SUPERIOR COURT OF WASHINGTON, KING COUNTY

DONALD NOLL and CANDACE NOLL, husband and wife,	)	
Plaintiffs,	)	13-2-06781-1 SEA
vs.	)	
AMERICAN BILTRITE INC., et al.	)	
Defendants.	)	

TELEPHONIC DEPOSITION UPON ORAL EXAMINATION OF

ED VAN DER BOGERT

10:05 A.M.

SEPTEMBER 6, 2013

601 UNION STREET, SUITE 4100

SEATTLE, WASHINGTON

REPORTED BY: CARLA R. WALLAT, CCR 2578

I N D E X

EXAMINATION BY:	PAGE(S)
MR. KIWALA	4

EXHIBITS FOR IDENTIFICATION		PAGE
EXHIBIT 1	Curriculum Vitae	*

(*Exhibit was marked after the deposition concluded.)

A P P E A R A N C E S

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ALSO PRESENT: NONE

SEATTLE, WASHINGTON; SEPTEMBER 6, 2013

10:05 A.M.

--oOo--

ED VAN DER BOGERT,

sworn as a witness by the Certified Court Reporter,

testified as follows:

EXAMINATION

BY MR. KIWALA:

Q. Sir, could you please state your full name for the record.

A. Sure. It's Ed van der Bogert.

Q. Okay. And Mr. Van der Bogert, what is your address?

A. I'm in Shoreline, Washington today.

Q. Okay.

A. I'll get you, you know, address and phone number and all that stuff on an invoice after the proceeding.

Q. Very well. Is your -- is your office in Shoreline?

A. Yes. This is my home office.

Q. Okay. And obviously we are all on the phone today. I am on the phone from my office in Alton,

Illinois.

At your home office in Shoreline, aside from yourself, is there anybody in the room there with you?

A. No.

Q. Okay. And have you given a deposition before?

A. Yeah, many times.

Q. Okay. Could you give me just a ballpark estimate of about how many times you've given a deposition?

A. Oh, boy. It's very ballpark. Probably 50, 60 times. Something like that.

Q. Okay. So you're an old pro?

A. Well, I've done it a lot.

Q. All right. Since we are on the phone today, if you have trouble hearing me, please let me know. I'll repeat my question. Also, if there is a question that you don't understand, please let me know that as well. The most likely situation will be that I've asked a bad question and in that case I'll do my best to rephrase it.

A. Okay.

Q. If -- I'm sorry. If I have asked a question and you do answer it, I'm going to presume that you understood my question. Is that fair?

A. That's fair.

Q. Okay. And if we need to take a break at any point, just let me know, okay?

A. You bet.

Q. Okay. Do you have any documents there with you in your office right now?

A. I have the, the notice for this -- the notice for this depo and I have the transcripts, the transcripts of Mr. Noll's depositions on the computer.

Q. Okay.

A. I've got them up and ready in case we have to go to them. Let me just say I also have a little notebook in which I'm going to write your name and contact information and all that stuff once we're done.

Q. Okay. In that notebook do you have any notes regarding this case?

A. It's just a record of the time I spend on the case.

Q. Okay. Just looking at your notes, how much time have you spent on the case so far?

A. At this point it's seven hours.

Q. Okay. Aside from the deposition notice, the transcripts that you have available on your computer, and the notebook, are there any other documents that you have there with you?

A. There's nothing else that I'm relying on

today, no.

Q. Okay. Mr. Van der Bogert, who is your current employer?

A. Well, I'm self-employed as a construction expert, I guess consultant, and then I'm the department head of the construction management department at Edmonds Community College here in Lynnwood, Washington.

Q. Okay. As far as the expert consulting work that you do, I take it part of that work includes serving as an expert witness in lawsuits like this one. Are there any other services, expert services outside of the context of litigation that you provide in your self-employment?

A. Well, currently, it's almost all litigation stuff. Now and then I do other things, but it's -- it's largely the litigation.

Q. Have you done any expert services in your self-employment outside of the context of litigation that have involved asbestos-containing construction materials?

A. No, not in my self-employment, no.

Q. Okay. And how long have you been self-employed doing expert work?

A. Well, most of my adult life I've been self-employed, so, and sometimes I've been called to do

expert work over, oh, gosh, the past 20 some years. The job -- the job I took at the college was intended to be a retirement, but it didn't turn out that way.

