th, 2018, from
11 Evan Kirchen to yourself, Rich Wall, and Steve Hawkins. Do
12 you see that?

13 A I do see that, yes.

14 Q Do you recall receiving this email from Mr. Kirchen on
15 that day?

16 A I -- I do, yes.

17 Q And what is your understanding of Mr. Kirchen's role at
18 that time?

19 A My understanding, he was a vice president with Williams
20 and, I believe, had overall responsibility for the ASR
21 project.

22 MR. NEIBURG: Okay. And Mr. Zinkel, if you could
23 zoom in on the first paragraph, where he says -- Mr. Kirchen
24 says:

25 "This morning, Transcontinental Gas Pipe Line

1 Company, LLC (Transco), Welded Construction, LP
2 (Welded), and the surety of performance, Chubb and
3 Payment Bond Number 8219-24-58 (in connection with
4 the work, material, and labor to be provided on
5 Transco's Atlantic Sunrise Spreads 5, 6, and 7, or
6 "the project") met via phone conference to discuss
7 a path forward for continuing the work under
8 Transco/Welded Contract 2016-001, "the contract,"
9 between October 22nd, 2018, and October 29, 2018."

10 Do you see that?

11 A I do.

12 Q Did you participate in the phone call that Mr. Kirchen
13 is referencing?

14 A Yes, I did.

15 Q And if you could just look through the email.

16 Does his email accurately summarize the phone call he
17 referenced?

18 (Pause in proceedings)

19 A I believe it does, yes.

20 Q Okay. And this phone call in this email is the day
21 right before the petition date, correct?

22 A Correct. This is the day prior to us following Chapter
23 11.

24 MR. NEIBURG: All right. Your Honor, I'll seek to
25 admit D-1609.

1 MS. EWALD: No objection.

2 THE COURT: It's admitted.

3 (DX-1609 received in evidence)

4 MR. NEIBURG: And Mr. Zinkel, if you could zoom in
5 on the second paragraph of this email.

6 BY MR. NEIBURG:

7 Q And I'll -- Mr. Pometti, starting with the second line
8 of this paragraph:

9 "Welded also requested prepayment to cover Welded's
10 internal costs and expenses of providing work, as
11 well as Welded third-party subcontractor, vendor,
12 materialmen, and supplier costs, expenses, profit,
13 and invoices for work, labor, material, and rentals
14 (currently estimated to be 5 million)."

15 Did I read that correctly?

16 A Yes, you did.

17 Q What did you understand that sentence to mean that Mr.
18 Kirchen was saying in his email?

19 A Well, generally, our discussion, you know, with regards
20 to the ASR project, you know, consistent with all of the
21 customers -- Mr. Hawkins and I spoke with each customer and
22 basically made clear we're filing for Chapter 11 protection,
23 and the only way we could have crews show up to perform is if
24 we had assurances and, you know, funding to guarantee that
25 our actual expenses that would be incurred were, in fact,

1 going to be paid because we did not have the ability to risk
2 being administratively insolvent once filing for Chapter 11,
3 and that this, generally, was saying that understanding.

4 And the current estimate as of the date of this email
5 was around \$5 million for the initial period of the
6 commitment letter.

7 Q And the initial period for this first commitment letter
8 was October 22 through October 29, 2018. Is that right?

9 A I believe that's correct, yes.

10 Q And as CRO, were you generally familiar with the
11 compensation structure under the pre-petition contract with
12 Transco?

13 A Generally, yes.

14 Q Is it your understanding that the compensation structure
15 contemplated by the commitment letter was different than the
16 structure under the contract?

17 A It -- it was different, yes.

18 Q How so?

19 Q Well, pre-petition, you know, there was a fee component
20 in the -- in the contract where invoices will have kind of
21 profit or a pre -- pre-agreed-to fee collected via invoices.

22 Obviously, that kind of time frame was -- was different.
23 This was now in a one-week period. The invoicing was
24 different. But again, this was purely focused, on the post-
25 petition basis, to be our actual expenses incurred, which was

1 slightly different than how the pre-petition contract was
2 structured.

3 Q Do you recall that, in the prepetition contract, there
4 was a 50 percent equipment fee multiplier on labor costs?

5 A Yes.

6 Q Was it your understanding that the equipment fee
7 multiplier did not apply under the post-petition commitment
8 letters?

9 A Yes.

10 Q Was it important to Welded that the equipment fee
11 multiplier did not apply to the commitment letters?

12 A Yes.

13 Q And why is that?

14 A Well, again, our goal was to ensure our actual expenses
15 were covered. We didn't want to risk administrative
16 insolvency.

17 We weren't seeking to have a profit. And we, obviously,
18 cannot afford to take the risk of having a loss. So we were
19 purely seeking to ensure our actual expenses were -- were
20 covered.

21 Q And if we could turn to D-1603.

22 A Okay. I see that.

23 Q And these are email exchanges involving yourself, Dean
24 McDowell, and Andrew Ralph on October 21, 2018, attaching
25 what is called an "ASR Cost Forecast, 10/21 to 10/28."

1 Do you recognize these emails and the attachment?

2 A I do.

3 Q And turning to the second page of this exhibit, the cost
4 forecast.

5 Were you involved in preparing the cost forecast?

6 A So I was seeing -- overseeing the work of my team, who
7 was coordinating with the project team to, you know, compile
8 this forecast --

9 Q And --

10 A -- so yes.

11 Q And o you recall this cost forecast that was attached to
12 this email?

13 A Yeah. There were multiple versions, obviously. This is
14 kind of a point in time. I kind of see this as, obviously, a
15 higher estimate than ultimately we -- we arrived at.

16 So we were kind of moving fast prior to filing and doing
17 similar efforts for our other customers, as well.

18 MR. NEIBURG: Your Honor, I'll seek the admission
19 of D-1603.

20 MS. EWALD: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (DX-1603 received in evidence)

23 BY MR. NEIBURG:

24 Q And Mr. Pometti, let's focus on the -- what I'll call
25 the "first email," so the bottommost email, where you wrote

1 to Dean McDowell at 7:10. Do you see that email?

2 A I do.

3 Q And just for the Court's reference, what was Dean
4 McDowell's role at the time?

5 A Dean was the CFO of Welded Construction.

6 Q And Mr. Andrew Ralph, what was his role on your team?

7 A He was working directly for me as part of the
8 AlixPartners -- or Zolfo Cooper team at that point in time.

9 Q With reference to the email at 7:10, in your second
10 sentence, you state:

11 "We can't risk incurring administrative expense
12 that we are not covered for. This should not be
13 the exact forecast. We need contingency in here
14 (specifically looking at non-labor)."

15 Do you see that?

16 A I do.

17 Q What did you mean by those statements?

18 A Well, so that first sentence, similar to what I said
19 before, again, we were looking to have all of our actual
20 expenses covered. We didn't want to risk administrative
21 insolvency. And you know, we were moving fast, trying to
22 provide this forecast. And we wanted to ensure we had the
23 best forecast but have some contingency with the
24 understanding that, if there was any access funding, it would
25 then be applied to any subsequent commitment letter or

1 ultimately returned to Transco.

2 Q Mr. Pometti, if you could turn to Tab D-1616

3 And these are email communications on October 22nd,
4 2018, involving yourself and Dean McDowell.

5 And do you recall these emails?

6 A I do, yes.

7 Q So I want to focus your attention on the second email
8 from the top on the first page, which is an email from Dean
9 McDowell to Andrew Ralph, copying you, at 10:48.

10 A I see that, yes.

11 Q Where Mr. McDowell states:

12 "We need to be on the higher side. We can't afford
13 to eat cost here."

14 Do you see that?

15 A I do see that.

16 Q What did you understand Mr. McDowell to be saying there?

17 A Again, Dean was likely just reiterating that we need to
18 ensure that we're funded to have all of our administrative
19 expense covered. We didn't want to risk being underfunded
20 and -- and having some administrative expense exposure and
21 being potentially administratively insolvent.

22 Q Now did Welded anticipate its labor costs during the
23 post-petition commitment letter work phase decreasing?

24 A So, at that point in time, they were expected it would
25 fluctuate, but likely, as work was being completed, it would

1 ultimately decrease.

2 Q Now, if the commitment letters utilized the 50 percent
3 equipment fee multiplier, but you were having lower labor
4 costs, how would that have affected Welded's administrative
5 expense exposure?

6 A Can you repeat that question?

7 Q So, if the compensation under the commitment letters --

8 A Uh-huh.

9 Q -- included just a 50 percent fee on labor costs, but
10 your labor costs were decreasing, would that have affected
11 Welded's administrative expense exposure?

12 A Potentially, yes.

13 Q And could Welded's actual cost for equipment for work
14 under the commitment letters have been less than a 50 percent
15 equipment fee?

16 A Yes. Yes.

17 Q And could the actual equipment costs incurred under the
18 commitment letter have been more than the 50 percent
19 equipment fee?

20 A Yes.

21 MR. NEIBURG: Your Honor, I'll seek the admission
22 of D-1616.

23 MS. EWALD: No objection, Your Honor.

24 THE COURT: Thank you. It's admitted.

25 (DX-1616 received in evidence)

1 BY MR. NEIBURG:

2 Q Mr. Pometti, if you could turn to Tab PX-421.

3 MR. NEIBURG: This is Main Case Docket 45.

4 Q Mr. Pometti, do you recall this Court's order approving
5 the first commitment letter dated October 21, 2018?

6 A I do, yes.

7 Q Now, looking at the commitment letter itself, which
8 starts on PX-421, Page 6.

9 A Okay.

10 Q Does this commitment letter -- is this identical to the
11 email summary that we talked about that Evan Kirchen sent on
12 October 21, 2018?

13 A I'm not sure if it's identical, but it's definitely very
14 similar, consistent with that email.

15 Q Now let's look -- let's go to the order, Paragraph
16 Number 2, which splits Pages 2 and 3.

17 A Okay.

18 Q And I'll focus your attention on the second sentence of
19 Paragraph 2. So that begins with:

20 "Unless otherwise agreed to in writing by Transco,
21 the Transco funds shall be used by the debtors
22 solely to fund the Atlantic Sunrise Pipeline
23 project for the period from October 22, 2018,
24 through and including October 2018" -- or "28th,
25 2018."

1 Do you see that?

2 A I see that.

3 Q Did Welded establish a separate account with respect to
4 the amounts paid by Transco under the commitment letters?

5 A We did.

6 Q And was that account different than the pre-petition
7 operating account at Huntington Bank?

8 A Yes. Yes, it was.

9 Q And was it your understanding that Welded used the
10 prepayments received from Transco under the commitment
11 letters solely to fund its post-petition work on the ASR
12 project?

13 A Yes, that's correct.

14 MR. NEIBURG: Your Honor, I'll move PX-421 into the
15 record.

16 MS. EWALD: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (PX-421 received in evidence)

19 BY MR. NEIBURG:

20 Q And Mr. Pometti, if you can go to Tab D-1645.

21 A Okay.

22 Q And these are -- it's a longer email chain, but I just
23 want to focus your attention on the emails that are on the
24 first page.

25 A Okay.

1 Q Do you recall these email communications with Joe Hines,
2 Dean McDowell, and Marcus Hood on October 26 and October 27,
3 2018?

4 A Generally, I do, yes.

5 Q And in his email at 6:46 on October 26th, Dean writes to
6 Joe Hines:

7 "We need to get a solid look at what actual costs
8 were incurred this week on ASR."

9 Do you see that?

10 A And I see that, yes.

11 Q And Joe Hines responds:

12 "Are we talking about total Welded costs or just
13 items reimbursable to Williams?"

14 Do you see that?

15 A I do see that.

16 Q And then you weigh in at 7:36 a.m. on October 27th,
17 where you say:

18 "Joe, it should be the best estimate of actuals
19 compared to the estimate provided earlier this week
20 of total actual costs to be incurred by Welded and
21 pre-funded by Williams (one of the email threads
22 attached) for this current week."

23 Do you see that?

24 A I do see that.

25 Q What did you mean by that statement?

1 A So this email appears to be at the end of the first
2 period of the initial commitment letter And the agreement
3 was, after we got, you know, to the end of that period, we
4 would revise how we believe actuals materialized for that
5 week and compare it to the initial funding provided, such
6 that, in any subsequent commitment letter, if they -- if we
7 were over-funded, that would be credited against the next
8 funding. And if there was any under-funding, that would be
9 part of the next commitment letter request.

10 So this was just trying to compile how we think that
11 week actually turned out as compared to the initial estimate
12 that was provided for the first commitment letter.

13 MR. NEIBURG: Okay. Your Honor, I'll move to admit
14 D-1645.

15 MS. EWALD: No objection.

16 THE COURT: It's admitted.

17 (DX-1645 received in evidence)

18 BY MR. NEIBURG:

19 Q So, Mr. Pometti, let's turn to D-1658.

20 And I'll first -- these appear to be emails between
21 yourself and Mary Edmonds on October 28, 2018.

22 Do you see that?

23 A I see that, yes.

24 Q Do you recall what role Ms. Edmonds had at Transco?

25 A My understanding was she worked in the general counsel

1 office at Williams.

2 Q Just a quick little housekeeping here.

3 Do you see the first email from Mary Edmonds, October
4 28, 2018, at 5:39 p.m.?

5 A I do see that.

6 Q And then it looks like you responded on October 28th,
7 2018, but it says 4:51 p.m.

8 Is it your understanding that perhaps you and Mr.
9 Edmonds were in different time zones while you were emailing
10 and that accounts for the fact that you emailed her before
11 her email arrived?

12 A I would -- I would have to assume we were in different
13 time zones at that -- at that time.

14 Q So let's turn to the second page of this exhibit where
15 it's 2A.

16 Do you see that?

17 A I do see that.

18 Q And then there's a bullet point there where Ms. Edmonds
19 asked the question:

20 "Are 'equipment costs' included in this the same as
21 the included equipment in the contract?"

22 Do you see that?

23 A I do see that.

24 Q What did you understand Ms. Edmonds to be asking you?

25 A Well, when entering into the second commitment letter,

1 the commitment letter structure changed somewhat. We were
2 then directed to exclude any subcontractor expense in our
3 pre-funding request because Williams, at that point in time,
4 wanted to pay all of those directly. So it was a bit
5 different than the initial commitment letter.

6 So my understanding was we were now trying to confirm
7 that our pre-funding request and what we had called
8 "equipment costs" was excluding any subcontract --
9 subcontractor expense or anything else that would be direct-
10 paid by Williams and that it was only including items that
11 were, you know, to be paid under the pre-funded dollars.

12 Q Okay. And it looks like, in your response email, you
13 say "see below." And then there's a shaded area in this 2A.

14 Do you understand that, where it begins "I am
15 confirming," that that's what you inserted in your response?

16 A Yeah. I believe that was my response, kind of embedded
17 within that thread.

18 Q Yeah. Okay. So I'll read that. So you responded:

19 "I am confirming. FYI, the project team was
20 directed to solely include labor and equipment,
21 estimated costs, and exclude all subcontractor
22 expense."

23 Do you see that?

24 A I do see that.

25 Q What did you mean by that statement?

1 A I just wanted to provide assurance that, you know, while
2 I was confirming my guidance and the -- the estimates that we
3 were compiling were to exclude all subcontractor expense and
4 that nothing -- none of -- no subcontractor expense would be
5 embedded in the labor and equipment cost estimate that we
6 were compiling and preparing.

7 MR. NEIBURG: Okay. And Your Honor, I'll move D-
8 1658.

9 MS. EWALD: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (DX-1658 received in evidence)

12 BY MR. NEIBURG:

13 Q And when you stated that "I am confirming," do you
14 recall then reaching out to Welded team members for
15 confirmation?

16 A Yeah, I'm sure I reached out to the Welded team in
17 response.

18 MR. NEIBURG: Okay. So let's pull up D-1649.

19 Q And these are emails on October 28, 2018, between
20 yourself, Joe Hines, and Dean McDowell.

21 Do you recall these emails?

22 A I do.

23 Q And it looks like, in reference to the email from
24 yourself at 5:47 p.m. to Joe Hines, you state:

25 "Can you very quickly confirm the equipment

1 estimate is for all equipment defined as 'included
2 equipment' under the contract?"

3 Do you see that?

4 A I do see that, yes.

5 Q What were you asking Joe to confirm?

6 A Again, when we were preparing our estimates for the
7 commitment letters, we had a line that included the word
8 "equipment." And I was just confirming that, definitionally,
9 the cost estimates that were included in that line were the
10 same as the items that were captured under the "included
11 equipment" definition of the original contract.

12 Q Joe responded.

13 And then Dean states in his email at 6:05:

14 "Just to be clear, this amount reflects a flat 50
15 percent of labor as is contractual terms."

16 Then he says:

17 "Frank, is this what Williams is looking for, or
18 are they looking to cover actual incurred cost?"

19 Do you recall that question from Dean?

20 A I do.

21 Q And you respond at 6:11 p.m.:

22 "They are looking to cover actual cost incurred by
23 Welded."

24 And you go on:

25 "Does the 50 percent of labor estimate cover or

1 exceed our expected cash cost to be incurred this
2 week for equipment?"

3 Do you see that?

4 A I do see that.

5 Q And what were you asking about in terms of whether the
6 50 percent of labor estimate covered or exceeded expected
7 equipment cost?

8 A. I was just trying to confirm that using -- was that the
9 best estimate for -- for actual expense to be incurred and
10 was it going to come in close to our actuals or have some
11 contingency or cushion in there as part of that pre-funding
12 request.

13 Q And Sean Singleton responds in that top email:

14 "Yes, it will be very close."

15 Do you see that?

16 A I do see that.

17 Q What did you understand Mr. Singleton to be saying
18 there?

19 A That it was, in fact, a very good estimate, you know,
20 probably the best estimate possible that we thought that
21 week's actual equipment cost would be.

22 MR. NEIBURG: Your Honor, I'll move D-1649.

23 MS. EWALD: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (DX-1649 received in evidence)

1 BY MR. NEIBURG:

2 Q And after getting confirmation through these emails, Mr.
3 Pometti, do you recall responding back to Ms. Edmonds?

4 A Yes.

5 MR. NEIBURG: If you could pull up D-1648.

6 Q If you see here, that first email at 5:39 from Ms.
7 Edmonds, that's the email that we already looked at.

8 A Correct.

9 But it looks like you may have responded right to her
10 email again without your prior responses being included,
11 right?

12 A Correct.

13 Q So you respond at 4:54 p.m. -- again, must be a time
14 zone difference:

15 "Re: The equipment expense estimate. 'Equipment
16 cost' included in this estimate is the same as the
17 included equipment in the contract."

18 Do you see that?

19 A I do see that.

20 Q What did you mean by:

21 "'Equipment cost' included in this estimate is the
22 same as included equipment in the contract."

23 A Again, what we were kind of capturing under equipment
24 cost in our pre-funding request was, in fact, the same kind
25 of type of expense that was defined as being included in that

1 "included equipment" definition.

2 Q By using the term "included equipment" in your email,
3 were you implying that the 50 percent equipment fee would
4 apply?

5 A No.

6 Q Did Ms. Edmonds ever tell you that it was Transco's
7 understanding that a 50 percent equipment fee applied under
8 the commitment letters?

9 A No, she did not.

10 MR. NEIBURG: Your Honor, I'll seek the admission
11 of D-1648.

12 MS. EWALD: No objection.

13 THE COURT: Thank you. It's admitted.

14 (DX-1648 received in evidence)

15 BY MR. NEIBURG:

16 Q Mr. Pometti, if you could pull up Tab PX-428.

17 A Okay.

18 MR. NEIBURG: This is Main Docket Number 111 in the
19 main bankruptcy case.

20 BY MR. NEIBURG:

21 Q And Mr. Pometti, do you recall this order approving a
22 second commitment letter from Transcontinental Gas Pipe Line
23 Company?

24 A I do.

25 Q And the second commitment letter is attached as Exhibit

1 1 to the order. Is that right?

2 A That is correct.

3 Q And let's turn to the second commitment letter itself,
4 beginning at PX-428, Page 6. And focusing on that first
5 paragraph.

6 A Okay.

7 Q Is it your understanding that the second commitment
8 letter addressed the funding of work between October 30, 2018
9 and November 4, 2018?

10 A Yes.

11 Q And is it your understanding --

12 MR. NEIBURG: If we could go, Mr. Zinkel, down to
13 the next section, the header "Week 2 Contract Work."

14 BY MR. NEIBURG:

15 Q Is your understanding that it's this provision of the
16 second commitment letter that indicated what the Week 2
17 contract work would be under this commitment letter?

18 A Yes.

19 Q And with reference to (i):

20 "Transco shall pay 1.8 million to the debtors'
21 operating account as a prepayment for the forecast
22 for all labor and equipment costs (for included
23 equipment) attributable to the Week 2 contract work
24 (Week 2 contract prepayment)."

25 Do you see that?

1 A I do.

2 Q Do you recall that Transco paid Welded 1.8 for work
3 under the second commitment letter?

4 A I believe they did, yes.

5 Q And you mentioned earlier that Transco wanted to pay
6 subcontractors directly when it came time for the second
7 commitment letter. Is that right?

8 A Correct.

9 Q And is that what (ii) here on this first page of the
10 commitment letter addresses?

11 A Yes, it does.

12 Q And with respect to (i), do you -- what's your
13 understanding of why "included equipment" was used in that
14 sentence?

15 A Again, my understanding was, because we were now
16 separating all subcontractor costs or -- or things that would
17 be paid direct by Williams, this was just to definitionally
18 be clear what, in fact, the 1.8 million in this case was
19 going to be utilized in terms of payments made by the debtors
20 versus what was going to be direct-paid by Transco.

21 MR. NEIBURG: Your Honor, I'll move PX-428.

22 MS. EWALD: No objection.

23 THE COURT: It's admitted.

24 (PX-428 received in evidence)

25 BY MR. NEIBURG:

1 Q Mr. Pometti, if you could turn to PX-655.

2 A Okay.

3 Q And it's a long email chain, but the emails that we'll
4 discuss are just beginning with Jon Heil's email on November
5 5, 2018, at 4:01, which is Page 2 onto the top of Page 3.

