

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: Chapter 11
Case No. 18-12378 (LSS)
WELDED CONSTRUCTION, L.P.,
et al., (Jointly Administered)
Debtors.
WELDED CONSTRUCTION, L.P., Adversary Proceeding
No. 19-50194 (LSS)
Plaintiff,
v.
THE WILLIAMS COMPANIES, INC.,
WILLIAMS PARTNERS OPERATING Courtroom 2
LLC, and TRANSCONTINENTAL GAS 824 Market Street
PIPE LINE COMPANY, LLC, Wilmington, Delaware 19801
Defendants. Wednesday, August 30, 2023
9:30 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN
CHIEF UNITED STATES BANKRUPTCY JUDGE

TRIAL (DAY 7)

Electronically
Recorded By: Brandon J. McCarthy, ECRO
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Proceedings recorded by electronic sound recording;
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Case Number 19-50194 (LSS)*

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1 (Proceedings commenced at 9:30 a.m.)

2 THE COURT: Please be seated. Good morning.

3 MR. GUERKE: Good morning, Your Honor. Kevin
4 Guerke, for the record, for Welded Construction.

5 Your Honor, when we broke yesterday, we had
6 introduced an exhibit into the record, PX-656. If I may, I'd
7 like to approach and hand the Court two copies, one for the
8 witness binder and one for the Court's main binder, to add.
9 This one is marked and is also paginated.

10 THE COURT: Okay.

11 MR. GUERKE: And should I update the witness
12 binder also, Your Honor, on the witness stand?

13 THE COURT: Why don't you do that later.

14 Mr. Sztroin has it. He knows what we're talking
15 about. Thank you.

16 MR. GUERKE: Your Honor, when we broke yesterday,
17 you made a ruling on the document that Mr. Sztroin was
18 reviewing during his examination and under oath. Would you
19 like to address that now or at a later date?

20 THE COURT: It's up to y'all.

21 MS. EWALD: Your Honor, I have a brief to provide
22 to the Court and to opposing counsel to address this issue.

23 THE COURT: Okay.

24 MS. EWALD: May I approach, Your Honor?

25 THE COURT: You may. Okay. Well, why don't we

1 take this up, then, subsequently so I have a chance to read
2 this during a break.

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

4 THE COURT: You may.

5 DAVID SZTROIN, DEFENDANTS' WITNESS, PREVIOUSLY SWORN,

6 RESUMES STAND

7 CROSS-EXAMINATION (Cont'd)

8 BY MR. GUERKE:

9 Q Good morning, Mr. Sztroin.

10 A Good morning.

11 Q Transco had \$575 million in authority to pay Welded in
12 the spring of 2018, right?

13 A I don't know that I would characterize it like that.

14 Q What part are you disagreeing with?

15 A We had -- basically, the project team had a certain
16 amount of authorization for the particular project, and then
17 they had this DOA -- something -- whatever -- I'm trying to
18 recall what the acronym is, but basically, it was the signing
19 authority. And it -- by that time, it exceeded the authority
20 dedicated for the project, so 'm saying I think that's really
21 how I would probably characterize it.

22 Q So that's the authority that I'm talking about.

23 Transco hit that authority limit in June 2018, right?

24 A Yes, sounds right.

25 Q Transco paid Welded the balance of its authorization

1 toward the June 2018 payment. Then Transco had to seek
2 additional authorization from Williams executive management,
3 right?

4 A That's correct.

5 Q Transco ended up paying that June payment in two
6 installments, right? One part payment in June, and then a
7 second payment in July 2018, correct?

8 A That's correct.

9 Q The second installment of the June 2018 payment that
10 was paid in July was paid late, correct?

11 A It was paid the following month, I believe.

12 Q So that was -- that means it was paid late, correct?

13 A Yes.

14 Q And Transco couldn't pay the rest of the June balance
15 until it got authorization from Williams executive
16 management, correct?

17 A That's correct.

18 Q You testified yesterday that you had meetings with
19 Welded in January 2018. Do you recall that testimony?

20 A Yes, 11th and 12th of January.

21 Q In that meeting, Marcus Hood was Welded's primary
22 voice, right?

23 A Again, I don't know that I would end up agreeing with
24 that. Scott Schoenherr had a -- certainly had a major role
25 in those discussions during those day and a half of meetings.

1 Q You agree Mr. Hood was present, right?

2 A Mr. Hood was present.

3 Q And you agree Mr. Hood had a significant role in those
4 meetings, right?

5 A He had a significant role in the meeting.

6 Q In that meeting or right after that meeting, you asked
7 Welded to add tie-in crews, correct?

8 A I wanted to end up understanding if adding tie-in crews
9 was possible.

10 Q And you asked Welded to add tie-in crews, right?

11 A I asked Welded -- well, in Scott Schoenherr's analysis
12 during all of those meetings, it became very, very apparent
13 that the rising number of tie-in counts that was original in,
14 I think it was, the December 3rd week-ending report, and then
15 by the time we got into January, it had -- just that right
16 there, it had increased. I think it was, like, 710 tie-in
17 counts. And it was very, very apparent that with the planned
18 plan progress and the number of crews that they had dedicated
19 at that time, it was going to be several months well past the
20 targeted mechanical completion date.

21 So, there was two choices. If they didn't add any
22 crews, the mechanical completion was going to end up being --
23 again, if I recall correctly, I think the calculation was
24 such that it was going to end up being in September or we can
25 end up trying to add tie-in crews. And, yes, I ended up

1 asking them to add tie-in crews.

2 Q You asked Welded to add additional resources generally
3 in addition to just the tie-in crews, correct?

4 A If I recall correctly, I think the only other crews we
5 were asking for were environmental crews because they were
6 having a hard time keeping up with the rest of the activities
7 going on. And, you know, we were trying to manage the
8 noncompliance aspects of the 102 permit.

9 Q You asked Welded to add additional men and additional
10 equipment, correct?

11 A I believe for the tie-in crews and environmental.
12 That's all I can recall at this -- that's all I can recall.

13 Q But just generally you asked Welded to add additional
14 men and additional equipment, correct?

15 A Yes.

16 Q Mr. Sztroin, on Monday, I sent a demonstrative video
17 clip to your counsel. Did you have an opportunity to review
18 that?

19 A I don't know what demonstrative you're referring to.

20 MR. GUERKE: Your Honor, I'd like to play the
21 demonstrative video.

22 THE COURT: Okay. And when was this sent?

23 MR. GUERKE: It was sent Monday, well before the
24 24-hour period to exchange demonstratives.

25 THE COURT: Okay.

1 MR. GUERKE: I was asking if he had reviewed it --

2 THE COURT: Right.

3 MR. GUERKE: -- since I sent it. Play the clip,
4 please.

5 (Whereupon, a video clip was played for the record as
6 follows:)

7 Welcome to Lancaster County in South Central
8 Pennsylvania, about two hours west of Philadelphia, where
9 pipeline construction on Spread 7 of the Atlantic Sunrise
10 project is making steady progress. This is one of eight
11 pipeline spreads that is a part of the nearly 200-mile
12 pipeline construction effort for the project. From stringing
13 and welding to lowering in and backfilling, the 42-inch pipe
14 for the Central Penn South Line that these workers are
15 putting into the ground is part of the biggest expansion
16 project in the history of the Transco pipeline system.

17 Right now, it's one of the biggest projects in the
18 country. It's one of the biggest projects Williams has done
19 in a long time. We're trying to be very deliberate on how we
20 do the work. It's not the best conditions. We started to do
21 this more towards the fall. And in the wintertime, you're
22 dealing with the elements and, you know, some of the issues
23 with snow and rain. And we're making progress. Everywhere
24 you look there is progress being made along the pipeline
25 right-of-way. Once in service, this mammoth expansion of the

1 Transco pipeline system will deliver 1.7 billion cubic feet
2 per day of natural gas. Said another way, that's enough gas
3 to meet the needs of 7 million U.S. homes.

4 It is a really big project. It's orders of
5 magnitude larger than what we've done before on some of these
6 expansion projects. Every day we're reminded of, you know,
7 how big a project it is and how challenging it is.

8 Delivering one of our biggest pipeline projects since the
9 original Transco line requires a focus from each of the
10 approximately 4,500 workers on this project on doing things
11 right and doing them safely every hour of every day. One of
12 Williams is -- that they stress so hard is the safety and the
13 integrity of the pipeline. Everything else comes secondary.

14 So, we have to stress that every day to make sure
15 that we don't lose sight of our, you know, goal. And that's
16 zero accidents. We've had a number of compliments, not only
17 from the local communities but even from the -- some of the
18 state agencies, you know, have complimented that they notice
19 that Williams is trying to do their best. I felt I was very
20 fortunate to end up working with such a talented group, you
21 know, to get us to this point right here.

22 In addition to building a pipeline, we're also
23 building partnerships with the communities along the path of
24 our project, helping us demonstrate our commitment to
25 communities and the environment as the Atlantic Sunrise

1 Environmental Stewardship Program. In partnership with The
2 Conservation Fund, our program has funded more than \$2.5
3 million in conservation projects that together will restore
4 over 10 miles of wildlife habitat along streams, prevent
5 thousands of pounds of harmful nutrients from entering
6 waterways, and support construction of 8 miles of new trails
7 in central and southeastern Pennsylvania.

8 We did ten focus group meetings, and we brought
9 together over 100 environmental stakeholders to help us
10 understand what their issues and concerns were and what kind
11 of projects they wanted to see address these issues. And so
12 this was a way for us to design a very special program that
13 would do exactly that, take community feedback but also put
14 it into a scientific parameter that would choose the projects
15 without bias.

16 Among the projects funded, the Donegal Trout
17 Unlimited's effort to rebuild a local stream to stop erosion
18 and protect the special brook trouts' habitat. DTU is very
19 appreciative of the Williams grants. Not only did they help
20 fund the projects but they helped accelerate them for four or
21 five years down the road before we were able to find
22 additional funding. Williams really should be commended for
23 the program. The company's commitment to the environment and
24 the communities in which it operates is really demonstrated
25 by this program. It really speaks to the fact that they walk

1 the walk when it comes to this -- their sense of corporate
2 responsibility to the commitment of these resources. Adding
3 to our over-60-year legacy of being a good neighbor and a
4 great operator in Pennsylvania.

5 (Whereupon, the video clip concluded.)

6 BY MR. GUERKE:

7 Q Mr. Sztroin, that was a video that Williams and Transco
8 prepared on the ASR pipeline project, correct?

9 A Yes.

10 Q And that was you in the video, right?

11 A Yes.

12 Q That was primarily Spread 5 -- I mean, Spread 7 of ASR,
13 correct?

14 A That's correct.

15 Q Did it accurately depict the state of the project at
16 that time?

17 A Yeah.

18 Q Do you know the date or the month when that video was
19 recorded by Transco and Williams?

20 A I don't recall the exact -- I want to say it was, like,
21 probably the springtime, March-April maybe, something like
22 that, of 2018. That's the best I can recall.

23 Q And from what you can tell, the video was accurate,
24 right?

25 A Excuse me?

1 Q From what you could tell, the video was accurate,
2 correct?

3 A Yeah. The video did capture, you know, some of the
4 pipeline activities going on, things of that nature, yes.

5 MR. GUERKE: May I have a moment, Your Honor?

6 THE COURT: Yes.

7 (Pause)

8 MR. GUERKE: I misplaced my tab. Could you pull
9 up Exhibit 648, please.

10 BY MR. GUERKE:

11 Q Mr. Sztroin, Exhibit PX648 is an email from you to Rob
12 Krenz dated July 9th, 2018, correct?

13 A I may have to change binders. What was the JX or --
14 what's the number?

15 Q I'm sorry, it is PX648. It's about a quarter of the
16 way through your binder.

17 A Okay.

18 Q Do you have PX648, Mr. Sztroin?

19 A Yes, I have it.

20 Q That is an email from you to Mr. Rob Krenz dated
21 July 9, 2018, right?

22 A Yes.

23 Q Attached to your email is "Contract Amendment Final,
24 June 20th, 2018," correct?

25 A Yes.

1 Q And what's attached is a contract amendment, and that's
2 an internal document at Transco, correct?

3 A Yes.

4 Q The contract amendment is an internal process to
5 provide executive management with reasons why Transco is
6 asking for more money, correct?

7 A Yes.

8 Q The statement you make in your email to Mr. Krenz is:
9 "FYI, on causes to the increase in cost."

10 Correct?

11 A Yes.

12 Q And if you go to the next page, which is the first page
13 of the contract amendment, you helped draft this document to
14 executive management, right?

15 A Myself and a few others.

16 Q You were the primary author, and you had assistance
17 with Hector Falcon and Tina Malone, correct?

18 A That's correct.

19 Q You would also run drafts of this by Chris Springer,
20 right?

21 A Yes.

22 Q In this document, you provided executive management
23 with the rationale behind the budget increase that you're
24 requesting, right?

25 A Yes.

1 Q The intent of this document was to be accurate,
2 correct?

3 A Yes.

4 Q Could you turn to the next page, please, page 3 of the
5 exhibit.

6 Mr. Sztroin, this section is titled "Introduction and
7 summary of contract changes," right?

8 A Yes.

9 Q The second -- the last sentence of the first paragraph
10 states:

11 "Due to permitting/regulatory delays, construction
12 did not begin until October of 2017."

13 That was correct, right, at the time this was written?

14 A It was originally started -- I think it was about a
15 year earlier. And so it was delayed about a year.

16 Q If you could go down to the second paragraph, about 70
17 percent down. There's a sentence that starts "No winter
18 construction." That part states:

19 "No winter construction was permitted within a
20 half mile of two bat" -- I don't even know how to pronounce
21 that word -- "hibernaculum areas in Spread 5. Also, there
22 were spring work restrictions for designated stock trout
23 streams."

24 That's what you stated in this document, right?

25 A Yeah. All of those time-of-year exclusions was

1 presented to all of the contractors on all of the spreads on
2 ASR. It was well known before construction ever began.

3 Q Could you go to the next paragraph, please, which is
4 paragraph 3 of the introduction. First two sentences of
5 paragraph 3 of the introduction states:

6 "In February 2018, the ASR team collected
7 sufficient field data and identified a need for additional
8 supplemental funding to cover the forecast submitted by the
9 contractor earlier in the month. Williams' forecast of \$575
10 million was an optimistic scenario assuming significant
11 production increases once winter challenges were cleared."

12 Did I read those two sentences correctly?

13 A Yes.

14 Q If you go to the next paragraph, the first sentence
15 states:

16 "Longer-than-expected adverse weather conditions,
17 coupled with multiple production challenges, forced us to
18 reassess the plan production and generate a revised
19 forecast."

20 Did I read that correctly?

21 A Yes.

22 Q If you go to the next page, please, page 4, the very
23 last paragraph. It states:

24 "Please note that for June -- for June 2018 cash
25 call, the project will spend the full approved authorized

1 amount of \$575 million. As such, expedited approval of this
2 amendment is respectfully requested to enable us to make
3 July's cash call."

4 Did I read that correctly?

5 A Yes.

6 Q That means there was no more money to pay Welded
7 without an additional authorization from Williams executive
8 management, correct?

9 A Without the additional authorization, we could not pay
10 in excess of what was currently authorized.

11 Q So at this point, that means there's no more money to
12 pay Welded without additional authorization from Williams
13 executive management, correct?

14 A That's correct.

15 Q And at this time, in June of 2018, you believed that
16 the \$723 million requested would be the estimate at
17 completion cost, correct?

18 A Yes.

19 Q Go to the next page, please. It's titled "Contract
20 Overview. Part 2," the last sentence of Paragraph 1(a).
21 I'll read the whole part:

22 "Fixed fee (lump sum) of \$45 million for
23 contractor's home office, overhead and management of the
24 project, taxes, benefits, and profit. The contract
25 references the fixed fee to cost for work ending at or before

1 April 1, 2018."

2 Did I read that correctly?

3 A Yes.

4 Q The next sentence states:

5 "The contractor has expressed intent to pursue
6 adjustment for work performed after said date."

7 That's what is stated in this contract amendment,
8 correct?

9 A Yes.

10 Q That was based on Welded being on the job longer than
11 the April 1st planned finish that's referenced in the same
12 paragraph, right?

13 A Yes.

14 Q And the \$50.5 million fixed fee that's referenced here,
15 that's the fixed fee that was based on the \$454 million cost
16 estimate, correct?

17 A I believe it was somehow prorated to where the -- the
18 mechanical completion -- or I'm trying to recall how that
19 added \$5.5 million was calculated. But, yeah, I mean, it's a
20 true statement that it was revised to 15.5 on the fixed fee.

21 Q And that was based on the increase from \$335 million to
22 \$454 million, right?

23 A I don't recall that it was tied to a particular
24 contract value. I thought it was more that it was prorated
25 because of April 1st and then when the anticipated completion

1 date was. I believe that that was the -- that was the
2 genesis for, you know, calculating that \$5.5 million. That's
3 the best I can recall.

4 Q Go to the next page, please. This section is:

5 "Section 3, Revision Number 1, amendment prior to
6 October 2017 NTP."

7 Did I read that heading right?

8 A Yeah, that's correct.

9 Q And here you're describing the time period involving
10 the Amendment Number 1 up to October notice to proceed,
11 right?

12 A Yes.

13 Q There is a chart in the middle of this page, correct?

14 It's titled "Atlantic Sunrise Spread 5, 6, and 7
15 Contract Estimate."

16 A There's the table.

17 Q It's identified as Table 2. Do you see where I'm --

18 A Yes.

19 Q -- the part I'm describing? Could you highlight and
20 look at part 8, please -- or I should say Item 8. Item 8 in
21 this June 20th, 2018, contract amendment is:

22 "Equipment NTP delayed for more than \$6 million."

23 Correct?

24 A Yes. That's what it's showing.

25 Q And that's the standby equipment that we discussed

1 yesterday, right?

2 A Yeah. That was in the earlier invoice.

3 Q This -- that \$6.25 million number was for keeping
4 equipment on the job before the start date, right? Isn't
5 that right, Mr. Sztroin?

6 A I believe so.

7 Q And the notice to proceed delay equipment money was
8 embedded in that \$454 million, correct?

9 A Yes.

10 Q And that was for money -- for Welded basically placing
11 some of its equipment on hold from January 2017 to the start
12 date, correct?

13 A January 2017? Is that what I heard you say,
14 Mr. Guerke?

15 Q Yes. That was Welded basically placing some equipment
16 on hold for a January 2017 start date? That was the original
17 contemplated start date, right?

18 A I don't recall if that was the original -- oh, the
19 original start date, yes. It was planned for the
20 construction permits in winter, in January. Sorry, I had to
21 recall that correctly.

22 Q No problem. I'll ask it again. That was Welded
23 basically placing some equipment on hold for a January 2017
24 start date, correct?

25 A Correct.

1 Q Since the notice to proceed was delayed, Transco had to
2 keep the rental engaged so Welded wouldn't end up giving it
3 to another contractor, right?

4 A I recall the NTP delay. I'm trying to recall if that
5 was, again, back to the details associated with that NTP. I
6 do remember about the January 17 --

7 Q The point --

8 A Back to the rationale -- it was back to the rationale
9 is what I'm trying to recall, Mr. Guerke.

10 Q I'm sorry. I didn't mean to interrupt you. Were you
11 finished with your answer?

12 A I am now.

13 Q Okay. The purpose here was so Transco would have
14 access to big iron needed for the project, right?

15 A Yes. We needed -- we needed the equipment to construct
16 this project.

17 Q There's no mention here that the pre-notice to proceed
18 standby equipment was being disputed or challenged, right?

19 A Not in this document.

20 Q You didn't state here that the standby equipment
21 invoice that Transco already paid did not have enough
22 documentation or substantiation, right?

23 A Yeah. I don't recall if he ever submitted -- it's
24 standard protocol to submit a rate sheet. That's what -- all
25 the contractors I've ever dealt with, they have labor rates

1 and equipment rates, things of that nature, to substantiate,
2 you know, what are we being charged, if you will. That's
3 what I don't recall ever seeing.

4 Q But you don't state in this document that the standby
5 equipment that Transco already paid for did not have enough
6 documentation or substantiation, correct?

7 A No. I did not include that in this document.

8 Q And that's a 6-plus-million-dollar item, right?

9 A Yes.

10 Q Could we go to two more pages down. It's Section 4.
11 Section 4 is titled:

12 "Revision Number 2. Variance from notice to
13 proceed baseline budget to current forecast, February 2018."

14 Did I read the heading correctly?

15 A Yes.

16 Q This section provides the reasons why costs increased
17 from \$454 million to \$575 million, right?

18 A That's what the title is and the narrative that
19 followed.

20 Q Third paragraph, first sentence states:

21 "The major changes to the original contract
22 revolved around low production numbers related to weather and
23 unfavorable conditions plus the underperformance results
24 compared to the high targets originally offered in their
25 initial estimate. This caused a spike in direct labor

1 supported with a list of over 160 trends, change orders."

2 Did I read those two sentences correctly?

3 A Yes.

4 Q The next sentence states:

5 "The other major impact revolved around additional
6 unforeseen scope needed for rock blasting, over three times
7 the estimated quantity provided by our third-party
8 engineering company and submitted to Welded."

9 Did I read that correctly?

10 A Yes.

11 Q And then the next sentence states:

12 "Another major change revolved around karst
13 mitigation, which increased significantly from the original
14 estimate, both in quantity and depth."

15 Did I read that one correctly?

16 A Yes.

17 Q Could you turn two pages down to Section 5, please.

18 Mr. Sztroin, before we get into Section 5, this document was
19 prepared for Williams executive management and was intended
20 to be as transparent to the events as possible, right?

21 A That was certainly the intent.

22 Q The purpose of the document was to explain the
23 conditions that the project was encountering that increased
24 the costs, correct?

25 A Yes. The narratives -- that was the purpose of the

1 narratives.

2 Q You've identified unforeseen scope needed for rock
3 blasting and unforeseen -- let me start that over. You've
4 noted unforeseen scope related to rock blasting and karst
5 mitigation as contributors to the increase in cost, right?

6 A Yes.

7 Q Back to Section 5. Third line starts the sentence:

8 "The meeting began by showing the flyover video
9 taken in April to show actual progress and specific
10 challenges."

11 Did I read that correctly?

12 A Yes.

13 Q That's the flyover video that we reviewed with Marcus
14 Hood when he testified last week, correct?

15 A I know there was two flyover videos. I'm trying to
16 recall which one was shown during the Marcus Hood testimony.
17 I just remembered there was two of them. I don't recall
18 if -- which one we were using.

19 Q At this time, described in this section, Transco was
20 pushing Welded to increase its labor and equipment on the
21 project to hit the mechanical completion date, right?

22 A I'm not following where this is, but...

23 Q It's a general question about this section,
24 Mr. Sztroin.

25 A Again, could you repeat the question. I'm not certain

1 what that -- what you're asking.

2 Q At this time, Transco was pushing Welded to increase
3 its labor and equipment on the project to hit the mechanical
4 completion date, right?

5 A Yeah. The tie-in counts that were given to us at the
6 start of the project. And then from that January meeting, it
7 had increased -- I think it was 710 from January. And then
8 these numbers just kept on increasing thereafter. Again, the
9 choice is -- one has two choices: If you can stay with your
10 existing resources and in those particular forecasted
11 completion, it's just going to keep on pushing to the right,
12 which is later or you can end up adding resources to try to
13 bring it back in line with those increasing number of tie-
14 ins. That's the two choices you have.

15 Q Go to the next section, please, section -- it looks
16 like V1 on the next page. Mr. Sztroin, Section V1 on page 11
17 is titled "Change Categories," and in parentheses it says,
18 "major breakdown."

19 Did I read that title correctly?

20 A That's correct.

21 Q The first sentence of that section states:

22 "Below is a summary of the meeting held with
23 Welded on May 1st and May 2nd showing the major factors that
24 generated the need to increase the forecast."

25 Did I read that correctly?

1 A Yes.

2 Q The next sentence says:

3 "Most of the direct labor increase is a
4 consequence of an aggressive surge and concentration of
5 resources to finish the remaining tie-in welds before the end
6 of July and accomplish the early August mechanical completion
7 date."

8 Did I read that correctly?

9 A Yes.

10 Q That's the aggressive surge that you were describing
11 Transco asked Welded to do, right?

12 A Yes. We needed to increase the -- by then -- this was
13 this June document. What the mitigation plan was identified
14 back in January was once they -- they finished with the --
15 basically the main line welding, some of those welders that
16 were welding on the main line were just going to turn into
17 tie-in crews, if you will. And the same resources that were
18 being used on the main line, they were going to transition to
19 tie-in crews.

20 I don't recall that they were actually adding any more
21 people or resources. They were just basically transforming
22 some of the resources they already had on-site and then
23 making additional tie-in crews as those main line activities
24 were being completed.

25 Q Mr. Sztroin, you prepared a table, Table Number 7,

1 which is listed on page -- I believe this is 11, the same
2 page we're talking about, right?

3 A Yes.

4 Q Table 7 describes Welded's cost variance description by
5 spread, May 18 FCST. That's what the title says of this
6 Table 7, right?

7 A Yeah. May 18 forecast. That's correct.

8 Q The second row is listed as "specialty equipment,"
9 correct?

10 A That's correct.

11 Q And under Spread Number 7, you have listed, number one:

12 "Additional equipment added to forecast: Morooka
13 with straw blower reclaimer vac unit."

14 Did I read that correctly?

15 A Yes. Yes.

16 Q And the Morooka with straw blower reclaimer vac unit is
17 identified here as specialty equipment, correct?

18 A That's what we were being charged for. That's why I
19 include it in this table.

20 Q And you agree that it is listed here as specialty
21 equipment, right?

22 A Again, that's what was the information provided to me
23 from Welded, and I included it.

24 Q You accepted that information, and you provided it to
25 Williams executive management June 20th, 2018, correct?

1 A Yes.

2 Q In this document to executive management, you did not
3 tell Williams that a Morooka with a straw blower was not
4 specialty equipment, correct?

5 A I had no opinion whether that was specialty equipment.
6 Yes, it's included in there, but I didn't have an opinion
7 whether that was going to end up being a valid charge or not.
8 As I stated earlier, I knew that we had rights to go ahead
9 and review these at a later date. I figured that at the time
10 we would end up seeing if there were -- you know, again, back
11 to agreements and whether specialty equipment was actually
12 correctly -- excuse me, correctly being charged to the
13 project.

14 Q That would be at a time after Welded had already spent
15 a year worth of acquiring specialty equipment for the
16 project, right?

17 A I knew that there were -- OGCS was doing, again,
18 audits.

19 I just knew that that was taking place by this time.
20 As I testified to earlier, I didn't know what some of the
21 results were. I didn't direct their work. That's what was
22 being -- we were being charged, and that's why I included it.

23 Q At this point, June 2018, you didn't tell Welded that a
24 Morooka with straw blower was not specialty equipment, right?

25 A Could you repeat the question, please.

1 Q At this point, when you prepared this contract
2 amendment to Williams executive management, you did not tell
3 Welded that a Morooka with straw blower was not specialty
4 equipment, right?

5 A I didn't tell them that.

6 Q Could you turn to three more pages down. It's Section
7 V4 at the bottom. It says -- it's titled "Weather
8 nonproductive days for all spreads." Mr. Sztroin, do you see
9 that section?

10 A Yes.

11 Q First sentence of that paragraph states:

12 "An extended winter season mixed with above-
13 average high and low temperatures created considerable
14 challenging site conditions to execute the project. The
15 protracted low temperatures coupled with snow resulted in icy
16 conditions, especially in the hilly terrain of Spread 5 and
17 the northern section of Spread 6."

18 Did I read those two sentences correctly?

19 A Yes. That's the narrative that was included in the
20 document.

21 Q The next sentence picks up:

22 "At times, mild winter temperatures that followed
23 heavy snow events caused the ground to warm and melt the
24 snow, causing extremely muddy conditions."

25 Did I read that sentence correctly?

1 A Yes.

2 Q The next one is:

3 "In spring, the extended and intermittent rain
4 again forced the contractor not only to stop during rainy
5 days but also to struggle in restarting since the ground
6 remained wet and slippery for prolonged
7 periods of time."

8 Did I read that one correctly?

9 A Yes.

10 Q "As such, the number of nonproductive days were
11 significantly greater than the number of recorded weather
12 days."

13 Did I read that last sentence correctly?

14 A Yes.

15 Q That's essentially what Marcus Hood testified about
16 earlier last week, right?

17 A Yes, I believe so.

18 Q Next paragraph, last sentence. It states:

19 "Unfortunately, those conditions not only extended
20 beyond the yearly average but also through and beyond the
21 spring season."

22 Did I read that correctly?

23 A Yes. All of what I'm writing in here was the feedback
24 being provided by Welded, and I included this in this
25 document.

1 Q Let's go to the next page, please. It's Section V5.
2 Section V5 is titled "Spread 5 site conditions." Isn't that
3 right, Mr. Sztroin?

4 A Yes.

5 Q Second paragraph, first sentence states:

6 "During the months of February and March, Eastern
7 Pennsylvania experienced quite a bit of precipitation in the
8 form of both snow and rain."