Q. So have you been doing expert work continuously over the last 20 years or is it something --

A. No, I was a builder. I was a builder and, you know, a construction company owner.

Q. Okay. So...

A. And now and then, let me just say, as a builder and construction company owner, now and then people would ask me to, you know, offer an opinion relative to -- largely in the past, it's largely construction defect and contract-related issues.

Q. Okay. Well, let me ask you this question.

How much of your total time do you split out between your work at the college and your work in self-employment as an expert consultant?

A. I'd say at this point it's about 50/50.

Q. Okay. And has it always been that 50/50 split since you started at the college?

A. No. When I started, I wasn't doing any of this kind of work. I started part time 18 years ago and took over full time at 16 years ago and then -- and I was doing other kinds of consulting at that time.

Not this kind of work. So it's been an evolution. During my tenure as department head, it's been more like 70/30 I guess, if you go back say last year, year before. I've just recently stepped down from the department head position and it gives me more free time to do this kind of work. I should say -- I should say that I'm stepping down. I will have officially stepped down as of September 23rd.

Q. Okay. Would it be fair to say that your work as an expert consultant is something that has increased over the years as far as a share of the time that it takes for you or --

A. Yes.

Q. Okay. What areas do you hold yourself out to be an expert?

A. Well, typically -- I think probably this closure for this case would have included construction sequencing, means, methods, materials, building codes, estimating, and that may not be an exhaustive list, but I -- that's close to everything.

Q. Aside from those areas, are there other areas that may not necessarily be pertinent to this case, but you nonetheless hold yourself out to be an expert in?

A. Sure. So contract issues relative to construction and in the past I've done a lot of safety

work, safety consulting.

Q. Okay. And then I want to get back to your work at the college. It's Edmonds Community College; is that right?

A. That's correct.

Q. Okay. How long have you worked at Edmonds?

A. I believe I've been working there for about 18 years. I started part time faculty and then after a couple years part time I was asked to take the department over and I decided I'd do that. I think that was 16 years ago. It may be 17.

Q. And you say later this month you plan to step down from the department head position?

A. That's correct.

Q. Okay. Do you plan to continue teaching or being involved in Edmonds in the construction management department?

A. Yeah. I'm going to be teaching a reduced load for at least a year.

Q. Okay.

A. And then we'll see. Just to put this in context, I'll be 67 in December, so.

Q. I see.

A. There's a time for everything.

Q. Right.

So I imagine as part of the faculty at the construction management department you teach classes in that department?

A. I do.

Q. Okay. What courses do you teach currently?

A. Well, let's see. I mean, I'm going to do the reduced load in the fall and that's going to be the materials and methods and basic estimating. And I do a seminar, a basic estimating seminar that's a computer-based thing so that we -- we teach the students how to work in an online plan center.

Previously, I've taught safety and accident prevention, safety program administration, the materials and methods, basic estimating. I will be teaching project management next spring and I've taught that for 16 years. What else? I do an erosion control class. A class in the summer, a seminar in the summer called Scope and Quality Standards; it's just a contract scope of work, writing class, essentially.

Q. Okay. You say you taught classes on materials and methods. Can you expand on what that course covers?

A. Sure. So the way we have structured that course, it -- it begins with construction documents, so sometimes a materials and methods class will include

documents, sometimes not. At our college it includes documents, so we spend a couple weeks on documents and kind of the formal way that construction activities are documented and how communication take place and then the class goes into soils, concrete, foundations, wood.

So in soils we do the trenching and excavating stuff that's somewhat connected to what we'll talk about today. We go into exterior shell and to some degree into the finishes, interior finishes. It's taught sequentially so it's taught in the order in which a building gets built, both commercial and residential concepts. That's -- that's pretty much the summary.

Q. Okay. And could you briefly -- just sort of skipping topics here.

Could you briefly describe the extent of your own formal education?

A. I have, of course, completed high school. And then I have a bachelor's degree from Syracuse University in psychology, I have a master's degree in education, I have an associate's degree in construction management from Edmonds Community College and I have a certificate in building inspection from Edmonds. The certificate being an actual rigorous academic certificate as opposed to, you know, just a piece of

paper kind of thing.