6 A Okay. I see that.

7 Q Do you recall, on November 5, that drafts of a
8 commitment letter were exchanged between the parties?

9 A Yes.

10 Q And these drafts that are being referenced, this is a
11 proposed third commitment letter. Is that right?

12 A That is correct.

13 Q And is it your understanding that Mr. Heil was Transco's
14 counsel at the time?

15 A It was my understanding that Mr. Heil was kind of
16 outside counsel representing Williams at that point in time.

17 Q Okay. And with reference to -- with reference to -- so
18 Mr. Heil's email at the top, it starts at the top -- or I'm
19 sorry -- it starts at the bottom of Page 1, but the text is
20 actually at the top of Page 2.

21 Do you see that email from Mr. Heil at 5:24 p.m. on
22 November 6th?

23 A I do.

24 Q And he states:

25 "Based on our call, we understand that a revised

1 forecast (given the narrow time line and scope) and
2 the reconciliation of the 1.8 million compared to
3 actual cost of work last week would be provided
4 today."

5 Do you see that?

6 A I do see that.

7 Q Did you understand that Mr. Heil was asking for a
8 revised forecast for the work to be performed by Welded under
9 the third commitment letter?

10 A Yes. My understanding, the "revised forecast" would be
11 referring to the -- the third commitment letter pre-funding
12 requirements.

13 Q And you respond to Mr. Heil at 5:29 on November 6th
14 where you indicate:

15 "Jon, our team was working on the revised forecast,
16 which served as the basis for the amounts
17 referenced in the draft agreement sent across."

18 Then you state:

19 "Below is the summary behind the forecast in line
20 with the agreed-upon scope."

21 Q Do you see that?

22 A I do see that.

23 Q What did you mean by "agreed-upon scope"?

24 A So, at that point in time, the third commitment letter
25 had, you know, specific work that was being requested, you

1 know, by spread with defined time frames associated with
2 each.

3 Q Was your understanding that the commitment letter
4 dictated the scope of work?

5 A Yes, it was.

6 Q Did the change in scope of work under the commitment
7 letter affect your cost forecasting?

8 A Yes.

9 Q And how so?

10 A So, again, as that scope was being refined, our -- our
11 forecasting of our actual expenses would have been, you know,
12 refined to ensure it was only aligned with that actual scope
13 of work.

14 Q So with reference to the -- I'll call it the "table" on
15 your email. Do you see that?

16 A I do see that.

17 Q Where it says direct labor, approximately 1.4 million?

18 A I do see that.

19 Q And then down below equipment, it says 487,000?

20 A I do see that.

21 Q That's not 50 per -- the amount listed for equipment,
22 that's not 50 percent of the labor cost, is it?

23 A No, it's not.

24 MR. NEIBURG: Your Honor, I'll seek the admission
25 of PX-655.

1 MS. EWALD: No objection.

2 THE COURT: It's admitted.

3 (PX-655 received in evidence)

4 BY MR. NEIBURG:

5 Q Mr. Pometti, if you could turn to PX-434.

6 MR. NEIBURG: This is Main Docket Number 172.

7 Q Mr. Pometti, do you recall this November 8, 2018 order
8 approving the third commitment letter from Transcontinental
9 Gas Pipe Line Company?

10 A I do.

11 Q Turning to the commitment letter itself, which is
12 attached as Exhibit 1 to the order. So starting at 434, Page
13 6.

14 A Okay.

15 MR. NEIBURG: And if we could focus on the second
16 of this order.

17 BY MR. NEIBURG:

18 Q Let's see. It's:

19 "Transco and Welded now wish to address, in a third
20 commitment letter, the funding of work between
21 November 5, 2018, and the conclusion of the
22 remaining work set forth herein (which shall be no
23 later than November 15, 2018 for right-of-way work,
24 no later than November 21, 2018 for Spread 5 and 7
25 yard cleanup, and no later than December 8, 2018,

1 for Spread 6 yard cleanup)."

2 Do you see that?

3 A I do see that, yes.

4 Q Do you recall discussions with Transco concerning the
5 scope of work under the third commitment letter?

6 A I do.

7 Q And is your understanding that the underlying sections,
8 starting on Page 2 into Page 3 of the third commitment
9 letter, dictated the work that Welded would perform at
10 contractor yards, Spread 5, Spread 6, and Spread 7?

11 A That is my understanding, yes.

12 Q Do you understand whether Welded completed its scope of
13 work under the third commitment letter?

14 A My understanding is that they did complete all of the
15 work under this commitment letter.

16 Q And did Welded complete the scope of work under each of
17 the commitment letters?

18 A Yes, I believe they did.

19 Q So, if we look at the third paragraph on the first page
20 of the commit -- of this commitment letter. And I'll start
21 with that last sentence in this paragraph:

22 "By November 8, 2018, Welded shall provide Transco
23 a reconciliation of the 1.8 million prepayment
24 provided pursuant to the second commitment letter
25 compared to actual costs incurred for the week of

1 October 29, 2018 through November 4 of 2018,
2 including detailed time sheet backup."

3 Do you recall that?

4 A I do.

5 Q Do you understand whether Welded provided that
6 reconciliation to Transco?

7 A I believe we did, yes.

8 Q And then if we go to the top of the next page, there's
9 just that one sentence:

10 "By November 8, 2018, Welded shall provide Transco
11 a revised forecast of work to be performed and
12 costs to be incurred by Welded on the project for
13 the remaining work set forth in" --

14 Do you see that?

15 A I do see that.

16 Q Do you recall whether Welded provided Transco a revised
17 forecast of actual costs to be incurred by Welded on the
18 project under the third commitment letter?

19 A We did provide a forecast for the third commitment
20 letter for funding requirements.

21 MR. NEIBURG: Your Honor, I'll seek for the
22 admission of PX-434.

23 MS. EWALD: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (PX-434 received in evidence)

1 MR. NEIBURG: And I have one more question
2 specifically about this. If we could go to 434, Page 8,
3 middle paragraph, about halfway down, starting -- the
4 sentence starts with, "Within ten business days after
5 December 8, 2018."

6 So, Mr. Zinkel, I think you could just zoom and
7 highlight that whole mid-section of that paragraph, that's
8 fine. All right.

9 BY MR. NEIBURG:

10 Q Mr. Pometti, do you see that sentence that I'm about to
11 read starting with "Within ten business days"?

12 A I do.

13 Q It says:

14 "Within ten business days after December 8, 2018,
15 Welded shall provide Transco a reconciliation of
16 all remaining amounts for obligations that accrued
17 or were incurred for forecasted work versus actual
18 cost of work, which shall be subject to Transco
19 review and audit."

20 Q Do you see that?

21 A I do see that, yes.

22 Q What did you understand this provision to require?

23 A Generally, what it states is that, you know, ten
24 business days after December 8th -- which I think was the out
25 -- you know, the outside date of the scope of work contained

1 in this commitment letter -- we were to provide a
2 reconciliation of how actual expenses have materialized
3 relative to the forecasted expenses.

4 Q And as CRO, were you involved in the process for
5 reconciling the estimated costs under the commitment letters
6 to the actual costs incurred by Welded under the commitment
7 letters?

8 A Yes. So I oversaw the -- the work in pulling together
9 the reconciliation. That involved not only members of my
10 team, but obviously members of the finance team and kind of
11 payroll team within Welded, as well as the project team, as
12 well.

13 Q If we could turn to Tab D-1781.

14 And I just have some questions about the first two
15 emails right on the first page.

16 I'll first refer you to the email on December 18, 2018,
17 from Transco's counsel, Jon Heil, to yourself, where Mr. Heil
18 states:

19 "As a reminder, the deadline for Welded to provide
20 a reconciliation of all amounts for obligations
21 that accrued or were incurred for the forecast of
22 work versus the actual cost of work, which is
23 subject to Transco review and audit pursuant to the
24 commitment letters, is ten business days after
25 December 8 or (by December 21, 2018)."

1 Do you recall that email?

2 A I do.

3 Q And in -- it looks like, after you receive that email
4 from Mr. Heil, you send an internal email. Is that accurate?

5 A That is, yes.

6 Q And you state:

7 "See below from Williams' outside counsel. Can you
8 confirm the level of detail we will be able to
9 provide?"

10 Do you see that?

11 A I do see that.

12 Q And then, in the last sentence of your email, you state:

13 "Beyond then, we will need just an accrual estimate
14 for incurred not yet billed."

15 Do you see that?

16 A I do see that.

17 Q So, at that point in time, had Welded received all
18 necessary invoices that would enable Welded to perform a
19 final reconciliation of actual costs incurred under the
20 commitment letters?

21 A Yeah, I would expect we -- we have not yet received
22 every final invoice for -- for the work performed during that
23 period.

24 MR. NEIBURG: Your Honor, I'll move D-1781.

25 MS. EWALD: No objection, Your Honor.

1 THE COURT: It's admitted.

2 (DX-1781 received in evidence)

3 BY MR. NEIBURG:

4 Q Mr. Pometti, do you recall this email from Dean McDowell
5 to John Todd, January 17, 2019, in which you were copied?

6 A Just to clarify. Are we on a new --

7 Q Oh, I'm sorry, yeah. Did I not read PX-641? Sorry.
8 Would you turn to --

9 A Yes.

10 Q -- PX-641?

11 A Okay. I am there.

12 Q All right. Let me know when you've had a moment to
13 review the email and the attachment.

14 A I see this, yes.

15 Q Now that we're on the same doc, Mr. Pometti, do you
16 recall this January 17th, 2019, email from Dean McDowell to
17 John Todd at Williams.com in which you and Andrew Ralph were
18 copied?

19 A I generally do, yes.

20 Q So Dean McDowell states:

21 "Please find attached the reconciliation of post-
22 petition costs to post-petition cash advances made
23 by Williams to Welded."

24 Do you see that?

25 A I do see that.

1 Q And let's turn to the attachment.

2 Could you generally describe for the Court what this
3 attachment is?

4 A So this attachment is a kind of preliminary
5 reconciliation that was provided, which would summarize --
6 well, I'll start at the bottom.

7 The "cash paid" row at the very bottom, 7.875 million,
8 is, in total, the total funding that was provided under the
9 three commitment letters.

10 And the table above is just summarizing what the
11 estimated -- or what the actual costs were with the exception
12 there is a line item for accruals where we haven't finished
13 reconciling invoices or may not have received all final
14 invoices. So that was then just an estimate for what's
15 accrued and not yet fully reconciled or received.

16 And the first column, outside of what was pre-funded is
17 just summarizing what was direct paid by Williams under the
18 last two commitment letters when they chose to direct-pay all
19 subcontractors.

20 Q Okay. Do you see at the bottom of this first page of
21 the preliminary reconciliation the asterisk beginning with
22 "accruals"?

23 A I do see that, yes.

24 Q So it reads:

25 "Accruals include over 300 invoices that are

1 currently being verified as a post-petition ASR
2 project expense, and the final amounts may be
3 greater than the cash received, leaving no cash to
4 refund at this time."

5 Do you see that?

6 A I do see that.

7 Q What was meant by that statement?

8 Q So there were a number of invoices received. And often,
9 invoices may span multiple projects or multiple time periods.
10 And you know, third parties were submitting invoices and some
11 tried to re-bill amounts from prior periods. So there was
12 still a reconciliation that was ongoing to confirm:

13 One, that these were all, in fact, post-petition
14 expense-related;

15 Two, that they did all, in fact, relate to the ASR
16 project.

17 And you know, upon completing that, you know, we would
18 have a final reconciliation in addition to what additional
19 invoices may come in.

20 But given the size of the dollars associated with these
21 300 -- 300 invoices, it kind of exceeded the funding. So
22 there was a risk that there may be no excess cash is what
23 that was referring to.

24 Q And were you involved, as CRO, in preparing the
25 preliminary reconciliation that was sent to Transco or John

1 Todd at Williams on January 17, 2019?

2 A Yeah. Again, I oversaw the overall effort that was
3 being conducted by both my team and the Welded finance and
4 project team.

5 Q So, at this time, January 17, Welded had not yet
6 received all invoices and was in the process of verifying 300
7 invoices, correct?

8 A Correct.

9 Q Why did Welded send Transco a preliminary
10 reconciliation?

11 A Yeah. Under the commitment letter, we were obligated to
12 provide reconciliation.

13 And you know, I recall, in addition to emails, we had
14 several calls about this reconciliation. So we were
15 providing it at their request, understanding that there are
16 still amounts to -- to potentially get invoiced and collected
17 and invoices that were being reconciled.

18 We were trying to be responsive and provide the most
19 up-to-date view on how actuals were -- were coming in
20 relative to the pre-funding provided.

21 MR. NEIBURG: Okay. Your Honor, I'll move PX-641.

22 MS. EWALD: No objections, Your Honor.

23 THE COURT: Thank you. It's admitted.

24 (PX-641 received in evidence)

25 BY MR. NEIBURG:

1 Q Mr. Pometti, if you could turn to tab D-1858.

2 A Okay.

3 Q These are emails from April 18th, 2019, attaching an
4 April 18th, 2019 letter from Jon Heil to Mr. Beach? You were
5 --

6 A Yeah, I see that.

7 Q And it looks like, in the middle email on the first
8 page, at 1:34, Mr. Beach forwarded the letter he received
9 from Mr. Heil to yourself and Mr. Hawkins and Mr. McDowell,
10 correct?

11 A He sent it to myself --

12 Q Oh, I'm sorry.

13 A -- and mister --

14 Q Mr. Beach sent it to --

15 A Yeah.

16 Q -- yourself, right?

17 A Yeah.

18 Q And Mr. Ralph.

19 A And -- yep.

20 Q And then you -- do you forward it to others at 2:34?

21 A Yes, I did.

22 Q Okay. And in your email, you state:

23 "See attached. Williams finally came back and are
24 claiming we owe \$2.4 million."

25 Do you see that?

1 A I do see that.

2 Q To your knowledge, was this April 18, 2019 letter the
3 first response from Transco regarding the January 17, 2019,
4 preliminary reconciliation that we just discussed?

5 A Yes, that is my recollection was this the first response
6 we received to that initial reconciliation.

7 Q And is it your understanding that, by Mr. Heil's letter,
8 April 18, 2019, Transco was asserting that the equipment fee
9 multiplier that was applicable to the contract also applied
10 under the commitment letters?

11 A That is my understanding, yes.

12 Q Do you agree with that position by Transco?

13 A No, I do not.

14 Q Why not?

15 A Again, immediately prior to filing, we had the same
16 conversation with all customers and we were very clear. We
17 were only seeking to have our actual expenses covered on a
18 post-petition basis; and, again, we're not seeking a profit
19 or a loss. But that was always the conversation. And we
20 expressly said we could not risk administrative insolvency.

21 Q And prior to the time that Transco sent this letter on
22 April 18, 2019, did anyone ever tell you that Transco
23 believed or understood that the 50 percent equipment fee
24 under the contract applied in the context of the post-
25 petition commitment letters?

1 A This was the first time I was made aware of that
2 viewpoint.

3 MR. NEIBURG: Your Honor, I'll move D-1858.

4 MS. EWALD: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (DX-1858 received in evidence)

7 BY MR. NEIBURG:

8 Q Mr. Pometti, we'll briefly -- let's turn to PX-476.

9 Do you recall this motion by Transco in which it sought
10 approximately \$2.3 million as a refund in connection with the
11 commitment letters?

12 A I do recall that, yes.

13 Q Do you understand that, like the April 18 letter we just
14 talked about, that, in the motion, Transco was asserting that
15 the equipment fee under the contract also applied in the
16 context of the commitment letters?

17 A Yes, I do recall that.

18 MR. NEIBURG: Your Honor, I'll move PX-476.

19 MS. EWALD: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (PX-476 received in evidence)

22 BY MR. NEIBURG:

23 Q And Mr. Pometti, we talked about the January 17, 2019,
24 preliminary reconciliation, right?

25 A (No verbal response)

1 Q At some point, did Welded prepare a final reconciliation
2 under the post-petition commitment letters?

3 A Yes, they did.

4 Q Were you involved in the process of preparing the final
5 reconciliation?

6 A I oversaw the work of -- within my team, who then were
7 coordinating with the Welded finance team and -- and project
8 team.

9 MR. NEIBURG: If we could turn to PX-654. And Mr.
10 Zinkel, if you could first bring up 654, Page 4.

11 (Pause in proceedings)

12 BY MR. NEIBURG:

13 Q And Mr. Pometti, do you recall this document?

14 A I do, yes.

15 Q And the what's reflected on Page 4, is this the summary
16 of the final post-petition reconciliation prepared by Welded?

17 A It is, yes.

18 Q And with reference to the bottom, what did your team
19 determine with respect to the prepayment amounts from Transco
20 compared to the actual costs incurred by Welded?

21 A So, based on the final accounting of actual expenses
22 incurred verse what was pre-funded, that there was
23 \$335,997.72 remaining in the customer account that was
24 established for the ASR project that was available to be
25 returned to Williams.

1 Q And do you understand that what is PX-654 includes
2 copies of the backup invoices and other documents supporting
3 that analysis in the final reconciliation prepared by Welded?

4 A Yeah. My understanding, without reconciling the invoice
5 in here to the schedules prepared, but this appears to have
6 all of the supporting invoices and -- and summaries behind
7 this reconciliation.

8 Q And is it your understanding that this document was
9 produced to Transco during this litigation?

10 A That is my understanding, yes.

11 MR. NEIBURG: And Mark, if you could also pull up
12 PX-654.0002.

13 BY MR. NEIBURG:

14 Q Mr. Pometti, is it -- let me know. Have you had a
15 chance to review PX-654.0002?

16 A 654 zero zero?

17 Q The Excel that's on the screen.

18 A Oh, the Excel on the screen.

19 Q Yeah.

20 A Yes, I see that.

21 Q Is it your understanding that this is the native Excel
22 underlying the PDF summary sheet that we just talked about?

23 A This appears to be the kind of Excel backup or Excel
24 version of -- of the final reconciliation, yes.

25 MR. NEIBURG: Your Honor, I'll move PX-654 and PX-

1 654.0002.

2 MS. EWALD: No objection, Your Honor.

3 THE COURT: They're both admitted.

4 (PX-654 and PX-654.0002 received in evidence)

5 MR. NEIBURG: Your Honor, I'm happy to report we're
6 moving on from the commitment letters.

7 BY MR. NEIBURG:

8 Q So, Mr. Pometti, as CRO, were you aware that, at one
9 point in this litigation, Transco started a large claim on
10 account of -- in the event that the surety did not pay any
11 third-party claims made against the surety bond?

12 A I do believe they filed a claim.

13 MR. NEIBURG: Mr. Zinkel, if you could pull up PX-
14 647.

15 (Participants confer)

16 BY MR. NEIBURG:

17 Q And Mr. Pometti, were you aware that the surety
18 reconciled and paid third-party claims made against the
19 surety bond?

20 A Yes.

21 Q Were you and your team involved in the surety's
22 reconciliation process?

23 A Yes, we were.

24 (Participants confer)

25 MR. NEIBURG: Your Honor, this is the native

1 version of PX-647.

2 BY MR. NEIBURG:

3 Q Do you recognize this Excel, Mr. Pometti?

4 A I do.

5 Q And what is it?

6 A So this table was a summary of all the bond claims that
7 were filed. And it was kind of used throughout the course of
8 the reconciliation process to track the status of each bond
9 claim.

10 Q And do you see the column, Column K, "per AP records"?
11 What does that mean?

12 A So Column J is the amount that was asserted in the bond
13 claim. And then the "per AP records," I believe that refers
14 to accounts payable.

15 This is, you know, taking the company's records to say
16 what -- the company's books and records to say were invoices
17 associated with the ASR project that were outstanding.

18 Q And column L where there's certain amounts where it says
19 denied, do you understand what that represents?

20 A My general understanding is there would be items that
21 ultimately were determined to not be valid claims and could
22 be denied for various reasons. It could have been -- already
23 have been paid or it could be related to a different project.

24 Q And Column M, "paid by surety." What is your
25 understanding of what that column represents?

1 A Ultimately, of all the bond claims that were submitted,
2 these were the amounts ultimately paid by the surety to
3 resolve those bond claims.

4 MR. NEIBURG: And Mr. Zinkel, if you could scroll
5 down. I forget the exact row, but there's like a summary row
6 at the bottom.

7 (Pause in proceedings)

8 MR. NEIBURG: There it is, Row 134.

9 BY MR. NEIBURG:

10 Q Do you see that Row 134, Mr. Pometti?

11 A I do see that, yes.

12 Q Could you explain what you understand these amounts to
13 be that are represented in the various columns?

14 A So, in total, there's roughly seventy-nine and a half,
15 79.6 million of bond claims filed.

16 When the company completed their review of all of the
17 supporting invoices, initially, there was 74.5 million that
18 reviewed as potentially valid invoices. I do recall many of
19 these bond claims had invoices that pertained to other
20 projects that were kind of stripped out.

21 And then of the 74.5 million, the next three columns
22 basically summarize, you know, how these were ultimately
23 resolved.

24 Clearly, of the seventy-four and a half, 74.4 million
25 ultimately were there been paid by the surety.

1 There was a small amount, 87,000, that might have been
2 paid or settled directly by Welded at one point in time.

3 And then 168,000 was then subsequently determined to not
4 be a valid bond claim and was denied.

5 Q And Mr. Pometti, to your knowledge, did the surety pay
6 or otherwise resolve all third-party surety claims?

7 A To the best of my knowledge, they have.

8 Q Are you aware of any unresolved third-party claims
9 related to Welded's work on the ASR project?

10 A I am not aware of any unresolved bond claims.

11 MR. NEIBURG: Your Honor, I'll seek the admission
12 of PX-647, the native version.

13 MS. EWALD: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (PX-647 received in evidence)

16 BY MR. NEIBURG:

17 Q Mr. Pometti, what was your understanding of -- you
18 understand that Bechtel was a former shareholder of Welded?

19 A Yes.

20 Q And at the time of the bankruptcy case, Bechtel was a
21 shareholder of Welded?

22 A Yes.

23 Q All right. Do you recall whether Bechtel filed proofs
24 of claim against Welded?

25 A I do recall they had filed proof of claims.

1 MR. NEIBURG: And if we could turn to Tab PX-646.
2 And Mr. Zinkel, do you see at the top right corner "Claim
3 601"?

4 (Pause in proceedings)

5 MR. NEIBURG: Top right corner. There you go.
6 BY MR. NEIBURG:

7 Q So, Mr. Pometti, is it your understanding that this
8 proof of claim was assigned Claim Number 601, and it was
9 filed on February 28, 2019? Do you see that?