9 Did I read that right?

10 A Yes.

11 Q "Freezing conditions at night coupled with wet
12 conditions froze the soil, creating extremely slick site
13 conditions on the pipeline right-of-way. The equipment could
14 not gain any sort of traction on the icy layer, causing, at
15 times, the equipment to slide into the line pipe welded up to
16 the top of the ditch. There were a number of gouges in the
17 line pipe, and the damaged section had to be cut out, thereby
18 creating additional work. Main concern, however, was the
19 safety of the personnel in those areas, specifically the
20 potential for someone to get caught between the sliding piece
21 of equipment and the line pipe."

22 Did I read those sentences correctly?

23 A Yes.

24 Q The next one states:

25 "After several of these incidents of equipment

1 sliding uncontrollably, the Williams management team, with
2 support from executive management, instructed Welded to cease
3 work in the very hilly areas of the spread until conditions
4 improved."

5 Did I read that correctly?

6 A Yes.

7 Q "Rearranging work within Spread 5 resulted in
8 inefficient utilization of the resources. This rightful
9 decision brought also a future problem we now face of
10 resuming and completing this task in a very short period of
11 time."

12 Did I read those sentences correctly?

13 A That's correct.

14 Q Last sentence of this paragraph says:

15 "A significant part of the cost impact is related
16 to this decision."

17 I read that one correctly also, didn't I, Mr. Sztroin?

18 A Yes.

19 Q Next section, V6, is titled "Spread 5 welding issues."
20 Can you take a look at that section, please, second
21 paragraph. Second paragraph of Section V6 states:

22 "Williams SME began implementing the use of
23 thermal induction blankets in order to maintain proper
24 preheat during welding. After the use of the induction
25 blankets, radiographic technicians, third-party contracted by

1 Williams, began calling some small transverse indications
2 (TIs) in the welds."

3 Did I read those sentences correctly?

4 A Yes.

5 Q "The TIs are similar in shape as cracks but smaller. A
6 third-party subject matter expert in the field of radiography
7 interpretation brought in to review the film determined that
8 the Tis were, in fact, lack of fusion on the sidewall and not
9 cracks."

10 Did I read those sentences correctly?

11 A That is correct.

12 Q Next sentence: "Several of these welds were cut out and
13 sent for testing at the lab. To date, all destructive tests
14 for defects called TIs after induction heating have been
15 found to be either slag or porosity and, based on their size,
16 would not have constituted a repair or cutout."

17 Did I read those parts correctly, also?

18 A Yes.

19 Q Mr. Sztroin, the next section is page -- I don't know
20 what page we're on. It's Section V8, "Welded performance."
21 And in this section, you state, first paragraph:

22 "After closely monitoring the contractor
23 performance since the granted NTP in October 2017, we can say
24 that the original targets established to meet the original
25 contract amounts were overly optimistic and nearly impossible

1 to meet. In spite of a major effort to accomplish the work
2 within these commitments, the contractor has not been able to
3 recover from the low production season and a plethora of
4 unforeseen complexities."

5 Did I read those sentences correctly?

6 A Yes.

7 Q Next section is V82, next page. Section V82 is titled
8 "Scope under estimation."

9 Do you see that part, Mr. Sztroin?

10 A Yes.

11 Q It states:

12 "There are some areas where initial quantities
13 were highly underestimated. Some, like the rock blasting and
14 the karst mitigation, are not the responsibility of the
15 contractor and have simply been accepted as additional scope
16 added to the original plan."

17 Did I read that correctly?

18 A Yes.

19 Q Can we go two more pages -- three more pages to, I
20 believe, Part 11VI. That section is titled "Risk and
21 opportunities for efficiency."

22 Do you see that heading, Mr. Sztroin?

23 A Yes, I see it.

24 Q Part VII, "Opportunities," the fourth bullet point
25 states:

1 "Move Spread Number 7 tie-in crews into Spreads 5
2 and 6 as they become available."

3 That was an opportunity described in this June 2018
4 contract amendment, right?

5 A Yes.

6 Q Next part is VI2. Title is "Risks." And I'd like you
7 to focus your attention on the second bullet point. The
8 second bullet point states:

9 "Attempt to obtain 24-hour work variance from FERC
10 for critical path crossings, such as I-81, I-76, et cetera."

11 That's what's stated in the June 20th, 2018, contract
12 amendment to Williams executive management, right?

13 A Yes.

14 Q Go to the last page of this document, please. It is
15 Section IX, "Conclusion." The first sentence of your
16 conclusion in this contract amendment states:

17 "Welded's ASR crews have strived through
18 considerable challenges since our notice to proceed in
19 October 2017. The contractor has not been able to meet plan
20 production for both justified and unjustified factors. The
21 winter weather has by far exceeded expected impact, creating,
22 in some instances, a hazardous environment to work in with
23 hill crews in Spread Number 5 who were stopped for more than
24 a month waiting for better work conditions as it became too
25 slippery to safely continue working. In all, the weather has

1 continued to cause downtime and slow progress way beyond even
2 our revised plan."

3 Did I read those parts right?

4 A Yes.

5 Q The last paragraph, please, focus on, Mr. Sztroin. It
6 says:

7 "Looking forward, there are not significant
8 opportunities in the final project phase to increase
9 production even with the increase of resources. The strategy
10 adopted aims to hold the mechanical completion dates by
11 forcing all efforts towards the critical path activities.
12 This continues to be a strategy that aligns to our internal
13 requirements. It is important to clarify that this strategy
14 has also created a spike in costs at the end. We will
15 continue to pursue any cost-saving opportunities and will
16 push for a swift de-staffing plan to reduce the burn rate to
17 a minimum once critical tie-ins are completed."

18 Did I read that last paragraph correctly, Mr. Sztroin?

19 A Yes.

20 Q After you submitted this contract amendment to Williams
21 executive management, Williams approved the request to
22 increase the budget to \$723 million, right?

23 A Yes.

24 Q And in this case, Welded has been paid a little less
25 than \$720 million, right?

1 A Yeah, I believe so.

2 Q If Transco made another payment, it would have exceeded
3 the \$723 million approved through this contract amendment,
4 right?

5 A Depends on what that payment amount would have been. I
6 don't recall exactly what was paid up until that time versus
7 the 723. Maybe one additional invoice could have been
8 processed. I don't recall the exact figure.

9 Q You don't know the last unpaid invoice from Welded? Is
10 that what you're saying?

11 A I don't recall the exact amount, no.

12 Q Mr. Sztroin, OGCS are consultants that specialize in
13 construction and construction costs, right?

14 A Yeah. I believe that they're a consulting agency that
15 does that sort of work.

16 Q Transco solicited OGCS's services for ASR, correct?

17 A Yeah.

18 Q And OGCS was looking only at Welded's Spreads 5, 6,
19 and 7, right?

20 A Yeah, I believe so.

21 Q You communicated with OGCS personnel, true?

22 A Yeah. They came and wanted to end up asking me a few
23 questions about the project, yeah.

24 Q Two OGCS people interviewed you as part of OGCS's work,
25 correct?

1 A Yes, I recall that.

2 Q One was Neil Anderson, and one was Adrian Green, right?

3 A Yeah. Those two names sound familiar.

4 Q You provided information if you were asked, and you
5 answered questions, right?

6 A Yeah, that's correct.

7 Q OGCS issued a preliminary report shortly after its work
8 started, right?

9 A Yeah, I believe so.

10 MR. GUERKE: Your Honor, before I move on, I
11 forgot to move PX648 into evidence, and I'd like to do that
12 now.

13 MS. EWALD: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (Exhibit PX-648 received into evidence)

16 BY MR. GUERKE:

17 Q You met with OGCS after OGCS issued its preliminary
18 report in the summer of 2018, right?

19 A Yeah. I believe I attended a meeting with him. Yeah,
20 I was one of the participants, I believe.

21 Q Mr. Springer, Jeffry Goebel were at that meeting for
22 Williams, right?

23 A Yeah, I believe so.

24 Q Adrian Green, Phil Burke, and Neil Anderson from OGCS
25 were at that meeting also, correct?

1 A Yes, I believe so.

2 Q As part of a proper audit process, typically, the owner
3 would discuss audit findings with the contractor, right?

4 A I've never been involved in an audit. I really don't
5 know what the -- what the protocol is. I didn't direct their
6 work. I don't know how to say -- I don't know.

7 Q If there were any cost adjustments as a result of audit
8 findings, you'd be able to sit down and discuss those issues
9 with Welded and then do a true-up if that was necessary,
10 correct?

11 A If it was -- how can I say this? If I believe -- if
12 the management with Transco and the audit firm, which was
13 OGCS, I believe if they came to some conclusion versus
14 something that -- how can I say this -- was suspect versus a
15 conclusion, yes, it is, at least in their opinion, then I
16 think that would be something that would be following up.
17 That's all I -- you know, again, I wasn't, say, directing
18 that work. I did sit in and listen at that point.

19 Q And Transco actually did that with one item that it
20 brought to Welded's attention. Welded looked into it and
21 provided credit, right? You remember that?

22 A I don't know the time frame and the item. I don't
23 recall.

24 Q But you remember the event generally, correct?

25 A No.

1 Q Transco did not provide audit findings from OGCS before
2 October 4th withholding, right?

3 A Again, I don't know if they did or they didn't at that
4 time. I wasn't directing their work.

5 Q You were copied on audit emails; isn't that right,
6 Mr. Sztroin?

7 A Yeah. I might have been copied.

8 Q Could you turn to Exhibit PX277, please. Mr. Sztroin,
9 in front of you is PX277. That is an email from Phil Burke
10 to Jeffry Goebel, yourself, and a few other people dated
11 June 29, 2018, right?

12 A Yes.

13 Q Phil Burke was the president and head of OGCS, correct?

14 A I don't recall what his role was, but I do remember
15 Phil being involved in this.

16 Q He was associated with OGCS. You agree with me on
17 that, right?

18 A Yes.

19 Q And Adrian Green was also a consultant for OGCS. He is
20 copied on this email, right?

21 A Yes.

22 Q The attachment to this email is titled "Audit
23 Findings 1," correct?

24 And feel free to flip to the next page, if you want to
25 confirm.

1 A Yes.

2 Q First sentence in Phil Burke's email to Jeffry Goebel
3 says:

4 "Following our recent email exchange, please find
5 enclosed our Audit Findings 1 for your review and comment.
6 As well as the content -- as well as the content, please
7 advise if this format works for you. We will put a register
8 together to record each finding and track its progress."

9 Did I read those two sentences correctly?

10 A Yes.

11 Q The next sentence states:

12 "I guess what we are asking you with this document
13 is: Do you agree and would you support this challenge with
14 the contractor?"

15 Did I read that sentence correctly?

16 A Yes.

17 Q So here Mr. Burke is providing Audit Finding Number 1
18 and asking in-house counsel for Williams whether Williams
19 agreed with it and supports the challenge, correct?

20 A Yeah. I would say that that's a logical conclusion
21 here.

22 Q That is not an audit process that is independent from
23 Williams or Transco, right?

24 A Could you repeat that question, please.

25 Q That is not an audit process -- what's described in

1 this email is not an audit process that is independent from
2 Williams and Transco?

3 A This isn't my -- again, this isn't my forte as far as,
4 you know -- the nuances associated with any kind of, I'll
5 say, preliminary investigation, you know, a look into it
6 versus, you know, something that's an official audit. I
7 wasn't directing their work. I participated in a few but not
8 all of the meetings. I'm just listening to what's going on.

9 My focus was the continued monitoring of the progress
10 for the construction and getting the mechanical completion
11 date completed. That's what my role was. Yes, I was
12 involved with a couple of meetings, but I didn't get involved
13 with any kind of decisions or anything like that associated
14 with OGCS.

15 Q Turn to the next page, please, PX277, page 2.

16 Mr. Sztroin, PX277, page 2, is an audit finding, and
17 it's identified as AF/001. Am I right?

18 A Yes.

19 Q The title is "Miscalculation of the value of the
20 equipment fee." Correct?

21 A That's the title, yes.

22 Q This describes OGCS's position on labor costs payable
23 for actual work performed, right?

24 A There's what this particular narrative of the Audit
25 Finding 001 denotes.

1 Q This position described in Audit Finding Number 1 was
2 adopted by Transco, correct?

3 A I believe that they were having some challenges to the
4 equipment fee.

5 Q So, yes, it was adopted by Transco?

6 A I don't know if --

7 MS. EWALD: Object to the characterization, Your
8 Honor, of the term "adopted."

9 THE COURT: Overruled.

10 BY MR. GUERKE:

11 Q You can answer the question, Mr. Sztroin.

12 A I don't know what parts of the audit findings were
13 adopted by Transco. Maybe some of the claims that OGCS did.

14 Again, I wasn't involved with those -- how can I say
15 this, I didn't -- I didn't get involved with the
16 interpretations, actual cost of work performed at this
17 particular stage. By then, it was being headed by Chris
18 Springer and -- and Jeff Goebel and I presume with, you know,
19 some senior management, you know, oversight on this right
20 here. I do know that they were having some challenges to the
21 equipment fee. The details of it, what actually transpired,
22 I don't recall that.

23 Q Well, you know this Audit Finding Number 1 in
24 particular was adopted by Transco, right, related to the
25 equipment fee calculation?

1 A Adopted -- adopted the audit finding itself?

2 Q The position described in the audit finding.

3 A I believe, again, some aspects of it were adopted. I
4 can't tell you the specifics.

5 Q Well, you remember taking -- giving a deposition as a
6 corporate representative, right?

7 A Yes.

8 Q And isn't this the position you described in your
9 deposition related to the equipment fee?

10 A It's been a while since I took the deposition. I might
11 have. That's what I'm saying. I don't recall.

12 MR. GUERKE: Your Honor, I move PX277 into
13 evidence.

14 MS. EWALD: I just note, Your Honor, the witness
15 did not prepare this document and doesn't have foundation to
16 introduce it. He was the recipient, not the author.

17 THE COURT: Mr. Guerke.

18 MR. GUERKE: This is how we've introduced almost
19 every exhibit in this case where the witness was a recipient
20 of the email. He also has reviewed it and testified on the
21 subject in his 30(b)(6) deposition. I don't -- he said he
22 received it. And he had meetings and reviewed audit findings
23 as part of his work at Transco. And that's what this is.

24 MS. EWALD: Your Honor, there have been documents
25 excluded previously in this proceeding based on the same

1 circumstances that I'm describing here with regard to
2 foundation to the scope of this document. Mr. Sztroin did
3 not prepare the document, and it is -- it cannot be
4 introduced with this witness.

5 THE COURT: I don't think I've excluded -- if I
6 have, someone will have to show me, but I don't think I've
7 excluded a document that a witness received based on lack of
8 foundation. I know I excluded a document that someone
9 testified about when he said he had no -- he didn't prepare
10 it, he didn't know anything about it. I don't think I have.
11 I think that would be inconsistent with the way documents had
12 been coming in if I didn't admit this document. Now, his
13 testimony is what it is about it. So that's different. I
14 heard his testimony loud and clear.

15 I'm going to admit the document. I think that's
16 consistent.

17 (Exhibit PX-277 received into evidence)

18 BY MR. GUERKE:

19 Q Mr. Sztroin, could you take a look at PX350, please.

20 THE COURT: 350?

21 MR. GUERKE: Yes, Your Honor, about the middle of
22 your binder.

23 BY MR. GUERKE:

24 Q Mr. Sztroin, do you have PX350 in front of you?

25 A Yes.

1 Q PX-350 is an email -- actually, I can't see who it's
2 from. It looks like maybe from Micheal Dunn to Evan Kirchen,
3 and it's dated September 6, 2018, correct?

4 A That is correct.

5 Q Mr. Sztroin, PX350 is a project -- let's turn to the
6 next page, actually. The attachment to this email is a
7 project change request form, right?

8 A Yes.

9 Q And this project change request form is a project
10 change request related to Welded's work on the ASR project,
11 right?

12 A Yes.

13 Q You prepared the text of this PCR that is dated
14 August 30th, 2018, right?

15 A I don't recall if I did or didn't.

16 Q Mr. Sztroin --

17 MR. GUERKE: Your Honor, may I approach?

18 THE COURT: You may.

19 MR. GUERKE: Your Honor, I'm handing the Court a
20 copy of Mr. Sztroin's deposition transcript.

21 THE COURT: Thank you.

22 BY MR. GUERKE:

23 Q Mr. Sztroin, you remember having your deposition taken,
24 right?

25 A Yes.

1 Q Your second deposition was taken January 6th, 2021,
2 correct?

3 A I think that sounds about right.

4 Q At that time, Mr. Sztroin, you were under oath,
5 correct?

6 A Yes.

7 Q Could you turn to page 423, please.

8 A Page 200?

9 Q 423, please.

10 A 423. Sorry.

11 Q Mr. Sztroin, on page 423, line 13, I asked you:

12 "Did you prepare the text that's included in this
13 project change request form, Mr. Sztroin?"

14 Answer:

15 "Yes. I worked with Mr. Springer on the language
16 associated with this particular section. It was a joint
17 effort, but I'm the person that submitted this particular
18 change request."

19 Did I read your deposition correctly?

20 A Yes. That's what I said at the time.

21 Q Going back to PX350, page 2. You prepared the text of
22 this project change request dated August 30th, 2018, right?

23 A Yes, with Mr. Springer.

24 Q Mr. Sztroin, I want to direct your attention to the
25 middle of this text starting with the word "During." It

1 says:

2 "During the initial project bid cycle..."

3 Do you see that?

4 A Yes, I see that.

5 Q And we're highlighting that section on the screen if
6 you want to look. This PCR states:

7 "During the initial project bid cycle, an
8 opportunity to lock in Welded for a significant length of ASR
9 was presented. In order to minimize this resource risk,
10 Williams executed a cost-plus fixed-fee contract with Welded
11 on Spread 5 through 7, transferring all the risks associated
12 with weather delays and resulting site conditions to
13 Williams."

14 Did I read that correctly, Mr. Sztroin?

15 A Yes.

16 Q And if you slide down three lines to the sentence that
17 starts "A key cost overrun..." Are you with me, Mr. Sztroin?

18 A Yes.

19 Q That sentence states:

20 "A key cost overrun contributor that affected all
21 pipeline construction spreads was the level of effort in
22 resources, both labor and materials, needed to maintain
23 environmental compliance. Other significant factors that
24 added to the cost include, A, resources needed to address
25 potential sinkholes (karst features) in Lancaster and Lebanon

1 Counties, Spreads 7 and 6 respectively."

2 Did I read that part of the sentence correctly?

3 A Yes.

4 Q The next part picks up:

5 "B, SMAW (aka stick welding) issues coupled with
6 radiography interpretation on Spread 5."

7 Did I read that part correctly?

8 A Yes.

9 Q And:

10 "C, higher-than-estimated quantity of rock
11 removal and disposal costs and related rock shield costs to
12 protect the integrity of the line pipe coating. Another
13 factor that added significant cost to the project was
14 Welded's work performance."

15 Did I read those parts correctly?

16 A Yes.

17 Q Next sentence says:

18 "The original production targets were overly
19 aggressive and, as such, extended the work duration and
20 subsequently increased the installation cost. Collectively,
21 Welded's estimated cost climbed from the original 335 million
22 to 454 million prior to the start of construction to the
23 current forecast at completion of \$723 million."

24 Did I read that part of this PCR form correctly,
25 Mr. Sztroin?

1 A That's correct.

2 Q I'll note -- strike that. Mr. Sztroin, if you look up
3 to the top section of this document, you are identified as
4 the project manager for this PCR request, right?

5 A Yes.

6 Q That was accurate as of the time that it was submitted
7 and approved, correct?

8 A Everything in this document is correct.

9 MR. GUERKE: Your Honor, I'd like to move into
10 evidence PX-350.

11 MS. EWALD: No objection, Your Honor.

12 THE COURT: It's admitted.

13 (Exhibit PX-350 received into evidence)

14 MR. GUERKE: Would you like me to break or
15 continue, Your Honor?

16 THE COURT: We are going to break. I have a
17 lunch -- I mentioned to -- I've got a lunch today. So, we're
18 going to take a break from right around 12:00, it can be a
19 little after, to about 2:00 o'clock. So, we can push on
20 unless Mr. Sztroin wants a break, or we can take ten minutes
21 now. Up to you.

22 MR. GUERKE: I'll leave it to Mr. Sztroin.

23 THE COURT: Mr. Sztroin, would you like a break?

24 THE WITNESS: Just a five-minute break, Your
25 Honor, for the bathroom.

1 THE COURT: Yes, of course. We're taking a
2 recess.

3 (Recess taken at 10:57 a.m.)

4 (Proceedings resumed at 11:10 a.m.)

5 THE COURT: Please be seated. Mr. Guerke.

6 MR. GUERKE: Thank you, Your Honor.

7 CROSS-EXAMINATION (Cont'd)

8 BY MR. GUERKE:

9 Q Mr. Sztroin, I have a question for you about a document
10 that I don't believe is in your binder. It is PX270. It's a
11 short email, so I'm going to ask you to take a look at the
12 screen when we pull it up. It's PX274.

13 THE COURT: 270?

14 MR. GUERKE: I said 70, but it was 274, Your
15 Honor.

16 THE COURT: 274.

17 BY MR. GUERKE:

18 Q I'm going to start at the bottom, Mr. Sztroin. At the
19 bottom of this email -- there we go. The full email is on
20 the screen now. The bottom of the email is from you. It's
21 dated June 27th, 2018. And it's to Chris Springer. The
22 subject is "PCR justification." Did I read that correctly?

23 A Yes.

24 Q This is an email that you sent to Chris Springer
25 describing PCR justifications, right?

1 A Correct.

2 Q Mr. Springer then added language to it in his email
3 above dated June 28th, 2018, correct?

4 A Yes, I believe so.

5 Q And this text is -- part of this text is included in
6 that PCR dated August 30th, 2018, that we just went over;
7 isn't that right, Mr. Sztroin?

8 A Yeah. I'd have to compare the two documents, but it
9 appears that some of this language, if not all of it, might
10 have migrated over into that particular document that I have
11 reviewed earlier.

12 MR. GUERKE: Your Honor, I'd move PX274 into
13 evidence.

14 MS. EWALD: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Exhibit PX-274 received into evidence)

17 BY MR. GUERKE:

18 Q Mr. Sztroin, yesterday you talked about work with, I
19 think, Mears on an ACVG survey. Do you remember that
20 testimony?

21 A Yes.

22 Q Transco made a claim, Proof of Claim Number 632, for
23 \$16.3 million related to the ACVG survey issue, correct?

24 A Correct.

25 Q If you want to look at the proof of claim, it's in your

1 binder at PX51 -- I'm sorry -- PX -- let me start again. In
2 your binder at PX451.

3 A And where is that?

4 Q It's the --

5 A Oh, towards the end. I see it.

6 Q This is Proof of Claim 632 that Transco filed in this
7 case; isn't that right, Mr. Sztroin? You can see the claim
8 number at the upper right-hand corner.

9 A Yes, I do.

10 Q Could you flip to the next page, please. Mr. Sztroin,
11 at the time that this was filed, the claim was in the amount
12 of \$16,320,000, right?

13 A Yes.

14 Q And over the course of -- of the project -- and you
15 described some of this yesterday -- the claim now for Proof
16 of Claim 632 is in the amount of \$4.2 million; is that right?

17 A That sounds about right.

18 Q Mr. Sztroin, could you turn to Exhibit PX386, please.

19 A PX386?

20 Q Yes.

21 A I'm there.

22 Q FERC put -- approved the ASR pipeline to go into
23 service October 4th, 2018, right?

24 A Yeah, that's correct.

25 Q This is the -- the filing notice in the FERC database

1 reflecting FERC's approval to put the ASR project into
2 service, right?

3 A Yes. That was the authorization of placing the
4 service.

5 MR. GUERKE: Your Honor, I move Exhibit PX386 into
6 evidence.

7 MS. EWALD: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (Exhibit PX-386 received into evidence)

10 BY MR. GUERKE:

11 Q The FERC approval, Mr. Sztroin, was timestamped
12 9:29 a.m., correct? Do you see where it says "posted"?

13 A Yes.

14 Q Later that day is when Transco sent Welded the
15 October 4th, 2018, withholding letter, right?

16 A That's correct.

17 Q Please turn to PX404, Mr. Sztroin. Mr. Sztroin, PX404
18 is an email from Phil Burke to Mary Edmonds and several other
19 people dated October 11th, 2018, correct?

20 A That's correct.

21 Q Mary Edmonds -- strike that. Phil Burke was the -- the
22 OGCS person that we discussed earlier, correct?

23 A That's correct.

24 Q Mary Edmonds is in-house counsel at Williams, right?

25 A I don't know her -- I know she was in legal up in

1 Tulsa. I don't recall what her official title was.

2 Q The next recipient on this email is Jeffry Goebel. He
3 is in-house counsel at Williams, right?

4 A Yes.

5 Q The next recipient is Adrian Green. Adrian Green is
6 one of the people associated with OGCS, correct?

7 A That's correct.

8 Q You are the fourth recipient of this email, correct?

9 A That's correct.

10 Q Chris Springer is a recipient of this email, right?

11 A Yes.

12 Q Tina Malone is a recipient of this email, correct?

13 A Yes.

14 Q Mr. Heil is a recipient of this email, correct?

15 A Yes.

16 Q Ms. Cotton is a recipient of this email, correct?

17 A Yes.

18 Q Shelley Ewald is a recipient of this email, correct?

19 A Yes.

20 Q John Todd is a recipient of this email, correct?

21 A Yes.

22 Q Evan Kirchen is a recipient of this email, correct?

23 A Yes.

24 Q The first sentence of this email states:

25 "Mary, please find enclosed the information we may

1 refer to in the meeting tomorrow. Regards, Phil."

2 Did I read that right?

3 A Yes.

4 Q The subject of this email is "Discuss Welded audit
5 findings." Right?

6 A Yes.

7 Q And then there's an attachment titled "Audit findings
8 for tables of withholdings."

9 Correct?

10 A Yes.

11 Q You received the attachments to this email; isn't that
12 right, Mr. Sztroin?

13 A Apparently so.

14 Q And you participated in this meeting being discussed in
15 this email, right?

16 A I don't recall if I participated in that particular
17 meeting or not.

18 Q But you did participate in meetings with this group
19 discussing Welded, the audit, and withholdings, correct?

20 A I participated in some meetings.

21 Q And you participated in some meetings in October 2018,
22 right?

23 A Yes.

24 Q The bottom email on this string is from Phil Burke,
25 same group. This one is directed to Jeffrey Goebel. And it

1 states:

2 "Jeff, it is my intention for Adrian and I to come
3 to Williams Tower in person for this meeting as we have
4 printed materials available as part of the review. Let me
5 know if this is not the expectation as I'm not sure of
6 everyone's location, particularly as it is a Friday."

7 Did I read that correctly?

8 A Yes.

9 Q Then if you go to the next page of the email, which is
10 the first email in this string. This looks like a Skype
11 meeting invitation for this meeting for Friday, October 12th,
12 2018, at 1:00 p.m., correct?

13 A Correct.

14 Q And you would have attended this meeting, right?

15 A I probably participated -- I probably attended this
16 meeting.

17 Q And at that meeting, OGCS, Transco, and the folks on
18 this email discussed the Welded audit findings, right?

19 A I believe so.

20 Q This meeting -- this email and meeting was roughly
21 seven days after Transco withheld \$23.5 million from Welded,
22 right?

23 A Yeah. I believe that's -- the math works out to be
24 like that.

25 Q And it is set to occur the day after the meeting

1 between Welded and Transco executives that you described in
2 your testimony yesterday?

3 A Yeah. I believe that meeting was October 11th, if I
4 recall correctly, between -- the meeting between Welded and
5 Transco in the Houston -- in our Houston office. So, yeah,
6 it would be the day after.

7 MR. GUERKE: Could you go flip two more pages,
8 please. You may have to zoom on this.

9 BY MR. GUERKE:

10 Q Mr. Sztroin, this is a register to track audit findings
11 that was attached to the email, right?

12 A Yeah. That's the title.

13 Q And these audit findings were the subject of the
14 meeting on October 12th, correct?

15 A That's correct.

16 Q Turn to the next page, please. The next page is a
17 table of withholdings, and it says:

18 "Attorney work product, 27 September 2018."

19 Right?

20 A Yes.

21 Q The first section is titled "Equipment fee for other
22 than (actual work performed)."

23 Correct?

24 A That's correct.

25 Q And that describes the basis for part of the

1 October 4th withholding, right?

2 A Could you repeat that question, please.

3 Q That section includes part of the reason given for the
4 October 4th withholding, right?

5 A I presume it is. I didn't draft the memo. And like I
6 said, I wasn't involved with -- with any of these preliminary
7 findings, audit findings. Again, how it all got included
8 in -- whether something was included in that particular
9 October 4th memo, I didn't get involved in any of those
10 discussions.

11 Q These audit findings in the -- PX404 are the basis for
12 the withholding of October 4th, correct?

13 A There may have been another document preceding this
14 one. It may have been preliminary. Again, I wasn't involved
15 with the decision and the details associated with all of this
16 preliminary and the -- and the audit that I think that
17 followed after. I don't know.

18 Q Well, you testified, Mr. Sztroin, that you participated
19 in the meeting where this was discussed on October 12th,
20 right?

21 A I listened in.

22 Q And in that meeting, OGCS made a presentation to
23 Transco related to the audit findings, correct?

24 A That's what the purpose of that meeting was.

25 Q And OGCS handed out hard copy documents of these audit

1 findings in that meeting, as reflected in the email we just
2 went through, correct?

3 A Yes.

4 MR. GUERKE: Your Honor, I move PX404 into
5 evidence.

6 MS. EWALD: I'll object, Your Honor. The witness
7 has testified he doesn't have any personal information with
8 regard to the audit findings, the preparation of them, or how
9 they were reviewed.

10 THE COURT: Mr. Guerke.

11 MR. GUERKE: He testified that he received this.
12 He's had discussions about the audit findings. He's met with
13 OGCS. He participated in this meeting. He received hard
14 copies of this presentation, and he was involved in
15 discussions. It's also consistent with the way we've been
16 admitting evidence throughout this trial.

17 MS. EWALD: Your Honor, I recall that there were
18 witnesses from Welded that testified they did not have
19 knowledge of particular documents, and the documents were not
20 admitted.

21 THE COURT: I remember one with -- with Mr. Hood.

22 MR. GUERKE: It's a different situation, Your
23 Honor.

24 THE COURT: I think it was.

25 MS. EWALD: Your Honor, I believe the record will

1 reflect what Mr. Hood said. I believe that Mr. Hood was
2 listed on the email but said he had no recollection and was
3 not involved in this decision.

4 MR. GUERKE: I don't recall that being accurate.
5 I believe Mr. Hood, if I'm remembering the right exhibit, he
6 wasn't on the email and he said he didn't know about it.

7 THE COURT: I think so.

8 MR. GUERKE: Different situation. Entirely
9 different situation.

10 THE COURT: I think so too, but I'm going to go
11 back and look at that.

12 MS. EWALD: Your Honor, I would also point out
13 that with respect to information that was received from the
14 consultant, particularly the Mears' report, that was objected
15 to by Welded's counsel and not admitted.

16 THE COURT: I don't remember on the grounds
17 though. I'm going to take this one under advisement. Are
18 you not going to ask another witness about this? There seem
19 to be plenty of witnesses that could have -- that this could
20 come in through.

21 MR. GUERKE: Your Honor, I believe there are a lot
22 of questions with other witnesses in depositions who are not
23 testifying live. It certainly could come in that way, but we
24 want it to come in with Mr. Sztroin. He was a participant.
25 He was a recipient. He was on the email. He participated in

1 the discussions. Very different than Mr. Hood.

2 THE COURT: Okay. I'm inclined to admit this one.
3 But I am going to take this one under advisement and go back
4 and look and see what I did with this. But he did testify he
5 was at the meeting. He received a hard copy. He was part of
6 that discussion. I understand his testimony that he
7 didn't -- that he wasn't involved in the October 4th letter
8 and decisions made about that. To me, that's sort of
9 different, but -- so I'm going to take this one under
10 advisement.

11 BY MR. GUERKE:

12 Q Mr. Sztroin, could we turn two pages forward, please.
13 Mr. Sztroin, this is - the title is "Audit Findings," and the
14 unique reference is "AF/001A," correct?

15 A Yeah, that's what it states.

16 Q The title here is: "Application of equipment fee to
17 labor, "fringe benefits," it looks like, "travel, per diem
18 tax, and per diem," right?

19 A Where are you quoting that? Is that towards the bottom
20 under "contractual justification"?

21 Q I'm on page 7 if --

22 THE COURT: 7?

23 THE WITNESS: Page 7? I thought it was -- I'm
24 sorry.

25 THE COURT: I thought we were on 9, but okay.

1 THE WITNESS: Okay. I'm on 7.

2 BY MR. GUERKE:

3 Q Is 7 that you're looking at the same document that's on
4 the screen, Mr. Sztroin?

5 A Yes, that appears to be.

6 Q So I'll ask this question again. This is titled
7 "Application of equipment fee to labor, fringe benefits for
8 travel, per diem tax, and per diem."

9 Right?

10 A Yes.

11 Q And it's marked as:

12 "Confidential. Prepared for and at the direction
13 of Transcontinental Gas Pipeline Company LLC, senior attorney
14 Jeff Goebel."

15 Right?

16 A That's correct.

17 Q Based on that title and your understanding of the
18 facts, this document was not provided to Welded at this time,
19 October 11, 2018, correct?

20 A I think I testified earlier I don't know if this
21 document was -- well, I mean, if you're asking -- let me
22 rephrase.

23 What is the question again, please?

24 Q You have no reason to believe that this document was
25 provided to Welded by October 11th, 2018, correct?

1 A I don't know if this document was provided to Welded.

2 I don't know.

3 Q But you do know it's marked "confidential, attorney
4 work product," correct?

5 A Yes, I see that.

6 Q You did not discuss audit findings with anyone at
7 Welded prior to October 4th withholding, right?

8 A I didn't discuss this with anyone with Welded.

9 Q You do not know of anyone else in the Transco
10 organization who did that either, right?

11 A I had no involvement in that. I don't know whether we
12 did or didn't.

13 Q Mr. Sztroin, after the October 4th withholding, Welded
14 asked to have a meeting to express its concerns about the
15 withholding, right?

16 A That is correct.

17 Q You participated in that October meeting with Welded
18 after Transco withheld money from Welded, right?

19 A I attended that meeting, but I didn't have any -- I
20 didn't say anything in that meeting. I didn't participate,
21 if that's the definition of it.

22 Q Rich Wall, Steve Hawkins, and a representative from one
23 of Welded's shareholders was at that meeting, correct?

24 A That is correct.

25 Q Marcus Hood was at that meeting, right?

1 A He may have been. I do remember Rich Wall and
2 Mr. Hawkins and someone else. And I believe that was the
3 other shareholder or something like that for Welded. That's
4 the only people that I recall from Welded that attended.
5 Maybe Marcus did. I don't recall.

6 Q On the Transco side, in addition to you, was Evan
7 Kirchen, Chris Springer, and Jeffry Goebel, correct?

8 A Yes, I believe we were the ones that attended that
9 meeting.

10 Q At that meeting, Welded asked Evan Kirchen what was the
11 basis for the withholding, right?

12 A Yes. I seem to recall that question.

13 Q Mr. Kirchen responded that we had had enough, right?

14 A I don't recall what Mr. Kirchen replied.

15 Q Could you pull out your deposition, Mr. Sztroin.

16 Mr. Sztroin, we're in your first deposition from
17 December of 2020, page 201. Let me know when you're there.
18 Mr. Sztroin, I'm reading page 201 starting on line 5:

19 "What else do you remember was said on the Welded
20 side?"

21 Answer:

22 "I recall them asking Evan, well, again, what was
23 the basis behind the withholding. And Mr. Kirchen replied,
24 in so many words -- again, I can't certainly speak word for
25 word on what he said -- was that we had had enough. The

1 audit findings, coupled with a number of other, you know,
2 considerations, was enough, for us, to go ahead and think
3 that you all grossly overbilled us, and that was -- that led
4 to the decision to withhold the amount of money identified in
5 that October 4th letter."

6 Did I read that correctly?

7 A That's what I said at the time.

8 Q Rich Wall, in that meeting, said that bankruptcy was
9 likely if Welded didn't receive payment, right?

10 A That, I do recall.

11 Q And Rich Wall, in that meeting, asked Transco to
12 reconsider its position, right?

13 A I do recall that.

14 Q Mr. Sztroin, the October 4th, 2018, withholding was
15 based on the audit provision of the contract, right?

16 A I didn't read the letter, but I seem to think that
17 that's a correct statement.

18 Q Under that audit provision, the audit findings had to
19 be presented to Welded before any adjustments were made to
20 any of its invoices, correct?

21 MS. EWALD: I'll object, Your Honor. It
22 mischaracterizes the contract and the notice of withholding.

23 THE COURT: Overruled. I'll let Mr. Sztroin
24 respond if he can.

25 BY MR. GUERKE:

1 Q Please respond, Mr. Sztroin.

2 A Okay. If you don't mind, could you repeat the
3 question.

4 Q Under the audit provision of the contract, audit
5 findings had to be presented to Welded before there was an
6 adjustment to any of its invoices, correct?

7 A I'd have to look into the contract. If that's what it
8 states, then I would agree with it.

9 Q Could you look at your deposition, page 371.

10 A The same December --

11 Q We're now in January, January 6th, 2021.

12 A And the page number again, please?

13 Q 371. Page 371, line 2, question:

14 "And under that provision, the audit findings have
15 to be presented before that adjustment, correct?"

16 There's an objection.

17 Answer:

18 "Well, any adjustments to be made, that's when we
19 would end up paying an invoice. And if one was to go ahead
20 and adjust it, okay, that's when the invoice is paid. I
21 would say that the presentation -- my interpretation alone --
22 I'm not an attorney. I can't provide a legal interpretation,
23 but I would say that a presentation would be made to the
24 contractor before that particular invoice having an
25 adjustment is paid to the contractor."

1 MS. EWALD: Your Honor, I'll renew my objection
2 with regard to the contract and contract interpretation.

3 THE COURT: I'm not taking it for contract
4 interpretation. I'm taking it for what Mr. Sztroin believes
5 the contract provides.

6 BY MR. GUERKE:

7 Q I read that part of your transcript correctly, didn't
8 I, Mr. Sztroin?

9 A That's what I said.

10 Q Could you turn to PX276, please. Mr. Sztroin, other
11 than just the disclaimer, this is -- this is just a one-page
12 email. I want to direct your attention to the middle of the
13 page. This is an email dated June 29th, 2018, from Jeffry
14 Goebel to Phil Burke, correct?

15 A That's correct.

16 Q Mr. Springer and you are copied on this email, correct?

17 A Yes.

18 Q The subject is "OGCS visit to Welded offices." Right?

19 A Yes.

20 Q Mr. Goebel states:

21 "Hello, Phil. I just want to let you know that I
22 am taking over the request for OGCS visit of Welded's
23 offices. As such, plans will proceed as previously
24 discussed. When developing reports on findings or opinions,
25 please mark those reports as confidential, prepared for and

1 at the direction of Transcontinental Gas Pipeline Company
2 LLC, senior attorney, Jeff Goebel. Two, please transmit
3 those reports directly to me and I will get with Chris and
4 David."

5 Did I read that part of his email correctly?

6 A Yes.

7 Q Mr. Sztroin, Phil Burke replies later -- and that's the
8 next string up. He states:

9 "Many thanks, Jeff. That is a very clear -- that
10 is very clear, and we will comply timely, as I actually have
11 the first topic for discussion to issue to you for your
12 comment this afternoon. This is a contractual interpretation
13 issue initially. But if you can confirm the format and
14 process we will follow, like this works for you, that would
15 be good. We are almost complete on a compilation of the
16 single database for labor. So, we will begin transmitting
17 the more transactional actions, such as double entries, et
18 cetera, next week."

19 Did I read that correctly?

20 A Yes.

21 Q Mr. Sztroin, you're copied on all of these emails, and
22 you know that the subject "OGCS visit to Welded offices," you
23 know that visit actually happened later in July 2018, right?

24 A Yeah. I recall that -- that they visited those
25 offices.

1 MR. GUERKE: Your Honor, I move into evidence
2 PX276.

3 MS. EWALD: My objection, again, Your Honor, is on
4 foundation. This witness was copied, and he's not the author
5 of this document.

6 MR. GUERKE: That's not a foundational objection.

7 THE COURT: Yeah. Overruled.

8 BY MR. GUERKE:

9 Q Mr. Sztroin, final acceptance of Welded's work was when
10 Welded conducted the final tie-in on the pipeline in
11 preparation for placing the pipeline into service, correct?

12 A Yeah. That last tie-in was the remaining one that
13 term -- or transitioned it from execution and we were
14 mechanically complete. I know that there was other work.
15 Like I testified to earlier, the restoration was still going
16 on at that time, but we were mechanically complete in
17 September the -- whatever it was, the 18th, 19th, that
18 Wednesday.

19 Q So the answer to my question is yes, Mr. Sztroin?

20 MS. EWALD: I'll object, Your Honor. I believe
21 that the question was "final acceptance." Mr. Sztroin
22 testified "mechanical completion."

23 THE COURT: Well, I'll overrule the objection. He
24 can say what his answer is.

25 THE WITNESS: So, can you please re-ask the

1 question?

2 BY MR. GUERKE:

3 Q Yes.

4 A If you don't mind.

5 Q Final acceptance of Welded's work was when Welded
6 conducted the final tie-in on the pipeline in preparation for
7 placing the pipeline into service, correct?

8 A I don't believe that that's final acceptance. I think
9 that was when all of the work was completed. And there was
10 work going on even after mechanical completion.

11 Q You agree that the last tie-in weld was September 19th,
12 2018, right?

13 A That was the last tie-in weld.

14 Q You're disagreeing that final acceptance of Welded's
15 work was when Welded conducted the final tie-in on the
16 pipeline in preparation for the placing of the pipeline into
17 service?

18 A I do not believe that that constitutes final
19 acceptance, that I can recall that definition in the
20 contract. There was other ongoing work, mainly cleanup and
21 restoration, that was taking place even before that
22 September 19th date. And that same work was continuing after
23 that date.

24 Q Mr. Sztroin, can you take a look at your deposition
25 again, the second one from January 6th, 2021.

1 A Now, which one was --

2 Q The second one, January 6, 2021. It should be tab 2.

3 A And the page?

4 Q The page is 346.

5 A 346.

6 Q Page 346 of your January 6, 2021, deposition
7 transcript, line 5, question:

8 "When was Welded's work -- when was final
9 acceptance of Welded's work?"

10 There's an objection.

11 And then your answer:

12 "Well, again, I am not an attorney, so I can only
13 provide -- I can't provide a legal interpretation, but that's
14 just my professional opinion, is that the acceptance of the
15 work was when they conducted the final tie-in weld on the
16 pipeline in preparation for placing the pipeline into
17 service."

18 Question:

19 "When roughly was that?"

20 Answer:

21 "The last tie-in weld was, I believe, September
22 the 19th, 2018."

23 Did I read that correctly, Mr. Sztroin?

24 A That's what I said at the time.

25 MS. EWALD: Your Honor, I object to the improper

1 impeachment. Mr. Sztroin goes on to testify that:

2 "ANSWER: Well, no. They had not completed the
3 restoration work. That's just when they completed the
4 mechanical completion date, but they had a lot of remaining
5 restoration work on the pipeline right-of-way."

6 Which was consistent with his testimony.

7 THE COURT: You can redirect him on that.

8 MS. EWALD: Thank you.

9 BY MR. GUERKE:

10 Q Mr. Sztroin, Mr. Poarch made the decision to deduct
11 \$10 million from Welded's invoice in August 2018, right?

12 A I believe so.

13 Q Prior to that deduction, Welded and Transco agreed to
14 pay that penalty over time, right?

15 A I don't recall who the representative was that agreed
16 to that.

17 Q But you know there was an agreement?

18 A Again, I don't know who agreed to what. Is there a
19 document you can show me? That's what I'm saying, I don't
20 know.

21 Q I'm asking you. You know that there was an agreement
22 for Welded to pay the \$10 million penalty overtime, right?

23 A I don't know who had the authorization -- again, my
24 response to this is I don't know who had the authorization -
25 if that was an agreement and did they have the authorization

1 to make that call.

2 Q Well, putting the authorization aside, you know that
3 there was an agreement between Welded Construction and
4 Transco for Welded to pay the \$10 million payment over time,
5 right?

6 A That's what I had heard. But, again, I'd like to end
7 up understanding who made that commitment on behalf of the
8 company because some people can end up, say, having an
9 agreement between two individuals, but do they have any
10 authorization to do that? I don't recall making that
11 particular call, and I was the project manager. And,
12 certainly, Mr. Springer should have had that same sort of
13 responsibility and the authorization to do so. That's all
14 I'm attesting to.

15 Q Mr. Sztroin, I may have misstated one of my earlier
16 questions about Mr. Poarch. Was it Mr. Kirchen that made the
17 decision to deduct the \$10 million penalty from Welded's
18 August 2018 invoice?

19 A It was one of the two. I don't know exactly, again,
20 who made that call. That was -- I was out of the
21 communication loop for that. I just know that, yes, there
22 was -- I'd say, that deduct that you mentioned, Mr. Guerke,
23 yeah, it occurred. But actually, who made it, whether it was
24 Mr. Kirchen or Mr. Poarch, I don't know.

25 MR. GUERKE: Your Honor, I'm at the end of my

1 questions. But based on the documents -- the question about
2 the document that's still pending, I don't want to close
3 cross because I would have a right to cross Mr. Sztroin on
4 that document if we're entitled to it. So, I'll ask the
5 Court How do I end, but keep that cross open?

6 THE COURT: I thought you had asked him questions
7 about the document. You have other questions you want to ask
8 him?

9 MR. GUERKE: I'm sorry, about the document he was
10 reviewing.

11 THE COURT: Oh, that, we're going to keep open for
12 that since I'm going to take that under advisement. You will
13 be allowed to ask questions about that since I'm looking at
14 it.

15 MR. GUERKE: Thank you, Your Honor.

16 THE COURT: You haven't waived anything.

17 Ms. Ewald, let me ask you, since we're approaching
18 12:00, do you want to start your redirect, or do you want to
19 wait until after lunch?

20 MS. EWALD: I'm looking at the clock. I think
21 it's about two minutes and 30 seconds, Your Honor, before
22 noon, so --

23 THE COURT: Well, I mean, we could have a few
24 minutes afterwards. That would be okay. But I'm assuming
25 it's going to be more than ten minutes or so?

1 MS. EWALD: It will be, Your Honor.

2 THE COURT: Okay. Why don't we start it after
3 lunch.

4 MS. EWALD: Thank you, Your Honor.

5 MR. GUERKE: May I have an instruction for the
6 witness, Your Honor.

7 THE COURT: Yes. The witness is not to discuss
8 his testimony or look at any other documents during the lunch
9 break. Thank you.

10 THE WITNESS: Understood.

11 MR. BURWOOD: Your Honor, may I ask a question
12 about schedule order presentation? I've got a witness, a
13 fact witness, who's been in the hallway for two days. I'm
14 just trying to get a sense of what we're going to do with
15 him. It's my understanding we're reaching the end of Mr.
16 Sztroin's testimony. Mr. Pew is the next witness.

17 A couple days ago, we talked about the fact that
18 Welded's counsel was going to read some deposition
19 transcripts into the record in between. I just ask that the
20 Court and counsel, for the courtesy of the witness, if we
21 could actually do the live witness before we do the
22 deposition witnesses. We would appreciate that.

23 MR. NEIBURG: I think that's fine, Your Honor.
24 We'd just ask that to the extent any of our rebuttal
25 witnesses also may fall in the same situation and may have to

1 go out of order before one of their experts, that we get the
2 same consideration.

3 THE COURT: If we have to go out of order to
4 accommodate a witness, I'm fine with that. And I would hope
5 that courtesy, you know, would be extended to witnesses who
6 are just toiling away in a room or in a hallway. So that's
7 fine. We'll go to Mr. Pew, is it, after we're completed with
8 Mr. Sztroin.

9 MR. BURWOOD: Thank you, Your Honor.

10 THE COURT: Thank you. We're in recess until
11 2:00.

12 (Recess taken at 11:57 a.m.)

13 (Proceedings resumed at 2:09 p.m.)

14 THE COURT: Please be seated. Ms. Ewald.

15 MS. EWALD: Thank you, Your Honor. Your Honor,
16 shall I proceed with my redirect examination of Mr. Sztroin?

17 THE COURT: Yes.

18 MS. EWALD: Thank you, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. EWALD:

21 Q Good afternoon, Mr. Sztroin.

22 A Good afternoon.

23 Q Mr. Sztroin, I'd like to draw your attention to an
24 exhibit that was identified and introduced on cross-
25 examination. I believe it's the new Exhibit PX656. And this

1 was provided yesterday and included this morning in the
2 binder.

3 A Yes, I see it.

4 Q Do you have that handy, Mr. Sztroin?

5 A Yes.

6 MS. EWALD: Your Honor, do you need some time?

7 THE COURT: I have it. Thank you.

8 BY MS. EWALD:

9 Q Mr. Sztroin, I'm going to draw your attention in
10 Exhibit 656 to -- I believe it's the third page of the
11 document. There's no numbers at the bottom, but I'll draw
12 your attention to the email from Mr. Grindinger to yourself
13 and others on December 11th, 2017. Do you see that?

14 A Yes.

15 Q And Mr. Grindinger says:

16 "David, please see the attached January 2018 cash
17 call with October 2017 reconciliation amounts for your
18 review."

19 And do you see that sentence, Mr. Sztroin?

20 A Yes.

21 Q And was this the -- was -- this was not the first cash
22 call that Transco had received from Welded, correct?

23 A No, this was not the first.

24 Q But this was the first reconciliation invoice received
25 from Welded. Do you recall that? The October 2017

1 reconciliation invoice was the first one received from
2 Welded?

3 A Yes, I believe so.

4 Q And we see here attached to Mr. Grindinger's email is
5 an invoice for \$78.399 million. Do you see that?

6 A Yes.

7 Q And I counted the pages attached to this invoice.
8 There's about 15 pages that are attached to the
9 invoice.

10 A Okay.

11 Q And was this the detailed supporting documentation that
12 Transco was expecting to receive supporting this invoice?

13 A There are some pages attached that just shows the
14 tables for hours.

15 Q And were there any invoices attached to this email --
16 or to this reconciliation invoice, Mr. Sztroin, that you can
17 see?

18 A No. It's just a listing of what we were being charged,
19 but there was -- but I -- at least in this document, I don't
20 see any supporting documentation to support those charges.

21 Q And was there additional backup document -- was there
22 additional backup documentation that Transco was expecting to
23 receive at this time?

24 A Yes. I think that's certainly part of the
25 reconciliation process.

1 Q And you were asked by Mr. Guerke whether there was any
2 response to this reconciliation invoice.

3 MS. EWALD: And I would like to provide the Court
4 with a document that has been identified as Exhibit D612.

5 May I approach, Your Honor?

6 THE COURT: You may. Thank you.

7 BY MS. EWALD:

8 Q Mr. Sztroin, we see here -- at the first page of
9 Document D-612, we see Mr. Grindinger's email of
10 December 11th, 2017?

11 A Yes.

12 Q And if we go back to Exhibit PX656, we see that they
13 were both sent on December 11, 2017, at 2:35 p.m.

14 A Yes.

15 Q And at the top of Exhibit D612, there is an email in
16 response from Scott Card. Who is Mr. Card, Mr. Sztroin?

17 A Scott Card was the lead project controls analyst for
18 all of ASR.

19 Q And Mr. Card writes back to Mr. Grindinger:

20 "Jim, I have a couple of questions regarding the
21 reconciliation."

22 And the first of those questions:

23 "Where is the detailed support referenced in Tina
24 Malone's email of November 29 requesting it be sent to her
25 and the project accountants for each spread?"

1 Do you see that?

2 A Yes.

3 Q And, Mr. Sztroin, does this indicate to you that
4 Transco -- representatives of Transco responded to this
5 invoice with the request for detailed supporting information?

6 A Yes. I think that's what was being requested.

7 Q And the detailed supporting information was being
8 thought to be provided to Ms. Malone and the project
9 accountants. Do you see that?

10 A Yes.

11 Q Are those the project accountants that you had
12 described earlier in your testimony, Ms. Rothgeb and the team
13 of field accountants?

14 A Yes, that's what I was referring to.

15 MS. EWALD: Your Honor, I'd move for the admission
16 of D-612.

17 MR. GUERKE: No objection.

18 THE COURT: It's admitted.

19 (Exhibit PX-612 received into evidence)

20 BY MS. EWALD:

21 Q Mr. Sztroin, I'd like you to turn to your cross-
22 examination binder that Mr. Guerke had provided to you. And
23 I'd like you, Mr. Sztroin, to turn to Exhibit PX648. And
24 this is the contract amendment document that Mr. Guerke asked
25 you about.

1 A Okay. I'm there.

2 Q And first of all, I'd like to look at the very first
3 page of the email of July 9th, 2018. Who is Mr. Rob Krenz?

4 A Rob was the assigned project manager for the two
5 spreads on the Central Penn Line North and the two pipeline
6 loops that were also part of ASR. They were pipeline
7 loopings on the -- what we call the Leidy system. And he was
8 the project manager for the three regulator stations that
9 were also included in the -- into the program.

10 Q Thank you, Mr. Sztroin. And now I'd like you to turn
11 to page 3 of Exhibit 648. And I'll first ask you about that
12 second paragraph with regard to the change in the start date
13 and the expected FERC notice to proceed date of October.
14 Were -- the circumstances described in that paragraph, are
15 those circumstances that were known to Welded prior to NTP?

16 A Yes. All of this right here was either, you know,
17 information -- like, for example, I testified to earlier, you
18 know, time-of-year restrictions on certain stream crossings
19 because of the trout spawning periods, the bat hibernaculum
20 area on Spread 5. All of those were -- that information was
21 conveyed to not only Welded but, again, all of the
22 contractors that were working on the pipelines. Everyone
23 knew of these restricted periods like that.

24 Q And now turn to the bottom paragraph on this page that
25 starts with "Longer-than-expected adverse weather

1 conditions." And I'll first direct your attention to that
2 second line that -- it indicates that:

3 "Longer-than-expected adverse weather conditions,
4 coupled with multiple production challenges, forced us to
5 reassess the planned production."

6 And, Mr. Sztroin, I see that there is a comment next to
7 that "planned production" with the initials "NT1."

8 Do you know what that refers to?

9 A Well, in some of the -- I'd say those Friday meetings,
10 okay, that we had every Friday recurring, one of the earlier
11 questions we were asking -- you know, we were looking at the
12 planned production, for example, for, you know, anything from
13 the main line welding progress, clearing and grading,
14 stringing, all of those activities, in addition to the tie-
15 ins. You know, we noticed that the planned production in the
16 winter was the same in the spring and the summer.

17 I remember specifically asking the question, Well, how
18 can that be if people are anticipating, you know, shorter
19 hours -- working hours in the winter, knowing that were going
20 to end up doing winter construction and not increasing in the
21 spring? It just didn't reconcile, at least in my head,
22 for -- how can I say it -- to account for maybe a lower
23 winter production, but those numbers would maybe start
24 elevating from spring, you know, getting into the summer. It
25 just didn't seem like -- it was just this constant X number

1 of feet per day regardless of the time of the year. It just
2 didn't seem to reconcile.

3 Q And did Welded ever tell you that they had included a
4 35 percent inefficiency factor on the tie-in welds in their
5 estimate?

6 A No. It was presented to us -- I believe it was the 1.2
7 days. Whatever that translates out to be, you know, divided
8 by 6, you know, that would be the planned -- or assumed delay
9 days associated with the weather.

10 Q And we see here in the email, it says -- or in the
11 document, it says:

12 "Considering the remaining scope and risk
13 conditions, the Williams projected forecast is \$723 million."

14 Mr. Sztroin, did that include the scope of the cleanup
15 and restoration work for this estimate of completion?

16 A Yes. I think -- I believe that that number was -- it
17 may not have been exactly matching, but I do believe that was
18 matching the latest forecast-at-completion costs that were
19 provided on those weekly -- weekly updates.

20 Q And I'll turn to page 5 of this document, Exhibit 648.
21 You were asked about some questions under Section 2,
22 "Contract Overview," and that item cost-plus fixed-fee
23 structure. And my question to you -- and this is at page 5.

24 My question to you, Mr. Sztroin, had the fixed -- was
25 the fixed-fee of \$45 million, was that associated with the

1 original mechanical completion date in the contract that we
2 see here on or before April 1st of 2018?

3 A Yes, I believe so.

4 Q And at this point, had that -- was -- that fixed-fee,
5 had it already been revised to the \$50.5 million to reflect
6 the June 15th mechanical completion date in the contract?

7 A Could you repeat your question.

8 Q Yep. The fixed-fee amount of the revision to the
9 \$50.5 million, had that already occurred with regard to the
10 new mechanical completion date of June 18th, 2018 --
11 June 14th, 2018? Excuse me.

12 A June 14th, 2018 --

13 Q Yes. I'm sorry.

14 A -- yes, that was incorporated, that \$50.5 million.

15 Q And we see here under Item 2.1, "Other contract
16 changes" -- this is at the bottom of the page. It indicates:
17 "Based on the current additional cost forecast, we
18 estimate Welded will not be earning an incentive bonus
19 payout."

20 Do you see that language?

21 A Yes.

22 Q And that was something that was identified by the
23 Transco team at the time; is that right?

24 A Yes.

25 Q And above that -- the sentence before that says:

1 "The incentive bonus is based on final cost, the
2 mechanical completion date, and a safety factor."

3 Were those the factors that you took into account when
4 making that statement?

5 A Yes. I don't recall what the safety factor was at this
6 time. But based on the anticipated final costs and the
7 mechanical completion dates that we had understood to be
8 about in this particular time frame, it certainly didn't
9 appear that they were going to end up receiving that
10 incentive bonus.

11 Q And, Mr. Sztroin, if we could turn to page 6 of the --
12 Exhibit PX648. We see there the contract estimate
13 comparisons. And you were asked some questions with regard
14 to equipment NTP delay. Do you recall that?