10 A I do see that.

11 MR. NEIBURG: And if we can go to the addendum
12 attached to the proof of claim, in particular PX-646, Page 5.
13 And Mr. Zinkel, if you could highlight that Paragraph (d).

14 And I'll just read the first sentence:

15 "As of the petition date, the outstanding amount
16 that Welded owed to the claimant on account of
17 goods and services provided to Welded was
18 approximately 3.9 million, as illustrated by
19 invoices and other supporting documents."

20 BY MR. NEIBURG:

21 Q Do you see that?

22 A I do see that.

23 Q And there's a Footnote 2 right there, and I'll just read
24 Footnote 2:

25 "The claimant has withheld the continuing services

1 agreement, the loaned employment agreement" -- "
2 employee agreement, and supporting docs for goods
3 and services provided to the debtors in order to
4 avoid producing voluminous records that the
5 claimant believes are already in debtors'
6 possession."

7 Do you see that?

8 A I do see that, yes.

9 Q And with reference to the continuing services agreement,
10 is your understanding that Bechtel provided seconded
11 employees to Welded for work on the ASR project under a
12 continuing services agreement?

13 A Yes, that is my understanding.

14 MR. NEIBURG: Your Honor, I'll seek the admission
15 of PX-646.

16 MS. EWALD: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (PX-646 received in evidence)

19 BY MR. NEIBURG:

20 Q Mr. Pometti, if you could turn to PX-529.

21 A Okay.

22 MR. NEIBURG: It's Main Case Docket Number 1505.
23 It's the order of June 25, 2000 [sic] confirming the debtor's
24 amended chapter plan -- Chapter 11 plan.

25 THE WITNESS: I see that.

1 BY MR. NEIBURG:

2 Q Do you recognize this order confirming the debtor's
3 amended plan?

4 A I do recognize this, yes.

5 MR. NEIBURG: Now, if you could go to PX-529.080.

6 Q And Mr. Pometti, do you understand that the plan
7 provided for the approval of a settlement agreement between
8 Welded, the Official Committee of Unsecured Creditors,
9 Bechtel, and McCaig?

10 A I do recall that, yes.

11 Q And is that the plan settlement agreement, what's
12 reflected as Exhibit A to the plan, beginning at PX529.0080?

13 A Yes, it is.

14 Q Now, as CRO, what was your general understanding of the
15 plan settlement agreement?

16 A Generally, this was a multiparty settlement. The UCC
17 had conducted an investigation on potential causes of action.
18 And this effectively was to settle all -- you know, various
19 claims. And involved kind of cash payment. It involved an
20 indemnification for a rather large claim filed by the central
21 states and then releases among the various parties.

22 Q. So I think you said it.

23 So do you understand that the settlement released
24 potential estate claims against Bechtel?

25 A Yes.

1 Q And do you understand that the -- that Bechtel released
2 its claims against the estate?

3 A Yes.

4 Q And the settlement amount you reference, was that
5 payable by Bechtel?

6 A Yes, it was.

7 Q All right. And I think that you mentioned release
8 provisions.

9 MR. NEIBURG: Let's just turn to PX-529.82,
10 Paragraphs 4 and 5.

11 BY MR. NEIBURG:

12 Q And Mr. Pometti, is it your understanding that it's
13 Paragraphs 4 and 5 of the settlement agreement that embody
14 the releases that you just talked about?

15 A Yes, that's correct.

16 Q And with -- particularly with respect to the release of
17 claims by partner settlement of the parties, you understand
18 that includes Bechtel, right?

19 A Yes, it does.

20 Q And do you recall that we just talked about Claim Number
21 601 that Bechtel filed?

22 A I do.

23 Q And this release, is it your understanding that this
24 release also provided for a release of Bechtel's claim
25 numbered 601?

1 A Yes, I see it covered that proof of claim. But there
2 were several others that were filed.

3 Q And several others. Okay.

4 MR. NEIBURG: And if we could -- we're going to go
5 back to the plan, five -- so, Mr. Zinkel, if you could PX-
6 529.0072.

7 BY MR. NEIBURG:

8 Q And with reference to Section 11.11 of the plan entitled
9 "Releases and Related Matters." Do you see that?

10 A I do.

11 Q Is it your understanding that 11.11(a) provides for the
12 debtor releases?

13 A Yes.

14 Q And is it your understanding that 11.11(b) provided --
15 or encompasses the releases that Bechtel provided?

16 A Correct, yes.

17 MR. NEIBURG: And if we can go to five -- PX-529,
18 Page 76.

19 BY MR. NEIBURG:

20 Q Reference to Section 12.1, "The Plan Settlement."

21 And is it your understanding that it's this provision of
22 the plan that approves and incorporates the settlement
23 agreement between the debtors and Bechtel?

24 A Yes, that's my understanding.

25 Q And Mr. Pometti, do you recall, did you sign the plan on

1 behalf of the debtors?

2 A I did, yes.

3 MR. NEIBURG: No further questions, Your Honor.

4 THE COURT: Okay. Very good.

5 Then we will take our lunch break.

6 Mr. Pometti, please do not speak to anyone about

7 your testimony over the lunch break.

8 We'll come back at 2:15.

9 MR. NEIBURG: Thank you, Your Honor.

10 UNIDENTIFIED: Thank you, Your Honor.

11 THE COURT: We're in recess.

12 (Luncheon recess taken at 1:05 p.m.)

13 AFTERNOON SESSION

14 (Proceedings resume at 2:15 p.m.)

15 (Call to order of th Court)

16 FRANK POMETTI, WITNESS FOR THE DEBTORS/PLAINTIFF, PREVIOUSLY

17 AFFIRMED, RESUMES STAND

18 THE COURT: Please be seated.

19 MR. NEIBURG: Your Honor, before Mr. Pometti is

20 subject to cross-exam, just one housekeeping matter.

21 I neglected to move PX-529, which is the

22 confirmation order, plan, and settlement agreement.

23 MS. EWALD: No --

24 THE COURT: Okay.

25 MS. EWALD: No objection, Your Honor.

1 THE COURT: Thank you.

2 MR. NEIBURG: Thank you, Your Honor.

3 THE COURT: It's admitted.

4 (PX-529 received in evidence)

5 (Pause in proceedings)

6 MS. EWALD: Your Honor, may I proceed?

7 THE COURT: You may.

8 MS. EWALD: Thank you.

9 CROSS-EXAMINATION

10 BY MS. EWALD:

11 Q Q. Good afternoon, Mr. Pometti. My name is Shelley
12 Ewald. I represent Transcontinental Gas Pipe Line Company.
13 It's nice to meet you this afternoon in person, finally.

14 A Good afternoon, Ms. Ewald. Good to meet you in person
15 as well.

16 Q And I'd like to address the issue of the included
17 equipment in connection with the commitment letters.

18 Do you recall that testimony?

19 A Yes.

20 Q And first of all, I'd like to draw your attention to D-
21 1645, which is in the binder before you.

22 A Okay. I am there.

23 Q And you were working with Mr. Joe Hines in connection
24 with identifying the, I guess, forecasts of cost to request
25 in these commitment letters. Is that right?

1 A Correct.

2 Q And Mr. Hines, what was his -- what was his role on the
3 project?

4 A I don't remember his specific role, but he was working
5 on the ASR project and, you know, was one of the key
6 individuals who were helping to provide this forecast at a
7 project level.

8 Q And we see in 1645 Mr. Hines is asking -- you've asked
9 -- or Mr. McDowell has asked to get a look at costs incurred
10 this week on ASR. And Mr. Hines says:

11 "Are we talking about total Welded cost or just
12 items reimbursable to Williams?"

13 Do you see that?

14 A I do.

15 Q And do you recall receiving an email in response from
16 Mr. Hines identifying this information to you?

17 A Just to confirm I'm understanding. An email in response
18 with the forecast information?

19 Q In -- an email in response from Mr. Hines to you when
20 you say:

21 "Joe, it should be the best estimate of actuals
22 compared to the estimate provided earlier this week
23 of total actual costs to be incurred by Welded and
24 pre-funded by Williams."

25 Do you see that?

1 A I do see that.

2 Q And there's a discussion of owned equipment.

3 Do you recall the email that you received in response
4 from him?

5 A I don't particularly recall if there was an email
6 response or if there was a phone call or if he was -- just
7 followed up with information. I'm sure there would have been
8 some response that provided some update.

9 MS. EWALD: And Your Honor, I'm going to call up a
10 document. I apologize. I don't have a paper copy of it, but
11 it's got an Excel attached to it that we couldn't view in
12 paper anyway, I believe.

13 Ms. Bair, could you please display on the screen
14 Exhibit 1647.

15 BY MS. EWALD:

16 Q And we see you sent your email at October 27th at 7:36
17 a.m.

18 MS. EWALD: Oh, no worries. We're looking for -- I
19 think it's -- 1647 is on the screen.

20 BY MS. EWALD:

21 Q And do you see that Mr. Hines responded at four o'clock
22 that afternoon on October 27th? Do you see that?

23 A I do see that, yes.

24 Q And he says:

25 "Just a couple of things to keep in mind. Actuals

1 do not include passthrough materials, truck
2 rentals, specialty equipment, mats, et cetera."

3 Do you see that?

4 A I do see that.

5 Q And Mr. Hines attached an Excel to his email. Do you
6 recall that?

7 A I see there was an attachment noted on this email, yes.

8 MS. EWALD: And Ms. Bair, if you could please pull
9 up 1647A.

10 BY MS. EWALD:

11 Q And I'd like to draw your attention, Mr. Pometti, to the
12 actuals 10/28 tab. Do you see that?

13 A I do see that.

14 Q And in the -- and this was attached to the email that
15 Mr. Hines sent back to you, correct?

16 A I don't see the file name, but I -- I see -- I would
17 believe -- I assume this is the attachment.

18 Q You can see at the top it's D-1647A, which is the Excel
19 attached to the -- Exhibit D-1647.

20 A I see that, yes.

21 Q And Mr. Hines has prepared that forecast you requested,
22 right?

23 A This would have been his updated view of actuals for
24 that prior week versus the initial forecast of actual
25 expense.

1 Q And in Mr. Hines' attachment, he calculated the
2 equipment fee at \$587,616, correct?

3 A I see that in Row 9, yes.

4 Q And that is 50 percent of the labor that appears above
5 it, correct?

6 A Without having done the math, but it appears to be, yes.

7 MS. EWALD: And I don't know if we can show the
8 formula in that cell. Perhaps that's -- you know, that's
9 probably a bridge too far.

10 THE WITNESS: I know that if you double-click,
11 sometimes it shows the formula. No.

12 BY MS. EWALD:

13 Q But that looks about -- you would say that's --

14 A Oh, there we go.

15 Q And in fact, the formula indicates that it's 50 percent
16 of the summation of the rows above, correct?

17 A I see that, yes.

18 Q And so that Mr. Hines at least responded with the
19 calculation of costs based on labor and a 50 percent
20 equipment fee, correct?

21 A Yeah. He would be showing what he thinks the updated
22 actual expense would approximate. Obviously, this wasn't
23 based on invoices. This was based on how he thinks that week
24 actually transpired.

25 Q And if we turn to the -- Exhibit 1649. This is in your

1 notebook, Mr. Pometti.

2 And we see, at 1649 -- I think that's the next day --
3 you ask Mr. Hines:

4 "Can you very quickly confirm the equipment
5 estimate is for all equipment defined as 'included
6 equipment' under the contract?"

7 Do you see that?

8 A I see that, yes.

9 Q And it was Mr. Hines' impression that you are asking for
10 -- he says:

11 "It's 50 percent of labor to cover our dozers,
12 hose, Marookas, floats, trailers, et cetera."

13 A I see that, yes.

14 Q And Mr. Hines was very familiar with the project,
15 correct?

16 A He was.

17 Q And he was very familiar with the use of equipment fee
18 for included equipment on the project, correct?

19 A He was familiar with providing the expense estimates we
20 were looking for, yes.

21 Q And if we turn to the next exhibit, 1648. You spoke
22 about this with counsel.

23 We see on the second page of Exhibit 1648 this is that
24 discussion between Mary Frances Edmonds and yourself
25 regarding the funding for the commitment letter.

1 And I'll draw your attention specifically to
2 Subparagraph (a). Do you see that?

3 A I do see that, yes.

4 Q And the -- her question that day was:

5 "Are the equipment costs included in this the same
6 as the included equipment in the contract? Our
7 concern is there are lessors or other suppliers
8 that are included equipment, part of the 50 percent
9 up-charge that we will also receive
10 demands/invoices from for direct payment."

11 Do you see that?

12 A I do see that.

13 Q And in response, the following day -- or later the same
14 day, your answer was:

15 "Re: The equipment expense estimate. Equipment
16 cost included in this estimate is the same as the
17 included equipment in the contract."

18 Correct?

19 A I see that, yes.

20 Q And no part of your response advised Ms. Edmonds that
21 the equipment costs that you were referring to were the
22 actual costs as opposed to the equipment fee, correct?

23 A Could you repeat that question?

24 Q Yes.

25 Nowhere in your response, Mr. Pometti, did you use the

1 term "actual cost."

2 A No. In that sentence, I only refer to it as an
3 equipment expense estimate.

4 Q And you stated:

5 "It's the same as the included equipment in the
6 contract."

7 Correct?

8 A Yes. The equipment that was included in that estimate
9 was the same as the equipment that was in included equipment.

10 Q I'd like to turn to the third commitment letter, Mr.
11 Pometti. It's PX-434.

12 A Okay.

13 Q And I'll draw your attention, Mr. Pometti, to Page 6
14 within PX-434, which is the letter dated November 6th, 2018,
15 that was signed by Evan Kirchen and by Steven Hawkins. Do
16 you see that?

17 A I do see that, yes.

18 Q And in very first paragraph, the letter recites that the
19 parties had entered into a commitment letter pursuant to
20 which Transco prepaid \$4.6 million for continuing the work
21 under Transco/Welded contract 2016-1, "the contract."

22 That's a specific reference to the contract between the
23 parties, correct?

24 A I see that reference to "the contract," yes.

25 Q And we see -- on the second page of -- Page 2 of 5, we

1 see that reference in two places, under Spread 5 and Spread
2 6, that the -- that:

3 "Transco will directly pay all subcontractor,
4 service providers, and vendors attributable to the
5 remaining work set forth herein, but only to the
6 extent not otherwise included in included
7 equipment."

8 A I see that, yes.

9 Q And that was referenced at least twice in the third
10 commitment letter, correct?

11 A That is correct.

12 Q And we also see -- there's a few other things in this
13 commitment letter I'd like to point out to you, Mr. Pometti.

14 First of all, it indicates under Spread 5 that:

15 "Due to the U.S. Fish and Wildlife regulatory
16 restriction near the established bat portal area,
17 all heavy equipment must be removed from the
18 pipeline right-of-way no later than November 15,
19 2018."

20 Do you see that?

21 A I do see that, yes.

22 Q And that was a -- that was part of the reasons for the
23 -- the third commitment letter reducing Welded's scope of
24 work, correct?

25 A I cannot say why this specific scope of work was

1 requested or reduced. This was what was defined as what we
2 were required to do under the third commitment letter.

3 Q And in the third commitment letter, there was no request
4 for the -- by Welded or agreement by Transco with regard to
5 payment of the final fixed-fee installment for profit and
6 overhead on the job, correct?

7 A These commitment letters were set just to be a
8 reimbursement of our administrative expense on a post-
9 petition basis.

10 Q Well, they also included coverage of Welded's overhead
11 costs, correct?

12 A There was definitely some agreed amount that would be
13 paid for the -- the estate's overhead cost, but it was a -- I
14 don't recall the exact dollar amount, but it was an agreed-to
15 amount.

16 Q It's in para -- it's in Footnote 2. I'll draw your
17 attention to that, Mr. Pometti.

18 Footnote 2 recites:

19 "Such amount is inclusive of fixed overhead costs
20 of 25,000 per week from the petition date through
21 December 8, 2018."

22 And that was not -- it was available to Welded for use,
23 correct?

24 A Correct.

25 Q And it wasn't subject to reconciliation, correct?

1 A Correct.

2 Q And it was to offset the significant overhead costs not
3 captured in the project cost estimate, correct?

4 A Correct.

5 Q So that overhead amount was paid to compensate Welded
6 for its overhead costs incurred during this post-petition
7 time frame, correct?

8 A That was an amount that went towards the -- the overhead
9 cost. The overhead cost was -- was more than that. But that
10 was a provision that all completion agreements and these
11 commitment letters had, that a portion of our overhead would
12 be funded, as well.

13 Q And a portion of -- well, Welded's overhead costs, as
14 recited in Footnote 2, were paid by Transco during that time,
15 correct?

16 A This \$25,000 per week, yes.

17 Q And I'd like to turn, Mr. Pometti, to PX-641. It is a
18 letter from Mr. McDowell to John Todd at Williams, and it
19 copies -- it copies you, I believe.

20 A Yes, I see that.

21 Q And I believe you described this as a reconciliation of
22 the post-petition costs that were provided on an interim
23 basis. Is that right?

24 A This was the initial reconciliation provided that
25 included accrual estimates.

1 Q And in this, at Page 4 of the Exhibit PX-641, there was
2 a -- there was an entry for equipment fee. Do you see that?

3 A I see that, yes.

4 Q And underneath was the included equipment, correct?

5 A Yeah, I see the label for included equipment and
6 accruals.

7 Q And in the backup that was provided, starting on Page 13
8 of Exhibit 641, this was information that Welded was
9 providing to support the included equipment charges incurred
10 in the post-petition time frame, correct?

11 A Yes. This was the initial summary of invoice support
12 behind this reconciliation.

13 Q And if we take a look at that first page, Page 13, we
14 see that truck rental from Barco Trucks was all included
15 equipment, right?

16 A I see some -- on that page, some were called "included
17 equipment" and others were sub -- were coded as
18 subcontractor.

19 Q And I'm just looking at Barco Trucks, the truck rental.
20 You know these were the pickup trucks, right?

21 A I don't recall exactly what -- what equipment was rented
22 from Barco.

23 Q And if we turn to Page 18 of PX-641, we see another
24 listing of truck rentals for Spread 6. And it's Express 4x4
25 now. Do you see that?

1 A I see that.

2 Q And these were pickup trucks, right?

3 A Again, I don't recall specifically what was rented from
4 them. It could have been a variety of equipment.

5 Q And we see -- if we turn to Page 22, Mr. Pometti, we see
6 at -- there's highway permits and fees, we see some highway
7 permits and fees in the -- for Nationwide Express Services,
8 the top two entries at least, were identified as included
9 equipment, correct?

10 A Can you --

11 Q I can try --

12 A -- reference --

13 Q -- to help you --

14 A -- again --

15 Q -- with that, Mr. Pometti.

16 A Yes, please.

17 Q It's the entries on Spread 7 and 6 for October 22nd. Do
18 you see that?

19 A (No verbal response)

20 Q And they're called "Highway Permits and Fees,"
21 "Nationwide Express Services."

22 And Welded identifies them as included equipment,
23 correct?

24 A Yeah. I -- I -see some references included equipment,
25 some as subcontractor.

1 Q And do you know the difference?

2 A I -- sitting here today, I can't, you know, answer why
3 certain invoices or amounts were included as included
4 equipment versus subcontractor in this reconciliation.

5 Q And we see at page -- PX-641, Page 27, we see
6 mobilization and hauling. It's November 6, 2018,
7 mobilization and hauling by Tri-Boro Materials as included
8 equipment, correct?

9 A Did you say 27?

10 Q It's at Page 27. And I'm looking at the entries,
11 November 6th, 2018, for Spread 7.

12 A Okay. Apologies. I was looking at the Excel Page 25 of
13 30. But that's --

14 Q Yes.

15 A PX-641.0027?

16 Q Yes.

17 A Okay.

18 Q. If you look at the top of the page, Mr. Pometti, that's
19 the Page 27 I'm addressing.

20 A I see that, yes.

21 Q So here at Spread 7, November 6, 2018, mobilization and
22 hauling by Tri-Boro Materials was identified by Welded as
23 included equipment, correct?

24 A I see those two invoices were referenced as included
25 equipment.

1 Q I'd like to turn to PX-646 within the binder, Mr.
2 Pometti. And it's at -- it's almost at the end, I can tell
3 you.

4 A Okay. I'm there.

5 Q And PX-646, this is the Bechtel gas -- Bechtel Oil, Gas
6 & Chemicals proof of claim. Is that right?

7 A That is correct.

8 Q And that is Proof of Claim 601, correct?

9 A Correct. This is one of their claims filed.

10 Q And this Proof of Claim 601, if we turn to Page 4, we
11 see in Paragraph (c) there is a reference to a continuing
12 services agreement. Do you see that?

13 A I do see that.

14 Q And first of all, Mr. Pometti, Bechtel Oil and Gas never
15 filed a claim against the surety payment bond, correct?

16 A I do not recall either way. I -- I do not believe, but
17 I don't specifically recall them filing a bond claim.

18 Q And this Proof of Claim 601 references two agreements,
19 correct?

20 A Yes, I see that.

21 Q It references a continuing services agreement effective
22 October 23, 2006, correct?

23 A Correct.

24 Q And it references a loan deployment agreement between
25 Bechtel and Welded effective April 9th, 2008, correct?

1 A I see that. Correct.

2 Q And the amount that is set forth in paragraph (d),
3 that's not the same amount that is in the Bechtel invoices
4 that are the subject of this proceeding, correct?

5 A I'm not sure I understand your --

6 Q Let me -- I'll try to clarify that.

7 The amount here, 3,871,583, that's not the amount of
8 Bechtel invoices that were submitted to Welded and
9 subsequently written off by Bechtel. That's not the same
10 amount, is it?

11 A I don't recall specifically. This -- this is the
12 invoices that are associated just with this one proof of
13 claim. There may have been others that are different proof
14 of claims.

15 Q And turning to the Bechtel settlement, which is part of
16 the plan confirmation at PX-529.

17 A Okay.

18 Q We see Proof of Claim 601 is the one that you identified
19 for us today and is referenced at Page 82 of PX-529, correct?

20 A PX529.0082, they reference four proof of claims, which
21 includes Claim 601.

22 Q Thank you.

23 And Mr. Pometti, if we turn to -- I think it's tab nine
24 ninety -- Tab D-997 in your binder.

25 A Okay.

1 Q This is a presentation that you prepared -- or let me
2 step back.

3 This is a presentation that you prepared for the Board
4 of Welded, correct?

5 A This presentation was a document prepared by the Zolfo
6 Cooper team, you know, in March, the month that we were
7 initially engaged, yes.

8 Q And you were part of that initial team that prepared
9 that presentation?

10 A Yes, I was.

11 Q And prior to preparing this presentation, you had also
12 gotten involved with, I think you called it, "liquidity
13 management." Is that right?

14 A Correct. When we were engaged in March of 2018, one
15 scope of work was around cash forecasting and cash management
16 and liquidity management.

17 MS. EWALD: Your Honor, at this time, I can hand
18 out my binder. It may have some of the same documents in it,
19 but I have mine in a particular order I'd like to provide to
20 the Court.

21 THE COURT: Okay.

22 MS. EWALD: May I approach, Your Honor?

23 THE COURT: You may. Thank you.

24 (Pause in proceedings)

25 MS. EWALD: Oh, Your Honor, I apologize. I'd like

1 to move to admit D-1647 and 1647A, which was the email and
2 the Excel spreadsheet calculation.

3 MR. NEIBURG: No objection, Your Honor.

4 THE COURT: They're both admitted.

5 (DX-1647 and DX-1647A received in evidence)

6 (Pause in proceedings)

7 BY MS. EWALD:

8 Q And Mr. Pometti, when you became involved in March of
9 2018, were there others Zolfo Cooper personnel working with
10 you?

11 A Yes, there were.

12 Q Was mister -- either Andrew Ralph or Ralph Andrew --
13 Andrew Ralph, I believe, was working with you, as well,
14 correct?

15 A That is correct. Andrew Ralph.

16 Q And I'd like to draw your attention to D-968, which is
17 the first exhibit in the binder I just provided to you.

18 A I see that.

19 Q And Mr. Ralph is advising Dean McDowell and Mr.
20 Patterson in an email on March 16th, 2018, with the subject
21 "Proposed Check Run."

22 Mr. Ralph indicates:

23 ""Basically, we removed any invoice that would only
24 be 14 days or less past due from today in order to
25 generate short-term liquidity with the assumption

1 that two-week-old invoices past due won't cause
2 disruptions to the operations."

3 Do you see that?

4 A I do see that.

5 Q And so part of Zolfo Cooper's remit in March of 2018 was
6 to manage the accounts payable to -- in order to manage
7 liquidity of the company, correct?

8 A That's not correct. We didn't manage accounts payable.
9 We would provide recommendations or review their liquidity
10 profile and make recommendations to the company.

11 Q And some of those recommendations involved advising
12 Welded with regard to subcontractor invoices that would be
13 paid late, correct?

14 A There -- there was a lot of past due payables at that
15 point in time.

16 Q And you helped -- and Zolfo Cooper assisted Welded in
17 identifying which of the past0due payables to pay at that
18 time, correct?

19 A My recollection, at that time, there would be meetings,
20 you know, with Zolfo Cooper, you know, employees
21 participating reviewing AP, what was due for a payment, and
22 arriving at a pay run for that -- or a check run for that
23 week.

24 Q And I'm going to skip one exhibit for now, but --

25 MS. EWALD: Oh, and Your Honor, I'd like to move

1 into evidence D-968.

2 MR. NEIBURG: No objection, Your Honor.

3 THE COURT: It's admitted.

4 (DX-968 received in evidence)

5 BY MS. EWALD:

6 Q And then I'm going to go next to D-1010, Mr. Pometti.

7 And D-1010 is a March 29th, 2018, email from yourself to
8 Mr. McDowell. Do you see that?

9 A I do see that, yes.

10 Q And do you recall that this email involved a payment to
11 Southeast Directional Drilling? Do you recall that?

12 A I don't specifically recall this email. I do recall the
13 name Southeast Directional Drilling from -- from the time I
14 was with Welded.

15 But I do see this email, yes.

16 Q And Southeast Directional Drilling was the horizontal
17 directional drilling subcontractor on ASR, correct?

18 A I -- I don't recall specifically what project, if they
19 were just supporting one or multiple projects.

20 Q And in your email, you are saying to Mr. McDowell:

21 "Given the sizable nature of the payment, intent
22 was to wait one week and pay in next week's check
23 run after the seventy-seven-million-dollar payment
24 received."

25 Do you see that?

1 A I see that, yes.

2 Q And was the seventy-seven-million-dollar payment
3 referring to an advanced payment by Transco?

4 A I don't recall specifically what that seventy-seven
5 payment referred to. I believe -- and reading the rest of
6 the email, I believe that's what it was referring to.

7 Q And you go on in the last sentence to say:

8 "I assume the message to Kent is that we are just
9 waiting to pay next week after receiving payment on
10 our outstanding Williams ASR bill."

11 Do you see that?

12 A I do see that.

13 Q And at that time, Transco had paid in advance for the
14 work that was covered in this invoice, correct?

15 A Again, I don't -- I'd have to review the specific
16 invoice. I -- I don't know specifically what the invoice
17 pertained to, if it was ASR or not.

18 Q Well, at this time, Transco had paid over \$100 million
19 in advance over the project costs by Welded, correct?

20 A I don't recall at this -- as of March 29th.

21 But I do know that ASR, that project, would pay their
22 invoice in advance of a month's expected expense. So they
23 paid in advance. So there would be an amount that was paid
24 in advance.

25 Q And Mr. Pometti, I'd like to turn to my tab right before

1 this, which is P -- or D-966 -- 996. Excuse me.

2 And I believe this was the same presentation that we saw
3 in your binder, correct?

4 A This appears to be the same, yes.

5 Q And you prepared this presentation, Mr. Pometti. Is
6 that right?

7 A Again, the -- I was kind of over -- helping to kind of
8 manage the -- the project at that point in time. My team was
9 involved in preparing it, as well as getting input from the
10 Welded team. But yes.

11 Q And so if we turn to -- and this presentation was for
12 the purpose of presenting at the Welded board meeting on
13 March 22, 2018, correct?

14 A This presentation was our initial board meeting upon,
15 you know, being engaged and our initial summary of our
16 initial understanding of the situation.

17 Q And if we turn to Page 3 of that presentation, there is
18 a table of contents that are being discussed at that time,
19 correct?

20 A Correct.

21 Q And there's project economics; short-term cash flow
22 projections; contingency planning; and at this time,
23 wind-down budget assumptions, as well, correct?

24 A Correct.

25 Q And if we turn to Slide Number 5 within the

1 presentation, we see at this time you have -- that Zolfo
2 Cooper has prepared a slide showing "Select project cash
3 flows - base case." Do you see that?

4 A Slide 4 --

5 Q Slide 5 --

6 A -- or 5?

7 Q Mr. Pometti, I apologize. It might be confusing.

8 It's Slide 4. But always look at the number at the very
9 bottom of the page. That says --

10 A Got it.

11 Q -- D996 --

12 A Thank you.

13 Q -- .5.

14 A I am at the right page. Thank you.

15 Q We try to put as many numbers on the page as we possibly
16 can.

17 (Laughter)

18 Q And we'll see that, in the box, we see on the left-hand
19 side, we see the various projects that are ongoing. Is that
20 right?

21 A These were select kind of projects. This wasn't a
22 complete listing.

23 Q And we see that for Williams ASR, the historical net
24 cash flow was \$135.6 million, correct?

25 MR. NEIBURG: Your Honor, I think this happened

1 with other witnesses.

2 I'd just note for the record again that Welded has
3 a motion in limine that we understand is under advisement for
4 the Court. But we just want to put that objection on the
5 record. It's relevance as to --

6 THE COURT: With respect to --

7 MR. NEIBURG: -- this --

8 THE COURT: -- relevance?

9 MR. NEIBURG: -- in the motion -- yeah.

10 THE COURT: How is it relevant to the issues we're
11 talking about?

12 MS. EWALD: Your Honor, I'd submit it's relevant to
13 our breach of contract claim with regard to timely payment of
14 subcontractors. I'll would -- I'll submit it's relevant to
15 --

16 THE COURT: What's the harm? What claim has been
17 asserted based on untimely payment of subcontractors?

18 MS. EWALD: Your Honor, it is not only the claim
19 but the defense to Welded's claims regarding CASPA liability,
20 with regard to -- in our -- with the pretrial order and in
21 the pretrial brief, we have identified the issue of Welded's
22 lack of performance under the contract with regard to timely
23 payment of subcontractors. And this evidence is directly
24 relevant to it.

25 It's also directly relevant to whether good faith

1 estimates of advance cash calls were being performed by
2 Welded versus -- whether they were motivated to increase
3 their cash call amounts in order to use funds for other
4 projects.

5 THE COURT: Okay. I don't think I've heard
6 anything on that second point yet, but --

7 MS. EWALD: We're about --

8 THE COURT: Okay. I'll permit it, and I'll decide
9 whether it's relevant to anything.

10 MR. NEIBURG: Yeah, just on that last point, Your
11 Honor.

12 Mr. Hood testified for two days. And he was the
13 person responsible for preparing --

14 THE COURT: The estimates.

15 MR. NEIBURG: -- cash call reconciliation invoices,
16 and that was the person to ask on that question.

17 THE COURT: It might have been. I don't know
18 whether this witness will have any information about that.

19 MS. EWALD: Your Honor, I'll move along very
20 quickly and --

21 THE COURT: You can ask the questions. He may have
22 knowledge; he may not.

23 BY MS. EWALD:

24 Q And, previously, we had seen in the email to the
25 Southeast -- regarding the Southeast Directional Drilling

1 subcontractor, that the message was that Welded was waiting
2 for Williams to pay, correct?

3 A If I recall that email, we were suggesting paying next
4 week as opposed to the current week.

5 Q Thank you, Mr. Pometti.

6 A Uh-huh.

7 Q And let's turn back to the slide at Page 5.

8 The slide at page 5 indicates that:

9 "Positive net cash flow from the Williams ASR

10 project has funded negative cash flow in ETP and

11 TransCanada Leach."

12 Do you see that?

13 A I see that, yes.

14 Q And that would indicate that funds from ASR -- the ASR
15 project have been used to cover losses on Welded's other
16 projects that were fixed-price jobs, correct?

17 A So this slide, you know, we had been there maybe a week
18 or so. And we were summarizing the historical net cash flow
19 associated with each project, but more importantly, trying to
20 figure out the second column, which is the cash flow of -- of
21 what's remaining. So there's different points in time of
22 when these projects started.

23 But in aggregate, this was an observation that the first
24 three lines had negative historical cash flow based on cash
25 flow receipts and cash flow disbursements to date, compared

1 to Williams ASR, where things were invoiced in advance.

2 So there was -- at that point in time -- and I think
3 this references March 14th -- was the as-of date, which was
4 likely right around when we were engaged.

5 There had been 135 million collected, more than what had
6 been disbursed at that point in time.

7 Q And so this is, as you say, a point in time.

8 And in March of 2018, we see that the 135.6 was positive
9 cash flow that had been generated by the ASR project. And at
10 that time, you had concluded that it was -- had been used to
11 fund losses on other projects, correct?

12 A Again, this wasn't an accounting of all projects, and we
13 had never done a tracing exercise to really see how each
14 project dollar was utilized.

15 But in the aggregate, it was the observation that -- you
16 have -- the first two rows had negative. Williams ASR had
17 positive. So when it nets, the reason why historical netted
18 to a positive number was largely due -- you know, when you
19 add those three rows, due to the Williams ASR positive cash
20 flow.

21 Q Thank you, Mr. Pometti.

22 MS. EWALD: Your Honor, I'd move to admit both D-
23 1010, which was the horizontal directional drilling email,
24 and D-996.

25 MR. NEIBURG: Your Honor, just subject to our

1 position about the relevance of this general topic area, no
2 objection as to the document.

3 THE COURT: Okay. So D-1010 is admitted.

4 (DX-1010 received in evidence)

5 THE COURT: And D-996 --

6 MS. EWALD: 996.

7 THE COURT: -- is admitted subject to the relevancy
8 objection.

9 (DX-996 received in evidence)

10 BY MS. EWALD:

11 Q And your -- Mr. Pometti, could you please turn to D-1263
12 in the binder? It is right after D-1010.

13 A I am there.

14 Q And this is an email now from June 21st, 2018, from Mr.
15 Ralph to yourself.

16 And Mr. Ralph is providing you with a schedule of the
17 actual and estimated cash calls in the cost flow file and a
18 work -- a WIP. Is that "work in progress"?

19 A Yes.

20 Q In the ASR cost file. Do you see that?

21 A I do see that.

22 Q And he's commenting on the cash call amounts and -- that
23 he is finding in the cost flow file, correct?

24 A I see that, yes.

25 Q And in his second paragraph he says:

1 "You can see we've consistently 'over-billed' since
2 Feb. So with the cash calls and true-ups, the
3 total billings fall short of 696 million."

4 Do you see that?

5 A I see that.

6 Q And when he says "You can see we've consistently 'over-
7 billed,'" is he referring to Welded, do you think, in that
8 sentence?

9 A I believe he's referring to Welded, yes.

10 Q And he goes on to say:

11 "Not really sure what's going on. And if that's
12 true, why is the forecast going higher to
13 seventeen" -- "716 million when expenses have been
14 lower than the cash calls?"

15 Q Do you see that?

16 A I do see that.

17 Q And do you recall if Mr. Ralph found any answer to that
18 issue?

19 A I don't specifically recall.

20 But at that point in time, we were trying to work on
21 getting the most accurate cash flow forecast as possible.
22 This project, obviously, had that kind of true-up dynamic, in
23 terms of forecasting expenses and invoices and then true-up
24 invoices. And we were trying to refine how to more
25 accurately ensure we were forecasting, you know, that dynamic

1 because I would have forecasted invoices and then needed to
2 figure out how to best forecast for true-ups.

3 And my recollection is there were several months where
4 we were over-billing. But then, as we got closer to the
5 filing, there was several months where we under-billed.

6 But it was trying to figure out that dynamic to improve
7 our cash forecasting ability.

8 MS. EWALD: And Your Honor, I'd move to admit D-
9 1263.

10 MR. NEIBURG: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (DX-1263 received in evidence)

13 BY MS. EWALD:

14 Q And the I'd like to turn to D-1382, Mr. Pometti.

15 And D-1382 is identified at -- the subject line is an
16 as-bid as-performed exhibit. Do you see that?

17 A I do see that.

18 Q And the date is July 30th of 2018. And Mr. McDonald --
19 and he was in your office. Is that right?

20 A He -- he was an employee of Zolfo Cooper working on the
21 team, yes.

22 Q And he is sending you the final as-bid versus
23 as-performed exhibit. Do you see that?

24 A I do see that, yes.

25 Q And the attached document is described as the "as-bid

1 versus as-performed analysis."

2 Was this presented by Zolfo Cooper at the August 1st,
3 2018, Welded board meeting?

4 A So this, I believe, was included in a board meeting
5 presentation.

6 I'm sure Zolfo Cooper helped talk through how we pulled
7 together this bid analysis. I believe Mr. Hawkins helped
8 kind of talk through this with the board as well.

9 Q And this was a presentation that Zolfo Cooper prepared
10 based on information and data received from Welded, correct?

11 A Correct. The Zolfo Cooper team received bid packages
12 and actual project data, and we just -- this became a random
13 math comparison between the original bid packages and -- and
14 how things ultimately played out.

15 Q And it was basically a financial analysis of the various
16 projects' performance, correct?

17 A I would refer to it as -- I wouldn't refer to it as a
18 "financial analysis."

19 This was a data comparison, taking bid packages of kind
20 of the initial forecast and -- and assumptions and then
21 taking actual data and comparing the two along numerous
22 dimensions.

23 Q And if we turn to Page 7 of the presentation, we see a
24 summary at -- a summary of the issues that Zolfo Cooper is
25 evaluating, correct?

1 A So this slide kind of summarizes, for all the projects
2 we receive data for, you know, these were for the specific
3 dimensions. We were making those comparisons.

4 Q And so presentation, as of August of 2018, identified
5 that, for ASR, the costs -- the as-bid costs were \$283
6 million. Am I reading that correctly?

7 A Correct. In the original bid package that we would have
8 been provided to -- to kind of base our comparison off of
9 it, that would have been the initial cost estimate.

10 Q And as-performed is six hundred and eighty-one. Do you
11 see that?

12 A I do see that.

13 Q And also at the bottom, righthand corner of the -- this
14 page, Page 7, we see an evaluation of tie-ins.

15 Are these an evaluation of tie-ins welds?

16 A That's my recollection, yes.

17 Q And it's a comparison of the bid number of tie-in welds
18 and the performed number of tie-in welds for the various
19 projects, correct?

20 A That is my recollection.

21 Q And if we can -- there's -- if we can turn to Page 10
22 within this presentation. There's also a presentation of the
23 variance of cost and hours per tie-in weld versus the bid.
24 Do you see that?

25 A I do see that, yes.

1 Q And on the right-hand side of the -- of this slide, we
2 see total hours per tie-in weld.

3 And does that indicate that, for ASR, the as-bid hours
4 for tie-in weld were 204, and the as-performed were 332?

5 A I believe this is the original bid assumptions of how
6 many hours and how many tie-in welds and doing that average
7 hours per tie-in.

8 And then the 332 is actually based on the number of
9 hours that were spent and number of tie-in welds, coming up
10 with that average hour per tie-in weld, yes.

11 Q And on the lefthand side, it shows the as-bid cost per
12 tie-in weld versus the actual cost per tie-in weld for ASR,
13 correct? And other projects.

14 A Correct. This is then comparing the original bid
15 packages and assumptions and then doing the math on the
16 actual --

17 Q And so --

18 A -- results across all projects.

19 Q Thank you, Mr. Pometti.

20 And that shows that there was a bid cost per tie-in weld
21 of 18,489 and an actual of 26,727, correct?

22 A The original bid package kind of average would have been
23 18,489, yes, and the actual was 26,727.

24 Q Now there's a place in this presentation, Mr. Pometti,
25 where ASR is addressed specifically, correct?

1 A I'm sure there is project-specific summaries.

2 Q And if we turn to -- and it's at the bottom of the page.
3 If we turn to D-1382, 56 and 57, I think that's where the
4 Williams ASR discussion begins.

5 A I am there, yes.

6 Q And first, there's a headline indicating that ASR is
7 expected to cost 681.3 million, 141 percent over budget,
8 correct?

9 A I see that.

10 Q And Zolfo Cooper also identified at Slide 57 that the
11 original bid cost estimate was exceeded in January of 2018,
12 correct?

13 A I see that reference, yes.

14 Q And that would have been about three and a half months
15 into the job?

16 A I -- I don't recall specifically when this project
17 began. It appears around the end of this time frame.

18 Q And I'd like to just address the equipment analysis that
19 Zolfo Cooper performed in connection with this presentation.

20 And I'll direct your attention to D-1382, Page Number
21 62.

22 (Pause in proceedings)

23 A Okay.

24 Q And I note that there is a comment associated with
25 August, September of 2017 that indicates:

1 "354 pieces of heavy equipment had no actual or
2 forecasted start date in equipment trackers
3 received. Therefore, it is impossible to know
4 exactly when equipment usage began prior to
5 September 14, 2017."

6 Do you see that?

7 A I see that note.

8 Q And the equipment tracker is information that Welded
9 provided to you that showed its use of equipment on the job?

10 A Yeah. There were various equipment trackers. You know,
11 the information we received only started post-September 14th.
12 We didn't receive data or information that went back prior to
13 that, so we -- we couldn't do that comparison.

14 Q And if we turn to Page 65 within D-1382, we see sideboom
15 equipment.

16 These would be the large pipe-layers that Welded used on
17 the job?

18 A Correct.

19 Q And the same note indicates:

20 "A hundred and sixteen pieces had no actual or
21 forecasted start date in equipment trackers
22 received. Therefore, it is impossible to know
23 exactly when equipment usage began prior to
24 September 14th, 2017."

25 Do you see that?

1 A I see that note.

2 Q And that was a conclusion that Zolfo Cooper reached
3 based on the data provided, correct?

4 A So this was just noting that the information we had only
5 started -- we -- we didn't have a start date for all
6 equipment. So we only had reliable data that started as of
7 September 14th when doing this analysis.

8 Q And you relied on the -- you relied on data that Welded
9 provided you to prepare this, correct?

10 A Correct.

11 MS. EWALD: And Your Honor, I'd move for the
12 admission of D-1382.

13 MR. NEIBURG: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (DX-1382 received in evidence)

16 BY MS. EWALD:

17 Q Mr. Pometti, I'd like to discuss the work in process
18 analysis prepared by Zolfo Cooper. And I'll draw your
19 attention to D-1709.

20 (Pause in proceedings)

21 A Okay.

22 Q And I'm drawing your attention to the email at the top
23 of the exhibit, 1709, from Mr. McDowell to Luis Monroy and
24 yourself dated November 6, 2018. And it appears he is
25 forwarding the attached WIP schedule for ASR projects.

1 Who is Mr. Monroy?

2 A He was an adviser who was working for the surety at the
3 time.

4 Q And what is a "WIP schedule," Mr. Pometti?

5 A So Welded maintained a kind of work-in-process schedule
6 for all of their projects. It basically summarized what's
7 the total, you know, expected kind of revenue and cost and
8 profit associated with each project and then would summarize,
9 you know, since starting the project, how much has been
10 invoiced and collected, ow much was sitting in A/R, how much
11 was yet to be billed; and, from an expense standpoint, how
12 much had been paid out, how much was either accrued or
13 sitting in AP, and how much was yet to be incurred and paid
14 out.