15 A Yes.

16 Q And, Mr. Sztroin, did Welded ever tell you that any of
17 the equipment that they identified as standby equipment was
18 being repaired during the standby period?

19 A No.

20 Q And did you believe that the standby equipment was
21 ready and able to go to work on the ASR project during that
22 standby period?

23 A Certainly. I mean, I believe when -- you know, again,
24 I forget the exact date. But when I said, yeah, we'd, you
25 know, go ahead and lock up this equipment, I think the

1 construction was pretty imminent.

2 Q And if we turn to page 7, we see a list of items that's
3 identified as Table Number 3. Do you see that?

4 A Yes.

5 Q And do you know if this is information that Welded
6 provided to you during its project reporting?

7 A Some of this was taken directly from that August 17th,
8 2017, presentation. In other words, we knew that they
9 were -- they stated that one of the reasons they went from
10 two construction spreads to three, they took into account the
11 winter construction, you know, starting -- the NTP starting
12 on or near October 1st of 2017. So, yeah, a lot of this
13 information was sort of like lifted, if you will, from that
14 particular document to substantiate the cost increase from
15 335 to 454.

16 Q And did you believe that Welded's reporting in that
17 regard to you was accurate?

18 A Yes.

19 Q Let's turn to page -- 648, the top of page 9, please.

20 And I'll draw your attention to Table Number 5. Table
21 Number 5 is identified as:

22 "Trend chart based on Welded's supply data."

23 And my question to you, Mr. Sztroin, is can you
24 identify Table Number 5 and whether it was based on the
25 information Welded had supplied to you?

1 A Yes. That was lifted right from their weekly cost
2 reports that they would issue.

3 Q If we turn to the next page, page number 10, we see
4 another in Table Number 6 that indicates:

5 "Trend charts based on Welded supply data."

6 Again, was this information that Welded supplied that
7 you utilized in this report?

8 A Yes.

9 Q Thank you, Mr. Sztroin. And now turning to page 11
10 under "Change categories, major breakdown." You spoke with
11 Mr. Guerke about this on cross-examination. The first
12 sentence indicates:

13 "Below is a summary of the meeting held with
14 Welded on May 1st and 2nd showing the major factors that
15 generated the need to increase the forecast."

16 Do you recall having a meeting with Welded on May 1st
17 and 2nd to address the forecast, Mr. Sztroin?

18 A Yes.

19 Q And we see here Table Number 7. And it's described as:

20 "Welded cost variance description by spread,
21 May 18 forecast."

22 Was this information that Welded had supplied to you?

23 A Yes.

24 Q And I'll turn to page 14 of Exhibit 648. And I'll draw
25 your attention to Section V.4:

1 "Weather - nonproductive days for all spreads."

2 And there's a discussion of the extended winter season.

3 And I'll draw your attention to the second paragraph, which
4 states:

5 "In our previous amendment, we partially
6 recognized this issue and verified that the adjusted plan
7 showing a continued 1.2 days a week of downtime for weather
8 reasons."

9 Was this the -- I believe you testified previously,
10 Mr. Sztroin. Was this the 1.2 days of weather impacts that
11 Welded had identified to you previously?

12 A Yes.

13 Q Did Welded ever identify that it had included two and a
14 half days of weather impacts in its schedule and cost
15 estimate?

16 A No. I don't recall -- I mean, if I would have seen a
17 notice to discrepancy or been aware of a discrepancy between
18 the 1.2 and the 2.5, I certainly would have, you know, tried
19 to reconcile exactly what was -- what was figured into this
20 project. And the number of shutdown days would, in essence,
21 be the same. But then, certainly, the narratives behind, you
22 know, saying that it was worse than what was planned, I would
23 have -- I would have changed some of the narratives in this
24 particular report if that were the case.

25 Q And I'll turn your attention to PX350, which is the

1 project change request form that you were asked about.

2 A Uh-hum.

3 Q And there's a -- and the font is very small,
4 Mr. Sztroin. But you were asked about, I believe, a
5 sentence, that:

6 "A key cost overrun contributor that affected all
7 pipeline construction spreads was level of effort and
8 resources, both labor and materials, needed to maintain
9 environmental compliance."

10 Do you see that?

11 A Yes.

12 Q And were the -- were the environmental requirements
13 known to Welded prior to contract -- prior to the NTP --

14 A Yes.

15 Q -- to your knowledge?

16 A They had completed E&S plans. All the contractors did.
17 And I seem to, you know, again, try to emphasize the need to
18 have people focus on these E&S plans, that we can end up
19 having, again, accurate expectations on cost and the level of
20 effort it was going to take to stay in compliance.

21 Q And you see that here we have the -- the current
22 forecast at completion of \$723 million. To your knowledge,
23 does that include the scope of cleanup and restoration,
24 Mr. Sztroin?

25 A Yes, I believe so.

1 MS. EWALD: I think I just have one more point,
2 and it's a very short one, Your Honor, with regard to the
3 deposition question that was addressed to Mr. Sztroin with
4 regard to the final acceptance of Welded's work. I believe
5 this may already have been cleared up.

6 BY MS. EWALD:

7 Q But, Mr. Sztroin, I'd just like you to -- if you have
8 your January 6th, 2021, deposition transcript handy, I would
9 direct your attention to page 346.

10 A Okay. Here's January. Which page?

11 Q The bottom of 346, sir, beginning with line 20 and then
12 over to page 347 to line 4. And I just wanted to -- I
13 apologize, sir. I'll let you find your way.

14 A Okay. I'm at 346.

15 Q And do you recall being asked questions with regard to
16 the final acceptance of Welded's work?

17 A Yes, I recall that.

18 Q And in your deposition, did you testify that Welded's
19 work was completed as of the final tie-in weld? I'll draw
20 your attention to line 20 at page 346.

21 A That question that was presented: Was Welded's work
22 considered to be complete?

23 Q And what was your answer at that time, Mr. Sztroin?

24 A Reading directly from the deposition: "Well, no. They
25 had not completed the restoration work. That's just when we

1 placed the mechanical completion date, but they had a lot of
2 remaining restoration work on the pipeline right-of-way."

3 MS. EWALD: Thank you, Mr. Sztroin.

4 I have no further questions, Your Honor.

5 THE COURT: Thank you.

6 MR. BURWOOD: I didn't know if you were going to
7 raise an issue yourself, Your Honor.

8 THE COURT: Perhaps.

9 MR. BURWOOD: I can sit down.

10 THE COURT: I don't know if you have any other
11 questions other than the ones based on the document?

12 MR. GUERKE: I don't believe I do, Your Honor.

13 THE COURT: Okay. I would like Mr. Sztroin to
14 step down and be outside of the courtroom while we have a
15 discussion about the document.

16 So, please, Mr. Sztroin.

17 (Witness excused)

18 THE COURT: Okay. I was able to take a quick look
19 at the submission that was made by the defendants. I
20 appreciate the written submission. I'd like to hear any
21 response by Welded.

22 MR. GUERKE: Your Honor, in a nutshell, our
23 response is Transco's submission cites to no cases saying the
24 situation that occurred here was acceptable, was not
25 improper, number one. Number two, there's an advisory

1 committee note, Federal Rule of Evidence 612, that says the
2 purpose of the phrase "for the purpose of testifying" as it
3 relates to that rule is to safeguard against using the rule
4 as a pretext for wholesale exploration of an imposing party's
5 files and to ensure that access is limited only to those
6 writings which may fairly be said, in fact, to have an impact
7 upon the testimony of the witness.

8 That's not what we're doing here. It's very
9 limited. It was a document that was reviewed during
10 testimony under oath, and it had to do with the testimony.
11 We followed up and reviewed rule -- Federal Rule 612, and it
12 does seem be the one that is on point and addresses the
13 situation we're dealing with here. So, nothing in that
14 submission changes the dynamic.

15 THE COURT: Okay. Ms. Ewald.

16 MS. EWALD: Yes, Your Honor.

17 THE COURT: I'll give you an opportunity to argue
18 and say anything you want to in response to what Mr. Guerke
19 said.

20 MS. EWALD: Thank you, Your Honor. I appreciate
21 that. And I would note that what Mr. Guerke said was that
22 the witness was using it during his testimony. The witness
23 was not using any notes or the document during his testimony.
24 It was prior to testifying.

25 THE COURT: How do you say that? It was prior to

1 that morning, but he was in the middle of testimony.

2 MS. EWALD: Because he was not on the stand
3 testifying at the time that he was -- he did not have notes
4 in his hand while he was testifying on the stand. And the
5 rule is broken into two sections, I would submit, for that
6 very purpose. When the witness takes the stand with notes to
7 refresh their recollection, the opposing counsel is always
8 entitled to review those notes that are being used to testify
9 if, as 612 requires, it provides that a party meet three
10 conditions before it may obtain documents used by a witness
11 prior to testifying.

12 And "prior to testifying" has been defined as -- I
13 believe it's the Hiskett case -- as when you are sitting
14 under oath and actually testifying in either a deposition or
15 a trial proceeding. The witness -- if it is a document used
16 prior to testifying, the witness must use the writing to
17 refresh his memory.

18 THE COURT: What do you think he was using it for?

19 MS. EWALD: I think he was simply, you know,
20 reviewing the list of exhibits that were going to be talked
21 about. I don't think he was using it to refresh his
22 recollection or for the purpose of influencing his testimony.

23 THE COURT: I think he testified that it was a
24 list of questions with his answers. I think that's what he
25 said. So how is he not using that to refresh his

1 recollection of what y'all discussed pre -- as trial prep and
2 how he should answer in accordance with those responses?

3 MS. EWALD: I don't think that there's any
4 evidence that it impacted or influenced his actual testimony.
5 There is no -- I would submit there is an obligation of
6 counsel to prepare a witness to testify.

7 THE COURT: Yes.

8 MS. EWALD: And that is -- and that is
9 appropriate. And Mr. Sztroin was permitted to, you know,
10 review that information prior to testifying.

11 THE COURT: How is that not like consulting with
12 his counsel?

13 MS. EWALD: Well, I would say he did not consult
14 with counsel. It was --

15 THE COURT: I understand that. But how is it not
16 like that?

17 MS. EWALD: I'd say it's a document previously
18 prepared and is -- was used for the purpose of review. I
19 don't know what Mr. Sztroin was doing with it. But the --
20 those two requirements, that it actually be used to refresh
21 his recollection -- he didn't say he wasn't able to remember
22 something so he consulted them. He didn't say --

23 THE COURT: He was doing it to know what his
24 testimony was going to be. Why else would he look at these
25 documents? What else would prompt him to look at these

1 documents other than to prepare for his testimony?

2 MS. EWALD: And, Your Honor, I don't know that
3 preparing for testimony is a prohibition or something that
4 requires turning over the documents to opposing counsel. I
5 think the requirements that have to be met are that it is
6 used to refresh his recollection, that it influences his
7 testimony. And then ultimately there's still the termination
8 that production is necessary in the interest of justice.

9 The rule, as provided in the advisory notes as
10 well as Wright & Miller and the Sporck v. Peil, Third Circuit
11 case, identifies that the work product -- attorney work
12 product privilege is not infringed upon by Rule 612 and does
13 not conflict with the protection of attorney work product.

14 THE COURT: No, it probably doesn't. I will tell
15 you this goes against everything I've ever known as a
16 Delaware lawyer, everything that we in Delaware do. We do
17 not talk to witnesses during deposition. We do not talk with
18 them during trial. They do not have documents. This goes
19 against everything and every way we practice in Delaware. I
20 saw that quote from the Massachusetts Court. That's not how
21 we do it in Delaware.

22 Okay. So, I'm struggling. I'm struggling also
23 because it's an attorney/client privilege document. So, I am
24 struggling with this. But it goes against everything we do
25 in Delaware. And I can think of no other reason that

1 Mr. Sztroin was looking at that document other than his
2 testimony -- other than to impact his testimony. And he was
3 in the middle of testifying, even though he wasn't on the
4 stand. That -- there's no doubt in my mind he's in the
5 middle of testifying.

6 Maybe we can ask him some questions to see why he
7 was looking at the document. But it would be hard for me to
8 think of a reason that he was looking at that document other
9 than checking to see what his answers should be. How was I
10 prepared? What should my answers be on certain questions?
11 And he's in the middle of his testimony.

12 MS. EWALD: Your Honor, obviously, it was a long
13 examination with many exhibits. So perhaps he was reviewing
14 the order of exhibits. But I would also submit, Your Honor,
15 that this is not a document I provided to him in the middle
16 of his testimony.

17 THE COURT: Right.

18 MS. EWALD: It is something he had prior to taking
19 the stand.

20 THE COURT: Yes.

21 MS. EWALD: And it is -- not inappropriately, I
22 believe, that you can prepare your witness and provide an
23 outline of questions and exhibits to your witness in advance
24 of taking the stand. I would also submit that to the extent
25 this was -- there was a concern -- apparently, this was

1 identified in the morning, and an issue could have been
2 raised and identified. And then I would have taken the
3 document from him. I did not realize he had it here.

4 THE COURT: Okay. Thank you.

5 MS. EWALD: Thank you, Your Honor.

6 THE COURT: Mr. Guerke.

7 MR. GUERKE: Your Honor, that doesn't change that
8 he was reviewing the document. That's what we saw. And if
9 we had -- I don't know what we would do; alert counsel to
10 that. Perhaps he would review it less, but it doesn't change
11 the issue here. So, he spends 20 minutes looking at it
12 instead of 22. I don't know. It doesn't change the issue at
13 all or the applicable law or the circumstances.

14 And how do we know what the impact is on his
15 testimony if counsel just said that she doesn't know what he
16 was doing with it? You can't make an argument it didn't have
17 an impact if you don't know what he was doing with it.

18 THE COURT: Did you ask him a question about why
19 he reviewed it? I don't think that you did. I don't recall
20 that.

21 MR. GUERKE: I don't have the transcript in front
22 of me, Your Honor. But I did ask him what he was doing, and
23 I believe he was -- what he said was he was looking at the
24 document in some way in preparation for his testimony, was
25 the gist of it. And I -- we can find the transcript.

1 THE COURT: Do we have real-time?

2 MS. EWALD: Your Honor, I do have a transcript --

3 THE COURT: Oh.

4 MS. EWALD: -- that, I think, was provided by

5 Reliable. I don't know if it's the final version or the --

6 if I may approach, I can hand it to you. It think it begins

7 at the bottom of page 1,640.

8 THE COURT: Thank you.

9 MR. GUERKE: I'm looking at the transcript now,
10 Your Honor. It says:

11 "This was the review that we had with legal
12 counsel, and those were my answers. When they would end up
13 asking those particular questions, I said, 'This is how I'm
14 going to answer these questions.'"

15 THE COURT: You didn't ask him why he was
16 reviewing it?

17 MR. GUERKE: I did not ask that particular
18 question, but it was apparent what he was doing. So, here's
19 the scenario, Your Honor -- I'll let you finish reading
20 before I give you my two cents on this scenario.

21 THE COURT: Thank you. Can someone else please
22 come up. Thank you. Do you need a break?

23 MS. EWALD: No, I'm good.

24 THE COURT: Okay.

25 MR. GUERKE: It's a list of questions and answers

1 for the testimony he's about to give. He's reviewing it in
2 anticipation of the questions, so he knows how to answer
3 them.

4 (Pause)

5 THE COURT: Well, what I'd like to know is how
6 much of the document he reviewed. I don't know how long it
7 is, I don't know if he reviewed a couple of pages, if he
8 reviewed the whole thing. I -- but I'd like to know that and
9 I think we have to hear that from Mr. Sztroin because he's
10 the only one who knows what he reviewed. I think it's being
11 reviewed in the middle of testimony.

12 (Pause)

13 THE COURT: And it may not have been used to
14 refresh his recollection, but I think it's being used to --
15 in anticipation of his testimony and answers he may give, and
16 I don't think that's permissible. It's not really Rule 615,
17 excluding witnesses, that's not really the basis of this,
18 that's not why I gave the instruction. I gave the
19 instruction because, again, I actually think I had to. It's
20 the way we do things in Delaware. There is not to be
21 discussion at depositions, there's not to be a discussion
22 in -- during trial. We don't want the witness to be
23 improperly influenced in his testimony. I'm sure there's a
24 Rob McKelvey decision on this, I'm sure there's a Joe Farnan
25 decision on this. These are prior District Court Judges,

1 this goes way back.

2 And, I will say, I haven't had it in front of me
3 on the bench, which is why I hesitated in the beginning and
4 it's -- I think that the other side is entitled to the
5 document, but I think, in fairness, you're only entitled to
6 the portions he looked at and not the entire document. So I
7 think we have to find that out and I think those questions
8 need to be asked. I would also ask him why he was looking at
9 it, but I'm not sure what that answer will mean because I
10 can't think of another reason that he was looking for it
11 other than because he knew he was going to get back on the
12 stand.

13 Let me say, I'm not -- let me make sure -- I'm not
14 ascribing something nefarious to the witness and certainly
15 not to Counsel, I'm not, I just think he couldn't do it. So
16 I would like Mr. Sztroin to come back in and I would like him
17 to be -- and maybe I'll ask the questions. Let me do that
18 and then I'll rule.

19 So if someone could please go get Mr. Sztroin?
20 Thank you.

21 (Pause)

22 THE COURT: I'm sorry, may I see the real-time?
23 And could someone else please get up other than Ms. Ewald?

24 (Pause)

25 THE COURT: Thank you.

1 Mr. Sztroin, do you remember when Mr. Guerke first
2 started questioning you that he asked you whether you had
3 been reviewing a document this morning prior to your -- prior
4 to getting on the witness stand?

5 THE WITNESS: Yes.

6 THE COURT: Okay. And you testified that you were
7 reviewing -- that document contained a list of questions and
8 it contained a list of answers. Do you recall that?

9 THE WITNESS: Yes, the document -- we, Shelly and
10 I -- there was a number of, first, hey, here are the
11 questions I'm going to end up asking, you know. They had
12 like a draft, you know. And if I ask this question, Dave --
13 David, how are you going -- Mr. Sztroin, how are you going to
14 end up replying?

15 And so we walked through, that was weeks before,
16 about two weeks before the trial, and then there was another
17 rehearsal with the same thing. Those answers were my
18 responses to those questions, but it was an outline, here'
19 are the subjects and topics we're going to end up reviewing.

20 THE COURT: Okay. And why were you reviewing that
21 this morning?

22 MR. GUERKE: Yesterday morning, Your Honor.

23 THE WITNESS: Yesterday morning?

24 THE COURT: Yesterday morning? Yesterday morning,
25 I'm sorry. Why were you reviewing that yesterday morning?

1 THE WITNESS: Well, we started the direct
2 examination, I think it was at 4 o'clock on Monday. It was
3 just a review to -- it's like, hey, she's going to cover
4 this, and I just wanted to refresh my memory on these topics
5 that I was going to end up covering.

6 THE COURT: Okay. Did you look at -- do you
7 remember whether you looked at the entire set of questions
8 and answers or a portion of it?

9 THE WITNESS: It was just a, you know, review, oh,
10 we're going to end up reviewing this. And actually I think,
11 you know, some of the responses -- like I said, the responses
12 I made, it certainly wasn't -- like how best to describe
13 it -- word-for-word. It was my response to it, Your Honor.

14 THE COURT: I understand that. Can you tell me
15 approximately how many pages that document is, do you know?
16 If you had to guess, best guess?

17 THE WITNESS: I want to say it was maybe 16. It
18 was, you know, like double or even triple-spaced. If I wrote
19 any notes on it myself, again, to try -- if Ms. Ewald was
20 going to end up asking any questions or maybe redirect, or
21 even cross-examination, just a review of even facts, you
22 know, I wrote that down on the piece of paper --

23 THE COURT: Okay.

24 THE WITNESS: -- or the series --

25 THE COURT: And, do you know, did you look at the

1 entire document of the 16 pages?

2 THE WITNESS: I don't think I completed it, no.

3 THE COURT: About how far do you think you got?

4 THE WITNESS: I don't know, maybe to, you know,
5 about 75 percent through it or something like that.

6 THE COURT: Okay. Thank you very much. I
7 appreciate your responses very much.

8 Okay, you can step down. And why don't -- thank
9 you -- and why don't you head outside again while we further
10 discuss this.

11 (Pause)

12 THE COURT: Okay. Well, I think Mr. Sztroin was
13 candid in his responses and he responded that he used this to
14 refresh his memory on questions and answers and facts. So I
15 think the document has to be turned over, but he said he
16 reviewed about three quarters of it and I'm going to take his
17 word on that. I think he's been honest with me and that's
18 how I would assess his testimony to date as credible. So I
19 would like to see the document and we're going to hand over
20 about three quarters of it.

21 MR. GUERKE: Thank you, Your Honor.

22 THE COURT: And I am making that distinction
23 because, quite frankly, it's an attorney-client document,
24 which is why I'm not requiring the whole thing to be turned
25 over. Otherwise, I would have required the whole thing to be

1 turned over.

2 MS. EWALD: Your Honor, I'll just note my
3 objection for the record --

4 THE COURT: Yes, of course.

5 MS. EWALD: -- and also ask, with regard to the
6 turning-over process, is it turned over for in camera review
7 or is it just turned over to Plaintiff's Counsel? And,
8 either way, I guess I would request a copy of it.

9 THE COURT: Well, of course. Yes, because you
10 don't actually have in your hands what he reviewed.

11 (Pause)

12 THE COURT: I guess, in the first instance, why
13 doesn't it get turned over to me. I will take a look at it
14 to see if there's anything extraneous and unrelated that
15 shouldn't be turned over. I will -- although I don't know
16 that it's necessarily the rule that applies, although I
17 think 612 can now apply given the testimony of Mr. Sztroin,
18 it does talk about it could possibly include unrelated
19 matter.

20 Actually, it strikes me -- it strikes me that --
21 Mr. Guerke, is there any reason why the document shouldn't be
22 given to Ms. Ewald, because the rule would suggest that, of
23 course, she should be able to review it and let me know if
24 there's anything extraneous, in the first instance, and
25 unrelated, is there any reason that shouldn't happen?

1 MR. GUERKE: Your Honor, could you -- what rule
2 are you --

3 THE COURT: I'm just looking at 612. Again,
4 it's --

5 MR. GUERKE: I think that's appropriate, Your
6 Honor, under the circumstances, as long as we get it at the
7 same time.

8 THE COURT: Well, you're not supposed to get
9 anything for unrelated matter. So I think it could be given
10 to Ms. Ewald and it could be given to me at the same time,
11 and so Ms. Ewald can make some argument to me if there's
12 anything unrelated to his testimony that shouldn't be turned
13 over, and then it would come to you after I make that
14 decision.

15 MR. GUERKE: I don't have a better suggestion now,
16 Your Honor.

17 THE COURT: Okay, so let me suggest this. We will
18 take a recess, so that Mr. Sztroin can provide the document.
19 Then, actually, if you could provide the document to my ECRO,
20 then we will get a copy made, okay? And then hand it back.
21 So, if that could happen, that's how we'll facilitate it. If
22 the document can be given directly to my ECRO, we'll take it
23 in chambers, and we will make a copy. I'll give you an
24 opportunity to look at it and see if there's anything
25 unrelated, and I'll give you an opportunity to address that.

1 I would ask that you not speak with Mr. Sztroin
2 about the process and what we're doing, simply ask him for
3 the document, and then we'll go from there. Let's take a
4 recess so that that can happen.

5 Thank you.

6 (Recess taken at 3:08 p.m.)

7 (Proceedings resumed at 3:25 p.m.)

8 THE COURT: Please be seated.

9 Mr. Sztroin, I'd like you to still be outside of
10 the courtroom for a few minutes.

11 (Pause)

12 THE COURT: Ms. Ewald, you've had a chance to take
13 a look at this now, is there anything that you think -- and
14 let me note first that I think this is really -- we have been
15 talking attorney-client, I think it's really work product --

16 MS. EWALD: Yes.

17 THE COURT: -- and not attorney-client privilege.

18 MS. EWALD: Your Honor, I agree, it is attorney
19 work product, and I have reviewed the document. There is
20 nothing extraneous in it that I see, and obviously some
21 handwritten notes by Mr. Sztroin to the outline.

22 THE COURT: Okay. And I see that it is -- barely
23 gets onto the 19th page there. So I think 75 percent of that
24 would be 14 pages or so, so that's what I'm anticipating
25 turning over. Okay?

1 So, with that, I will make a copy of the 14 pages
2 and we'll provide that to counsel.

3 MS. EWALD: And, Your Honor, just to reiterate my
4 objection --

5 THE COURT: And you have -- yes --

6 MS. EWALD: Thank you.

7 THE COURT: -- clearly, Transco is objecting, it's
8 over objection.

9 MR. GUERKE: Thank you, Your Honor.

10 THE COURT: Okay. Someone besides Ms. Ewald,
11 please come get this. Thank you.

12 Okay, let's take a recess. I will get this to
13 counsel -- well, let's talk -- and then we are done with
14 Mr. Sztroin's testimony except for anything you may wish to
15 address with him on this document. So I'm trying to think
16 how we proceed because he is the client rep, he's entitled to
17 be in here, and we were going to go to Mr. somebody --

18 MR. GUERKE: Pew.

19 THE COURT: Mr. --

20 MR. GUERKE: Pew, Your Honor.

21 THE COURT: -- Mr. Pew, Colby Pew, right, next.

22 MR. GUERKE: We're taking their witness next, Your
23 Honor, and then we're going to finish with our deposition
24 designations after Mr. Pew, that's our plan. And if you're
25 asking whether we have an objection with Mr. Sztroin staying

1 in as the corporate rep, I don't see why we would.

2 THE COURT: Okay. Good, then that solves that
3 problem.

4 So let me get this to -- provided to you. Then,
5 if there are any additional questions that you'd like to ask
6 Mr. Sztroin based on this, you will have the opportunity to
7 do that.

8 MR. GUERKE: Thank you, Your Honor. Will that be
9 something that we can do tomorrow or do we have to do it
10 today?

11 THE COURT: I doubt we're going to -- are we
12 planning to be done with Mr. Pew and the depositions today?
13 I wouldn't think so. So it's a tomorrow thing.

14 MR. GUERKE: Thank you, Your Honor. And will he
15 be under the same instruction as if he was on the stand?

16 THE COURT: And that's the part where he's the
17 corporate rep.

18 MR. GUERKE: I do request a sequestration -- I
19 mean an instruction, a sequestration order, whatever it is,
20 until he's finished with -- whether or not we're going to
21 cross him on this, I don't know, but until that process has
22 played out.

23 THE COURT: So the suggestion is -- and I'd like
24 to hear from Ms. Ewald -- the suggestion is he can be in the
25 courtroom and listening to testimony, but there should not be

1 any discussion with Mr. Sztroin with respect to testimony
2 before he's back on the stand?

3 MS. EWALD: I think I understand --

4 MR. GUERKE: There is testimony in that outline;
5 am I right?

6 THE COURT: Right -- well, yes, he shouldn't --
7 there should be no discussion about what his testimony
8 certainly might be based on this outline or his testimony
9 generally, yes.

10 MS. EWALD: Your Honor, I don't think he should be
11 excluded from the courtroom, as he's our corporate
12 representative. If we would need to consult with him with
13 regard to some matter other than anything on the outline, I
14 would ask that we be allowed to; I don't know that that would
15 be necessary but some -- if there's some issue that might
16 come up, obviously, unrelated to anything on the outline.

17 THE COURT: Thank you.

18 MR. GUERKE: As long as it doesn't have to do with
19 his testimony, just like a normal instruction, I don't -- we
20 don't have an issue with other type of communications.

21 THE COURT: I'm okay with that. I just don't want
22 there to be any misunderstandings, so -- because the only
23 other thing we could do, and I would not want to do it, but
24 I'm happy to do it, is to -- is not to go forward with
25 another witness and let you have time to take a look at this

1 and ask any questions, and, you know, not move on until we're
2 done with Mr. Sztroin. So that would be the only other --
3 the only other thing.

4 MS. EWALD: And we're amenable to that, Your
5 Honor.

6 THE COURT: Well, which --

7 MS. EWALD: I'm sorry, I thought there was an
8 option. I think that if we just proceed with the review of
9 the outline and ask any questions regarding it and get it
10 resolved today.

11 THE COURT: Well, and I would give a recess, so
12 they have an opportunity to take a look at it --

13 MS. EWALD: Certainly.

14 THE COURT: -- because they haven't seen it.

15 MS. EWALD: Certainly.

16 THE COURT: So we can do that too.

17 MR. GUERKE: That's fine, Your Honor, if that's
18 how you want to proceed. I think I would rather proceed
19 tomorrow with it, but I understand it provides some
20 logistical issues, and we know Mr. Pew has been on deck for a
21 couple days.

22 THE COURT: Well, I'm okay any way we go. I just
23 don't want there to be any issue if Ms. Ewald needs to speak
24 with Mr. Sztroin about something unrelated to this outline.

25 MR. GUERKE: No, that is fine with us, Your Honor.

1 THE COURT: Okay. So we're going to go back to
2 the first way. I'm positive, you know, Counsel understands,
3 Ms. Ewald understands and her team understands no discussion
4 with respect to the outline and Mr. Sztroin's testimony
5 generally. If they need to ask a question with respect to
6 something else, then that's certainly permissible.