15 Also, you could do a historical, you know, what's the
16 kind of project economics to date and the cash flow to date,
17 and then what's the go forward remaining project forecast for
18 it, and then all to summarize to a total project level.

19 Q Thank you, Mr. Pometti.

20 And if you turn to Page 4 within this exhibit, is this
21 the work-in-process cash flow summary you just described?

22 A So this is a kind of summary WIP for the ASR project as
23 of October 22nd, the filing date.

24 Q I was going to ask you, Mr. Pometti. That's significant
25 because it's the WIP you prepared as of the bankruptcy

1 petition filing date, correct?

2 A Again, we -- the company, Welded, had maintained WIPs.
3 We were helping to kind of summarize it and put it into this
4 format.

5 Q And this shows, on the October 22nd, that Welded had
6 collected a total amount of cash on the ASR project of \$705.5
7 million, correct?

8 A Correct.

9 Q That's in the little box F, I believe, in the second
10 row.

11 A Correct. I see that. F equals D minus E.

12 Q And --

13 A And then it's referencing something else. I don't have
14 the full formula over there.

15 Q And so the amount of cash received at this point from
16 Transco was \$705.5 million. Is that right?

17 A Correct. This WIP summary had total cash collected as
18 of that date of 705,581,000.

19 Q This was after the October 4th withholding, correct?

20 A This would have been after the October 4th short-pay,
21 yes.

22 Q And as of this time, in Welded's books and records, they
23 were identifying a cost incurred as of September 30 of 694
24 million, correct?

25 A Correct. So this had costs incurred as of September 30,

1 six ninety-four, and then estimated cost incurred through
2 October 22nd of 711 million.

3 Q Thank you, Mr. Pometti.

4 And with regard to the amount of cash collected as of
5 October 27 -- 22nd, that 705 million, was -- that was -- was
6 that the total amount of cash collected? And I guess my
7 question is: Did it reflect any of the cost payment penalty
8 deduction?

9 A So you'll see in Column E that reference of 10 million
10 reduction or offset to -- to collections. That would have
11 been factored into that, I believe.

12 Q So do you think that the amount of cash collected as of
13 October 22nd was 705 million or 715 million?

14 A Seven hundred and five million.

15 Q Thank you. That's what my conclusion was, as well.

16 And in -- and I believe you said this. In column G, the
17 estimated costs incurred through October 22nd was \$711
18 million, right?

19 A That is correct.

20 Q And that \$711 million also did not include a deduction
21 for the cost penalty, correct?

22 A The 711 million, the cost penalty, I believe, was
23 reflected as -- it was an ultimate reduction in cash
24 collected. It was not factored into the cost incurred.

25 Q So this is -- of all the documents that we've seen thus

1 far in this case, Mr. Pometti, I'd say this is -- the \$711
2 million represents the picturing of what Welded had actually
3 incurred for costs on the job as of October 22nd, correct?

4 A That would have been kind of life to date, you know, as
5 of this preparation estimate. Obviously, there were true-up
6 invoices that, you know, were yet to be created for many of
7 the prepetition months. But as of this point in time,
8 without any of that factored in, it was the estimate at that
9 point in time.

10 Q And note -- Footnote 3 goes along with Box G. And it
11 says:

12 "Cost includes actuals as of 9/30 and estimated
13 accruals from 10/1 to 10/22."

14 Correct?

15 A I see that footnote.

16 Q So the \$711 million of estimated costs through 10/22 was
17 the entirety of Welded's costs incurred on the project as far
18 as Zolfo Cooper was able to calculate on this date, correct?

19 A Yeah. Again, based on the information available, that
20 was the total current estimate.

21 There were true-up invoices that were yet to be created
22 to then reconcile how actuals actually materialized for, you
23 know, the months leading up to the filing. I believe there
24 were true-up invoices for August, September, and then
25 October, ultimately, that needed to be created, that would

1 then have to be factored in to arrive at the final estimate.

2 But based on the information available at the time of
3 this WIP, that would be the best estimate available.

4 Q And so -- I appreciate at this time that Welded has -- I
5 believe Welded has agreed that it was responsible for the
6 ten-million-dollar cost penalty, correct?

7 A Yeah. At this point in time, that cost penalty was
8 already applied and -- and netted off invoices. So it
9 reduced our collections as of the filing date.

10 Q Right. But it's not netted out of the seven hundred and
11 eleven, correct?

12 A It was -- I believe it was netted off the invoice, you
13 know, the kind of receivable.

14 Q The seven hundred and eleven represents the total
15 estimated cost incurred for the project through October 22nd,
16 based on your report here, correct?

17 A Yeah. As of that point in time, it was the estimate
18 through 10/22.

19 Q So, if the cost penalty was deducted from that cost of
20 seven hundred and eleven, leaving \$701 million, at this point
21 in time at least, Welded had already collected cash over that
22 amount, correct?

23 A I'm not sure I agree with that math because the 10
24 million was already deducted off the receivable. I don't
25 know why you would reduce your expense by 10 million then.

1 In effect, it would then have zero impact.

2 It was -- again, the 705.5 million of cash collected
3 included fee that had been collected to date. So,
4 effectively, that was a give-back of 10 million of the fee.
5 I don't think it really impacts or would be appropriate to
6 reduce the expense incurred to date. Effectively, it was a
7 reduction in the fee that was collected that reduced kind of
8 cash collected down to seven oh five.

9 Q So, as of this date, October 22nd, how much was the cash
10 collected from Transco?

11 A Again, based on this summary, it was 705 million.

12 Q And the estimated cost at this time, with accruals
13 through 10/22, are seven hundred and eleven, correct?

14 A As of this date, yes.

15 Q And that resulted in a net cash flow for the project of
16 \$84.4 million, correct?

17 MR. NEIBURG: Your Honor, I'll just object to this
18 question because it relates to the positive cash flow that we
19 discussed earlier.

20 THE COURT: So this is a relevancy issue?

21 MR. NEIBURG: Correct, Your Honor.

22 THE COURT: I'll hear it.

23 BY MS. EWALD:

24 Q Mr. Pometti, you calculated that, as of October 22nd,
25 the net cash flow that had been the positive net cash flow on

1 the project was eighty-four and a half million dollars as of
2 10/22, correct?

3 A Correct. That's inclusive of the kind of fee component.
4 But yes, based on the total cash collected as of 10/22 and
5 the total cash that had been paid or disbursed as of that
6 date, net cash flow as of 10/22, inclusive of the fee
7 component, would have been roughly eighty-four and a half
8 million dollars.

9 Q And the bottom row that you have here is describing the
10 accounts payable and going forward cash flow, correct?

11 A Correct. That middle row is kind of backwards-looking.
12 The bottom row is everything at that point in time looking
13 forward.

14 Q And in that bottom row, there's also an amount of
15 accrued unpaid union dues, correct?

16 A Correct.

17 Q And those were accrued and unpaid prior to the petition
18 filing date, correct?

19 A Correct. I believe that figure would have been as of
20 October 22nd, 2018. So, as of the filing date and the as of
21 date for this report, that would have been the estimated
22 accrued unpaid union dues.

23 Q And Transco paid those accrued and unpaid union dues
24 after the bankruptcy filing, correct?

25 A Yeah. Post-petition, Williams ultimately then agreed to

1 fund and pay for the prepetition unpaid union dues.

2 Q And when you say "unpaid union dues," it wasn't unpaid
3 by Transco prior to the filing, correct?

4 A This was unpaid as of the petition date.

5 Q And as of the petition date, there was a net cash flow
6 of \$84 million. So Transco had already paid in advance these
7 union dues, correct?

8 A The --

9 Q Or paid monies that could cover those, right?

10 A The contract with Williams had advanced invoicing. So
11 in advance of incurring expense, invoices would be submitted
12 and paid.

13 I -- the only caveat that with -- there was a true-up
14 dynamic. And I know, during this period of time, when I
15 looked at August, September, and October, ultimately, the
16 true-up invoices concluded expenses were higher than what was
17 invoiced. So there was kind of true-up invoices that were
18 generated to account for that.

19 But, again, none of that would have been known as of
20 that -- this point in time. Those were yet to be created.
21 So those true-ups would have to be taken into account to --
22 to kind of, I think, make that statement that you are making.
23 And again, we know they were under-invoiced for those
24 previous months, so, if they're related to those periods, it
25 very well could not have been funded.

1 Q But Transco --

2 A But that's all --

3 Q I'm sorry, Mr. Pometti. Are you finished?

4 A Yes.

5 Q And Transco did pay the 2.795 million for those union
6 dues post-petition, correct?

7 A Post-petition, Transco did pay the prepetition unpaid
8 union dues. I don't remember if that was the exact number.
9 This might have been an accrual estimate. But whatever the
10 exact number was arrived at, those were funded and paid for
11 by Transco.

12 Q And that -- as far as prepetition costs -- or cash
13 collected from Transco, that should be added then to the \$705
14 million?

15 A Could you repeat that question?

16 Q Sure.

17 We see -- we had seen earlier that the total cash
18 collected from Transco prior to October 22nd, prior to the
19 petition date, was the \$705 million. And then Transco
20 subsequently paid the \$2.8 million for prepetition costs,
21 correct?

22 A Correct.

23 Q So total we can take away from this work in process that
24 Transco paid for prepetition costs seven hundred and -- a
25 little over -- a little over \$708 million when you include

1 that union dues, right?

2 A So, for prepetition funding, if you wanted to take that
3 funding post-petition and add it to seven oh five, I agree
4 for that, up until 10/22, they would have paid roughly 708
5 million.

6 Q Thank you.

7 MS. EWALD: Your Honor, I'd move for the admission
8 of D-1709.

9 MR. NEIBURG: No object, Your Honor.

10 THE COURT: It's admitted.

11 (DX-1709 received in evidence)

12 BY MS. EWALD:

13 Q And Mr. Pometti, I'll turn to 1764, which is -- D-1764,
14 which is a series of emails related to those union benefits.
15 It's dated December 10th, 2018. It's an email from Ms.
16 Peters to yourself and Mr. McDowell.

17 And Ms. Peters is sending you the accounts payable check
18 register for your reference for these prepetition union
19 benefits. Do you see that?

20 A I do see that.

21 Q And attached to her email is those -- are those check
22 registers. And we see them beginning Page 13 through Page
23 16. Do you see that?

24 A I do see that.

25 Q And it appears there are two checks that were paid then

1 to the unions.

2 At page 15, we see a check for \$985,381.54. And then,
3 at Page 16, we see a payment of 641,035.88 for a total of
4 1,626,417.

5 Do you those figures?

6 A I see those figures, yes.

7 Q And is that the amount that Welded then paid from --
8 then paid post-petition to the unions from the money that
9 Transco provided?

10 A I -- I don't recall specifically.

11 And this appears to be amounts that were paid. I don't
12 know if that was the total amount. I do recall multiple
13 payments that were made.

14 So I don't recall specifically. But whatever was
15 funded, I believe, was then paid for those specific union
16 dues and benefits.

17 Q. And do you know if -- have you ever seen any
18 reconciliation that Welded provided to Transco for these
19 union dues that it paid post-petition?

20 A When you say "reconciliation," I just want to make sure
21 I understand what you're referencing.

22 Q "Reconciliation" may be a term of art. I'm just --
23 that's used in this project in a particular way. So let me
24 just ask it like this, Mr. Pometti.

25 Q Did you -- do -- have you ever seen any details that

1 were provided to Transco regarding the union payment -- union
2 dues payments that were made post-petition, reflecting the
3 amounts paid?

4 A I don't specifically recall.

5 I absolutely recall the discussions of getting these
6 paid, and I recall getting the funding and making the
7 payments.

8 I don't recall what information that was shared at that
9 time, but I do recall them being paid.

10 MS. EWALD: Your Honor, I'd like to move for the
11 admission of D-1764.

12 MR. NEIBURG: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (DX-1764 received in evidence)

15 BY MS. EWALD:

16 Q Mr. Pometti, some of these exhibits were in your binder
17 as well, so I'm going to try to skip them in my binder.

18 (Pause in proceedings)

19 Q And I'll turn your attention to Exhibit D-1832.

20 A D ... okay. I'm there.

21 Q Thank you, Mr. Pometti.

22 I believe you mentioned that Zolfo Cooper was involved
23 in some of the final reconciliation invoice processing. Do
24 you recall that?

25 A With respect to the commitment letters, yes.

1 Q And if we turn to the first email in this chain, at the
2 very bottom of Page 2, we see an email from Joe Hines at
3 Welded to Mr. McDowell and others at Zolfo Cooper. Do you
4 see that?

5 A I do see that, yes.

6 Q And it appears Mr. Hines is sending the September,
7 October, and November reconciliations. Do you see that?

8 A I do see that.

9 Q And at that time, it appeared that there were some
10 Bechtel invoices that were missing. Do you see that as well?

11 (Pause in proceedings)

12 A I'm trying to find that -- that reference.

13 Q Yes. It says:

14 "A few things still pending."

15 And the Bullet Number 2 is:

16 "Missing Bechtel invoices from September 23 to
17 10/21."

18 Do you see that?

19 A I do see that, yes.

20 And if we turn to the first page of Exhibit D-1832, Mr.
21 Hines reports a few days later to Mr. Ralph and others at
22 Zolfo Cooper about the final reconciliations.

23 And in the third sentence, he says:

24 "Sounds like we are not worried about the Bechtel
25 invoices anymore."

1 Do you see that?

2 A I do see that, yes.

3 Q And do you know why, at this time in February of 2019,
4 that Mr. Hines was not worried about the Bechtel invoices
5 anymore?

6 A I don't -- I wasn't copied on this, I don't recall this,
7 and I -- I don't know what he was referring to when he said
8 that, like exactly what -- what he meant there.

9 Q And we see other AlixPartners folks that are listed
10 along with Mr. Ralph.

11 MS. EWALD: And Your Honor, I'd move for the
12 admission of D-1832.

13 MR. NEIBURG: Objection, Your Honor. As the
14 witness just testified, he's not on the email and he has no
15 recollection of the conversation.

16 THE COURT: Sustained.

17 BY MS. EWALD:

18 Q Mr. Pometti, if you would turn to Exhibit D1851, please.

19 A Okay.

20 Q And Exhibit D-1851 is a presentation that you put
21 together for Mr. Rich Wall, correct?

22 A So I do recall these are slides that Mr. Wall asked me
23 to send to him, yes.

24 Q And some of these slides address information that we had
25 previously seen in the presentations that you had done

1 previously.

2 Q But I'd like to draw your attention to Page 10 of
3 Exhibit D-1851.

4 And you prepared this presentation. Now it's March
5 29th, 2019, correct?

6 MR. NEIBURG: Your Honor, this slide is along the
7 same line as the information that I've previously objected to
8 in terms of positive cash flow from ASR. I'll just object on
9 the same grounds.

10 THE COURT: Okay. I'll take it subject to the
11 relevance argument.

12 Although is there a disputed fact here? I'm
13 getting a lot of information about stuff that I don't think
14 is necessarily disputed.

15 MS. EWALD: Your Honor, I'd say that the
16 information prepared by Zolfo Cooper is also reflective of
17 the Welded costs incurred on the project in addition to the
18 issue of cash flow and how cash -- how ASR cash was used.
19 And I will

20 THE COURT: Okay. I'm not sure if that's relevant
21 either, but you can ask him a question. I'll take it subject
22 to the relevance argument.

23 BY MS. EWALD:

24 Q And Mr. Pometti, this -- at this time in March of 2019,
25 you prepared a slide for Mr. Wall that showed the net cash

1 position of a -- certain Welded projects as of October 21st,
2 2018, correct?

3 A So this slide was sent in March.

4 I just want to caveat I don't know when this slide was
5 actually prepared. You know, much of these slides that were
6 sent to Mr. Wall at that time were from various presentations
7 that I was just pulling to -- to kind of send his way.

8 Q And here, we see the same amounts of cash collected.

9 That would be \$705.5 million collected from Transco for
10 ASR, correct?

11 A Correct.

12 Q And at this time, it doesn't include the union dues,
13 correct?

14 A Correct.

15 Q And then it shows the estimated cost incurred through
16 10/22. It's the same number, \$711 million, correct?

17 A Correct.

18 Q And then, over at the righthand side, there is -- again,
19 we see the \$85.6 million. Do you see that?

20 A I do see that.

21 Q And the note that has been appended to this slide. Was
22 that a note that you prepared, Mr. Pometti?

23 A Again, I don't know who specifically, you know, created
24 that note, but this was from a presentation that I would have
25 been involved in -- in compiling.

1 Q And this was a presentation that you sent to Mr. Wall
2 after he requested it from you, correct?

3 A Yeah, these were, again, various slides from various
4 presentations, I -- I believe, that were compiled over time
5 that he -- he was looking for copies of.

6 Q And the note indicates:

7 "ETP benefitted from \$68 million of cash from other
8 sources while ASR was the net provider of 85.7
9 million of cash through 10/21/18."

10 Correct?

11 A Correct. As of this kind of point in time, there had
12 been positive cash flow off of ASR and negative cash flow off
13 of ETP.

14 Q And so we see here compared -- in the comparison between
15 ETP and ASR, ETP was a loss of \$127 million for Welded. Is
16 that right?

17 A I believe it was --

18 Q The cash received less cost incurred?

19 A I'm just trying to refresh my recollection then with --
20 D --

21 Q That's okay --

22 A So --

23 Q -- mister --

24 A Yeah.

25 A So I mean, I see that. I'm just trying to reconcile

1 with kind of the 68 million of net cash versus -- you know, I
2 believe it was -- yeah, I see, over this time frame, negative
3 68 million of cash flow. And then the remaining kind of cash
4 flow, I think, there was another negative 15.3 million
5 associated with it.

6 MS. EWALD: Your Honor, I'd move for the admission
7 of D-1851.

8 MR. NEIBURG: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (DX-1851 received in evidence)

11 BY MS. EWALD:

12 Q And finally, Mr. Pometti, I'd like to draw your
13 attention to D-1870, which is the complaint that was filed by
14 Welded in this matter.

15 A Okay.

16 Q And you --

17 MS. EWALD: And Your Honor, this is the last
18 exhibit that's in the -- Mr. Pometti's binder.

19 THE COURT: Thank you.

20 BY MS. EWALD:

21 Q And Mr. Pometti, as I understand it, you assisted in the
22 preparation of the amounts that were included in Welded's
23 claim in this proceeding, correct?

24 A We would have provided information to the lawyers when
25 they were preparing this.

1 Q And if we turn to Page 12 of the complaint. And I'll
2 just draw your attention to Paragraph 29.

3 And you see at the top of -- at Paragraph 29 Welded
4 averred that:

5 "As of the date hereof, Williams is unjustifiably
6 and unlawfully withholding \$71,310,018.67."

7 Do you see that?

8 A I do see that.

9 Q And I believe that the -- and that number is found
10 elsewhere in the complaint, as well. Do you recall that?

11 A That the 71.3 million number is referenced elsewhere in
12 this complaint?

13 Q Yeah --

14 A I have -- I have no reason to think it wasn't referenced
15 elsewhere in here.

16 Q And in the complaint -- and the amount that was included
17 in the complaint was a result of inadvertent double-counting,
18 correct?

19 A Correct.

20 Q And that inadvertent doubling-counting that went into
21 the complaint was based on a counting of the October
22 reconciliation invoices as well as an addition of the actual
23 cost incurred -- or the -- excuse me. I'll step back.

24 It's the October cash call plus the October cost
25 incurred, correct?

1 A The double-counting was the original October invoice,
2 which then was short-paid, what we would refer to. And then
3 when the true-up invoice, as was, you know, normally provided
4 three months in the future, and the actual cost for October
5 was prepared, I think it was, and that seventeen or \$13
6 million. The short-pay and that true-up invoice were
7 inadvertently added together when, really, it is the true-up
8 invoice should have been the total basis for the unpaid
9 amount, based on how actuals then trended through October
10 22nd.

11 Q And when you account for that inadvertent
12 double-counting, I believe the amount that should have been
13 appropriately arrived at was \$54 million. Is that right?

14 A It was roughly in that ballpark, I -- I recall, around
15 fifty-two or \$57 million.

16 Q And that reduced -- after the double-counting, that
17 reduced amount was further reduced, I believe, by the union
18 dues that were paid post-petition as well, correct?

19 A Correct. That 71.3 million didn't account for the
20 payment of union dues. And then it had that double-counting
21 provision.

22 So I think that then netted it down to roughly 52
23 million, which I -- I believe -- my recollection is that then
24 didn't include a retainage invoice that was subsequently
25 issued.

1 MS. EWALD: I have no more questions for Mr.
2 Pometti. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MS. EWALD: Oh, I suppose I should move to admit
5 the complaint at D-1870. I appreciate it's on the docket,
6 but ...

7 THE COURT: Okay.

8 MR. NEIBURG: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (DX-1870 received in evidence)

11 MR. NEIBURG: I'll just have a brief redirect, Your
12 Honor.

13 THE COURT: Okay.

14 REDIRECT EXAMINATION

15 BY MR. NEIBURG:

16 Q Mr. Pometti, I just want to go back to the double-
17 counting that occurred in the complaint in Paragraph 29 that
18 you just testified about.

19 Prior to trial, did you review Transco's pretrial brief?

20 A I did review their pretrial brief.

21 Q And do you recall that, in the pretrial brief, Transco
22 alleged that you conceded at your deposition that Welded had
23 double-billed Transco in the amount of \$19 million?

24 A I do recall the double-billing reference.

25 Q And did you -- did you agree with those assertions?

1 A I did not agree with it being characterized as double-
2 billing, no.

3 Q And why not?

4 A Because I don't believe they were double-billed. You
5 know, the kind of true-up invoice -- original invoice and
6 true-up invoice was just a natural process under the
7 contract. It was the double-counting of those amounts.

8 Q Just for purposes of the complaint. Is that right?

9 A Correct.

10 Q So I just want to go back to your earlier testimony on
11 cross where you were showed -- or discussed where there was a
12 50 percent, seemingly, applied.

13 Was Mr. Hines involved in any way in the negotiations of
14 the commitment letters between Welded and Transco?

15 A No, he was not.

16 Q And for purposes of the first commitment letter, did
17 Welded use 50 percent of labor as its estimate of estimated
18 equipment cost?

19 A I believe they did.

20 Q And that changed for purposes of the third commitment
21 letter, as you earlier testified today, right?

22 A That is my recollection, yes.

23 Q Do you recall why Welded used 50 percent as an estimate
24 for its expected equipment costs of labor?

25 A So my understanding, that was always intended to be a

1 good proxy for what actual expenses would, over time, come
2 out to. And you know, based on discussions with the project
3 team, that was their best basis for providing that estimate,
4 especially when we're on such a short time frame of providing
5 these pre-funding forecasts.

6 Q Okay. And let's talk about the term or phrase "included
7 equipment."

8 Do you recall that, under the contract. there was a
9 category of material and equipment defined as "included
10 equipment"?

11 A Yes.

12 Q And Welded did not receive the 50 percent equipment fee
13 of labor cost to account for the included equipment. Is that
14 right?

15 A Can you ask that one more time?

16 Q All right. Well, so you understand that Welded billed
17 for labor costs incurred under the prepetition contract,
18 right?

19 A Correct.

20 Q And then did not separately bill for included equipment,
21 correct?

22 THE COURT: What time frame are you in?

23 MR. NEIBURG: Under the prepetition contract. I'm
24 sorry.

25 THE WITNESS: Yeah. So, prepetition, it was just a

1 kind of an equipment multiplier that was applied to labor.

2 BY MR. NEIBURG:

3 Q And that 50 percent of labor was paid on account of the
4 included equipment under the prepetition contract, right?

5 A Correct.

6 Q So, in your emails post-petition discussing the
7 commitment letter, the references to "included equipment,"
8 was that simply because Welded now had to bill for costs
9 incurred on account of that type of equipment that was
10 included equipment under the prepetition contract?

11 A Yes. Our forecast had an equipment forecast. And it
12 was to be actual expense.

13 And especially when subcontractor costs were being
14 stripped out and direct-paid, it was to account for that type
15 of equipment being -- and materials that were kind of covered
16 by that definition as part of the pre-funding estimate.

17 Q Okay. And just one more question or two.

18 MR. NEIBURG: Mr. Zinkel, if you could pull up PX-
19 529 and go back to Page 82.

20 (Pause in proceedings)

21 BY MR. NEIBURG:

22 Q So, Mr. Pometti, on cross-exam, do you recall being
23 asked questions about the release of Bechtel claims in
24 Paragraph 4?

25 A Yes.

1 Q And Transco's counsel specifically asked you about the
2 claim numbered 601, correct?

3 A Correct.

4 Q Now is your understanding that release -- that the
5 release of Bechtel claims relates only to enumerated proofs
6 of claims?

7 A No.

8 Q In fact, if you read (i):

9 "Waive any and all claims and/or requests for
10 payment, whether administrative, priority, or
11 unsecured in nature, that have been, could have
12 been, or could be asserted by the partner settling
13 parties" --

14 Which includes Bechtel.

15 "-- (or any other person or entity claiming by or
16 through the partner settlement parties) against the
17 debtors and their estates, including, without
18 limitation, any and all claims asserted in" --

19 And then it goes to list the specific proof of claims
20 and the request for payment of admin. expense claim.

21 Do you see that?

22 A I do.

23 Q Okay. So it's your understanding that the plan
24 settlement agreement and the plan, Bechtel released any and
25 all claims it may have had against the estate. Is that

1 right?

2 A Correct. Any and all claims, which included the proof
3 of claims that were filed.

4 MR. NEIBURG: And Your Honor, I apologize. I lied.
5 I had one or two more questions about an area that I saw on a
6 different page.

7 BY MR. NEIBURG:

8 Q Mr. Pometti, do you remember during cross you were asked
9 questions about Zolfo Cooper's as-bid versus as-performed --

10 A Yes.

11 Q -- analysis?

12 And you kept on on saying "original bid package." Do
13 you recall when that original bid package had been submitted
14 to Transco?

15 A I don't specifically recall. It was obviously well
16 before we were ever engaged.

17 Q And it listed a number of 283 million as part of the
18 original bid estimate. Do you recall that?

19 A I do.

20 Q And do you recall that, at some point, Transco and
21 Welded had entered into a contract amendment? Are you aware
22 of that?

23 A I do recall there was an amendment at a point in time,
24 and I believe there might -- may have been multiple
25 amendments, but --

1 Q Are you aware that --

2 A I don't --

3 Q -- under the amendment --

4 A -- specifically recall.

5 Q -- the anticipated costs of the contract were 454
6 million?

7 A That sounds familiar. I -- I do know the contract value
8 was then increased over time --

9 Q But at --

10 A -- at various points.

11 Q I'm sorry.

12 At the time of your as-bid versus as-performed analysis,
13 Zolfo Cooper was just looking at the original bid package.
14 Is that right?

15 A Correct. For that analysis, it was -- that was the bid
16 package we were requested to base the comparison against.

17 MR. NEIBURG: No further questions, Your Honor.

18 THE COURT: Okay.

19 MS. EWALD: I have no recross, Your Honor.

20 THE COURT: Thank you.

21 Thank you for your testimony, Mr. Pometti. You may
22 step down.

23 THE WITNESS: Thank you, Your Honor.

24 (Witness excused)

25 MR. GUERKE: Your Honor, the next witness, I

1 believe, is Mr. Sztroin. He is on both of our lists. And by
2 agreement, the -- Transco is going to call him in their -- at
3 this point, but we're going to wait to cross before we close
4 out our case, Your Honor.

5 THE COURT: Okay. So you're going to call him now,
6 so Transco is going to call him now.

7 MS. EWALD: Yes, Your Honor.

8 THE COURT: Okay.

9 MS. EWALD: Transco will call Mr. Sztroin as their
10 first witness, recognizing that Mr. Guerke, plaintiff's
11 counsel, is not going to close their case-in-chief until his
12 cross-examination is concluded.

13 THE COURT: Okay. And then does Welded have any
14 other witnesses you're calling live?

15 MR. GUERKE: Your Honor, we have some deposition
16 designations that we will be using tomorrow, but we don't
17 have any more live case-in-chief witnesses. We'll have some
18 rebuttal witnesses.

19 THE COURT: Okay. Okay. Would you like a break
20 before you call -- I should ask Mr. Sztroin whether he would
21 like a break --

22 MS. EWALD: He may.

23 THE COURT: -- before he goes on the stand.

24 MS. EWALD: He may appreciate a break, Your Honor.

25 THE COURT: Okay. Why don't we take ten minutes.

1 We'll come back at 4.

2 MR. GUERKE: May I address one issue, Your Honor?

3 THE COURT: Yes.

4 MR. GUERKE: Prior to the start of trial, we agreed
5 to provide witness lineups two days in advance of our case.
6 And we provided our witness lineup Friday before the Tuesday
7 start and we did it in the morning, at the defendants'
8 insistence that it be two full days.

9 And we got the witness lineup from the defendants
10 at 12:39 on Friday, which had us anticipating that they were
11 going to take a lot of time with cross and that they were
12 calling Mr. Sztroin tomorrow at 12:39.

13 I don't have a specific application for what to do
14 with that, other than we may need some flexibility with the
15 schedule to make sure we're prepared to cross him and we have
16 our witness binders and all those things, Your Honor.

17 THE COURT: Okay.

18 MR. BURWOOD: Your Honor, I sent the witness list
19 on Friday. We still had Mr. Gray, Mr. Kakol, Mr. Pometti. I
20 did my best to project two days in advance in good faith.

21 THE COURT: Okay. Well, I appreciate that.

22 Let's see. Let's get Mr. Sztroin on the stand, and
23 we'll start and we'll see where he ends.

24 I'm certainly not going to make you cross him
25 today, assuming that the direct is over, which I think Ms.

1 Ewald is telling me it won't be. So let's see if it presents
2 an issue.

3 MR. GUERKE: Thank you.

4 THE COURT: Okay. Let's take our break.

5 (Recess taken at 3:49 p.m.)

6 (Proceedings resume at 4:01 p.m.)

7 (Call to order of the Court)

8 THE COURT: Please be seated.

9 THE ECRO: Raise your right hand, please.

10 DAVID SZTROIN, WITNESS FOR THE DEFENDANTS, AFFIRMED

11 THE ECRO: Please state your name for the record.

12 THE WITNESS: David Michael Sztroin S-z-t-r-o-i-n.

13 THE ECRO: Thank you. You may be seated.

14 MS. EWALD: Your Honor, may I proceed?

15 THE COURT: You may.

16 MS. EWALD: Thank you.

17 Your Honor, the Transcontinental Pipe Line Company
18 calls Mr. David Sztroin as its first witness.

19 DIRECT EXAMINATION

20 BY MS. EWALD:

21 Q Good afternoon, Mr. Sztroin.

22 Who is your current employer, Mr. Sztroin?

23 A The Williams Companies.

24 Q And what was your role on the Atlantic Sunrise project?

25 A I was the project manager for the forty-two-inch Central

1 Penn Line South Pipeline.

2 Q And before we talk specifically about ASR, let's talk a
3 little bit about your educational and work background.

4 Do you have a college degree, Mr. Sztroin?

5 A Yes, I do.

6 Q And where is your degree from and what is it in?

7 A I graduated in -- with a Bachelor of Science Degree in
8 Civil Engineering from the University of Louisiana at
9 Lafayette.

10 Q And do you hold any professional licenses or
11 certifications?

12 A Yes.

13 Q And what professional licenses do you have?

14 A A professional engineer's license in the State of
15 Louisiana.

16 Q And can you describe your work background, Mr. Sztroin,
17 beginning in -- let's say beginning in 1990?

18 A Okay. I started actually working for The Williams
19 Companies in March of 1990 through -- and it was -- I was a
20 project engineer -- or a field engineer, actually, I think,
21 was my official title. I did a couple of projects with them,
22 also provided tech services for our operations group.

23 And in 1993, Williams sold those assets to Enron. So I
24 ended up going with the assets, so to speak.

25 So I started -- you know, I was employed by Enron at

1 that point in time and started working for Florida Gas
2 Transmission Company, which -- which was, again, one of their
3 subsidiaries that they owned at the time.

4 While I was in the Lafayette office, I did a lot of what
5 they maybe characterize as non-FERC projects. I did clean
6 burn conversions on compression projects, meter stations,
7 pipelines, things of that nature that -- that basically
8 didn't require a 7(c) project -- a 7(c) certification.

9 As -- as everyone knows, you know, Enron went bankrupt.
10 Those -- now those assets were sold from the Bankruptcy
11 Court. Southern Union purchased those assets in -- I want to
12 say it was the end of 2004 or beginning of 2005.

13 From that point, I was transferred from Lafayette to
14 Houston and then started working on now FERC 7(c) projects.

15 Q And you mentioned a few times in your testimony about
16 the assets that were getting transferred from Williams to
17 Southern Union to Enron. What type of assets are you
18 speaking of?

19 A Well, they had what they called an "intrastate pipeline
20 system" in -- on Louisiana. It was, oh, a little bit more
21 than 500 miles or somewhere close to 500 miles and -- and a
22 couple of compressor stations. And that's -- those are the
23 assets that were -- were sold to Enron.

24 Q And so in that period, 1990 forward, you were -- were
25 you working in the oil and gas industry in connection with

1 pipelines?

2 A Yes.

3 Q And I believe you were just going to describe the point
4 where you were -- you -- I think you had talked about working
5 with Enron and then with Florida Gas.

6 A Florida --

7 Q What did --

8 A -- Gas --

9 Q What did --

10 A -- Transmission.

11 Q -- you do --

12 A Yes. It --

13 Q What did --

14 A Like I --

15 Q -- you do for --

16 A -- said, they were -- they were a subsidiary of -- of
17 Enron. They had assets along the Gulf Coast, inclusive of
18 Louisiana. And -- and so it was sort of a natural sort of
19 migration, if you will, to -- you know, working for them and
20 -- and help support those assets and projects, for that
21 matter.

22 Q And at some point, did you rejoin Williams?

23 A I did.

24 Q And what time -- and what year was that?

25 A Well, Southern Union ended up being sold to Energy

1 Transfer. I think that occurred in March of 2012. And it
2 was very shortly after that -- it was, I think, in May of
3 2012, where I rejoined Williams.

4 Q And have you worked with Williams ever since 2012?

5 A Yes.

6 Q And prior to the ASR project where you served as the
7 project manager, had you acted as a project manager, in a
8 project manager role for similar pipeline projects?

9 A Yes. The Florida Gas Phase VIII project -- well, let me
10 back up.

11 You know, Florida Gas Phase VII, I was the project
12 manager on that particular pipeline expansion. You know, it
13 was not nearly as -- as large as ASR.

14 But for the FGT Phase VIII expansion project, that was
15 well -- you know, a 2.3-billion-dollar project. I think it
16 was 483 miles or something like that of pipelines, a lot of
17 compression, meter stations, you know, all of that, that was
18 compromised of that -- that expansion project.

19 Q And thank you, Mr. Sztroin.

20 And let's talk about your role on the ASR project.

21 When did you first start working on the ASR project?

22 A It was in May of 2014.

23 Q And from May 2014, leading up to the point where
24 construction of the pipeline began, can you describe what
25 your duties and responsibilities were in connection with ASR?

1 A Yes. Something of this nature, you know, requires a lot
2 of permits. Okay. With respect -- especially with FERC.
3 They have these -- what are known as "resource supports," and
4 there is a lot of data to gather for -- for that.

5 So there was a lot of environmental efforts to acquire
6 that data from the field. There were the actual engineering
7 route. You have to select the route so that one could end up
8 determining the potential impacts caused by the project;
9 hence, it made its way into those environmental resource
10 supports for FERC.

11 And then, also, there were all -- some agencies that we
12 had to acquire permits: PADEP, which is sort of acronym for
13 -- for Pennsylvania Department of Environmental Protection,
14 that we had to acquire the 102 and 105 permits. We had
15 threatened and endangered species.

16 So, like I said, there were a number of those sorts of
17 activities.

18 And then, of course, land was a major -- a component of
19 it, too, as far as identifying the tracks and, you know,
20 payment to the landowners to secure the easements.

21 So there was just a tremendous amount of work, planning
22 that went in before construction ever began.

23 Q And before and after construction, who were some of the
24 environmental members of the team for the ASR project?

25 A Well, the -- specifically, the environmental, Lynda

1 Schubring was the -- the lead scientist on -- on that.

2 We had two project engineers on the Central Penn Line
3 South.

4 We had, again, land that was helping out.

5 Chris Springer, who was the project director, he was not
6 only over on, you know, Central Penn Line South as a project,
7 but he was -- basically, you could call it a "program
8 manager."

9 So it included a number -- I think it was like
10 fifty-something different work orders or whatever that
11 compromised ASR, if you will.

12 Q And did you have -- did Transco have a team of
13 construction managers that worked in the field as well during
14 the project?

15 A Yeah. For the pipelines, there were two designated
16 Williams construction managers:

17 Colby Pew was specifically assigned to Spreads 4 through
18 7.

19 And another individual was basically managing Spread 4,
20 which is on -- on Central Penn Line South.

21 But -- and then we had a Central Penn Line North and
22 some other routes, and so that individual was managing --
23 overseeing those -- those duties.

24 Q And I'd like to turn, Mr. Sztroin, to Exhibit D-007,
25 which is in your binder.

1 MS. EWALD: At this time, Your Honor, may I
2 approach?

3 THE COURT: Yes.

4 MS. EWALD: Thank you.

5 (Pause in proceedings)

6 BY MS. EWALD:

7 Q Mr. Sztroin, I'm showing you what's been marked as D-
8 007. It is entitled "Atlantic Sunrise Project Pipeline Job
9 Showing," dated June 16, 2015.

10 Do you recognize this document?

11 A Yes.

12 Q And were you present at this pipeline job showing in
13 2015?

14 A Yes, I was.

15 Q And can you describe what this -- what the -- first of
16 all, what did a pipeline job showing entail?

17 A The -- we invited a number of contractors. I don't
18 recall exactly how many, somewhere close to ten, if I recall.
19 And we invited ones that we believed were capable of -- of
20 constructing however many spreads that they wanted to end up
21 bidding on.

22 We included the alignment sheets, all of the -- the road
23 and stream crossings and wetlands that has been determined up
24 to this point, the con -- the construction specifications,
25 you know, and how to build the pipeline, things of that

1 nature that was included in this particular package.

2 Q And just to provide some background for the Court, if we
3 could turn to Page 5 of the presentation. It's entitled
4 "Project Overview."

5 Q Using this slide, Mr. Sztroin, could you explain to the
6 Court purpose behind the Atlantic Sunrise Pipeline was, what
7 was the reason for its being?

8 A Yes. The -- the reason was we were -- we were really
9 bottlenecked, if you will, on bringing additional supplies
10 from the Marcellus shale areas down south towards our
11 pipelining system, our existing Transco pipeline system.

12 So as you can see, they had like two converging arrows.
13 And what happened is that there was some supply coming in, in
14 what they called the "Leidy system" out on the western end of
15 it. And that's like -- you could see almost like Points 3
16 and 4, that's some of the additional supplies we were able to
17 pick up.

18 They had the other areas, which was actually Central
19 Penn Line North, and you can kind of see this on this Number
20 2. So it was also pulling some additional supplies from that
21 area.

22 They converged at that particular point between 2 and 4
23 at this green -- sort of green dot, if you will. And that's
24 the beginning of Central Penn Line South.

25 That particular pipeline was about a hundred and -- it

1 turned out to be 128.3 miles. And it terminated at our
2 existing Transco system.

3 So it allowed to bring those additional supplies and
4 bring it to our particular Transco system, the existing one,
5 where -- whereby we can end up moving those volumes for our
6 shippers to other points, delivery points on our Transco
7 system.

8 Q And if we turn to the next page, Mr. Sztroin, which is
9 Slide Number 6 does this depict the ASR pipeline project in
10 total?

11 A Those shows the -- all of the pipeline -- the planned
12 pipeline projects in Pennsylvania.

13 Q And does this show -- and can you indicate what portion
14 of the project was the Central Penn Line South, which is the
15 subject of this lawsuit?

16 A Well, this is a -- this is an overview, if you will.

17 But you could see a label, and it was called "Station
18 517." The actual start of the pipeline itself was -- I -- if
19 I remember right, it was about a mile just to the east of it.
20 That's where -- where it started.

21 And again, that's where the Central Penn Line North
22 Pipeline terminated, which is that red one that was out
23 towards the east. And then it -- it kind of took a turn and
24 went to the northeast, if you will.

25 So that's the -- that was the beginning of the 128.3

1 miles of forty-two-inch. And as you can see, it -- it
2 generally was going in a southerly direction. And it
3 terminated just to the northeast of our Station 195.

4 Q Thank you.

5 And you can see -- and with regard to the slide at Page
6 6, could you remind us, Spreads 5, 6, and 7, what the mileage
7 was for those three spreads?

8 A Yeah. Of that 128.3 miles, it was approximately 95
9 miles that was compromised of Spreads 5, 6, and 7.

10 Q And I'd like to turn, Mr. Sztroin, just briefly within
11 this presentation to Slide Number 35, which is the list of
12 environmental construction plans.

13 And just to draw your attention to that slide, are these
14 the types of planning that you were describing earlier that
15 went into preparing for the ASR pipeline project?

16 A Yes, it was. There was -- as you can see, there was
17 really a litany of -- of plans and, you know, permits and
18 things of that nature that we -- you know, we had to -- had
19 to acquire.

20 And so we had to develop all of these particular plans.
21 You know, just looking at them, there was quite a few of them
22 that was, again, mandated by FERC, noxious and invasive
23 plants, you know, the unanticipated discovery of -- of like
24 humans. That -- that was what they call a "SHPO," State
25 Historic Preservation Office. So those are the kind of

1 things, that we had to develop all these plans that was a
2 part of the construction.

3 Q And if we turn just one page, we'll see what's been
4 referenced several times, I think, in this proceeding. We'll
5 see, at Page 36, "Chapter 102, 105 permitting."

6 Can you just give an overview for the Court of what
7 Chapter 102 and 105 permits entail?

8 A Okay. Those were state -- state permits.

9 The 102 was essentially the erosion and sediment control
10 plan. That's where we had to end up making sure that the
11 construction would not adversely, you know, again, cause
12 erosion and then getting sediment off the right-of-way.
13 That's what those particular permits were.

14 So we had to end up providing some -- some pretty
15 detailed plans for -- for the 102.

16 105 was -- was related to wetland and water body
17 crossing; streams, rivers, that nature.

18 So -- s we had like different, you know, focuses, if you
19 will, with regards to the 102 and then -- then the 105.

20 Q And the last bullet, the last large bullet on Slide 36,
21 it says:

22 "No changes without a variance request and permit
23 modification."

24 Can you explain what that entailed?

25 A Yes. With respect to the permits, if there was a change

1 -- once we identified, again, what's -- like just using, for
2 an example, on 102. Okay? If we wanted to end up doing
3 something different after that particular -- the set of plans
4 were submitted and we acquired the permits, if there was any
5 change to that that -- that could possibly affect, again, the
6 E and S issues associated with it -- again, erosion and
7 sediment control -- we had to end up getting a variance.

8 They were very strict with crossing methods. If we
9 identified that it was going to be an open cut and the
10 contractor wanted to change it to a bore or vice-versa --
11 okay? It required a variance before that change could be
12 realized and used by the contractor.

13 Q And

14 A So --

15 Q Oh, I'm sorry. I didn't mean to --

16 A -- sort of the --

17 Q -- interrupt you, Mr. Sztroin.

18 A But along those same lines, with regards to the 105
19 permit, if there was a particular method identified -- for
20 example, it was -- we wanted -- we thought that the
21 contractor would best want to bore that stream, for whatever
22 reason, and they wanted to end up changing that, that, again,
23 required a variance request because it's -- you're changing
24 the method, okay, that it was permitted under.

25 Q And if we turn further into the presentation at Slide

1 48, we see some discussion of the variance process And the
2 title of the slide under "variance process" indicates:

3 "Construction contractors must submit a fully
4 complete variance request form with" --

5 And then there is the long laundry list of items.

6 How did variances typically arise under the ASR project?

7 A Well, the contractor really is the -- I'd say the start
8 of the process is the contractor. They're the ones that
9 recognize, for whatever reason, either a lot of difficulty if
10 we maintain that particular, say, crossing method. It could
11 be a lot more impacts that might be realized if we, again,
12 continued with that crossing method.