7 MR. GUERKE: Thank you, Your Honor.

8 THE COURT: Okay. Let me -- though, in the
9 meantime, let me get a copy of -- what did I say, 14 --

10 MS. EWALD: Fourteen --

11 THE COURT: -- pages, right?

12 MS. EWALD: -- or 75 percent. Thank you, Your
13 Honor.

14 (Brief recess)

15 THE COURT: Okay, just to conclude before we start
16 with our next witness and for the record, I am handing to Mr.
17 Guerke the first 14 pages of the document that Mr. Sztroin
18 reviewed yesterday morning. His counsel has a copy of the
19 entire document.

20 MR. GUERKE: Thank you, Your Honor.

21 THE COURT: And, Mr. Sztroin, there may be some
22 questions, additional questions that Mr. Guerke may have of
23 you based on the outline. If he does, he will be entitled to
24 ask those questions with you on the stand, and I'm
25 instructing that you not speak with your counsel about the

1 outline or your testimony until we see whether or not Mr.
2 Guerke has any additional questions for you.

3 And I also ask that you not look again at the
4 document or any other documents that you may have related to
5 this case.

6 MR. SZTROIN: Yes, Your Honor.

7 THE COURT: Okay? Thank you.

8 THE ECRO: Mr. Pew, please stand to be sworn.
9 Raise your right hand.

10 COLBY MARTIN PEW, DEFENDANTS' WITNESS, AFFIRMED

11 THE ECRO: Please state and spell your name for
12 the record.

13 THE WITNESS: Colby Martin Pew. The last name is
14 P-e-w.

15 MR. BURWOOD: Good afternoon, Your Honor, Jonathan
16 Burwood, for the record. I have witness binders, may I pass
17 those up?

18 THE COURT: Just give me one moment and you may.

19 (Pause)

20 MR. BURWOOD: May I approach, Your Honor?

21 THE COURT: You may. Thank you.

22 DIRECT EXAMINATION

23 BY MR. BURWOOD:

24 Q Good afternoon, Mr. Pew.

25 A Good afternoon.

1 Q Mr. Pew, where do you work?

2 A Williams Companies.

3 Q Can you tell us a little bit about your educational
4 background?

5 A I have a B.S. in business management and various
6 certificates, industry-related.

7 Q Where did you get your Bachelor of Science?

8 A Johnson State College in Vermont.

9 Q And what year was that?

10 A I graduated in '96.

11 Q And you mentioned professional certifications; is that
12 right?

13 A I do, yes.

14 Q Which ones do you hold?

15 A I hold an ACE CP1 (phonetic), I hold API 1169; I hold a
16 hydro-test certification, and also a CPWI cert.

17 Q Did you mention an 1169 certificate?

18 A API, yes.

19 Q What is that?

20 A It's an industry certificate for pipeline inspection.

21 Q So you've got experience working on pipelines; correct?

22 A Correct.

23 Q How long, how long have you been working on pipeline
24 projects?

25 A I started with Williams the fall of '96.

1 Q And, at that point, what was your role with Williams?

2 A I was more of a maintenance crew guy, you know, and
3 supporting DOT work, supporting valves and doing mark-outs,
4 and testing RATA drops and everything that's involved with
5 daily maintenance of pipeline system.

6 Q How long were you in that maintenance role,
7 approximately?

8 A Oh, maybe three or four years.

9 Q And then did you move into a different role?

10 A Then I started getting involved with the construction
11 projects, and that's kind of the direction I went.

12 Q And did you have a title change at that point or a role
13 change? What was your title, say in maybe 2000, when you
14 started working on the construction projects?

15 A I was a utility inspector.

16 Q And what did that -- generally speaking, what did you
17 do?

18 A General -- watching the processes of all the
19 contractors throughout a construction project, whether it's
20 linear or facility-related, and just making sure they adhere
21 to all the specs.

22 Q So can you explain to us what you mean by linear versus
23 facility-related, are those two different types of
24 construction projects for pipelines?

25 A For the most part it is, yeah. It usually involves

1 different types of skill sets by the contractors. So linear
2 would be more of a project that goes through various miles,
3 straight, basically, with one line. Facilities, meter
4 stations, you know, involves different -- different piping,
5 different valving, moving gas around, pig traps, you know,
6 receivers, meter stations, building new meter stations,
7 working with the customers.

8 Q Okay. And so is it the case that the ASR project that
9 we're here talking about, Spreads 5, 6, and 7, is that a
10 linear project, in your mind?

11 A For sure.

12 Q Okay. And just up until, let's say, 2017, you
13 understand that was the outset of the ASR project?

14 A Yes.

15 Q Okay. How many linear projects had you worked on at
16 that point?

17 A Probably a dozen or so, you know, varying lengths.

18 Q And do you recall what the diameter of the pipe was
19 used for the ASR project, Mr. Pew?

20 A Forty two inch.

21 Q Okay. And had you worked on -- is it a large diameter?

22 A It is.

23 Q Okay. Had you worked on large diameter projects prior
24 to ASR?

25 A Mostly, mostly large diameter.

1 Q Okay. So is it the case that most of the dozen or so
2 linear projects you had worked on it was large-diameter pipe?

3 A Correct.

4 Q Sort of focusing on the 12 or so projects that you had
5 experience with coming into ASR, where geographically,
6 generally, were those, if you could tell us?

7 A It was all New Jersey, Pennsylvania, a little bit of
8 Maryland.

9 Q Have you -- other than college in Vermont, have you
10 lived sort of in that tri-state area your whole life?

11 A For the most part, yes.

12 Q In the 20 years that you've been doing sort of
13 construction roles for Williams, have you been in the --
14 where have you lived?

15 A Right in that vicinity, South Jersey.

16 Q Okay. And so you live in South Jersey now?

17 A Correct.

18 Q Approximately how far are you from any point of the ASR
19 project now?

20 A A hundred miles or so.

21 Q Did you have any employers between college and working
22 for Williams?

23 A Just that one.

24 Q Okay. Was it -- do you have --

25 A Not industry-related.

1 Q Okay. What's your title and role with Williams today?

2 A I'm a construction manager staff.

3 Q And are there multiple levels of construction manager
4 titles with Williams?

5 A There are, yep.

6 Q What are they?

7 A One, two, three seniors, and then into staff.

8 Q Okay. Is staff the highest construction manager
9 position at Williams?

10 A It is, yes.

11 Q And how long have you had that?

12 A Staff?

13 Q Yes.

14 A About a year and a half.

15 Q Okay. Back in 2017, 2018, what was your title?

16 A I was a senior.

17 Q And is that the title just below staff?

18 A It is, yeah.

19 Q And so in your role as senior construction manager
20 for -- you were the senior construction manager for Transco
21 at the ASR project; right?

22 A Correct.

23 Q Okay. All spreads?

24 A Five, six, and seven.

25 Q Okay, thank you. What generally were your

1 responsibilities in that role, Mr. Pew?

2 A I hire all the inspection staffing and work with those
3 groups to work alongside the contractor, to make sure the
4 contractor is adhering to all our specs and expectations.

5 Q Okay. And so for this job you had people, you had a
6 team working with you?

7 A I did, yes.

8 Q You said inspection staff; is that right?

9 A Yes.

10 Q Okay. Who were your primary -- who primarily reported
11 up to you for this project?

12 A It kind of tiered as myself and then I hired two other
13 construction managers that are not Williams-related, and
14 then, beneath them, there's a chief, and one other CM had two
15 other chiefs; and below them we do environmental leads,
16 welding leads, utility leads, and they each have a group of
17 people beneath them.

18 Q Okay. And --

19 A So --

20 Q -- all of those people you just listed, all those roles
21 you just listed, they would report up to you on this job?

22 A Correct, yeah.

23 Q Mr. Pew, were you in the field during the ASR job?

24 A I made weekly visits to the field, yes.

25 Q Okay. And so there's three spreads, were you on each

1 spread weekly or did you pick one spread for that week?

2 A Depending on what activities were going on in what
3 spread and maybe what issues, you know. I would try to hit
4 all three of them, but a lot of times I'd spend most of my
5 time on 5 to 6.

6 Q Okay. So any given week during the project -- it's a
7 six-day week; right?

8 A Correct.

9 Q Just approximately, how many days of those six days
10 were you in the field on the right-of-way?

11 A Three to four.

12 Q Okay. And where were you the other days?

13 A In my office.

14 Q And where was that?

15 A South Jersey.

16 Q At home?

17 A Yes.

18 Q Okay. Was there also a field spread office or did each
19 spread have its own field office?

20 A They did. Seven had one in Lancaster, then we called
21 it Pine Grove, and we had a building there where we ran both
22 spreads 5 and 6 inspection out of.

23 Q And did you spend time in the field offices as well?

24 A Uh-huh.

25 Q Yes?

1 A Yes.

2 Q Okay. Mr. Pew, I want to ask you about sort of
3 generally on the job your interaction with Welded's
4 personnel, okay? Did you have a counterpart with Welded that
5 you communicated with primarily?

6 A I think Schoenherr was probably someone, but then I
7 dealt with the superintendents a lot and, you know, that was
8 probably most of it. And then, if I went out, I would always
9 feel free to talk to whatever foreman or whoever was out
10 there.

11 Q So Scott Schoenherr, you said?

12 A Yes, sir.

13 Q He was a general superintendent for Welded; is that
14 right?

15 A Yes.

16 Q Okay. But then, if I understand your testimony, when
17 you were in the field, you would also communicate directly
18 with whoever Welded had in the field on that particular
19 location or dealing with whatever particular issue you were
20 looking at; is that right?

21 A Uh-huh.

22 Q Okay. When you were in the field, did you have the
23 opportunity to actually make observations of your own?

24 A Yes.

25 Q Okay. So can you give us an example sort of why you

1 would be on the right-of-way on any given particular date,
2 just generally speaking, sort of what your role was there and
3 what you were doing, how you were observing, as an example?

4 A I would talk to my team and then usually we would
5 follow up -- in the morning, and then we'd follow up and
6 drive around the right-of-way and look at various things, you
7 know, whether it's a wetland crossing or a road bore or, you
8 know, some kind of land issue, you know, we'd try to hit
9 spots like that.

10 Q Okay. And did you say you met with your team before
11 you did that?

12 A Always, yeah.

13 Q Okay. And so those were your chief inspectors; is that
14 right?

15 A Chiefs and CMs.

16 Q And just what are some of their names?

17 A Well, we had Matt Andrews and then we had Colby Thorson
18 below him, and then we had Lee Vohn (phonetic), and then we
19 had Chris Brooks and then we had Brian Geiss (phonetic).

20 Q Okay. Thank you.

21 Mr. Pew, were you involved in the project -- well, when
22 did you first come to the project full time?

23 A Probably right before construction.

24 Q And do you recall when the NTP was?

25 A Late '17.

1 Q Do you recall what month it might have been?

2 A September.

3 Q And so do you think that you came to the project full
4 time in September or sometime before September?

5 A It was right before. I was finishing up other
6 projects, I had one going on in Staten Island and some others
7 in North Jersey, but it was right about the start when I went
8 to ASR full time.

9 Q Okay. Mr. Pew, do you have any observations, generally
10 speaking, about any pre-NTP planning that Welded had done as
11 of the time you arrived at the site?

12 A Yeah. So I was concerned about my staffing, so I got
13 my CMs and chiefs there early, so they could be familiar with
14 the right-of-way. There's a lot of roads in 95 miles and a
15 lot of nooks and crannies. So it was important to have them
16 out there to know where the pipe is going, understand the
17 right-of-way. So that part of it on our side, yeah, they
18 were there I think probably March time frame, '17.

19 Q So this is your staff, Transco's chiefs; right?

20 A Correct.

21 Q And they were driving the right-of-way, being familiar
22 with the roads, is that what you're saying?

23 A Looking at prints, yeah.

24 Q Okay. And my question is, did you have any sense when
25 you came to the job of any preparation that Welded had done

1 sort of in a similar fashion?

2 A I think it was lacking for sure.

3 Q What made you think that?

4 A So at one point, you know, we had an office and they
5 came into the office, and they came with this big staff, but
6 yet there was no one there driving or looking or talking to
7 my staff on site, you know. So I would visit with them
8 during the weeks, you know, and by then there was no
9 construction crews, but there was groups of people working
10 for Welded were supposed to be doing pre-planning. I would
11 ask them, I said, hey, has anyone been up here? You know, we
12 would go to see landowners, where's Welded, do they want to
13 come here and visit, you know. I mean, at this part of the
14 job, we should be working together and trying to build the
15 job together, and it was lacking. There was -- 5 and 6 had
16 no one up there. At one point, they said no one has been
17 here, and it was late, late into the summer.

18 Q No one from Welded, is that what you're saying?

19 A Correct, yeah.

20 Q Okay. Mr. Pew, can you draw your attention to
21 Exhibit 270? It's in the binder in front of you, it should
22 be the first tab. And it's an email from yourself to Scott
23 Schoenherr, it's dated August 8, 2017, and the subject line
24 says Welded Deliverables ASR. Do you see that?

25 A I do, yes.

1 Q Okay. Have you seen this before?

2 A I have.

3 Q Okay. August 8th, we're a month and a half before the
4 NTP; does that sound right?

5 A Yes.

6 Q And you're sending this to Scott Schoenherr at Welded.
7 Was he part of Welded's original project management team, if
8 you know?

9 A He was not, no.

10 Q Do you have any sense, Mr. Pew, when Mr. Schoenherr
11 came on board for Welded?

12 A Probably shortly before this email that I sent him.

13 Q Okay. And what was the subject of this email you were
14 writing to Mr. Schoenherr?

15 A I was looking for some of these details of planning
16 that we have not seen, that we once had talked to Welded
17 about, they're all -- they're all very relevant to building
18 this pipeline and, you know, it was just very obvious there
19 wasn't any involvement at all. So, when Scott came on, I
20 feel comfortable enough, you know, to email him, ping him,
21 whatever that is, to try to get him on board, you know, to
22 work together.

23 Q So the first sentence you say, "In January, we held a
24 Welded and Williams kickoff meeting in Houston." Do you see
25 that?

1 A I do.

2 Q Okay. Did you attend that meeting?

3 A I did.

4 Q Okay. And it says key stakeholders from both companies
5 were there. Mr. Schoenherr was not there; right?

6 A That's right.

7 Q Okay. Who, if you recall, was in the general
8 superintendent role for Welded at that time?

9 A General superintendent? I know Marcus Hood was there,
10 but I don't think he was general superintendent. I don't
11 even know if they had named someone at that point.

12 Q Okay. And in the second sentence you say, "At that
13 meeting, we discussed some of the deliverables and
14 expectations from Welded."

15 Do you see that?

16 A Yes.

17 Q Do you recall what deliverables or expectations were
18 discussed in that January kickoff meeting?

19 A Much of the same as I have listed in the body of the
20 email.

21 Q Okay. Before we get to the list, do you recall if you
22 or -- if you had heard back from the Welded team with respect
23 to any of these deliverables and expectations that were
24 talked about in January?

25 A Nothing solid, you know. A lot of times, my CMs would

1 try to run this down. I mean, we talked as a group, you
2 know, and tried to get them involved with Welded, more at a
3 local level of the spreads, to identify these.

4 Q In fact, in the third sentence, don't you say,
5 "Unfortunately, we have not received or have heard any
6 discussion of most of these subjects." Is that what you
7 wrote?

8 A Yes.

9 Q Okay. So then there's a list of, I think, 23 items; do
10 you see that?

11 A I do.

12 Q Okay. Why did you identify these items for
13 Mr. Schoenherr at this time?

14 A One, because they're all kind of deliverables, we
15 probably talked about them in January. And they're all very
16 typical of what we do to build the pipeline. You know, you
17 see in here communication, you know, you see some OQ
18 qualifications, some of the details of the erosion control,
19 you know, the blasting plans were big, abandoned mine
20 mitigation, you know, we had -- these were all plans that we
21 had in the drawings and somehow you have to execute it. At
22 the time, we didn't know how they were going to execute
23 really any of this stuff. So we're just trying to get a
24 sense of like an execution plan.

25 Q One of the things you identify as a fourth point is a

1 safety plan; right?

2 A Yes.

3 Q And then is there, in 7, you ask for quality management
4 information; is that right?

5 A Yes.

6 Q Did you get a response to this email, Mr. Pew?

7 A Not that I remember.

8 Q Short of a direct response, do you recall that of
9 the 23 sort of deliverables and action items you've
10 identified here, subsequent to this August 8th time frame,
11 was there substantial progress on any of these items, in your
12 mind?

13 A Definitely not, no.

14 Q And, having not received a substantive response, what
15 did you do?

16 A We probably just tried to -- kept getting them engaged,
17 you know, a lot of it probably went through my CMs.

18 MR. BURWOOD: Your Honor, I'd move to admit
19 Exhibit D-270, please.

20 MR. NEIBURG: No objection, Your Honor.

21 THE COURT: It's admitted.

22 (Exhibit D-270 received in evidence)

23 BY MR. BURWOOD:

24 Q Mr. Pew, if you could turn to Exhibit PX-126? It
25 should be the next exhibit in your binder. And that is -- at

1 least the first page is an email from Marcus Hood to Rita
2 Cotton at Welded, Marcus Hood of Welded to Rita Cotton at
3 Welded, and it was sent on September 8, 2017. Do you see
4 that?

5 A Yes.

6 Q And the subject line of this email is Pre-Jobs for
7 Spread 5, 6, and 7. Do you see that?

8 A Yes.

9 Q Okay. I'm going to ask you to turn to the second page.
10 And, just to orient everyone, the heading there is Laborers
11 International Union of North America Pre-Job Conference
12 Report. Do you see where I'm at?

13 A Yes.

14 Q And the date is September 7, 2017?

15 A Yes.

16 Q Okay. Have you ever seen -- and feel free to page
17 through the entire document, Mr. Pew, but I'm going to ask
18 you if you've ever seen this document, the pre-job conference
19 report, before.

20 A I would say no.

21 Q Okay. So, Mr. Pew, Mr. Hood testified earlier in this
22 proceeding and he testified that Colby, yourself, early in
23 the job, that you requested the pre-job conference reports
24 from Mr. Hood. Do you recall doing that?

25 A I do not, no.

1 Q And he said, Mr. Hood then said, I'm sure they were
2 sent over.

3 So, I just want to be clear, looking at this pre-job
4 conference report, do you understand what this is?

5 A It is, yeah, pre-job with the unions, yes.

6 Q Okay. So, just generally speaking, what's your
7 understanding of what a pre-job conference is?

8 A It's an agreement between the contractor and the local
9 unions. Typically, I never see any of this. This is built
10 into the rates and they build this into their bids where it
11 doesn't really -- I don't see this stuff.

12 Q Okay. And so specific as to this document -- and I'll
13 offer to you, just for the record, this is -- this particular
14 document you're looking at is just for, I believe,
15 Spread 5 -- well, it's for just one spread because it says
16 17 miles of 42-inch pipe. Do you see that?

17 A On that same second page?

18 Q Yeah. And what I'll ask you to do is, if you page
19 through to page 9, there's another set of pre-job conference
20 reports for another one of the spreads, and I'm just going to
21 ask if you ever received this from anyone at Welded?

22 A I did not.

23 Q And then if we go to page 13, there is another set of
24 pre-job conference reports for a different spread. And, once
25 you've had a chance to look at that, I'm going to ask you if

1 you ever received this document from Welded.

2 A No.

3 Q Mr. Pew, did you communicate regularly with Mr. Hood
4 around this time, September or the outset of the job?

5 A We usually didn't communicate at all.

6 Q Okay, so not just limited to that time period? So let
7 me ask more broader, was Mr. Hood someone that you commonly
8 communicated with, with respect to this project?

9 A Definitely not.

10 Q Why not?

11 A I was kind of more of a field guy and I think he dealt
12 with more people at a higher level in Houston, working more
13 direct with them.

14 MR. BURWOOD: This document was previously
15 admitted during Mr. Hood's testimony as P-126.

16 BY MR. BURWOOD:

17 Q Mr. Pew, if you would turn to Exhibit 435 for me. But
18 before we get there specifically, I'm going to ask you, you
19 were involved with the project from August or September until
20 the end of execution; is that right?

21 A Yes.

22 Q When did you demobilize from this project?

23 A Probably late '19.

24 Q 2019?

25 A Yes, sir.

1 Q Okay. Do you have any sort of general impressions,
2 Mr. Pew, with respect to the consistency of Welded's
3 personnel in this job and whether there was any turnover?

4 A There was quite a bit of turnover on all the spreads.

5 Q Can you just elaborate a little bit on that for us?

6 A Well, at a higher level, the superintendents, you know,
7 on Spread 7, the one superintendent left. They brought in
8 another one who we felt comfortable with, we'd known him, he
9 had left suddenly after like two, three weeks, and then they
10 proposed someone else to us and he ended up staying on 7.
11 And then there were some changes on 5 and 6 as well.

12 Q Okay. In your view, Mr. Pew, was there any impacts to
13 the work associated with that level of personnel turnover
14 you've just described?

15 A I think a lot of it would be tied back to pre-planning,
16 right, because some of these guys just showed up right before
17 construction, so with zero knowledge of the project. I mean,
18 they were starting from scratch at that point.

19 Q I want to focus you on Exhibit D-435; it's an
20 October 9, 2017 email from Donna Crum at Welded to numerous
21 people, including yourself. Do you see that you were copied
22 here?

23 A I do.

24 Q Okay. And the subject line is 2017 01 letter, key
25 personnel. Do you see that?

1 A Yes.

2 Q And Ms. Crum sent this to David Sztroin; right?

3 A Yes.

4 Q Okay. And her email says, "Please see the attached
5 letter for review." So I'm going to ask you to turn to the
6 second page of the exhibit, which is the letter. And you can
7 take an opportunity to review it. I'm going to ask if you've
8 seen it before.

9 A Yes.

10 Q Okay. What's -- who is Donna Crum?

11 A Office personnel from Welded, I'm not sure of her exact
12 title.

13 Q Okay. Do you know why she's writing to Mr. Sztroin and
14 yourself and others here?

15 A In our contracts, we asked for -- to review any
16 supervisory changes in the project.

17 Q Okay. And was there one such supervisory change at
18 Welded that's identified here in the letter?

19 A Yeah, Dan Wolford (phonetic) has left Spread 7
20 superintendent.

21 Q And Mr. Wolford, so he was the Spread 7 super. This is
22 October 9th, we're a couple weeks into the execution phase;
23 is that right?

24 A It was -- yeah, it was kind of shocking, to be honest
25 with you, yeah.

1 Q Why was -- shocking to you?

2 A I think to everyone on the spread. You know, it was
3 just another turnover of personnel, you know, it's a big
4 project. Someone's head should have been in the project, he
5 was actually -- this was after the start.

6 Q And when you said like more turnover, is it the case
7 that before Mr. Wolford left that you recall that there had
8 already been turnover with respect to Welded's team?

9 A They had made some changes before, yes.

10 Q Okay. Do you recall a Welded employee or a Welded
11 representative named Sandy Williams?

12 A I do, yeah.

13 Q Okay. What was his role, if you recall?

14 A Uh, whether he was a project engineer, I think that was
15 probably his title. We kind of looked at him as like the
16 head lead for Welded on Spread 7.

17 Q Okay.

18 A You know, my CMS would talk to Sandy quite a bit.

19 Q A primary point of contact for Transco?

20 A Yes.

21 Q Okay.

22 A For 7.

23 Q For 7. Do you know if Mr. Williams left the project?

24 A He was asked to leave by Welded.

25 Q Okay. Do you recall when?

1 A Not exactly, but --

2 Q Do you recognize the name Gerald Hill?

3 A I've heard of it. I'm not quite sure what he was
4 doing.

5 Q Do you know if he stayed on at the project during its
6 execution phase?

7 A Definitely not, no.

8 Q Okay. Do you recall the circumstances of his
9 departure?

10 A No.

11 Q Okay. J. B. McHenry, do you know that name?

12 A I do.

13 Q Who is Mr. McHenry?

14 A I don't know. He kind of paled around with Sandy, so
15 whatever he was, maybe a project engineer of some sort. I
16 don't know.

17 Q Okay. Do you know if McHenry left the project at any
18 point during execution?

19 A Excuse -- before execution, right. So I think he --
20 they were before Dan Wolford came in.

21 Q Okay, so let's put that in time. So it's the case that
22 Mr. McHenry left before October 9 of 2017, in your mind?

23 A Yes.

24 Q Okay. And Mr. Sandy Williams, do you think he was gone
25 at this point already?

1 A They were very close.

2 Q If you take a look at the exhibit -- well, if you
3 recall, do you recall who Welded proposed to replace
4 Mr. Wolford as the Spread 7 superintendent?

5 A Jim Parker.

6 Q Okay. And the letter here, does it indicate how long
7 Mr. Parker had been involved with the job at this point?

8 A Since August of '17.

9 Q Okay, so about two months. Do you know when the pre --
10 Welded's pre-NTP planning period started, Mr. Pew?

11 A It would be '16 sometime.

12 Q Sometime in 2016?

13 A Yes.

14 Q Okay. Did you have any particular view at this time,
15 early October of '17, about Mr. Parker's experience
16 sufficient to fulfill this role as Spread 7 super?

17 A For sure. So in '17, I think he was mostly in the
18 shadows. Like he never had any interaction with our guys in
19 August of '17 until he was actually appointed the
20 superintendent. So when we received this, we have concerns
21 with him leading such a large-scale project.

22 Q And when you say we, were there others at Transco that
23 shared that concern?

24 A That would be my immediate team and I shared it with my
25 boss at the time --

1 Q Who's that?

2 A -- my manager. Mark Hartmann.

3 Q Do you know if those concerns were ever communicated,
4 you know, either to Donna Crum or anybody at Welded?

5 A I would say yes. We always voice our opinions, we talk
6 a lot. I think this was a pretty big blow for us, so --

7 Q Okay. So just -- I understand it's been a while -- do
8 you recall, specifically, when were the other -- if there was
9 a response from you to this letter to Welded?

10 A I do not recall that.

11 Q Okay. Do you recall if Transco ever approved, as
12 requested here, Mr. Parker as the Spread 7 super?

13 A I know we talked internally about it and had our
14 concerns.

15 Q Do you recall if Mr. Parker ultimately fulfilled that
16 role?

17 A He did, yes.

18 Q Okay. Do you know if it was for the balance of the
19 project?

20 A It was.

21 Q Okay. Did Transco request any sort of conditions on
22 his approval, if you recall, any requests from Transco about,
23 if Mr. Parker assumes that role, you know, we'd like you to
24 consider X, do you remember anything like that?

25 A I think we wanted to make sure that Welded was going to

1 be able to support Jim Parker in his new role and Schoenherr
2 would be the one to do that.

3 Q Scott Schoenherr?

4 A Yes.

5 Q Okay. Was he known to Transco's team at this point in
6 time?

7 A Yes, from previous jobs.

8 Q And in your experience, having worked on this job, did
9 Scott Schoenherr in fact support Mr. Parker in that role
10 after October of 2017?

11 A I would say no.

12 Q Why not? What's the basis of you saying no?

13 A Most superintendents, they're around every day on the
14 job, you know, you can drive 36 miles and find them
15 somewhere, or the office, he was -- Scott was just never
16 around.

17 Q Okay. And that's the case in the fall of 2017?

18 A I'd say throughout the project.

19 Q That was my next question was, you know, you say he's
20 never around, I just want to frame for the Court, you're
21 talking about from the fall of 2017 until when?

22 A He wasn't around at Spread 7 until the end of Welded.

23 Q Until the end of the job?

24 A For Welded, yeah.

25 Q And you would have had an opportunity to observe

1 whether or not he was on the right-of-way because you were on
2 the right-of-way regularly yourself; right?

3 A Correct.

4 Q And he was your primary point of contact with Welded,
5 is that the case?

6 A Probably equally with the superintendents, I call the
7 superintendents as well.

8 MR. BURWOOD: Your Honor, I'd ask to move -- I'd
9 move to admit Exhibit D-672.

10 MR. NEIBURG: Is that the one you were just
11 talking about?

12 MR. BURWOOD: I hope so --

13 MR. NEIBURG: No --

14 MR. BURWOOD: -- no, it wasn't.

15 MR. NEIBURG: -- you were talking about D-435.

16 MR. BURWOOD: D-435, Your Honor, I'd move to
17 admit.

18 MR. NEIBURG: No objection as to D-435.

19 THE COURT: It's admitted.

20 (Exhibit D-435 received in evidence)

21 BY MR. BURWOOD:

22 Q Mr. Pew, now I'd ask you to take a look at
23 Exhibit D-672 in the binder. And I'm going to draw your
24 attention to the first email in the chain, so the bottom of
25 the page, it's from a Gerald McLaughlin. It's dated

1 January 3rd of 2018, it's to Brad Burtagh (phonetic) and
2 others, and the subject line is Welded Quality Status on ASR
3 Spreads 5 and 6. Do you see that?

4 A Yes.

5 Q Okay. And do you recall if you received a copy of this
6 email or do you see yourself copied there?

7 A I do, yes.

8 Q Okay. Do you recognize this email; do you recall
9 having received it?

10 A Yes.

11 Q Okay. Who's Mr. McLaughlin?

12 A He was the head of our quality group at the time.

13 Q What do the quality groups for Transco do, what was
14 their role?

15 A They would kind of do spot audits on inspection, as
16 well as the contractor, just making sure everyone is adhering
17 to the specifications of the project.

18 Q What was Mr. McLaughlin reporting to the Transco team
19 here in this email?

20 A He just wants to point out that the highest number of
21 findings relative to all ASR contractors, specifically
22 Spreads 5 and 6, just increased non-compliances.

23 Q All right, so let's back up. So when he says findings,
24 what do you take to be a finding?

25 A They categorized them between areas of concern and the

1 more severe would be a nonconformance.

2 Q Okay. These are quality issues; right?

3 A Correct.

4 Q Quality with the work being done?

5 A Workmanship, yeah.

6 Q Okay. So the email here references AOCs and NCs in the
7 first line. Do you see that?

8 A Yes.

9 Q Okay. What is an AOC?

10 A It's an area of concern.

11 Q Can you describe sort of in lay terms what an area of
12 concern is?

13 A If they were out there and maybe, you know, there's
14 different -- different equipment out there, maybe something
15 was out of calibration, you know, but maybe it still -- in my
16 mind, I'm thinking of like jeeping pipe, there's coating on
17 the pipe. There's a tool called a jeep, it's like a spring,
18 that you run it down the pipe. So it beeps if there's a void
19 in the coating, so that means it's metal-to-metal. The
20 spring is metal, the pipe is metal, it's not supposed to
21 jeep. So you call it a jeep, you know, it's kind of --

22 Q Jeep is the noise it makes?

23 A It is, it kind of beeps, yeah. It's commonly known in
24 the industry, you know. It's DOT, you have to jeep all pipe
25 before it goes in the ditch. So -- you know, so you could

1 jeep a piece of pipe. It has to be calibrated daily and you
2 need certificates of calibration. So, if one had expired,
3 you know, that might be an area of concern, is the equipment
4 actually still working? Yes.

5 So that would be an example of an area of concern.

6 Q A quality area of concern; right?

7 A Yeah, it gets more action, get --

8 Q What's an NC?

9 A More severe, nonconformance.

10 Q Can you give us an example, using this job, if you can?

11 A Again, you know, the pipe, we kind of treat it like
12 porcelain. We pay a lot of money for good quality steel, we
13 pay a lot of money for the coating on the pipe, and a
14 nonconformance would be, you know, mishandling the pipe, you
15 know. I mean, we try to be lenient, we try to coach them to
16 do better for all contractors, and, you know, if they -- we
17 lay the pipe down on wooden, we call them skids, four-by-six
18 wooden planks, but we do call for padding on it, you know,
19 because although it looks durable, we treat it like
20 porcelain. So we take like carpet padding and make little
21 squares to set it on, so we don't disrupt the coating, we
22 don't want any voids, we want it as fresh as it came from the
23 manufacturer.

24 So a nonconformance would be they did it once, they did
25 it twice, you know, maybe they're just setting the pipe on

1 the dirt, maybe it's right on the skids, you know, they're
2 not handling it properly, we would -- we would coach them,
3 you know, maybe it comes to an AOC, and if they repeat,
4 repeat the same actions, it gets elevated to a
5 nonconformance.

6 Q Is it the case that when there's a nonconformance, is
7 the contractor to do anything in response?

8 A They're officially notified, yes, and then try to come
9 up with some corrective actions.

10 Q Okay. And you forwarded this, Mr. McLaughlin's email
11 on to Mr. Schoenherr on the same day; right?

12 A Yes.

13 Q Okay. What message did you send him in forwarding it?

14 A Do you want me to read it?

15 Q Just generally describe, sir, what you communicated to
16 him. Feel free to read it, if that's the best way to do it.

17 A I just said -- I just wanted him to be aware of the
18 heightened awareness of the quality of the work that his crew
19 is doing out there. You know, there's probably been many
20 incidences before we had to put it in writing, so it's been
21 building. It's something that needs to be communicated to
22 Welded, you know, asking for some help here, you know, help
23 them.

24 Q Looking back at Mr. McLaughlin's email quickly, do you
25 recall, did Williams or Transco have to take any action in

1 response to the number of AOC and NC findings that Mr.
2 McLaughlin reported; did they take any action in response?

3 A It was happening so often and it was becoming so common
4 that, you know, Williams gets concerned. Our goal is to put
5 good product in the ground and I think one way to help
6 continue to put good product in the ground that Gerry ended
7 up hiring two extra quality inspectors just to oversee
8 Welded's activities on the right-of-way.

9 Q Okay. Thank you, Mr. Pew.

10 Do you recall, Mr. Pew, how Mr. Schoenherr responded to
11 this email?

12 A I don't recall how he responded.

13 Q Do you recall, Mr. Pew, if Welded's quality metrics
14 improved, to your recollection, after January 3rd of 2018?

15 A I don't think it improved, no.

16 MR. BURWOOD: Your Honor, I'd move to admit D-672,
17 please.

18 MR. NEIBURG: No objection, Your Honor.

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

20 (Exhibit D-672 received in evidence)

21 BY MR. BURWOOD:

22 Q Mr. Pew, I'm going to ask you to just take a look at
23 the contract really quick and I'm going to draw your
24 attention to -- it's in the black binder right there next to
25 you, and we're going to be looking at Section 2 of the

1 contract, Article 3(g), it's called Site Safety.

2 MR. BURWOOD: And, Your Honor, it's on page 80,
3 eight zero, of JX-1.

4 BY MR. BURWOOD:

5 Q Mr. Pew, I just want to call your attention to the last
6 sentence that says, "Any stoppage in work as a result of
7 contractor's willful, repeated, or unaddressed safety-related
8 actions or inactions be at the sole expense of contractor."

9 Do you see that?

10 A Yes, I do.

11 Q Okay. Do you recall if Welded had repeated or
12 unaddressed safety-related actions or inactions on the
13 project?

14 A They did.

15 Q Bringing your attention to Exhibit 837 back in the
16 binder, and I want to call your attention first to the email
17 at the bottom of the first page and it's from Joshua Colette
18 to Justin Lamper on February 19, 2018. Do you see that?

19 A Yes.

20 Q Okay. Who's Justin Lamper?

21 A He was the head of our construction safety at the time.

22 Q Okay. A Transco -- Transco/Williams person; right?

23 A Correct.

24 Q Okay. And do you know who Joshua Colette was?

25 A He was a third party safety rep working for Justin.

1 Q Okay. And just for reference sake, ultimately, this
2 email was forwarded to you by Michael Hiddemen at the top.
3 Do you see that?

4 A Yes.

5 Q Okay. So what is Mr. Colette reporting to Mr. Lamper
6 in the first email at the bottom of the page, what kind of
7 event is he reporting?

8 A Eleven-joint section means 11 joints of pipe are welded
9 up, and it was on a hillside and it slid off its cribbing,
10 which is the same as those skids that I was talking about,
11 the wooden cribbing that holds the pipe up. It's very odd to
12 have something like this and it had a lot of potential for
13 severity for injury.

14 Q So when you say it's very odd to have something like
15 this, what are you comparing it to, on this project or in
16 your experience on similar projects?

17 A For any project to have this amount of pipe, you know,
18 slide uncontrollably, not knowing where it's going, on an
19 active construction site.

20 Q Do you have any sense what the cause of the sliding
21 pipe was, Mr. Pew?

22 A At that time, the deadmans weren't being utilized like
23 they should in the hills working with pipe.

24 Q Okay. How do you know that?

25 A Any time you string pipe up and down hills, gravity

1 wants to pull it, so you add these deadmen along the way just
2 to hold the pipe in place.

3 Q So, in fact, in the second email on February 19th, Mr.
4 Lamper says to Mr. Hiddemen and Mr. Sztroin, "We're still
5 investigating the cause at this time, but my personal opinion
6 is that Welded failed to anchor it with a deadman."

7 Do you see that?

8 A Yes.

9 Q Okay. Do you know one way or another if that was ever
10 confirmed?

11 A I think it was, yeah.

12 Q If we go up to the top email there and it's from --
13 who's Michael Hiddemen?

14 A He's a safety manager, so he was Justin's boss.

15 Q He's also at Transco?

16 A Correct.

17 Q Okay. And he sends this along to Mr. Sztroin; do you
18 see that?

19 A Yes.

20 Q Okay. And this is February 21 of 2018, Mr. Hiddemen
21 says, I'm getting reports of workers from Welded's crew
22 leaving sites due to unsafe conditions. Do you see that?

23 A Yes.

24 Q Okay. Independent of what he's written here, do you
25 recall that that was actually happening?

1 A Yes.

2 Q Okay. Can you just elaborate on that a little bit,
3 what you know about that?

4 A I mean, people had some concerns at this point, you
5 know. There had been quite a few incidences, you know, even
6 this is a safety. It's also, again, you know, mishandling
7 the pipe, you know, just in general not doing probably what
8 they should be. And a lot of people were just kind of
9 concerned. Things were probably moving a little bit quicker
10 than what they should have and probably not as planned out as
11 what it should have.

12 MR. BURWOOD: Your Honor, I'd move to admit
13 Exhibit D-837.

14 MR. NEIBURG: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Exhibit D-837 received in evidence)

17 BY MR. BURWOOD:

18 Q Mr. Pew, I'm going to draw your attention to
19 Exhibit 842 in your binder, please. Exhibit 842 is an email
20 from Timothy Reed to yourself and it's February 21, 2018. Do
21 you see that?

22 A I do, yes.

23 Q And that's the same date as the exchange between
24 Mr. Hiddemen and Mr. Sztroin we just looked at; right?

25 A Yes.

1 Q Okay. And what was the -- there's a lot on the page
2 here and so I'd ask, can you generally describe what was
3 Mr. Reed writing to you about on this date?

4 A Again, you know, I listened to the guys in the field,
5 my crew; they definitely had some concerns. We talk about
6 concerns, we talk about them as a group in the morning so
7 that we can do better throughout the day. And there was just
8 a string of accidents happened and this was in one week.

9 So --

10 Q So how do we know it's just one week?

11 A Because he responded to me, as requested, the summary
12 of the events over the past week has been as followed.

13 Q Okay. Do you recall requesting any specific
14 information from him?

15 A I think there was just so much coming in at once that I
16 needed to just -- I needed a compiled list so that I could
17 communicate to others.

18 Q Okay. These are all AOCs; correct?

19 A Yes.

20 Q And you'd agree with me there's seven of them
21 identified here; right?

22 A Yes.

23 Q Okay. Based on your experience with this project and
24 similar projects, at this time, did you feel like seven AOCs
25 in one week was sort of normal for the course or --

1 A Extremely excessive.

2 Q Can you elaborate on that a little bit, please, for us?
3 Why do you consider that to be extremely excessive?

4 A I mean, just some of the findings, you know. A two-
5 joint pipe exhibiting signs of being dragged across the
6 ground, I mean, that's scarring the coating, you know. I
7 mean, at no job have you ever seen piping drag across the
8 ground.

9 There was one -- you know, besides the 11-joint that
10 rolled, it slid down the hill --

11 Q We talked about that one; right?

12 A We talked about that one. You know, there was damage
13 to an elbow being -- it looked like it was struck by a
14 machine or another joint of pipe. You know, I mean, people
15 were going out there just walking up and down the right-of-
16 way, seeing damaged pipe. It was just -- you know, just very
17 excessive. It was concerning.

18 Q So is it the nature of these AOCs or is it the volume
19 of these AOCs that was particularly concerning?

20 A Probably a little bit of both. Definitely the volume,
21 but, I mean, equipment hitting pipe, running into pipe. I
22 mean, that rarely happened, I mean, you hardly ever see it
23 happen. And then all this in a week? I mean, that's a major
24 concern.

25 Q Okay. So do you recall being concerned towards the end

1 of February of 2018 about Welded's quality and safety, as
2 reflected in Exhibit D-842?

3 A Yes.

4 Q Do you recall if you communicated those concerns to
5 Welded?

6 A Do I recall it? I mean, that's kind of what I do,
7 that's probably what I did with this email is forward it on
8 to others.

9 Q So it's been a long time, you don't recall specifically
10 what you did with this particular email; is that right?

11 A I do not.

12 Q Okay. Generally speaking, though, when you received
13 quality reporting from Mr. McLaughlin's group -- Mr. Reed is
14 a member of that group; right?

15 A Yes.

16 Q Okay. During the job, during the course of the job, if
17 not this particular time, what would you do with that quality
18 reporting information vis-a-vis Welded?

19 A This would probably be another email to my superiors
20 and also to probably Schoenherr, since he oversaw it.

21 Q Do you recall what either Mr. Schoenherr or Welded in
22 general did in response to the AOCs identified here?

23 A I don't recall exactly what they did for each incident.

24 Q Okay. Is it the case that, independent of what you
25 might have done with this email, that, generally speaking,

1 any quality reporting would have gone to Welded through
2 normal channels with respect to this job every time?

3 A Correct, yeah.

4 MR. BURWOOD: Your Honor, I'd move to admit D-842,
5 please.

6 MR. NEIBURG: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Exhibit D-842 received in evidence)

9 BY MR. BURWOOD:

10 Q Mr. Pew, if you could turn to Exhibit 845 and, in
11 particular, 845A. And that's the next exhibit in your
12 binder, and I'm going to ask you to turn to the second page,
13 if you would.

14 And I apologize, I understand the type is hard to read
15 here, but what I'll ask you is, just to orient you, do you
16 see in the Items column it says 5.08?

17 A Correct.

18 Q Okay. And the date is 2/12/18; right?

19 A Yes.

20 Q And then do you recognize this as one of the items, one
21 of the AOCs that was itemized in Mr. Reed's email that we
22 just looked at?

23 A Yes, this would be a clip out of the reporting that
24 they do.

25 Q Okay. And so what's -- you can paraphrase -- what's

1 the description of what the quality issue is here?

2 A Not protecting the pipe.

3 Q And there's photos of what?

4 A Scarring on the coating.

5 Q Damage to the pipe; right?

6 A Damage to the pipe, yes.

7 Q Okay. What happens with respect to this piece of pipe,
8 for example -- let me ask you this, do you remember this
9 particular damage to this particular piece of pipe?

10 A Specifically, no, but --

11 Q Okay. So let me ask you, just generally speaking, when
12 a piece of pipe is damaged like this, what happens next to
13 that joint of pipe?

14 A So we have to evaluate it, right? Can we use it or can
15 we not? We certainly can't use it in this condition. So we
16 would probably call our asset integrity team, whose sole job
17 is to look at the coating and the piping, and they would have
18 to ground out -- like one is down to the metal, you can see
19 that in the second picture to the right -- you know, they
20 would grind down, take measurements of metal loss to see if
21 it's within code. And right off the bat, if it was scarred
22 so much, it would be scrapped, basically.

23 Q So do you see in Exhibit 845A there's a column that
24 says, "Corrective Measures"?

25 A Yes.

1 Q So what was the corrective measure that Transco's
2 quality group identified here?

3 A To find measures to protect the pipe while on the
4 right-of-way.

5 Q What does that mean to you?

6 A It shouldn't even have to be protected, you know.
7 I mean, that's how we work, we work with good pipe. So for
8 them to have to go out of their way to protect pipe on the
9 right-of-way, whatever that is, you know, make the operators
10 aware that there's pipeline strung down the right-of-way. I
11 mean, I don't know how they could not know that, but, you
12 know, take the extra step, whatever that may be.

13 Q And the corrective measure says Welded shall do that;
14 right?

15 A They're the ones that caused the damage.

16 Q So this would have been issued to Welded; is that
17 right?

18 A Yes.

19 Q All right. Is there any rework identified associated
20 with this particular item of quality?

21 A Besides assessing any metal loss, you know, all the
22 scarring on the coating, you know, that's not acceptable. So
23 they would have to come back and basically apply new coating.
24 Sandblast that, make a surface profile that would have a
25 second layer of coating adhered to the original.

1 Q Okay. Thank you.

2 MR. BURWOOD: Your Honor, I'd move to admit
3 Exhibit 845 and 845A.

4 MR. NEIBURG: I'll object as to 845A, Your Honor.
5 Mr. Pew testified he doesn't recall this and it wasn't
6 attached, it doesn't look like there's any attachments to --
7 you know, 842 is fine, but D-45 is a document I'm sure that
8 he said he didn't see before and I don't know, you know, a
9 current email on which he's copied.

10 MR. BURWOOD: Your Honor, I'd offer that in
11 connection with Exhibit 842, this is one of the items
12 referenced. He identified that he understood that this was a
13 quality issue that happened. I can ask him one or two
14 additional follow-up questions to see if he's got foundation,
15 may I do that?

16 THE COURT: Okay.

17 BY MR. BURWOOD:

18 Q Okay. So when AOCs -- let me back up. In Exhibit 842,
19 Mr. Reed from the quality group says, as requested, the
20 summary over the events of the past week have been as
21 follows; right?

22 A Yes.

23 Q Okay. Do you infer that you requested this information
24 from him?

25 A Yes.

1 Q Do you recall reviewing the information upon receipt or
2 do you have any reason to believe you did not?

3 A I'm sure I did, yeah.

4 Q Okay. And so turning then your attention to the
5 exhibit where there's the objection, 845A, that's the one
6 with the photo, would you receive this type of detail, this
7 chart with the photos, in connection with AOCs as part of
8 your role as the construction manager senior?

9 A Yeah, I was copied on all individual AOCs, copied on
10 anything directed towards Welded, and I also got the monthly
11 report that would summarize all findings for all ASR
12 projects.

13 MR. BURWOOD: Your Honor, on that record, I'd move
14 to admit Exhibit 845A.

15 MR. NEIBURG: Same objection, Your Honor. I
16 think, just because he has seen these in the past doesn't
17 mean he has seen this one, he said he doesn't recall seeing
18 this one.

19 THE COURT: Sustained.

20 (Exhibit D-845 received in evidence)

21 BY MR. BURWOOD:

22 Q Mr. Pew, can you turn for me to Exhibit 849, it's about
23 three tabs into your binder, and it's an email from yourself
24 to Scott Schoenherr, it's dated February 22nd, 2018. Do you
25 see that?

1 A Yes.

2 Q Okay. And what did you write to Mr. Schoenherr about
3 on this date?

4 A I was making him aware of two incidences that occurred.
5 We have monthly safety meetings -- or Monday morning safety
6 meetings and we had two incidents directly after that
7 meeting. And that's a whole spread safety meeting, everyone
8 is supposed to attend weekly meetings, the sole purpose to
9 talk about safety and hot topics and whatever else, lessons
10 learned from --

11 Q Everybody being Welded and Transco?

12 A Correct.

13 Q Everyone on the right-of-way?

14 A Sure, yes.

15 Q Okay. And so go on, there were two incidents after
16 that meeting?

17 A They had some possible serious severity to them and it
18 looks like I said it did involve slippery, frozen conditions,
19 so outside of those concerns.

20 Q So, Mr. Pew, you say to Mr. Schoenherr in this email,
21 these numbers are increasing. Do you see that?

22 A Yes.

23 Q Do you recall what you meant by that?

24 A You know, much like the compliance issues, you know,
25 safety was just -- it was snowballing, you know, to a point

1 that it was starting to become very alarming, yes.

2 Q Do you recall with respect to these particular two
3 safety incidents if they resulted in any stoppage of work?

4 A Certainly for the crews themselves, but not spread-
5 wise.

6 Q So taking a step back and just thinking about any
7 Welded safety incidents in general, okay? And we're going to
8 look at some photos more and we can talk about this then, but
9 just in general would a safety incident necessarily mean that
10 the work stops in some measure as a result?

11 A I'd say yes.

12 Q Does the duration of the stoppage depend on sort of the
13 particularities of that safety incident?

14 A Yes.

15 Q We talked about rework a minute ago relative to some
16 damaged pipe. Mr. Pew, in your experience on the job, would
17 rework result in stoppage of work at any time?

18 A Yes.

19 Q So thinking about like the damaged joint of pipe, you
20 know, how might damage to that joint of pipe translate into a
21 stoppage of the main line, lowering in welding work, however
22 you want to frame it, can you give us an example of that?

23 A Yeah. So for damaged pipe, so probably like double,
24 triplefold here, right? So, obviously, they can't put that
25 pipe in the ground, so now they're delayed. Now someone has

1 to come and assess it. Depending on how severe it is, you
2 may have to bring equipment and welders to come and cut that
3 piece of pipe out. And, if it's not a cutout, you have to
4 bring a sandblast crew, a coating crew to come in and rework
5 that area. They may not be in the area; they may be two
6 miles down the road. So, again, you know, they're losing
7 their efficiency, they're moving people around, which isn't
8 efficient, to come back and do corrective actions. So --

9 Q Thank you -- oh, go ahead, please finish. Are you
10 done?

11 A And then we would have to go back and accept whatever
12 repairs were made, you know, whether that's a weld repair or
13 a coating repair, the jeep comes into play again.

14 MR. BURWOOD: Your Honor, I'd move Exhibit D-849
15 into evidence, please.

16 MR. NEIBURG: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (Exhibit D-849 received in evidence)

19 BY MR. BURWOOD:

20 Q Mr. Pew, I want to talk about -- ask you about weather
21 for a moment, okay? Did you have an opportunity to observe
22 the weather when you were on the right-of-way on this
23 project?

24 A Yes, definitely.

25 Q And you were on the right-of-way on all three spreads;

1 right?

2 A Uh-huh.

3 Q Every week; right?

4 A Uh-huh.

5 Q Okay. Is weather, in your mind, an important factor in
6 execution of pipeline construction activities?

7 A It has risk.

8 Q It what?

9 A It does have some risks to it.

10 Q Okay. In what way?

11 A You have to prepare for the weather, right? So, if
12 it's going to rain, maybe some of your activities are geared
13 not towards the stream, maybe gear them somewhere else or --
14 you have to plan for it.

15 Q Have you ever worked on a pipeline project where
16 weather was not in some way a factor in the execution of the
17 work?

18 A No.

19 Q Okay. Based on your experience and observations on
20 this job, okay, what's your recollection of how the weather
21 was in terms of like your historical understanding of the
22 weather?

23 A You know, it was about average, you know. It was fall
24 to winter to spring, so -- into summer, so it was four
25 seasons in Pennsylvania.

1 Q Okay. There was some bad weather; right?

2 A Yes.

3 Q Thinking about perhaps the winter before and the winter
4 after, do you recall if this particular winter, '17-'18, was
5 particularly bad, in your mind?

6 A I don't think it was anything out of the ordinary, no.

7 Q Mr. Pew, do you know what a trend was on this job?

8 A Yes.

9 Q What was a trend?

10 A Welded would kind of put us on notice of something they
11 were seeing; not trending, but, you know, a series of events
12 that kept happening over and over again, and they would try
13 to document it. And then -- I think it was more of something
14 to put us on notice and then maybe the second part of it may
15 be dollar signs to it, maybe not.

16 Q If there were dollar signs to it, would that be a
17 different document, do you recall?

18 A To make it official would be another document.

19 Q What document was that?

20 A An extra work request.

21 Q Okay. Relative to weather, Mr. Pew, do you recall if
22 Welded, in your mind -- to your knowledge, if they were
23 prepared to trend and submitted it to Transco relative to
24 weather impacts?

25 A Nothing that I can recall, no.

1 Q Okay. Do you recall, Mr. Pew, if Welded ever prepared
2 and submitted an EWR to Transco relative to weather impacts
3 on the project?

4 A Not that I have seen, no.

5 Q Mr. Pew, were you aware -- was there any protest
6 activity on the right-of-way during construction?

7 A There was.

8 Q Can you just elaborate just a little bit on what you
9 recall of that protest activity?

10 A Just frankly speaking, there wasn't a whole lot. I
11 mean, I think we got away pretty -- pretty -- pretty good
12 considering how much protest and opposition there was,
13 especially down on Spread 7, it was almost little to none.

14 Q So, I just want to make it clear, there was little to
15 no activity; is that what you're saying?

16 A Protest activity.

17 Q Protest activity, okay.

18 So do you have any sense, Mr. Pew, whether or not
19 protest activity, in your view, based on your observations,
20 if it disrupted Welded's work, executing its work?

21 A Very little.

22 Q Do you recall if Welded prepared and submitted to
23 Transco any trends relative to protest activity impacts?

24 A I don't believe they did, no.

25 Q And do you recall, Mr. Pew, if Welded prepared and

1 submitted to Transco any EWRs concerning protest activity
2 impacts?

3 A I don't think so, but I don't know if I have seen all
4 the EWRs either.

5 Q Do you recall seeing an EWR relative to protest
6 activity? That's --

7 A No.

8 Q -- all I'm asking.

9 A No.

10 Q Okay. Mr. Pew, will you please turn to Exhibit D-1040
11 in your notebook?

12 And I'm going to direct your attention to the email at
13 the bottom of the page, it's from Justin Lamper, it's to
14 yourself and others, and it's dated Saturday, April 7 of
15 2018. Do you see that?

16 A Yes.

17 Q Okay. And the subject line is what?

18 A High potential near miss Spread 7, overhead power line
19 strike.

20 Q Overheard power line strike?

21 A Yes.

22 Q Do you know when it says here high potential near miss,
23 does that mean anything to you? Do you know what that means?

24 A It does. It means it could have high severity, you
25 know, of injury, death -- you know, hopefully not, but yes.

1 Q Was high potential like a metric that was used by the
2 safety group, by the Transco safety group?

3 A We continued to use that terminology, yes.

4 Q Okay. Did you just testify another power line strike,
5 is that what you said, or did you say overhead power line
6 strike?

7 A I was reading the heading, overhead power line strike.

8 Q Okay, overhead power line strike. What -- feel free to
9 familiarize yourself with the email, but what I'm going to
10 ask you is what, in general terms, is Mr. Lamper
11 communicating to you here regarding the overhead power line
12 strike?

13 A That we had an incident, 8:15 in the morning; it was in
14 Lancaster, Spread 7, and then it goes on to describe what
15 happened.

16 Q Okay. What did happen?

17 A A side boom was maneuvering underneath the overhead
18 power lines. There were goal posts in place --

19 Q What's a goal post?

20 A It's a visual aid that if the power lines are there, so
21 any equipment or trucks or any movement underneath them,
22 typically is used two PVC pipes and use the -- like the used
23 car flagging, you know, the multi-colored, to like draw
24 attention that there's a hazard there and it's -- we require
25 that for all power line crossings.

1 So they were there and then it looks like the
2 operator -- so we put one on one side of the power line and
3 one on the other, right? So you're always protected going
4 through. You hit the goal post before you hit the power
5 line.

6 So this side boom was going through. He made it past
7 the first goal post and then he's playing with his levers,
8 which, you know, (indiscernible) block, that means he pulled
9 the winch up and increased the boom height to hit the power
10 line before he safely exited the second set of goal posts.

11 Q What does it mean, the line grounded through the side
12 boom, do you know what that means?

13 A It sounds like there was an arc.

14 Q Do you recall, Mr. Pew, if this was the first time that
15 Welded's team had struck an overhead power line?

16 A Certainly not. I mean, just having the two spotters
17 there, typically, we don't have two spotters. So, in the
18 beginning, we probably trusted them to safely cross under
19 power lines. As the incidences, they kept occurring, you
20 know, Williams kept increasing and pressuring Welded to do
21 better when crossing. We went to one spotter, the incidences
22 kept happening, to a point that we made them have two
23 spotters, which is very rare when crossing a power line. So
24 we just had to keep increasing to try to -- try to do better,
25 right? Lessons learned.

1 Q So it's safe to say that the striking of the power
2 lines, this was a repeated safety incident; is that correct?

3 A It was, yeah.

4 Q Okay. And do see Mr. Hartmann's email to Mr. Bud
5 Raines (phonetic) above Mr. Lamper's?

6 A I do.

7 Q And does he indicate there that this had happened more
8 than once within a specific time frame?

9 A We had another power line strike today on Spread 7,
10 that's three in seven days.

11 Q Okay. Mr. Pew, in your experience on approximately a
12 dozen projects similar to ASR, you had seen overhead power
13 line strikes before; is that true?

14 A I have.

15 Q Had you ever seen three strikes in seven days on any
16 project?

17 A Never.

18 Q Mr. Pew, were Transco's -- Mr. Hartmann then sent an
19 email by saying everyone is very frustrated. Do you see
20 that?

21 A Yes.

22 Q Were you frustrated at this time?

23 A When it says everyone, everyone was frustrated, yeah.

24 Q Okay. And everyone on the Transco team?

25 A Transco, safety. I mean, it was unheard of, you know,

1 it was -- you know, people -- I mean, this is serious
2 situations, people could get seriously hurt, if not worse.

3 Q Did Transco communicate that frustration to Welded, if
4 you know?

5 A Sure, just by having two spotters. I mean, that was
6 just -- you know, many conversations, it was a hot topic.
7 The crews have tailgate meetings every morning, talk about
8 the safety issues of the day's work, and I know power lines
9 were a daily topic every day. And so, to have this one
10 happen at 8:15 when the crews probably start at 7:15, I mean,
11 they left the tailgate meeting talking about safety, jump on
12 a piece of equipment and hit a power line. So that's just
13 some of the, you know, frustration.