13 And so these particular changes, that -- like you said,
14 it had to be a bona fide reason for -- for doing -- for
15 requesting this right here. And just to have a need -- there
16 was -- there was a laundry list of different items that
17 needed to accompany the -- this particular variance request,
18 as you could see right here.

19 Q And was Welded at the job showing, mister -- was Welded
20 representatives at this pipeline job showing, Mr. Sztroin?

21 A Yes.

22 Q And with regard to the time line for ASR, was this job
23 showing in the year -- earlier in the year than bids were due
24 from contractors for the project?

25 A Well, it was conducted in June, and I think we were

1 starting -- we requested that the bids come in, in somewhere
2 around September that same year.

3 Q And do you recall that Welded submitted a bid to Transco
4 for the ASR project in September of 2015?

5 A Yes. They submitted several, I'd say, bids because it -
6 - this was on a per-spread basis. The earlier overview map
7 did denote like the different -- where the different spread
8 breaks would be.

9 So if a contractor wanted to bid only on one spread,
10 that was okay. If they wanted to -- for some reason, you
11 know, strategically, they wanted to bid two of them on a --
12 you know, to kind of make it continuous, if you will, or
13 joining, they could do that, too.

14 So it was really up to the contractors to go ahead and
15 submit the bids only on the ones that they, well, again, were
16 interested in -- in executing.

17 Q And after Welded submitted a bid for the ASR project, do
18 you recall that Welded approached Transco with the proposal
19 -- a proposal in November of 2015 to enter into a
20 cost-reimbursable arrangement?

21 A Yes. I know that they submitted a bid in September
22 again, if I recall correctly the timing. But it was a -- you
23 know, a conventional bid, be it a lump-sum basis, if you
24 will.

25 And I want to say, towards maybe the latter -- the very

1 latter half of October or beginning of November, it's my
2 understanding that they placed a call to someone in our
3 contracts department to -- you know, to see if we would be
4 interested in considering this cost-plus-fixed-fee type of
5 arrangement.

6 Q And were you involved in discussions with any of the
7 Welded representatives in the -- regarding that proposal?

8 A Welded actually came in person and presented that to a
9 group of Williams personnel. I was in that meeting.

10 But no Welded did not call me or anything with respect
11 to making this proposal.

12 Q I appreciate that, Mr. Sztroin.

13 I was just asking if you were involved with the meeting
14 with Welded representatives at some point.

15 A At -- at some point, yes.

16 Q And in those meetings -- was Mr. Wall in those meetings?

17 A When they came originally and made the proposal, Mr.
18 Wall was actually the one that was presenting that proposal.
19 And I was in that meeting.

20 And then I think the next time I was in a meeting with
21 Mr. Wall was in the latter part of January of the following
22 year.

23 Q And in those meetings, did Mr. Wall or other Welded
24 representatives make any comments with regard to the pricing
25 of the cost-reimbursable contract as compared to their

1 fixed-price bid?

2 A Yeah, the -- back, I believe, again, in that November --
3 I think it was the 7th or somewhere around there -- meeting,
4 Mr. Wall indicated that there would -- there could be some
5 cost savings, I -- if I recall, somewhere between twelve and
6 \$15 million savings as compared to the -- to the lump-sum
7 bid.

8 Q And was there also a schedule of the work being
9 discussed at that time?

10 A Yes, there were.

11 Q And Mr. Sztroin, I apologize. I'm going to ask you to
12 go to Tab 13, which I think I have out of order here. My
13 next exhibit I'd ask you to take a look at is D-13.

14 And D-13 is an email from Ms. Malone to you and others
15 forwarding ASR schedules and estimate. And the attachments
16 include that it is a preliminary construction schedule for
17 5/6 and 6/7 attached.

18 And do you recall receiving this schedule, Mr. Sztroin?

19 A Yes.

20 Q And it has been forwarded to Ms. Malone from Diane
21 Ingmire at Welded.

22 Who is Ms. Malone?

23 A She was one of the people that works in the contracts
24 department, and so she was really the person that was
25 assigned to help support ASR.

1 Q And looking at the schedule that Ms. Ingmire forwarded
2 -- or sent to Ms. Malone in December of 2015 -- first of all,
3 to orient everyone, this is shortly after the notice --
4 letter of intent, notice of contingent award has been signed.
5 Do you recall that?

6 A Yes. I -- I remember that someone in our organization
7 had -- had executed that notice.

8 Q And if we turn to the schedule that Welded is submitting
9 to Transco at the time, can you explain what it shows with
10 regard to the season of the proposed construction?

11 And particularly looking at Page 2. And I'll draw your
12 attention to the mobilization date and the beginning of
13 construction dates.

14 A Yes. It -- it shows that we had mobilization to
15 commence in the like late fall, Fall of 2016, and
16 construction to commence right -- right at the beginning of
17 2017, during the winter.

18 Q So at, this time, the proposed schedule and plan for
19 construction was winter construction. Would you agree with
20 me, Mr. Sztroin?

21 A Yes.

22 Q And now I'll ask you to take a look back to D-13, which
23 is actually out of -- or I'm sorry -- D-14. I confused
24 myself. D-14, which is now a January 12, 2016, email from
25 Ms. Malone to yourself and others at Transco.

1 Do you recall receiving this email from Ms. Malone?

2 A Yes.

3 Q And we see that attached -- she says:

4 "Attached is the summary of company estimates
5 versus bids. 5, 6 and 7 are Welded's unit cost bid
6 numbers."

7 Q And do you recall that those were the bids -- the unit
8 cost bid that Welded had submitted previously?

9 A That's correct.

10 Q And so turning the page to Page 2 of D-14, can you
11 explain what we see here for -- in this table entitled "2016
12 ASR Pipeline Total Cost Summary as of January 12, 2016"?

13 A What -- what this is for, this -- this is sort of
14 starting the basis before awards are made, you know, to -- to
15 go ahead and show what appears to be the -- I'll call it the
16 leading -- the contractors that may end up getting an award
17 for the different spreads.

18 And they had Welded listed as 5, 6, and 7 and, you know,
19 other contractors on those other spreads that I -- that was
20 on that overview map that was -- that was depicted earlier.
21 That's what this is for.

22 Q And at this time, had Transco prepared its own estimate
23 of the cost of Spreads 1 through 7?

24 A Yes.

25 Q And is that -- what is that shown on this exhibit?

1 A Well, the total for all of the pipelines spreads that --
2 all eight of them, that -- the total of the estimate was --
3 was 632 million.

4 Q And with regard to the bids that we see here from
5 various contractors, including what -- or let me ask you, Mr.
6 Sztroin.

7 What does the righthand column show with regard to the
8 bid totals?

9 A Well, if we -- this was just hypothetical, of course.
10 But if we stayed with these particular contractors with these
11 bid amounts, it totaled to be 725 million.

12 Q And of those -- in te Welded, for Spreads 5, 6, and 7,
13 those are -- the numbers that we see here in this document
14 are the September 2015 bids, correct?

15 A That's correct.

16 Q Thank you.

17 And, Mr. Sztroin, talking a little bit about the
18 meetings in connection with the -- with Welded, were there
19 discussions -- and I believe you had -- perhaps you can tell
20 us how many meetings that you were in personally with Mr.
21 Wall and Welded representatives.

22 A Well, at least with Mr. Wall, the only one I can end up
23 remembering is the end of January of -- I guess that would
24 be, whatever, two thousand and six -- yeah, the end of
25 January of 2016. Myself and two other people with the

1 contracts group -- Tina being -- being one of them -- was
2 there along with Mr. Wall and Alex Epstein and some other
3 individual -- I don't recall who it was -- with -- with
4 Welded.

5 But we were in a pretty long meeting that day.

6 Q And was the issue of planning for ASR discussed?

7 A Yes, it was.

8 Q And what was the -- how was that issue raised?

9 A Well, we were talking about, oh, just numerous topics.
10 Okay? And so, leading up to it, obviously, there was going
11 to end up being some mobilization to it. And I remember Mr.
12 Wall said, well, are you -- are you willing to pay for it.
13 And I paused and started -- you know, before I -- I replied,
14 I -- I paused a bit and started thinking, well, you know,
15 there's two choices, I could have said yes or no.

16 And so the -- call it yes, if you will, in the regards
17 that I recognized that this project was -- was complicated
18 and it required a lot of planning if we were going to end up
19 meeting, you know, cost and -- and schedule goals. So I did
20 not -- I -- I didn't want to end up underestimating the level
21 of effort it was going to take to accomplish that. And if we
22 even hoped to obtain, you know, twelve to fifteen, \$18
23 million in savings, there needed to be some meticulous
24 planning that went into this right here because, again, it's
25 -- it's a complicated project. There's just a lot of people.

1 You got to keep them moving very cost effectively. And so
2 that was the yes part of me saying that.

3 The no was, well, if I said now, I started thinking what
4 sort of level of effort is it going to be. I recognized the
5 -- the risk aspect because you -- those risks were
6 transferred to us.

7 So I thought that, by us willing to -- Transco willing
8 to go ahead and fund that -- that planning part would yield
9 better results, and so I replied yes.

10 Q And ultimately, did -- is that decision to say yes, is
11 that what resulted in the request for services that we've
12 seen in this proceeding?

13 A Yes.

14 Q And Mr. Sztroin, approximately how much money did
15 Transco pay to Welded to perform that planning?

16 A It was -- I want to say it was 6.2 million or something
17 very close to that.

18 Q And throughout the -- and I think we've seen as well in
19 this proceeding that the kickoff to that planning phase
20 occurred in January of 2017. Do you recall that?

21 A Yes.

22 Q And what -- can you just briefly orient the Court to
23 what trans -- where that kickoff meeting for the planning
24 occurred and what transpired thereafter?

25 A Well, we were -- we were having a -- call it an

1 "indication" that we -- we believed we were going to end up
2 getting the FERC order towards the end of January or maybe
3 the beginning of February because we had already received the
4 FEIS, I think it was maybe in December sometime. So we
5 figured it was somewhat imminent.

6 We actually had a kickoff meeting in January, the --
7 towards the end of January of -- of 2017, actually, right
8 before we -- we received the order. And shortly there -- and
9 that meeting lasted all day long. And there was quite a few,
10 you know, topics to discuss with -- between our own people
11 that was involved with the project team, as well as Welded.

12 Q And thereafter, did -- and what transpired after that
13 meeting with --

14 A Well, I want to say it was around March. That's where
15 they started mobilizing people to -- to Pennsylvania.

16 I don't know if it started out at Mount Joy. But at --
17 at some point in time, they -- they secured that Mount Joy
18 office, so it was -- you know, the office was getting set up.
19 And then they started having several people, project managers
20 and -- and the likes, start showing up.

21 That -- those were the sort of things that -- that
22 started about that time frame.

23 Q And I'll turn your attention, Mr. Sztroin, to D-144 in
24 the binder. It's the next exhibit. And it's an exchange or
25 letter that -- sorry -- email that you sent to Ms. Bethany

1 Van Baren and to Marcus Hood. And the date is May 5, 2017,
2 and the subject is "ECD action item."

3 A Yeah, that's correct.

4 Q And can you explain for the Court what you were asking
5 of Mr. Hood at the time?

6 And I'll draw your attention to the first two lines [as
7 read:

8 "Marcus, the installation and maintenance of the
9 erosion control devices for Atlantic Sunrise will
10 be complicated. The worst thing we can do is
11 underestimate the level of effort and expertise."

12 Why were you raising this issue with him at this time?

13 A Well, I'm a firm believer in lessons learned. Okay?
14 And it was my understanding that other, you know, contractors
15 were -- were having difficulty, let's say understanding some
16 of those E and S plans and implementing them.

17 They had -- again, I'm -- I'm relying on a lot of
18 feedback from the industry, if you will, in -- for pipeline
19 construction in Pennsylvania. And it seemed as though there
20 was a lot of noncompliance, you know, on other jobs. And in
21 -- I saw the development my -- personally of the 102 plans to
22 submit to acquire that 102 permit. It was complicated.

23 And again, I was just adamant that -- you know, for
24 people to review these plans and know what needs to be done
25 before we ever set foot on that right-of-way. So I -- this

1 was -- I was trying to instill that sense of urgency, you
2 know, to Bethany and -- and Marcus to -- to do exactly that.

3 Q And did you feel that they had that same sense of
4 urgency, Mr. Sztroin?

5 A I -- I just could not -- I just couldn't get a -- for
6 lack of a better word, a warm fuzzy feeling that-- that, you
7 know, people were just really taking this -- this seriously
8 and devoting that -- efforts to go ahead and -- and do
9 exactly what I'm after right here in this -- pleading in this
10 letter.

11 MS. EWALD: And Your Honor, I realize I have failed
12 to move for the admission of D-7, D-13, D-14, and also D144,
13 the last four exhibits we reviewed, and I would to so at this
14 time.

15 MR. GUERKE: No objection.

16 THE COURT: Okay. They're all admitted then.

17 (DX-7 received in evidence)

18 (DX-13 and DX-14 received in evidence)

19 (DX-144 received in evidence)

20 BY MS. EWALD:

21 Q Mr. Sztroin, I'd like to turn now to D-210, which is an
22 email exchange dated July 17th, 2017.

23 And it's now July of 2017. How far away at this point
24 is notice to proceed being projected?

25 A Well, we were anticipating a start date at or very near

1 October 1st. So that was my best intel that I had. So if
2 you're talking about mid-July -- September -- that's two and
3 a half months.

4 Q And Mr. Pew -- again, what was Mr. Pew's position on the
5 project?

6 A Yes. Colby was the construction manager for Spreads 5
7 through 7.

8 Q And below, it's -- the subject line indicates:

9 "Welded's project manager Sandy Williams released
10 from the project."

11 Do you see that?

12 A Yes.

13 Q And the next page indicates:

14 ""We just found out that Sandy Williams has been
15 removed from Welded for reasons unknown at this
16 time. This is a huge disappointment to Williams'
17 field teams."

18 And it goes on to say that:

19 "There has been communication and trust with him,
20 and Sandy is the one person from Welded who has
21 been truly invested with CPLS."

22 Do you recall this event occurring?

23 A Yes, I do.

24 Q. The next email from Mr. Pew later that same day states
25 that Gerald Hill has also left the project.

1 And what was Mr. Hill's role on the project?

2 A It's my understanding that he was going to be a
3 superintendent on one of the spreads.

4 Q And there's also a discussion about Mr. Scott
5 Schoenherr, who was the superintendent for ASR, but he is
6 also overseeing the Sunoco project. Did you see that?

7 A Yes.

8 Q And at -- and then the top email indicates:

9 "J.B. McHendry, Sandy's assistant project manager,
10 was relieved of his duties today, also."

11 Do you recall this one email in mid-July of 2017, where
12 three Welded personnel were -- where you got this news about
13 these three Welded personnel?

14 A Could you repeat your question --

15 Q Yes, I'm --

16 A -- please?

17 Q I apologize, Mr. Sztroin.

18 Do you recall receiving this news in July of 2017 about
19 these individuals?

20 A Yes.

21 Q And what was your reaction to that?

22 A I was -- was quite concerned. As I mentioned earlier, I
23 -- I realized the utter importance to go ahead and properly
24 plan something of -- a project like this right here. And so
25 all of that institutional knowledge they had up until this

1 point is basically walking out the door.

2 And you know, again, those superintendents, they have a
3 tendency to walk that pipeline. They visualize all of these
4 particular crossings, how to do it, you know, how long it's
5 going to end up taking. And again, all of that institutional
6 knowledge right out the door.

7 Q And at the time, Mr. Sztroin, did anyone from Welded
8 advise you that it was resourcing this planning project with
9 agency hires from a group called Professional Talent
10 Acquisition Group?

11 A No, no one notified me of that.

12 Q And as the -- did you have concerns at this point with
13 regards to the planning work that was being done?

14 A Yes. It was like, okay, well, all these people left, so
15 who's planing this work. And we -- and we're going to be
16 starting construction in -- in two and a half months.

17 Q And one of the -- we've seen many of the deliverables
18 that Welded was to provide already in this proceeding, the
19 cost estimate, I believe the project execution plan.

20 Did Welded also provide a schedule for the project in
21 the Summer of 2017?

22 A Yeah. I -- I want to say maybe it was in August, quite
23 possibly, that --

24 Q And --

25 A -- that it was submitted.

1 Q And I'll turn your attention to D-269, Mr. Sztroin.
2 It's an email exchange between you and Matt Andrews. It's an
3 email Mr. Andrews sent to you on August 7, 2017.

4 Do you recall receiving Mr. Andrews' email?

5 A Yes.

6 Q And what was Mr. Andrews' role on the job, on the
7 project?

8 A Matt Andrews was the on-site construction manager
9 specifically assigned to Spread 7.

10 Q And what was Mr. Andrews providing you with on August
11 7th of 2017?

12 A Well, once I received the schedule, I -- I sent it to
13 the -- the field construction managers, as well as to Colby.
14 I wanted some feedback from them -- from them to see if they
15 had any particular concerns.

16 You know, again, anybody can submit a schedule, but is
17 it -- is it reasonable? Is it -- is it such that it appears
18 to be commensurate with the scope of work and then with the
19 different activities, where we end up getting, you know, the
20 mechanical completion date that we were all seeking? I
21 wanted their feedback on it.

22 Q And in your view, was the project schedule an important
23 part of the preparation for ASR?

24 A Yes.

25 Q And if we turn to the second page of Mr. Andrews' email

1 to you, he indicates, in the second paragraph, his view of
2 the schedule, stating:

3 "This initial Level 3 schedule that Welded has
4 provided to our group lacks detail and is a product
5 of some disarray that we have experienced out in
6 the field with their project development team."

7 A Uh-huh.

8 Q And he goes on to say:

9 "The schedule does not reflect the mobilization
10 work to set up offices in the field, environmental
11 workout on the right-of-way, car structures and
12 support, et cetera."

13 Was that -- do you recall receiving this email, this
14 information from Mr. Andrews?

15 A Yes.

16 Q And did you -- were you concerned with regard to his --
17 his view of the schedule?

18 A Yes. I mean, as Mr. Andrews pointed out, there's a --
19 there is bit of, call it "preparatory work" that needs to be
20 done before your mainline crews can even get on the
21 right-of-way and -- and actually start making progress.

22 So Mr. Andrews is pointing this out to me. And it's
23 like, hey, where is this time frame occurring, it's not --
24 you know, the -- the schedule doesn't show that. And it
25 shows like, hey, they're -- they're trying to basically start

1 obtaining progress really immediately after the -- the NTP or
2 very, very shortly after the NTP.

3 And so there's -- there's some things, again, that needs
4 to be done before, again, those crews start hitting the
5 right-of-way.

6 MS. EWALD: Your Honor, I'd like to move for the
7 admission of Exhibit D-210 and D-269. They're the last two I
8 discussed with the witness.

9 MR. GUERKE: No objection.

10 THE COURT: They're admitted.

11 (DX-210 received in evidence)

12 (DX-269 received in evidence)

13 BY MS. EWALD:

14 Q And Mr. Sztroin, do you recall that the -- first of all,
15 let's go back to 2016 when the original contract was executed
16 with Welded.

17 Do you recall what the construction cost -- the final
18 construction cost estimate was in the August 2016 contract?

19 A If I recall, it was like 353 million.

20 Q And I believe the record will reflect it was \$335
21 million.

22 A Three hundred and thirty --

23 Q We can pull out the contract to refresh your
24 recollection, Mr. Sztroin.

25 A It was three thirty-five, yes.

1 Q And --

2 A I do remember that.

3 Q And so why don't we go ahead and just take a look at
4 that amount to make sure we're all on the same page, Mr.
5 Sztroin.

6 MS. EWALD: And I'll refer the Court and the
7 parties to JX-1. And I will find my JX-1.

8 (Pause in proceedings)

9 BY MS. EWALD:

10 Q And Mr. Sztroin, I think there's a JX-1 binder in -- at
11 the witness stand, but please let me know if you need it.
12 And I will -- do you have the contract in front of you, Mr.
13 Sztroin?

14 THE COURT: The black binder.

15 THE WITNESS: There's a lot of black binders.

16 THE COURT: Yeah.

17 THE WITNESS: I'm not certain exactly which one is
18 the contract.

19 (Participants confer)

20 (Pause in proceedings)

21 BY MS. EWALD:

22 Q I apologize for that, Mr. Sztroin.

23 And I'd like to direct your attention, Mr. Sztroin, in
24 JX-1, to Page 495, where we will find the final construction
25 cost, I believe, at the bottom of the page.

1 And Mr. Sztroin, does this refresh your recollection
2 that the final construction cost for the original contract in
3 August of 2016 was \$335 million?

4 A That's correct.

5 Q And do you recall? Was that number less than the
6 fixed-price bid that Welded had submitted in the -- in
7 September of 2015?

8 A Yes. I think it was -- yes, it was -- it was less.

9 MS. EWALD: And now that we've reoriented the
10 witness to the contract price.

11 BY MS. EWALD:

12 Q Do you recall that there were meetings in August of
13 2017 with Welded to address an amendment to the contract
14 price?

15 A Yes. They had a presentation in mid August of '17.

16 Q And what was the revised price that they originally
17 presented to you in August of 2017?

18 A The cost went from this 335 million to 454 million.

19 Q And the -- were there -- the original meeting -- or the
20 meeting that Welded presented their revised contract
21 estimate, was it already at 454 million at that time?

22 A Well, the first -- the first number -- and I apologize.
23 The first number that was -- that was floated out was 410
24 million. And that was the presentation, it was -- it was
25 that figure.

1 Q And at that -- was that presentation -- where did that
2 occur?

3 A That occurred in Houston.

4 Q And at that presentation, did Welded indicate that there
5 were some items of cost that were not included in that
6 estimate?

7 A Yeah. Towards the end, they were -- they had some
8 exclusions. In other words -- I started asking them
9 questions, so you're saying that the four hundred and ten did
10 not include these items. And they -- they said yes, that is
11 correct.