14 MR. BURWOOD: Your Honor, I'd move to admit
15 Exhibit D-1040, please.

16 MR. NEIBURG: Your Honor, no objection as to the
17 first email on the chain in which Mr. Pew is copied, but he
18 is not copied on the last two emails in that chain.

19 MR. BURWOOD: Your Honor, I'm happy to rely on his
20 testimony relative to those emails and admit it for the
21 purpose of the first email.

22 THE COURT: I will admit it for the emails he's
23 on.

24 (Exhibit D-1040 received in evidence)

25 MR. BURWOOD: Thank you, Your Honor.

1 BY MR. BURWOOD:

2 Q Mr. Pew, I'm going to ask you to turn in your notebook
3 to Transco's Demonstratives 14 through 23, and it's a series
4 of photographs. And just let me know when you're there.

5 A I can see it, yes.

6 Q Okay. Looking at Defendant's Demonstrative Exhibit 14,
7 do you recognize that photo?

8 A I do, yes.

9 Q Okay. Do you know where, approximately, that was
10 taken?

11 A Spread 5.

12 Q Okay. How do you know that?

13 A From the terrain and then, as soon as the incident
14 happened, my CM and chief went out there to be on site, and
15 they took a picture and they sent it to me, like they often
16 do.

17 Q Okay. So you recognize this as a photo that you've
18 seen before; is that what you're saying?

19 A Definitely, yes.

20 Q Okay. And do you know what this photograph depicts,
21 Mr. Pew?

22 A Welded had an incident of -- so that's a pipe truck,
23 stringing truck, you know, and so they're moving pipe from
24 the common yard and stringing it out to the right-of-way. So
25 trucks are constantly moving, moving pipe to the right-of-

1 way.

2 Q This is considered a safety incident?

3 A Right. So, in this incident here, the truck flipped
4 over, right? Obviously, and 42-inch joint, 60-foot long, are
5 rolling down the highway. I mean, we're lucky there was no
6 cars involved with random pipes rolling at whatever miles an
7 hour, you know, highway speeds, high potential.

8 Q Mr. Pew, turning your attention to Demonstrative --
9 Transco's Demonstrative 15, which is the next photograph, do
10 you recognize this photo?

11 A I do.

12 Q What do you recognize it as?

13 A That was Spread 5 and a hydro-test failure.

14 Q I believe Mr. Sztroin testified about that yesterday.
15 I'll ask you, Mr. Pew, do you know -- dumb question, but
16 something like this would result in rework, is that the case?

17 A It certainly would, yes.

18 Q Okay. And do you recall the specific rework that was
19 associated with this hydro-test failure?

20 A We would have to come in, mat into the area, if there
21 was wetlands, which I know there were, re-dig up that piece
22 of pipe and not just expose it, but you have to dig it back
23 out to get the welders in there to cut out a cylinder and
24 replace the bad section of pipe. Re-weld, re-X-ray, recoat,
25 re-backfill, retest, there was a lot involved with this.

1 Q And all that happened; right?

2 A Definitely, yeah.

3 Q Okay. Looking at Demonstrative Number 16, Mr. Pew, do
4 you recognize that photo?

5 MR. BURWOOD: I'll offer to the Court that the
6 blue sky should be facing up.

7 THE WITNESS: I do, yes.

8 BY MR. BURWOOD:

9 Q Okay. What's depicted in that photo?

10 A It's a side boom that flipped over end-for-end.

11 Q Do you know approximately where that was?

12 A Spread 7.

13 Q And how do you know that?

14 A My chief called me as soon as the incident happened,
15 which is what they do, and sent me a photo of what happened.

16 Q Now, would you turn to Demonstrative 17 for me? It's
17 the next photo. Is that the same condition as depicted in
18 Exhibit Demonstrative 16, Mr. Pew?

19 A Same piece of equipment, yes.

20 Q Okay. Just from a different perspective; is that your
21 understanding?

22 A Yes.

23 Q Okay. Do you know, Mr. Pew, if this particular
24 incident resulted in any stoppage of work?

25 A Sure, yeah.

1 Q You do know that?

2 A Yeah. You have to stop work and correct the scene,
3 yeah.

4 Q Relative to Transco's Demonstrative Number 18, do you
5 see that?

6 A Yes.

7 Q Do you have a sense as to where this was taken,
8 Mr. Pew?

9 A I think it's Spread 6. It's definitely 5 or 6, I think
10 it's 6.

11 Q Okay. And do you recall seeing this photo before
12 today?

13 A I do, yeah.

14 Q Okay. You recall seeing it during the project?

15 A Yeah, immediately when it happened.

16 Q All right. What --

17 A That's my chief standing there in the photo.

18 Q What happened here?

19 A They had a few joints welded up and that first side
20 boom that is facing the wrong way and on its side, it should
21 have been facing up the hill with the rest of them. And when
22 they -- so, again, gravity, pipe, they were rigging it up --
23 and you should always pick up on the bottom side to make it
24 level -- this incident, this operator picked up on the front
25 side, only making the slopes steeper, and it took the weight

1 and resulted in, you know, possible injury. Again, high
2 potential. The equipment side booms don't -- you never see
3 them flipped over sideways in disarray like we've seen in the
4 last couple photos.

5 Q Okay. So, an upside down side boom, is that an
6 occurrence you had seen on the other jobs you participated in
7 before this?

8 A Never.

9 Q You had never seen one?

10 A Uh-uh.

11 Q Okay. Do you know, Mr. Pew, if this particular
12 situation reflected in Demonstrative 18, if that resulted in
13 a stoppage of work in any fashion?

14 A Yes, definitely.

15 Q I'm going to skip Demonstrative 19; if you would go to
16 Demonstrative 20, please? And do you recognize that photo,
17 Mr. Pew?

18 A I do.

19 Q Do you know where this is?

20 A Again, up in the terrain of Spread 5/6.

21 Q Okay. And do you know what happened here?

22 A It looks like a track hoe. He was maneuvering wrongly
23 and, you know, there's a certain way to move a track hoe on a
24 slope and a good operator would know how to do it.
25 Obviously, this operator wasn't familiar with the equipment

1 he was on and it resulted in this flip-over.

2 Q Do you know, Mr. Pew, if this particular condition
3 resulted in any stoppage of work?

4 A It would have to, yes.

5 Q Someone has got to turn the piece of equipment right-
6 side-up; right?

7 A Correct, yes. And then if there's fuel spilling out or
8 anything like that, you know, that's another crew that comes
9 in and we need to make sure everything is cleaned up spill-
10 wise, for any piece of equipment that's flipped.

11 Q Okay. I should have asked you this before, but I won't
12 go back. With respect to this particular piece of equipment,
13 do you happen to recall if it was functional after they
14 flipped it right-side-up?

15 A Certainly nothing that they would automatically start
16 operating again, no. It would go back to the yard, get
17 evaluated.

18 Q Mr. Pew, Demonstrative 21, please. Do you recognize
19 this photo?

20 A Yes.

21 Q Do you know where this condition is, generally?

22 A Spread 7.

23 Q And do you recall what happened here?

24 A Again, it's a stringing truck, you know, just like the
25 one we saw on the highway. This is getting towards its

1 destination on the right-of-way. Obviously, they misjudged
2 the turn, the back set of wheels fell off that elevated
3 section and resulted in pipe damage, trailer damage, more
4 stop work. A high severity of potential -- I mean, if
5 someone had been sitting there while that truck flipped over,
6 you know, again, high potential.

7 Q Had you seen any conditions such as this one on any of
8 the projects you had worked on prior to ASR?

9 A I never have, no.

10 Q Have you seen it since?

11 A No.

12 Q Do you know if this condition resulted in any sort of
13 stoppage of work, Mr. Pew?

14 A Yes.

15 Q I'd ask you to turn to Defendant's Demonstrative
16 Number 23. Mr. Pew, do you recognize this piece of
17 equipment?

18 A I do, yeah.

19 Q What is it?

20 A It's a Morooka with a straw mulch blower on it.

21 Q When you say Morooka, that -- can you describe them --
22 strike the question.

23 When you say straw mulcher blower, what is that?

24 A It's a piece of equipment used to stabilize the soils,
25 you know, as part of the permit conditions.

1 Q How is that done?

2 A I mean, basically, you take the square bales, you put
3 it in one end, there's a beater in there, it mulches it, and
4 that same beater blows it out at the same time. It's a
5 pretty simple machine.

6 Q I appreciate that some of my questions are obvious, but
7 I have to ask. Thank you.

8 A That's fine.

9 Q Do you recognize this particular piece of equipment as
10 having been used on the ASR project?

11 A Oh, yes, definitely.

12 Q The Morooka with the straw mulcher blower on the back;
13 right?

14 A Uh-huh.

15 Q Okay. Do you recall this particular piece of equipment
16 being used on any of the dozen prior similar projects that
17 you had worked on?

18 A It's a common tool to use, yeah.

19 Q And so, yes, you had seen it on prior projects?

20 A Yes.

21 Q Okay. Do you recall how many of those dozen projects
22 you saw a Morooka with a straw mulcher blower on the back?

23 A Probably the majority of them.

24 Q Okay.

25 A Smaller jobs may not require a full-time Morooka with a

1 straw mulcher blower on it, but --

2 Q Considering the length and nature of the right-of-way
3 on ASR -- strike the question.

4 Mr. Pew, I'm going to ask you to take a look at Exhibit
5 D-816A, which is in your notebook. I will say, the quality
6 of the photo is not great in the notebook and so we're going
7 to pull it up on the screen for you.

8 (Pause)

9 Q Why don't we start with your notebook, okay?

10 A Okay.

11 Q So you need to orient the photo landscape. Do you see
12 that?

13 A I do, yes.

14 Q Okay. And what are we looking at here in general?

15 A It's a typical bell hole ditch with shoring protection.

16 Q Okay. And when you say shoring protection, what do you
17 mean?

18 A There's a trench box sitting in there for safety.

19 Q Do you recognize this as -- this photo being as from
20 the ASR project?

21 A It's just such a typical scene on any project --

22 Q Fair enough.

23 A -- but, I mean, these were common throughout 95 miles
24 of pipeline.

25 Q Okay. That looks like a large-diameter pipe; right?

1 A Yes, with the rock shield reinstalled, yeah.

2 Q Okay.

3 A Looking for a welded log on a piece of equipment or
4 something, yeah.

5 MR. NEIBURG: Your Honor, I'll just object to the
6 further use of this demonstrative. He says he doesn't
7 recognize it from being part of the ASR project.

8 MR. BURWOOD: Your Honor, it is an exhibit, not a
9 demonstrative, and if I could ask the next question before
10 you rule on the objection? Thank you.

11 THE COURT: Okay.

12 BY MR. BURWOOD:

13 Q So, Mr. Pew, you identified, I think, a trench box near
14 that -- is it like a blue pop-tent, do you see that?

15 A I do, yes.

16 Q Okay. And so is that a piece of equipment that you
17 recognize as having been used on the ASR project?

18 A The trench box?

19 Q Yes.

20 A Yes.

21 Q If not that particular trench box in this photo, trench
22 boxes of that nature, is that the case?

23 A It's just very, very common. I mean, any excavation
24 project is going to have a trench box on it, for the most
25 part, yes.

1 Q Okay. So, thinking about all of the dozen or so
2 pipeline projects that you worked on prior to ASR and also
3 the ASR project, okay, is it typical to have a trench box
4 such as the one depicted in this photo used on the right-of-
5 way?

6 A Yes.

7 Q Okay. Let me ask you a better question. When there's
8 trenching such as this, is it always the case that those
9 projects will use these types of trench boxes?

10 A The most commonly used type, yes.

11 MR. BURWOOD: Your Honor, based on that record, I
12 move to admit D-816 and 816A -- or 816A.

13 MR. NEIBURG: Your Honor, I'm not sure how -- I
14 thought it was being used as a demonstrative.

15 MR. BURWOOD: It's not.

16 MR. NEIBURG: Well, Your Honor, he testified he
17 didn't recognize this as being a particular area of the ASR
18 project?

19 MR. BURWOOD: And, Your Honor, so --

20 MR. NEIBURG: They got the -- I'm sorry -- I'm
21 just saying they have the testimony they have, that doesn't
22 mean this photograph that he doesn't recognize should come
23 into the evidence.

24 THE COURT: Sustained.

25 MR. BURWOOD: Thank you, Your Honor.

1 BY MR. BURWOOD:

2 Q Mr. Pew, could you please turn to Exhibit D1256.

3 Mr. Pew, before we look at this exhibit, I'm just going to
4 ask you just to reiterate and provide some foundation. You
5 were in the field every week on this job, the ASR job, right?

6 A Yes.

7 Q You visited all spreads on a weekly basis, generally
8 speaking; is that right?

9 A Yes.

10 Q Okay. And on jobs prior to ASR, how often -- the dozen
11 or so jobs that you explained, generally speaking, were you
12 in the field on those jobs?

13 A At some point in time, yeah. Regularly, yeah.

14 Q Okay. At least some of those jobs, you were
15 construction manager, right?

16 A Correct.

17 Q How many of them?

18 A Construction manager?

19 Q Yeah.

20 A You know, ten or so.

21 Q Okay. And so part of your responsibilities were to be
22 in the field, right?

23 A Uh-hum.

24 Q Okay. And when you were in the field on those jobs,
25 not the ASR jobs, the prior jobs, you had an opportunity to

1 observe equipment?

2 A Yes.

3 Q Okay. If you turn to the third page of Exhibit D1256,
4 please. I apologize. It's a black-and-white photograph.
5 Let me back up. Why don't you go back to the first page. I
6 apologize.

7 The first page of Exhibit 1256 is an email from Bob
8 Smith to David Sztroin. Do you see that?

9 A I do.

10 Q Were you copied?

11 A I was.

12 Q And it's dated June 18 of 2018, right.

13 A Yes.

14 Q Do you see the re: line? It says:

15 "I-81 and Swatara Creek bores."

16 A I see it.

17 Q Okay. Do you know if that refers to the ASR project?

18 A It does.

19 Q Okay. How do you know that?

20 A Those were both hot topics for the project and some of
21 names on the email.

22 Q Okay. And the -- you see the second email on the page.
23 You're also copied on that. It says:

24 "Bob, is my understanding correct is that a
25 surveyor is being sent to the I-81 jobsite to better locate

1 the pilot head?"

2 Do you see that?

3 A I do.

4 Q Okay. Do you have any recollection today what
5 condition is being described there, what situation?

6 A There was a bore. It was an HDD-type bore when it
7 probably shouldn't have been -- when it shouldn't have been.

8 And they were probably going out there to investigate
9 to see what the situation was at the exact time so they could
10 better explain to the agencies what happened.

11 Q Did you yourself ever observe the condition at the I-81
12 bore?

13 A I went by it. But I wasn't there the day it fracked
14 out, if that's what you're asking.

15 Q Okay. Going to the third page, Mr. Pew, what's the
16 equipment depicting in that -- depicted in that photograph,
17 if you know?

18 A It's a trench box slide rail system.

19 Q So how is it different from the trench box that we just
20 looked at in the prior exhibit?

21 A This one's built modular, right. So, you can -- you
22 can rent different panel sizes, different spreader bars,
23 different heights. It's probably used for more complicated
24 trenching.

25 Q And are you familiar with this modular slide rail type

1 of shoring system based on your experience on the ASR job?

2 A And before, yeah.

3 Q Okay. So, my next question: Have you seen it on jobs
4 before?

5 A I have, yeah.

6 Q Okay. Is this -- Mr. Pew, if you could --

7 MR. BURWOOD: Your Honor, sorry. I move to admit
8 Exhibit D1256 into evidence.

9 MR. GUERKE: Just the email? I guess I'm a just
10 little confused, Your Honor, because the email itself does
11 not appear to show any attachments per the face of the email.
12 So, I don't know what these photographs are as it relates to
13 the email.

14 MR. BURWOOD: So, Your Honor, I'll offer that if
15 you look at the Bates pagination, it's consecutive all the
16 way through from the email to the pages. I think counsel is
17 referring to the fact that it doesn't mention that there's an
18 attachment. But Mr. Pew testified that he received the
19 email, he's familiar with the condition in the field, that
20 he'd been to the I-81 site before, and he recognizes that
21 particular piece of equipment as a modular slide rail shoring
22 system. So, I'm not sure...

23 THE COURT: What are you trying to use this for?

24 MR. BURWOOD: He's identifying the equipment in
25 that photo as a modular slide rail shoring system, Your

1 Honor.

2 MR. GUERKE: I think where we're going, Your
3 Honor, is when we get to Demonstrative 24, they're trying to
4 use him as undisclosed expert to tell the Court what is and
5 is not specialty equipment.

6 MR. BURWOOD: Your Honor, I'd just add that there
7 was no objection to this exhibit on our exhibit list.

8 THE COURT: Okay. Well, I mean, he's identified
9 it for what it is. I'm not sure that he identified it -- he
10 had driven by the I-81 site there.

11 MR. BURWOOD: Your Honor, just to make the record
12 clear, I'm not asking him if this is a modular slide rail
13 system at the I-81 bore. I'm asking him if this is the
14 type of modular slide rail shoring system that was used on
15 the ASR job and he testified yes.

16 THE COURT: Okay. Well, it's admitted for that.
17 It's admitted.

18 (Exhibit D-1256 received into evidence)

19 MR. BURWOOD: Thank you, Your Honor.

20 Mr. Pew, I'm going to ask you to turn your
21 attention to Exhibit JX64.

22 And, Your Honor, JX64, in your binder, is a fairly
23 long document. It's a reconciliation invoice dated July 5,
24 2018. I'm going to refer to several pages. I've tabbed both
25 your copy and counsel's copy for reference.

1 BY MR. BURWOOD:

2 Q Mr. Pew, do you see the reconciliation invoice that is
3 on the first page of JX64?

4 MR. GUERKE: Your Honor, sorry. I'll just object
5 on the grounds of foundation. Counsel has not yet
6 established that Mr. Pew has ever seen this reconciliation
7 invoice or been involved in the reconciliation process at the
8 time.

9 THE COURT: Okay. You want to set a foundation,
10 please.

11 MR. BURWOOD: I will, Your Honor. I haven't moved
12 to admit it. I will lay a foundation. I'm going to ask him
13 about certain pieces of equipment that are reflected within
14 this invoice and that he's got personal knowledge about the
15 equipment itself.

16 MR. GUERKE: Your Honor, he's trying to use the
17 document to show just -- if he's going to ask him about a
18 particular piece of equipment out there, ask the question
19 without reference.

20 THE COURT: Why do you need to reference the
21 document?

22 MR. BURWOOD: Because it's on a particular
23 invoice, Your Honor, just for reference. But I can ask him a
24 question, that's fine.

25 THE COURT: Yeah. Unless he can identify the

1 invoice.

2 MR. BURWOOD: Your Honor, I'm embarrassed, and I
3 apologize, but this is a joint exhibit that's already been
4 admitted.

5 MR. GUERKE: I don't think that was my concern,
6 Your Honor. He's -- he hasn't established that this witness
7 knows anything about this document.

8 THE COURT: Right. It depends on what you're
9 going to use the document for with him.

10 MR. BURWOOD: Okay.

11 BY MR. BURWOOD:

12 Q Mr. Pew, is it the case that you observed on the ASR
13 project that there were, what I will call, conventional
14 trench boxes? Do you know what I mean by that?

15 A Yes.

16 Q Okay. What's a conventional trench box?

17 A It's something that comes as a whole. You put it
18 together on top of the ditch. And you lower it in the ditch,
19 the panels, the one that had the yellow piping on it with the
20 yellow rock shield.

21 Q So, when you lower a conventional trench box into the
22 ditch, is it preassembled?

23 A It is.

24 Q How does it get lowered into the ditch?

25 A I believe with an excavator. Then you have to use a

1 four-way chain sling system to pick it up and lower it in.

2 Q Okay. Is there any other equipment that you use with
3 the chain sling system to lower that trench box into the
4 ditch?

5 A Not as a whole, no.

6 Q Do you know what a spreader bar is?

7 A I do, yes.

8 Q What's a spreader bar?

9 A A spreader bar, when you order those -- rent those
10 systems, you can get varying degrees of width to spread the
11 panels out.

12 Q Based on how wide you want the conventional trench box
13 to match the trench; is that right?

14 A Match the trench, match the limits you need inside the
15 trench to work to get the job done.

16 Q Okay. Mr. Pew, do you have any sense, dimensionally,
17 how big the conventional trench boxes were that were used on
18 the ASR project?

19 A They're going to be larger boxes just because the pipe
20 itself is 42 inches. Plus, you need working room, so...

21 Q Do you have any sense as to what make or manufacturer
22 of conventional trench boxes were used on the ASR project?

23 A GMEs are commonly --

24 Q GME? Is that what you said?

25 A Uh-hum. From United Rentals.

1 Q From United Rentals. And that's based on your
2 experience in the field on ASR? How do you know that?

3 A United Rentals is one of the biggest rental companies.
4 And all contractors use them just because they have so much
5 availability for anything that you may need: pumps, trench
6 boxes, light plants, whatever.

7 Q Okay.

8 A All construction-related equipment.

9 Q I want to shift your attention to the modular slide
10 rail shoring protection. Do you know what I mean by that?

11 A I do, yeah.

12 Q Okay. Are there particular components of that system
13 that you could describe for us?

14 A So, it's modular in nature, right. So, you can build
15 it to any size you want, build a box, that type. You have
16 corners that you rent. You have panels. And they can come
17 in various sizes. But you also have panels for the ends as
18 well. So, it's just very modular, and you can make the
19 excavation how you need it for more integral type of
20 excavation.

21 MR. BURWOOD: Your Honor, I'm going to ask to show
22 the witness page 152 of Joint Exhibit 64 so that I can ask
23 him to identify the particular components of the shoring
24 equipment that he just identified.

25 MR. GUERKE: Your Honor, I would ask counsel to

1 first establish that Mr. Pew has ever seen invoices from
2 United Rentals that were part of the backup to the
3 reconciliation invoices.

4 MR. BURWOOD: Well --

5 MR. GUERKE: If --

6 MR. BURWOOD: -- go ahead. It's my fault.

7 MR. GUERKE: -- there's still a question about a
8 particular thing, then you ask the question. But why do you
9 need to reference a document that he may have never seen?

10 MR. BURWOOD: Your Honor, I guess my response to
11 that is that there is equipment described in these invoices
12 that we know was billed to Transco. I want to ask Mr. Pew if
13 he's able to identify the individual pieces of equipment as
14 being the equipment that he saw in the field.

15 THE COURT: I'll overrule the objection. You can
16 answer.

17 BY MR. BURWOOD:

18 Q Mr. Pew, would you please turn to page 152 of Exhibit
19 D64. Mr. Pew, did you see this particular document during
20 the project?

21 A Did I see this particular one?

22 Q Yeah.

23 A I don't think so.

24 Q Okay. What do you recognize -- do you recognize it as
25 anything?

1 A It looks like a typical invoice for rental equipment
2 for trench boxes.

3 Q Do you see in the upper left-hand corner it says,
4 "United Rentals"?

5 A I do, yeah.

6 Q Does it say, "trench safety"?

7 A Yes.

8 Q All right. So, looking in the body of the invoice
9 itself, do you see the first line that says:

10 "Trench box, 10-by-20 with 6-inch wall"?

11 A I do, yeah.

12 Q Okay. What do you recognize that piece of -- do you
13 recognize that description as any particular piece of
14 equipment that you're familiar with?

15 A It's a conventional trench box. That's the wall. 20-
16 foot long, 10-foot high.

17 Q And the make of that particular one?

18 A It's a GME.

19 Q Okay. As to the second item, do you recognize that
20 particular equipment described there as any equipment that
21 you were familiar in from your observations in the field on
22 ASR?

23 A It just looks like an invoice for a similar trench box.

24 Q Okay. How about the third item? Same question.

25 A Again, it's same type of -- piece of equipment,

1 conventional box.

2 Q Conventional trench box?

3 A Yes, sir.

4 Q The fourth item is the spreader bar kit, 8 inches by 14
5 feet. Do you see that?

6 A Yes.

7 Q Do you recognize that described material as any
8 particular equipment that you observed in the field on ASR?

9 A So, the first three are just describing the sides of
10 the trench box. And then that's the spreader bar. And you
11 can get those in varying widths depending on what your needs.
12 So that goes with that system.

13 Q So, the fourth item here, the spreader bar, your
14 testimony is that you recognize that as equipment that goes
15 with the conventional trench boxes?

16 A Yes.

17 Q And same question for the 168 8-inch spreader bars
18 below. Do you recognize that description as being equipment
19 you observed in the field on the ASR project?

20 A Yes.

21 Q What was that used for?

22 A It's the same type of equipment there.

23 Q Can you just be more descriptive? Same type how?

24 A Spreader bar. Just -- you know, the first one is a
25 kit. The next one is linear feet. So, it looks like they're

1 renting it by linear feet.

2 Q Okay. So, both the spreader bar items, in your
3 experience, are tied to the conventional trench box?

4 A Yes.

5 Q Okay. How about the next item? It says:

6 "Modular shield panel, 24 inches by 8 feet."

7 Do you see that?

8 A I do.

9 Q Okay. Do you recognize that description as being
10 related to any equipment that you observed in the field on
11 the ASR project?

12 A They had some modular boxes out there, yes.

13 Q Okay. When you say, "modular box," can you just
14 describe a little bit more in detail what you mean by that?

15 A Something you would rent more in pieces, and then you
16 size it for what you need for your excavation.

17 Q Okay. You testified earlier that there was modular
18 shoring trench protection on the ASR project you saw, right?

19 A Yes.

20 Q Okay. Is -- this item here, modular shield panel, is
21 that tied to that -- ultimately that type of shoring
22 protection?

23 A It is, yeah.

24 Q Okay. What about the end member, 8-foot? Do you have
25 any sense, based on that description, if that's tied to any

1 equipment that you observed in the field on the ASR project?

2 A Yeah. It's all part of the system.

3 Q All part of what system?

4 A Modular trench box.

5 Q Okay. So as to the remaining items there -- so modular
6 shield strut, 96-inch. Do you recognize that?

7 A Yes?

8 Q What system is that part of, in your experience?

9 A The modular trench boxes.

10 Q How about lifting lugs?

11 A Yes.

12 Q "Yes" what?

13 A Modular. Modular trench box system.

14 Q Okay. And how about connector pin light shield? Any
15 particular equipment that that relates to in your experience?

16 A It's, again, the modular system trench box.

17 Q Okay. Thank you.

18 MR. BURWOOD: Your Honor, I'd like to turn the
19 witness's attention to our Demonstrative 24, please.

20 BY MR. BURWOOD:

21 Q Mr. Pew, before we get into that, I'm going to actually
22 turn your attention back to the contract for a moment.

23 Would you please turn to the contract, page 487. That's

24 going to be Section 8 of the contract. And just let me know

25 when you're here.

1 THE COURT: I'm sorry. What page?

2 MR. BURWOOD: 487, Your Honor.

3 THE COURT: Thank you.

4 BY MR. BURWOOD:

5 Q Mr. Pew --

6 A I'm there. I see it on the screen.

7 Q -- do you see the definition of "included equipment,"
8 Mr. Pew?

9 A I do.

10 Q Okay. And do you see the language where it says:

11 "Included equipment means materials, equipment,
12 supplies, tools, vehicles, machines, offices, office
13 equipment, furnishings, communications, and utilities
14 typically owned, leased, and/or provided by contractors
15 performing work similar to this work."

16 Do you see that?

17 A I do.

18 Q Okay.

19 MR. GUERKE: Sorry, Your Honor. I'm just going to
20 object that counsel has not established that, during the
21 course of his work during the ASR project, this witness ever
22 used or read the contract, let alone interpreted what
23 included equipment is versus specialty equipment.

24 BY MR. BURWOOD:

25 Q Mr. Pew, during your time on the project, did you have

1 occasion to use the contract?

2 A Yes.

3 Q And did you review it?

4 A Yes.

5 Q Okay. Do you know if you had reviewed during the
6 project this Section 8 relative to compensation?

7 A I read the whole contract.

8 Q Is that something you normally do on the jobs when
9 you're the CM senior?

10 A Yes.

11 Q Okay. I want to focus your attention on this language
12 we just read, and it talks about:

13 "typically owned, leased, or provided by
14 contractors performing work similar to this work."

15 Do you see that?

16 A Yes.

17 Q Okay. Had you worked on jobs prior to ASR that were,
18 in your mind, work that was similar to the ASR work?

19 A Yes.

20 Q Okay. And are those jobs the dozen or so that you
21 identified previously in your testimony today?

22 A Yes.

23 Q Okay. So, you had worked on approximately a dozen jobs
24 that were similar to ASR; is that right?

25 A Yes.

1 Q And I won't ask you to go through it, but do you see
2 there that there's several romanettes under there that is
3 examples of included equipment? Do you see that?

4 A I do, yes.

5 Q Okay. And then I'm going to ask you to turn further
6 into the document, the contract, JX1, page 504. So let me
7 know when you're there. 504 says "Exhibit 2, included
8 equipment listing."

9 Do you recall, when we were just looking in Section 8,
10 there was a reference to Exhibit 2 in the definition of
11 "included equipment"?

12 A Yes.

13 Q Okay. Do you understand now we're looking at
14 Exhibit 2, "Included equipment listing"? Do you see that?
15 Just the front page.

16 A Just the front page? Yes, I see it.

17 Q So, if you can turn to page 506 for me. And it says:
18 "Equipment listing. ASR contract."

19 Do you see that?

20 A Uh-hum.

21 Q Okay. Had you reviewed this Exhibit 2 at some point
22 during your role on the ASR project?

23 A Yes.

24 Q Drawing your attention to Exhibit 2 of the -- Section 8
25 of the contract, Mr. Pew, the equipment listing, do you see

1 there that one of the things identified as included equipment
2 is conventional trench boxes?

3 A Am I missing it? I don't see it.

4 Q I apologize. It's on the next page. About halfway
5 down, do you see the reference to conventional trench boxes
6 as included equipment?

7 A I do now, yes.

8 Q Okay. Is there an equivalent exclusion there?

9 A Excludes the modular slide rail systems.

10 Q Okay. Conventional trench boxes included modular rail,
11 slide rail systems excluded, right?

12 A Correct.

13 Q Are those the two pieces of equipment that you've been
14 describing for us over the course of the last half an hour?

15 MR. GUERKE: Your Honor, I object. Calls for a
16 legal conclusion as to what qualifies as included equipment.
17 We were just seeing photos of random trench boxes. He's
18 never testified he's been part of the reconciliation process
19 or reviewed the backup materials that Welded provided. I'm
20 just going to -- and I think, you know, this relates to the
21 motion in limine that Welded had as to FTI, where we asserted
22 that the FTI expert is not qualified to render an opinion as
23 to specialty equipment, included equipment.

24 Mr. Pew -- this is essentially undisclosed expert
25 testimony where they're trying to make up for the FTI

1 expert's -- financial expert's inability to be able to say
2 what is specialty equipment under the contract.

3 MR. BURWOOD: Your Honor, I'd just offer that
4 Mr. Hood testified what was or was not included equipment
5 during his testimony. But also, Your Honor, we've got a
6 witness here who was in the field, has experience with this
7 project and a dozen similar projects. Okay. He understands
8 what a conventional trench box is. Okay. He understands
9 what a modular slide rail trench box is. He's described them
10 for the Court. We've seen photos. Okay.

11 I'm not asking him if it's included equipment
12 relative to any sort of compensation conclusion. I'm asking
13 him, when he looks at this list, if he sees "conventional
14 trench box," does he understand that to be what he testified
15 he saw in the field and, at the same time, relative to the
16 exclusion, while you're asking about modular slide rail
17 systems, is that the modular slide rail shoring system that
18 he testified to that he saw in the field and that he's
19 familiar with. Put a better way, Your Honor, I guess I'm
20 asking him: Did you see conventional trench boxes in the
21 field?

22 THE COURT: Why isn't -- go ahead.

23 MR. GUERKE: Your Honor, I think the big
24 difference between Mr. Hood's testimony is Mr. Hood was
25 Welded's fact witness that said in there "I was the guy that

1 called the balls and strikes and what I billed as specialty
2 equipment versus included equipment." I think that's a huge
3 difference in this case.

4 THE COURT: I don't -- are you asking as a factual
5 question?

6 MR. BURWOOD: Yes.

7 THE COURT: Okay. But not that a particular item
8 we just saw is what's -- is included equipment or not
9 included equipment. I mean, he cannot testify that a
10 particular piece of equipment was billed or not.

11 THE WITNESS: Correct. I'm asking him does he
12 know what a conventional trench box is. He's testified yes.
13 I asked him, Were they used in this project?

14 And he said yes and he described it. Okay. And
15 I'm asking him if he sees here on this list of included
16 equipment that the conventional trench boxes and modular side
17 rail systems are on that list. He's familiar with the
18 contract. He's read the contract. He knows what those pieces
19 of equipment are.

20 THE COURT: I think he can testify to that.
21 Overruled.

22 BY MR. BURWOOD:

23 Q Did we get your answer?

24 THE COURT: You gave him an answer, but go ahead.

25 BY MR. BURWOOD:

1 Q Mr. Pew, do you see where it says "conventional trench
2 boxes" in Exhibit 2 to Section 8?

3 A I do, yes.

4 Q Okay. And did you see conventional trench boxes used
5 in the field on the ASR project?

6 A Most commonly used, yes.

7 Q And do you see where it says "modular slide rail
8 system" as an exclusion?

9 A Yes.

10 Q Did you also see modular slide rail systems being used
11 in the field on ASR?

12 A Yes.

13 Q Okay. And then based on your experience on this job
14 and other jobs, your personal observations, okay, is a
15 conventional trench box something that is typically provided
16 by a pipeline contractor?

17 MR. GUERKE: Your Honor, objection. That's
18 where --

19 THE COURT: Sustained.

20 MR. GUERKE: -- the line that they crossed before.
21 I would object.

22 THE COURT: Sustained.

23 MR. BURWOOD: Okay. Let me ask it a different
24 way, Your Honor.

25 BY MR. BURWOOD:

1 Q Mr. Pew, have you seen conventional trench boxes used
2 on
3 projects prior to ASR?

4 A Almost all of them, yes.

5 Q I'm going to ask you to turn back to the first page of
6 Exhibit 2. And I'm going to ask you to see if Morookas is on
7 that list of included -- of equipment listing Exhibit 2,
8 Mr. Pew. Let me know if you see Morookas.

9 A Halfway down.

10 Q Okay. And are they also described there as "or similar
11 rubber-tracked carriers"?

12 A Yes.

13 Q Okay. Can I get you to look in Demonstrative 24, go to
14 slide 8, please. Do you recognize that piece of equipment
15 depicted in those two photos, Mr. Pew?

16 A Yes, I do.

17 Q Okay. And is that based on your experience working in
18 the field on pipeline projects?

19 A Yes, it is.

20 Q Including the ASR project?

21 A Yes, it is.

22 Q Okay. What is that equipment that's depicted in those
23 photos?

24 A It's a Morooka with a potholing vac on the back.

25 Q Did you say a potholing vac?

1 A Commonly used for potholing, yeah.

2 Q Okay. Can you --

3 A Vacuum excavator.

4 Q What is the role -- in your experience, the role of
5 that equipment on a project?

6 A To spot foreign lines, whether electric, other
7 pipelines, in a soft manner. They call it soft dig. So,
8 they're not using a mechanical bucket that could cause damage
9 to anything.

10 Q Turning your attention back to Exhibit 2 to Section 8,
11 the list of included equipment on the second page. So, it's
12 page 507 of the contract, Mr. Pew.

13 You can just look -- I don't know if you have that open.
14 It might be easier for this if you open your hard copy
15 notebook to page 506, 507 so that Ms. Bair doesn't have to
16 bounce back and forth.

17 MR. BURWOOD: Ms. Bair, if we can go back to
18 slide 8, please.

19 BY MR. BURWOOD:

20 Q Let me know when you're there, Mr. Pew.

21 A I'm sorry. Where do you want me to go?

22 Q Exhibit 2, the list of included equipment. Do you see,
23 on the second page, does that list identify vacuum excavation
24 units at all?

25 A I'd have to find that other page.

1 Q Second page.

2 A In my notebook?

3 THE COURT: No. It's a different notebook.

4 BY MR. BURWOOD:

5 Q Mr. Pew, I apologize. You've got a contract binder up
6 there. I was asking if you could open that to page 506, 507.
7 That's the Exhibit 2 that we've been referring to. And if
8 you could leave that open, it will allow you to go back and
9 forth. But take your time, please. Yeah, page numbers are
10 at the center top, 506, 507.

11 A 506?

12 Q Yes, sir. Do you see on page 2 of Exhibit 2 that small
13 vacuum excavation units are listed there?

14 A I do.

15 Q Okay. Based on your experience on this project and
16 past projects, do you have an understanding what a small
17 vacuum excavation unit is?

18 MR. GUERKE: Your Honor, I'll object. That's a --
19 that could be a very specific term for this contract that may
20 not be used in the industry.

21 THE COURT: Why don't you set a foundation for
22 that, then.

23 BY MR. BURWOOD:

24 Q Well, you testified earlier that in the photo you
25 recognized the equipment as a Morooka with a -- what did you

1 call the attachment?

2 A A vacuum excavator.

3 Q Okay. And are there excavators used on pipeline
4 projects other than vacuum excavators?

5 A All my projects this year have them on them.

6 Q Okay. Are they varying in sizes?

7 A They are.

8 Q Okay. And is -- the one depicted in the photos on the
9 screen, what size is that?

10 A That's a small.

11 Q Okay. And what is it used for, in your experience?

12 What -- do you know? What was it used for on this project?

13 A Potholing the foreign lines. Pothole and spotting the
14 foreign lines. So, before you dig it with a main line ditch
15 or an excavator where you can cause damage, you want to make
16 known what's out there.

17 So, they run this thing -- you know, out on the right-
18 of-way, you know, we're in the woods, there's other pipelines
19 that run through the woods too. So, you can run this out
20 there, positively identify depths where it's at, talk to the
21 owner, come up with a plan to make a crossing.

22 Q Other than ASR, on the dozen or so similar projects
23 you've worked on, did you recall seeing a Morooka with a
24 small excavation unit on the back on those projects?

25 A Yes.

1 Q Okay. Do you know how many of the 12 you saw that?

2 A Depending on the size of the job, again, right. So -
3 but many times.

4 Q Okay. If you could turn your attention to slide 10 of
5 the demonstrative, please. And you recall we looked at that
6 photo of the -- the photo at the top of the pyramid right
7 there, do you see that, with that -- the equipment with the
8 straw?

9 A I do, yes.

10 Q And remind us again. What did you identify that as?

11 A It's a straw mulcher blower.

12 Q And do you recognize that particular equipment as being
13 used on the ASR project?

14 A Yes.

15 Q Okay. To serve what purpose again?

16 A Stabilization, whether it's temporary or for whatever
17 reason.

18 Q And had you -- had you seen that particular piece of
19 equipment used on pipeline project right-of-way in the dozen
20 or so projects prior to ASR that you're familiar with?

21 A Yes.

22 Q And do you recall earlier, when we looked at Exhibit 2,
23 the list of equipment, that Morookas was on that list?

24 A Yes.

25 Q Can you go back to page 506, which is Exhibit 2.

1 A Yes.

2 Q Do you see mulching machines on that list as well?

3 A I do, yes.

4 Q Okay. Does the Morooka mulcher straw blower that you
5 identified in this photo as having been on ASR, is that
6 performing a mulching function? Am I right about that?

7 A Yes.

8 Q Okay. I know you said earlier but just because we're
9 here now: What's the mulching function it performs?

10 A It mulches the bales and then blows it on the right-of-
11 way.

12 Q Okay.

13 A This is just a shortened version of that.

14 Q Mr. Pew, turning to page 11 in Demonstrative 24, the
15 title of that is "Morookas with crane attachments."

16 Do you see that?

17 A I do.

18 Q Okay. Did you see on the ASR project any Morookas with
19 crane attachments on the back similar to that depicted in
20 these photographs?

21 A I have.

22 Q Okay. And focusing on the dozen or so projects that
23 you worked on prior to the ASR project, did you see Morookas
24 with the similar crane set up on those projects?

25 A I have.

1 Q How often on those projects? Was it every single one?

2 A Not every single one.

3 Q What types would you see? In your experience, what
4 types of projects -- what indicia of those projects would
5 have a Morooka with a crane on the back?

6 A Something with more length to it where that specialized
7 piece of equipment would be useful.

8 Q Length of what?

9 A Excuse me?

10 Q Length of what? You said --

11 A Length of the pipeline project.

12 Q Okay. And this project, ASR, was -- how long was the
13 length of this project?

14 A This section was 96 miles that we talked about here
15 today.

16 Q Okay. And as a result, you witnessed that Morookas
17 with crane attachments were used on this project, right?

18 A Yes.

19 Q In the field, Mr. Pew, in your experience on the ASR
20 project or the similar projects that you worked on, if a
21 Morooka has a straw mulcher blower on the back, for example,
22 what do you call it as it drives by?

23 A What do I call it?

24 Q Yeah.

25 A A mulcher, I guess.

1 Q Okay. And, like, what if a Morooka with a crane drives
2 by? I mean, what do you call that, in your experience?

3 A It's a Morooka.

4 Q Okay. And then how about a Morooka with a small vacuum
5 attachment on the back as it drives by? What would you have
6 called that?

7 A A Morooka.

8 MR. BURWOOD: Your Honor, just in terms of status,
9 I've got a few more like this and then I'm done with my
10 direct. So, I'd ask is it okay if we continue through?

11 THE COURT: Yes.

12 MR. BURWOOD: Thank you, Your Honor.

13 Mr. Pew, are you okay if we keep going?

14 THE WITNESS: Please.

15 MR. BURWOOD: Okay. Ms. Bair, will you please go
16 to slide 15 of Demonstrative 24.

17 BY MR. BURWOOD:

18 Q Mr. Pew, in the upper photograph, do you recognize that
19 piece of equipment, based on your experience on this project?

20 A Yes.

21 Q Okay. What is it?

22 A It's a vac unit for moving pipe around.

23 Q Can you just describe what part is the vac unit and
24 what it does?

25 A It's an attachment that would go on the end of an

1 excavator instead of a bucket, and it's used to actually
2 vacuum the pipe and to be able to maneuver it around.

3 Q It lifts the pipe up?

4 A It does.

5 Q Okay. Did you see those used on the ASR project?

6 A Yes.

7 Q And you saw them used to lift up pipe?

8 A Yes.

9 Q Okay. Had you seen the vacuum lifting attachment like
10 that used on the dozen or so other projects that you had
11 worked on before ASR that were similar?

12 A Yes.

13 Q If you want to look in your notebook, please, at
14 page 506, which is the first page of Exhibit 2. Do you see
15 about a third of the way down on that page the reference to
16 vacuum lifting attachments?

17 A I do, yes.

18 Q Okay. In your experience, is -- the photograph on
19 Demonstrative 24, page 15, is that a vacuum lifting
20 attachment?

21 A It is.

22 Q Okay. What's in the photo below that, Mr. Pew?

23 A It's a similar device, again, made for the same
24 purposes. You know, it's a way to keep the men and the
25 workers away from heavy lifted loads. So, it's very similar

1 to the vac. It does the same thing.

2 Q And what do we call it?

3 A The deckhand.

4 Q Okay. It performs a similar function, in your
5 experience, as the vacuum lifting tool?

6 A Yes.

7 Q Okay. I'm going to trouble you to go back in the
8 contract to the definition of "included equipment" for me.
9 So do you mind turning back to page 487, please. And I just
10 want to draw your attention that we are at the definition of
11 "included equipment."

12 Do you see that?

13 A I do, yes.

14 Q Okay. And then in the examples of included equipment
15 in the romanettes, if you flip to page 2, what's identified
16 in romanette (vii) at the top of that next page?

17 A Passengers, cables, lifting accessories, and lifting
18 aids.

19 Q In your experience, Mr. Pew, is a vacuum lifting unit a
20 lifting aid?

21 MR. GUERKE: Your Honor, I'll object. He's
22 essentially asking the witness to interpret the contract.

23 THE COURT: Sustained.

24 BY MR. BURWOOD:

25 Q Vacuuming lifting units, in your experience, are used

1 to lift pipe, correct?

2 A Yes.

3 Q Deckhands, in your experience, are used to lift pipes,
4 correct?

5 A Yes.

6 Q And you've seen that happen, right?

7 A Many times.

8 MR. BURWOOD: Ms. Bair, can you turn to page 17 of
9 D24, please.

10 BY MR. BURWOOD:

11 Q Mr. Pew, can you go back to Exhibit 2. We're going to
12 go back to page 506 in the contract.

13 A Yes.

14 Q And do you see tack rigs identified on that list of
15 equipment?

16 A I do, yes.

17 Q Okay. What's a tack rig?

18 A Something used in the welding process when you're
19 performing main line welding activities.

20 Q What -- specifically, what function does it play?

21 A Call it the front end when you're putting all the pipe
22 together. And then you have multiple welders starting to put
23 it together, and that's how they get their efficiency, just
24 by moving it linear. So, you have two guys making the first
25 bead on the first one, and then they do a second pass on it.

1 So -- it's to put the pipe together.

2 Q Is a tack a weld? Tack is a weld?

3 A It is, yeah, the first few passes on a weld.

4 Q Fair enough. Did you see -- do you know if tack rigs
5 were used on the ASR project, based on your observations?

6 A Yes.

7 Q Okay. Have you seen tack rigs used on the dozen or so
8 similar projects in your experience?

9 A Always.

10 Q Always?

11 A Yes.

12 Q Okay. In looking at the photographs on page 17 of
13 Demonstrative 24, do you identify the photograph that says,
14 "Vanguard welder"?

15 A Yes.

16 Q Okay. Is that, in your experience, a part of a tack
17 rig?

18 A It is, yes.

19 Q And same question for the inverter welder. Is that, in
20 your experience, part of a tack rig?

21 A It is part of the welding process on the front end,
22 yes.

23 Q You've seen -- did you see Vanguard welders being used
24 in the field on ASR?

25 A Again, that's -- there's different types of welders,

1 right. So, a tack rig comes with whatever kind of welder and
2 inverter you want to put on it.

3 Q Okay.

4 A But it comes as a whole.

5 Q You're saying that this particular welder and this
6 particular inverter are examples of inverters and welders.

7 Is that the case?

8 A Very commonly used, yes.

9 Q Okay. And the inverters and the welders in general are
10 part of a tack rig, correct?

11 A It comes as a whole, yes.

12 MR. BURWOOD: Ms. Bair, can you turn to page 19 of
13 Demonstrative 24, please.

14 BY MR. BURWOOD:

15 Q Mr. Pew, if you look at the contract, page 506, which
16 is the first page of Exhibit 2, the equipment listing. Do
17 you see towards the top of that page that excavators are
18 identified as included equipment?

19 A Third one down, yes.

20 Q Okay. And looking at the photograph that's on the
21 screen in the demonstrative, what is that piece of equipment?

22 A That's an excavator.

23 Q Okay. I apologize. If you go back to Exhibit 2. If
24 you read to the right where it says "excavators," do you see
25 that there's an equivalent or exclusion there in a

1 parenthetical?

2 A 314 to 349.

3 Q Okay. So, do you have any understanding, based on your
4 experience, what Cat 314 through 349 means?

5 A The size of the machine. They come in different sizes.

6 Q So, is it the case of the smaller the number, the
7 smaller the machine?

8 A Yes.

9 Q Okay. And would you agree with me that if the machine
10 says -- the excavator says Cat 336, that it falls within the
11 range of Cat 314 through 349?

12 A I do, yes.

13 Q Are you familiar with the Cat 336 excavator?

14 A For the most part, yeah. They're pretty commonly used,
15 yeah.

16 Q Okay. So that was my next question. Did you see
17 Cat 336 excavators used on the ASR project?

18 A Yes.

19 Q Okay. And when you say, "they're pretty commonly
20 used," had you also seen that size of excavator used on the
21 dozen or so similar projects that you participated in?

22 A Yes.

23 MR. BURWOOD: Ms. Bair, can we go to 21, please,
24 page 21.

25 BY MR. BURWOOD:

1 Q Going back to the first page of Exhibit 2, the included
2 equipment listing, Mr. Pew, do you see a reference on that
3 list to motor graders?

4 A That's 506?

5 Q It is 506.

6 A I do, yes.

7 Q Okay. And do you see that as with the excavators
8 there's a qualification that says, on Exhibit 2, up through
9 Cat 14/140 or equivalent?

10 A I do.

11 Q Okay. Based on your experience, do you know what a
12 Cat 14/140 motor grader looks like?

13 A Similar to the picture you're showing.

14 Q Yeah. Okay. But I'm saying: Do you have personal
15 knowledge of what that piece of equipment is?

16 A Yes.

17 Q Okay. And is it reflected here in this photograph at
18 the bottom of this page on the screen?

19 A It is, yes.

20 Q Okay. Do you know what a Volvo G946B motor grader is?

21 A It looks like a similar piece of equipment, yeah.

22 MR. GUERKE: Your Honor, I'll object. He just
23 says, "it looks like" based upon this photo.

24 THE COURT: He said he didn't know. You can cross
25 him on it, but I take it he didn't know.

1 BY MR. BURWOOD:

2 Q So, I'll ask this question. In your experience, have
3 you ever seen, like, a Volvo motor grader in the field as
4 opposed to a Cat motor grader in the field?

5 A Yeah.

6 Q Okay. Independent of who made it, okay, you're
7 familiar with the concept of "I know what a motor grader
8 looks like," right?

9 A Correct.

10 Q Okay. And in your experience, those motor graders,
11 they were used on the ASR project; is that right?

12 A Yes.

13 Q To do what?

14 A Grade the right-of-way out, roads, access roads.

15 Q You saw that work happening?

16 A Yes.

17 Q Okay. Other projects you worked on before this also --
18 did those also use motor graders?

19 A Yes. Not always commonly used.

20 Q Okay. Why, in your experience, would one be used or
21 not be used? What would be the deciding factor based on
22 project to project?

23 A Again, the size of the project.

24 Q You had seen them used before in the field?

25 A I have, yes.

1 MR. BURWOOD: Ms. Bair, page 23 of
2 Demonstrative 24, please.

3 BY MR. BURWOOD:

4 Q Mr. Pew, going back to your list of included equipment
5 from Exhibit 2. Do you see your reference to on-road dump
6 trucks about two-thirds of the way down on that first page of
7 Exhibit 2?

8 A Yes.

9 Q Okay. Are you familiar with the use of dump trucks on
10 the ASR project?

11 A Yes.

12 Q Okay. You saw dump trucks -- did you see dump trucks
13 being used in the ASR project?

14 A Hundreds every day, yeah.

15 Q Okay. Is it also the case that on the other jobs
16 similar to this that you've worked on, dump trucks were used?

17 A Yes.

18 Q Okay. Thinking about the dump trucks at ASR, do you
19 know what a tri-axle dump truck is?

20 A I do.

21 Q How do you describe that?

22 A It just has an extra axle to carry heavier loads and
23 they're commonly used because why have the same truck
24 carrying less of a load? It's just more efficient to run a
25 tri-axle to get that extra 10,000 pounds of load, whatever

1 you're hauling.

2 Q Okay. Thinking about the dump trucks that you saw
3 being used on the ASR project, where were they being used?

4 A It's common, right. So, rock pads, as soon as you get
5 there, part of erosion control, you have to bring quarry rock
6 out all the time. It brings in padding material for the
7 piping. Every time they build a contractor yard, I mean,
8 these things are lined up from a quarry right to the
9 contractor yard when you have to rock, you know, 20, 30 acres
10 at a time to just -- it's a necessity.

11 Q In your experience, when you saw these trucks at ASR,
12 were they being driven up on the right-of-way next to the
13 trench?

14 A They're not meant for that, no.

15 Q What are they meant for?

16 A For on the road.

17 Q Okay.

18 A Usually from quarry to jobsite.

19 Q So bringing material from the jobsite to the quarry?

20 A Yes.

21 Q Okay. And you observed dump trucks at ASR driving on
22 the road from the jobsite or at least off the jobsite?

23 A Yes.

24 Q And onto the jobsite?

25 A Yes.

1 Q Driving on the roads?

2 A Yes.

3 Q Okay. And you had made those similar observations
4 relative to tri-axle dump trucks with respect to the other
5 projects that you worked on prior to this one that were
6 similar?

7 A Yes.

8 MR. BURWOOD: Ms. Bair, can you go to 24, please,
9 page 24 of 224.

10 BY MR. BURWOOD:

11 Q Mr. Pew, do you recognize the piece of equipment in
12 this photograph?

13 A I do.

14 Q What is it?

15 A Articulated dump trucks or off-road trucks.

16 Q All right. So, I know that's what the description
17 says.

18 And so, I guess just to be clear, have you seen this
19 type of equipment used in the field before?

20 A Oh, yeah. Yes.

21 Q Did you see it on ASR?

22 A Yes.

23 Q Okay. And where and how was this type of a dump truck
24 being used at ASR?

25 A Anytime you have to move material up and down the

1 right-of-way that could be rutted, could be mudded, could be
2 walking on mats, this is the type of equipment you would use
3 to move a lot of material back and forth.

4 Q Okay. In your experience at ASR, this is different
5 than a tri-axle dump truck?

6 A Yes.

7 Q Okay. And is this dump truck -- in your experience at
8 ASR, did you see it being primarily on the road?

9 A That is not road legal.

10 Q It's not road legal?

11 A No.

12 Q And that's also how you've seen -- have you seen this
13 type of dump truck being used on any of the dozen or so prior
14 projects that you were involved with?

15 A Yes.

16 Q Okay. And was it being used on the road or off?

17 A Always off the road.

18 Q Mr. Pew, if you go back to Exhibit 2 one last time,
19 506 -- page 506 of the contract. And I'm going to ask you if
20 you see identified on Exhibit 2 in the list of included
21 equipment pickup trucks about three quarters of the way down
22 on that first page of Exhibit 2.

23 A Yes.

24 Q Okay. It's not my intention to insult your
25 intelligence here, but I have to ask, do you know what a

1 pickup truck is?

2 A I do.

3 MR. BURWOOD: Ms. Bair, can you show us slide 25.

4 BY MR. BURWOOD:

5 Q Did you see pickup trucks being used in connection --

6 26 -- in connection with the ASR work?

7 A Commonly used, yes.

8 Q Okay. Do you know what a Chevy Silverado looks like?

9 A I do.

10 Q Would you recognize it if you saw it?

11 A I think I would, yeah.

12 Q What kind of truck do you drive?

13 A I drive a Ford.

14 Q So, did you see Chevy Silverado trucks being driven at
15 the ASR project?

16 A I mean, all kinds of trucks are out there, yeah.

17 Q In your experience, are pickup trucks used on the dozen
18 or so other pipeline projects similar to the ASR project?

19 Did you see that?

20 A It's the most common vehicle there is out there, yes.

21 MR. BURWOOD: Your Honor, I have no more -- I have
22 two more questions. Sorry.

23 BY MR. BURWOOD:

24 Q Mr. Pew, do you know what a welding rig is?

25 A I do, yes.

1 Q Can you describe that for us?

2 A Welding rig? Well, all the welders out there, they
3 need their own tools to work with. So, it's just commonly,
4 like, a 1-ton truck that's outfitted with a welder. There
5 are bottles on it. There are tools to complete all cutting
6 and welding activities for what they have to do for the day.

7 Q Did you see welding rigs being used on the ASR project?

8 A I mean, they're everywhere, yeah.

9 Q The welding rig has equipment on it?

10 A It does, yes.

11 Q What types of equipment?

12 A The welder itself, all the torches, the bottles it
13 needs for cuts, you know, the clamps, the equipment to
14 maintain all of that.

15 Q On the dozen or so other projects you've worked on
16 before ASR that were similar, did you see welding rigs being
17 used on those projects?

18 A Very common.

19 Q Do you know what a mechanic's rig is?

20 A I do.

21 Q Can you describe a mechanic's rig for us?

22 A So, again, the mechanic is himself, right. But he
23 needs tools. So, again, the term "rig" is just used for
24 describing his tools. So, the mechanic rig is usually a
25 bigger truck. You know, may have a little crane on it. It

1 has way more tools to maintain any of the Cat equipment, take
2 buckets on and off, take, you know, A-frames offside booms.
3 I mean, they're just -- do oil changes. So, it's like a
4 mobile garage.

5 Q So, in terms of oil changes, in your experience on ASR,
6 did -- the mechanic rig, did they carry, like, oils and other
7 machine fluids?

8 A Just common, common, common. Everyday occurrence.

9 Q Yes, on ASR, though?

10 A Yes.

11 Q Okay. And then on the similar projects you worked on,
12 did you see mechanic's rigs?

13 A Yes.

14 MR. BURWOOD: Your Honor, I have no further
15 questions on direct for Mr. Pew.

16 Thank you, Mr. Pew.

17 THE COURT: Thank you. Okay. Mr. Pew, we're
18 going to be done for the evening here. You will be back in
19 the morning for cross-examination. Please do not speak with
20 anyone about your testimony. Please do not look at any
21 documents. And we'll see you in the morning.

22 Any logistic things we need to talk about?

23 (No verbal response)

24 THE COURT: You may step down.

25 MR. GUERKE: I'm not sure, Your Honor. We're at

1 the end of our second week that we have scheduled tomorrow.

2 And we have, I think, our deposition designation part. Then

3 I understand that the defendants have two witnesses.

4 MR. BURWOOD: Short of rebuttal, two experts.

5 MR. GUERKE: That may get us through tomorrow, and

6 then we have to --

7 THE COURT: We have two days next week, right?

8 MR. GUERKE: Two days next week.

9 THE COURT: Okay. Is there a question in there?

10 MR. GUERKE: No. I just wanted to stretch my leg
11 and I stood up.

12 THE COURT: Oh, okay. Okay. I want to make sure
13 I wasn't missing anything. Okay. Then we're adjourned for
14 the evening. See you in the morning.

15 (Proceedings concluded at 5:56 p.m.)

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CERTIFICATION

We 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 our knowledge and ability.

/s/ Tracey J. Williams

September 9, 2023

Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajackowski

September 9, 2023

Mary Zajackowski, CET-531
Certified Court Transcriptionist
For Reliable