12 Q And do you recall what some of those items were that
13 they had excluded from their estimate at that time?

14 A They had Karst. Let's see, maybe some -- I think some
15 of the E and S. There was a number of other items that --
16 that were flagged. And I -- I thought that it should have
17 been included.

18 Q And what was your direction to Welded at that time with
19 regard to those exclusions?

20 A Well, I told them that they -- they had updated
21 information. And so they needed to go back and price those
22 exclusions into the bid because I didn't want to end up
23 trying to manage the -- this 410 million knowing that all of
24 these particular exclusions were just -- you know, could be
25 piled on. I was -- I really wanted to end up understanding

1 what do we really believe is going to end up be the final
2 cost of this right here. So I asked them to go back and
3 price those into the -- into the estimate.

4 Q And did Welded do that?

5 A Yes, they did.

6 Q And was that the -- was that ultimately then the \$454
7 million that was included in Amendment 1?

8 A Yes.

9 Q And did Welded provide you with a cash flow for the
10 project after the final construction costs had been
11 identified?

12 A Yes, they did.

13 Q And I'd like you to turn to Exhibit D-341, where Mr.
14 Grindinger of Welded is sending you a cash flow -- an
15 attachment identifies it as "Cash Flow Williams ASR." Do you
16 see that?

17 A Yes.

18 Q And was this information that was required under the
19 contract?

20 A Yes. We -- we needed it to end up understanding the
21 cash flow for the project.

22 Q And why was that important to Transco?

23 A Well, it's, you know, for 454 million, you know, the --
24 the Treasury Department, they -- you know, they always are --
25 are very concerned that they, you know, made sure that they

1 had, you know, I'd say, plenty of money to pay the
2 contractors' invoices. This wasn't -- of course, this wasn't
3 just Welded, right? It's the whole ASR. So they were
4 starting to look at this holistically, so the cash flows was
5 very important.

6 Plus, you know, we -- we were having -- we knew that the
7 structure of the compensation was such that they had cash
8 calls. That's why we wanted to end up, again, understanding
9 what the -- what that looked like.

10 Q And so just turn to the third page of Exhibit D-341.
11 And it's an exchange between you and Mr. Grindinger in August
12 of 2017.

13 And at that time, looking at the top of Page 3, were
14 there still -- were there still outstanding deliverables that
15 you were expecting from Welded?

16 A Yes.

17 Q And did that include, at this point, an updated Level 3
18 schedule?

19 A Yes.

20 Q And in response to this email, did you receive the --
21 the cash flow that had been requested?

22 A (No verbal response)

23 Q And I'll draw your attention, Mr. Sztroin, to the
24 attachment, which is an Excel spreadsheet. It's D3-41A. And
25 I'd just like to draw your attention, Mr. Sztroin, to the

1 cash call that -- I think it's for the end of the project.

2 Now, at this time, can you orient the Court to what the
3 mechanical completion date was for the project?

4 A The actual --

5 Q The planned --

6 A -- mechanical completion?

7 Q The planned mechanical completion date.

8 A The planned mechanical completion was June 14th of 2018.

9 Q And just looking at the second page of the first cash
10 call, do you see that the cash calls went beyond June 14th,
11 the planned completion date, into September of 2018?

12 A That's correct.

13 Q And Welded's cash call included over twenty-six -- I
14 think over \$30 million that would be called or invoiced after
15 June of '14 -- June 14, 2018.

16 Mr. Sztroin, what work was -- what work was Welded to
17 perform after the mechanical completion date was achieved?

18 A Well, June 14th is mechanical completion, but there's
19 further work to be done after mechanical completion; namely,
20 the restoration of the pipeline right-of-way. You have to --
21 you have to complete that.

22 Q And can you describe for the Court what the -- what is
23 the scope of work that is entailed in the restoration of the
24 right-of-way?

25 A Well, let's see. I -- I believe that, you know, after

1 the -- the pipeline has been backfilled and you have these
2 particular crews that go in and start preparing the -- in ag
3 areas [sic], for example. They have de-compaction that needs
4 to take place because all of this heavy equipment, you know,
5 kind of pounding, if you will, on the -- on the ground, it
6 has a tendency to pack up. And you know, that will inhibit,
7 you know, routes from establishing. Again, this is an ag
8 area, especially in -- in 6 and 7. So you have to end up de-
9 compacting.

10 You have to restore the ground to pre-construction
11 conditions.

12 And then you have to -- you know, they usually spread
13 some sort of mulch with seed and fertilizer to stabilize the
14 areas until such time the vegetation can start germinating
15 and establishing a root system.

16 And then, after that has all taken place, at some later
17 date, then the perimeter erosion control devices that was,
18 you know, again, in accordance with the 102 permit, those are
19 pulled up.

20 And -- and then basically the project is finished at
21 that point in time.

22 Q And at this time in -- we're now in September of 2017 --
23 was Transco anticipating notice to proceed to be issued?

24 A Yeah. We had the FERC notice to proceed. I think it
25 was the 15th of -- I think the following week. We were

1 already starting to conduct the required environmental
2 training. That was a -- that was a FERC requirement, by the
3 way, that had to take place. And then I think, for Welded,
4 that was on September the 18th or 19th.

5 And then, for the next three days, Colby Pew, again,
6 being the construction manager, he conducted a construction
7 kickoff meeting and devoted one day for each of the three
8 spreads. So that was the Wednesday, Thursday, and Friday
9 that was dedicated for -- for Welded.

10 On the following Monday, September the 25th, that is
11 when Tina Malone had issued to all the contractors the notice
12 to proceed with the construction for ASR.

13 Q And we've seen previously in this proceeding the notice
14 to proceed issuance.

15 With the notice to proceed, were -- what permits were
16 issued along -- or in place at the notice to proceed?

17 A Well, we -- we had, well, again, the FERC order and its
18 -- and FERC's notice to proceed with the construction. So
19 that was critical.

20 You -- you had to have your agency permits, the 102, the
21 105.

22 We had the -- the Corps of Engineers for -- we also had
23 to secure that for the water body crossings and the wetlands
24 as well.

25 So we had those particular permits in hand. Otherwise,

1 FERC would have not have allowed us to get started with --
2 with this right here.

3 Q And some of the permits that we haven't talked about too
4 much in this proceeding are access roads and haul roads.

5 Who was responsible for getting those permits?

6 A Well, the -- you know, we had what we called, you know,
7 access -- temporary access roads, but that was just strictly
8 for the construction purposes on -- on existing tracts of
9 land. Those were identified in the FERC application and it
10 was granted, which means is we could end up improving a --
11 let's say, for example, a farmer had a field road and it was
12 a twelve-foot-wide road. We identified it. We got permission
13 from FERC. We secured that particular easement, temporary
14 workspace for that road. We widened it to the permitted say,
15 sixteen-foot-wide to allow -- that was, say, our
16 responsibility for that.

17 But the haul roads, those were public roads. And so
18 that was incumbent upon the contractor to secure those --
19 basically those haul routes to go from -- because they didn't
20 want them just, you know, wandering all over the place with -
21 - especially with these heavy loads. They wanted to know
22 where is the equipment and pipe and other things like that,
23 how is that going to get to the right-of-way. Those were a
24 responsibility of the -- of the contractor.

25 Q Thank you, Mr. Sztroin.

1 MS. EWALD: And Your Honor, I'd move for the
2 admission of D-341, which was the email with the cash flow
3 forecast.

4 MR. GUERKE: No objection.

5 THE COURT: And 341A?

6 MS. EWALD: And 341A, yes. Thank you, Your Honor.

7 (DX-341 and DX-341A received in evidence)

8 BY MS. EWALD:

9 Q Also, Mr. Sztroin, at this time, were there meetings
10 with the Transco field accountants?

11 A Yes.

12 Q And can you explain who the field accountants were for
13 Transco on the ASR project?

14 A Okay. Well, at the onset, because, again, of -- due to
15 the structure of the cost compensation, I knew that there
16 would just be, you know, just a tremendous amount of data
17 that would need to be validated and reconciled with these
18 invoices that they were going to be submitting. I knew that
19 the invoices were going to be lagging the cash call by -- by
20 several months, and people needed to end up focusing on -- on
21 basically just that.

22 So it was -- LaDonna Rothgeb that was tasked with that
23 particular task. She had, I believe, three -- at least three
24 primary or lead field accountants. They may have had maybe
25 some other additional help on top of that. But their job was

1 to go ahead and reconcile the -- the monthly invoices and
2 check against the -- basically, the backup paperwork, you
3 know, time sheets and, you know, any kind of listing of
4 specialty equipment, for example, subcontractors, things of
5 that nature, to, again, reconcile those -- those claimed
6 costs on the invoice.

7 Q And I'll turn your attention, Mr. Sztroin, to D-356 in
8 the binder before you. And it appears to be a meeting notice
9 for a Skype meeting on September 11th, 2017. Do you see
10 that?

11 A Yes.

12 Q And there is an agenda that is attached at Page 5 to the
13 -- at Page 5 of the meeting notice. Do you see that?

14 A Yes.

15 Q And was this a meeting that was held for this purpose,
16 to determine, I would say workflow for this process you
17 described?

18 A Yes.

19 Q And this indicated -- for example, under Section C,
20 there's a discussion about who is processing. It indicates:

21 "Field accountant audits the invoices that includes
22 actuals and processes it in Oracle."

23 Do you see that?

24 A Yes.

25 Q And who is the field accountant -- who are these field

1 accountants? Are these the team that you described?

2 A Yes.

3 Q And then there was a discussion of:

4 "True-up data tracking spreadsheet done at the
5 field."

6 Was that part of the field accountant's job?

7 A Yes.

8 Q And there was a discussion about adding a resource to
9 track daily man hours. Do you know if that was done?

10 A I believe so, yes.

11 MS. EWALD: Your Honor, I'd move to admit D-356.

12 MR. GUERKE: No objection.

13 THE COURT: Can I ask a question?

14 Is this all Transco internal communications here?

15 THE WITNESS: I -- I believe only Transco people
16 were copied on this email.

17 THE COURT: This is your Transco team?

18 MS. EWALD: It --

19 THE COURT: This is your Transco team, not a Welded
20 team.

21 THE WITNESS: Yes.

22 THE COURT: Thank you.

23 THE WITNESS: Oh, I'm sorry, Your Honor.

24 THE COURT: No. Thank you.

25 (DX-356 received in evidence)

1 BY MS. EWALD:

2 Q And Mr. Sztroin, and I believe you already described the
3 NTP process that occurred -- or the NTP that occurred in
4 September of 2016 -- or I'm sorry -- 2017. I apologize.

5 At the time that the project was getting kicked off, was
6 -- were you receiving requests or notices from Welded with
7 subcontractor bids that had been prepared and received?

8 A You know, one of my duties was to go ahead and review
9 subcontractor costs that basically exceeded \$1 million. They
10 had to end up getting my approval on anything that they were
11 anticipating spending above that 1 million.

12 And then, if it exceeded \$3 million, then the obligation
13 was to go ahead and actually secure, you know, through a --
14 through a bidding process, again, all in an attempt to make
15 sure that we were -- it was getting implemented in a
16 cost-effective manner in accordance with the contract.

17 Q And I'll draw your attention to the next tab, D-425.
18 It's an email. The first email is -- at the bottom of the
19 page, is from Mr. Mike Hajnik at Welded to yourself on
20 Saturday, September 23rd, 2017. And he is sending "ASR
21 Letter 10 for approval of Karst mitigation works." And he is
22 -- indicates:

23 "Attached for Williams' review is our Letter 10
24 requesting approval to proceed with award of the
25 Karst mitigation works to Clearwater Construction,

1 Inc. in the total amount of \$5,847,250."

2 And do you recall receiving this, Mr. Sztroin?

3 A Yes.

4 Q And was this type of contract award request part of that
5 process you just described for the competitive bids for
6 subcontractors -- subcontracts over \$3 million.

7 A Yes.

8 Q And we see at Page 2 is a letter with a proposed
9 decision, background, reasons for decision.

10 And the -- on Page 4, we see a summary of the bids
11 received.

12 Is that what is the information reflected in Exhibit D-
13 425?

14 A Yes.

15 Q And do you recall reviewing this contract award
16 recommendation to Clearwater Construction?

17 A Yes, I do.

18 Q And generally, what type of information was being
19 communicated to you from Welded?

20 A Well, for the bidding purposes, I generally had some
21 questions, you know, relating to what was the scope of work
22 that it was including, you know, were there any
23 specifications attached, you know, things of that nature.

24 I want to make sure that those -- the bidding process
25 and the award is based on something that -- where -- whereby,

1 you know, the -- the subcontractor won't be asking Welded for
2 a whole bunch of, you know, extras and, you know, is just
3 willing to go ahead and have a robust scope of work, you
4 know, identified. That's -- that goes a long way for -- for
5 accomplishing that.

6 So those are some of the questions that I had when I
7 was reviewing these -- these bid proposals like that.

8 Q And if we turn to the -- if we leaf through this bid
9 review process, beginning at Page 6, there's a discussion of
10 various aspects of the bid review, the labor rate
11 comparisons, equipment rate comparison.

12 And then I believe we see your signature at Page 15.

13 A Yes. I -- I reviewed all of that.

14 Q And at -- if we turn to the last page in this document,
15 at Page 15, is that your signature, Mr. Sztroin?

16 A Yes, it is.

17 Q And we also see -- at the beginning of this document, we
18 see, the very first page, that you wrote "approved" in your
19 email back to Mr. Hajnik, correct?

20 A That's correct.

21 MS. EWALD: Your Honor, I'd move for the admission
22 of D-425.

23 MR. GUERKE: We object, Your Honor. This is a
24 continuing objection based on this brand-new, last week
25 breach of contract argument that they're asserting now for

1 competitive bidding and not getting approval for
2 subcontracts. It's not part of the case. It was never
3 asserted as a claim. It's not part of the counterclaim.
4 And the statute of limitations ran on it a long time ago, if
5 it ever was.

6 MS. EWALD: Your Honor, it is a part of our breach
7 of contract claim that was filed in the counterclaim. It is
8 part of the -- these are the safeguards in the contract that
9 are described and discussed in our pretrial order, our pre-
10 hearing brief that were breached by Welded during the
11 project.

12 This is factual information with regard to what
13 approvals were requested and whether or not they complied
14 with these requirements. This is the time for which the
15 breach of contract is to be explored.

16 THE COURT: Okay. Well, I think I'm getting
17 factual information about how the contract works. I'm going
18 to accept it for that. Whether -- if a claim wasn't properly
19 or a counterclaim wasn't properly raised, I'll deal with
20 that.

21 But I'm going to accept this for testimony about
22 how the project was handled, so I'll admit it for that
23 purpose.

24 (DX-425 received in evidence)

25 BY MS. EWALD:

1 Q And Mr. Sztroin, I'll turn to the next document, D-448.

2 And we see at the bottom of D-448 there is a letter that
3 was sent by Ms. Krumm to you in October of 2017. Do you see
4 that?

5 A Yes.

6 Q And Ms. Krumm says -- first of all, who is Ms. Krumm, to
7 your knowledge?

8 A She has this -- I think she was assigned the duties of
9 like a subcontractor manager, if I recall correctly.

10 Q And she is sending -- she says:

11 "David, please see the attached letter for your
12 records."

13 Q Do you see that?

14 A Yes.

15 Q And is the attached letter, was that a letter advising
16 Transco that a subcontract had been awarded to Allan Edwards,
17 as well?

18 A Yes, I see that.

19 Q And for some of the subcontracts -- and I believe you
20 already covered this topic, Mr. Sztroin, in your testimony --
21 contracts \$1 million and above, are those the ones that
22 required express approval, but lower than 3 million did not
23 require a competitive bid? Is that -- I think that is how
24 you described it.

25 A That's -- that is correct.

1 MS. EWALD: And Your Honor, I'd move for the
2 admission of Exhibit D-448.

3 MR. GUERKE: I have the same continuing --

4 THE COURT: Same --

5 MR. GUERKE: -- objection.

6 THE COURT: -- objection?

7 Okay. Same ruling. I'll deal with whether this is
8 relevant to any particular claim or counterclaim or CASPA
9 claim or whatever when I get to it. But I'll admit it for
10 now.

11 (DX-448 received in evidence)

12 (Pause in proceedings)

13 BY MS. EWALD:

14 Q And Mr. Sztroin, I believe you testified already about
15 the kickoff meetings.

16 One of the other things that we've heard about in this
17 proceeding, Mr. Sztroin, are trends and EWRs.

18 First of all, can you describe your understanding of a
19 trend as it related to the ASR project?

20 A A trend would be such that there was no change in scope.
21 Maybe they're just, say, notifying me if that -- for example,
22 if they thought a subcontract was going to cost \$2 million,
23 but now it's going to cost four. Again, just kind of using
24 this for an example. That's -- that's just a notification
25 that, you know, a particular cost is -- seems to be, you

1 know, elevating for maybe a particular location or a
2 particular incident like that.

3 An EWR is such that it -- it would end up altering the
4 cost and/or schedule. An example of that was the -- the
5 court of -- the Third Circuit Court of Appeals' two-day stay.
6 Obviously, Welded had no control over that. And -- and all
7 of the spreads and all of the construction everywhere on ASR
8 was halted for those two days.

9 So that's -- that's sort of the difference in -- in just
10 notifying something of a particular cost and/or a schedule
11 trend. But something like this was -- was, again, no change
12 in the scope versus something like -- like the two-day stay.

13 Another one that kind of came to mind was, you know, the
14 Adorers. We -- we asked for a specific crew to go and -- and
15 take care of --this was out of sequence. So, again, that is
16 a change in scope that would result in an EWR.

17 Q And Mr. Sztroin, you mentioned the "Adorers." I think
18 that the Adorers have been discussed a bit in this
19 proceeding, but perhaps not by that name.

20 Can you explain for the Court what the Adorers issue
21 was?

22 A It -- it was on Spread 7. It was a group of nuns that
23 owned some property. And shortly after the notice to
24 proceed, we asked Welded to develop a plan to go ahead and
25 install the pipe on that particular track that was out of

1 sequence, if you will.

2 So that's where -- they prepared that plan. They
3 fielded a small construction crew and they installed that --
4 that section of pipe somewhere around the middle to the end
5 of October, I think. You know, maybe it was a two-week
6 endeavor or something like that. But that was -- that was an
7 EWR as well.

8 Q And I believe that -- were there protesters that were
9 present at the Adorers location?

10 A Yes.

11 Q Is that -- and I believe that -- well, did the
12 protesters try to shut down work on the right-of-way, do you
13 recall that?

14 A They tried on a few occasions. It's -- it was -- I'd
15 call it sporadic. It was -- it was really sporadic. It was
16 -- it only resulted then, you know, maybe a couple of hours
17 while the -- while the U.S. Marshals were called to maybe
18 remove some of the protesters on the right-of-way, things of
19 that nature.

20 But it didn't happen all that often and -- and, again,
21 only on Spread 7. And even when it did happen, it was
22 generally just affecting a one -- particular crew, certainly
23 not the -- the whole spread. That never occurred.

24 Q And with respect to the Adorers and the protest, did you
25 issue an EWR to Welded to address it?

1 A I know that -- like I said, this particular out of
2 sequence, yes, there -- there was. The individual -- unless
3 it was, I think, a real large impact, I -- I don't really
4 recall seeing any trends or -- or EWRs related to it, nothing
5 that I can recall, something, you know, again, specific to a
6 particular location or a particular day.

7 Q And so, other than the Adorers situation that you talked
8 about, this group of nuns, was there significant protest
9 activity, in your view, on the project?

10 A Nothing that -- that, again, halted work for any -- any
11 long duration. And like I said, it was -- it didn't happen
12 very often, either.

13 MS. EWALD: Thank you, Your Honor.

14 Your Honor, This might be a good stopping point. I
15 realize we're at 5:30, and I think that I'll have a few hours
16 with Mr. Sztroin in the morning. I think we'll get to the
17 12:39, two-business-day notification, I hope, and think I
18 will.

19 THE COURT: Okay. Then we'll adjourn for the
20 evening.

21 Mr. Sztroin, please do not talk about your
22 testimony with anyone, and you'll be back on the stand in the
23 morning.

24 THE WITNESS: Sure.

25 THE COURT: Thank you.

1 MR. BURWOOD: Your Honor, can I ask one question
2 just --

3 THE COURT: Yes, Mr. Burwood.

4 MR. BURWOOD: -- with respect to schedule --

5 THE COURT: Yes.

6 MR. BURWOOD: -- and availability of the witnesses?

7 Attorney Guerke mentioned that, tomorrow, they
8 intend to introduce some deposition testimony into the
9 record. I just was hoping we could talk about perhaps the
10 process they intend to use and what depositions. We've got,
11 I think, 16 depositions that were designated for them. I just want
12 to get a sense of -- in terms of how long that's going to
13 take so we can plan for our next witness.

14 THE COURT: Are you planning to present any of it
15 in court or just submit it?

16 MR. GUERKE: Present it, Your Honor.

17 THE COURT: Okay.

18 MR. GUERKE: Not all of it, though.

19 THE COURT: Okay. So you're going to have somebody
20 reading it or is it video or what?

21 MR. GUERKE: Yes, Your Honor.

22 THE COURT: Okay. Well, can you all talk
23 afterwards and get a sense of -- so that Mr. Burwood has a
24 sense of the timing on that, what you think that's going to
25 take?

1 It sounds like Mr. Sztroin is probably going to
2 take us to lunch. And then maybe the -- and then we'll have
3 cross, right? And then maybe we'll have depositions. So
4 does that sound like a day to you? It kind of sounds like a
5 day to me in terms of tomorrow.

6 MR. GUERKE: As far as --

7 THE COURT: But I'll let you all talk.

8 MR. GUERKE: Yes.

9 MR. BURWOOD: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. GUERKE: Thank you.

12 THE COURT: Anything else, logistically?

13 (No verbal response)

14 THE COURT: Okay. Thank you.

15 Then we're adjourned for the night.

16 (Proceedings adjourned to 8/29/23 at 9:30 a.m.)

17 (Concluded at 5:29 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



September 8, 2023

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

For Reliable