Q. Okay. Let's see. Let's start with the bachelor's degree in psychology.

When did you -- when did you start at Syracuse?

A. I started in '64. I graduated, got the bachelor's in '68, got the master's in '69.

Q. Okay. And then the, the associate's degree from Edmonds, when did you get that degree?

A. Well, so I got it -- I got the degree in '94. I had spent probably five or six years taking classes that I was -- sort of topical content that I was interested in as a business owner. And then in '94 I thought that I might as well transfer some of my general education stuff from Syracuse and actually get a degree out of the deal. And so the -- you know, after as much as five years I think of coursework I got the degree.

Q. Okay. So you got the degree in I think you said 1994, but it sounded --

A. '94.

Q. -- like you were taking classes that went towards that degree as early as 1989?

A. I think so. That's my recollection.

Q. Okay. Did you take classes towards that

degree that involved materials and methods?

A. Yes.

Q. Okay. Was it the same kind of coursework that you described earlier as, you know, as it pertained to the course that you teach?

A. It was similar.

Q. Okay. And you also mentioned that you had the certificate in building inspection and I believe that was also in 1994?

A. Correct.

Q. Okay. And you said you took, I guess there was some formal class work or training that was involved along your way to getting that certification, correct?

A. That's right. As a part of the associate's degree, there was an elective category that I filled with the courses that were required for the building inspection certificate.

Q. Okay. What kinds of courses were involved in the building inspection certificate?

A. Well, the standard courses that were part of the ATA, so the materials and methods estimating, et cetera, and so on part of it, but the specific courses for the building inspection cert was -- were three-quarters of building codes and three-quarters of

structural design.

Q. Okay. Did you have any classes or training in the course of getting your associate's degree or the certificate in building inspection that involved coursework pertaining to methods for installing sewer lines?

A. Well, that sort of thing would be integrated in at the appropriate point, but, yes, we talked about those things. A lot of what I know about side sewer work is from having been a builder and a developer and having done the work. But, yes, some of it's included in the coursework.

Q. Okay. Did any of those classes at Edmonds, either for the associate's degree or for the certificate, involve any training or coursework pertaining to methods for installing asbestos cement pipe of any type?

A. I don't recall that that was a separate category. I just don't remember.

Q. Okay. Even aside from being discussed as a separate category, did -- was installation of the asbestos cement pipe something that was discussed during the classes that you took?

A. I just don't recall. My -- I mean, I'm sure the textbook included a discussion of the various kinds

of sewer pipe and that kind of thing and their properties.

Q. Aside from anything else that we've discussed so far, have you ever taken any classes or training that dealt specifically with methods for working with asbestos cement pipe?

A. No, nothing specific to that kind of pipe.

Q. I understand from the disclosure, you're also currently on the King County Building Codes Advisory and Appeals Board; is that right?

A. No longer. So that may be an older disclosure you have. I've stepped down from that position.

Q. Okay. When did you step down from that?

A. Two years ago, something along that line. It kind of -- if I may, when the recession hit, we didn't have a lot of work to do on that committee because there wasn't a lot of appeals. There wasn't much building going on. And it just got to be time for me to step away so I did.

Q. Okay. So you stepped down from that two years ago. When did you -- when did you first become a member of that board?

A. I don't recall, but it would have been early, early 2000s or maybe before that. I was on the board for a number of years. I was an appointee of the

Master Builder Association of King County and Snohomish County, so I was the builder representative on that body.

Q. Can you just describe for us what it is that the, the Building Codes Advisory and Appeals Board does?

A. Sure. It's -- so relative to appeals, it's kind of the easy part. People who are aggrieved by the decision of the building official and feel as though they should be granted either, you know, exception or some sort of waiver relative to a stated building code come to the board and make a presentation and then the board consists of people from mechanical, plumbing, the fire marshal, the building official, architect and so on. So it's a very diverse board. And we hear the appeal and then have conversations and decide whether to grant the appeal or not or maybe some revised version of the appeal.

And the advisory part of the job is to advise the building official relative to the intent and the application of the code. So the -- frequently the literal -- the language and the interpretation of the language of the code is at issue and so our job is to, you know, have that conversation.

Q. Okay. So I'm going to imagine that in that

work you gained some familiarity with, with the building codes in King County as they existed at that time; is that right?

A. That's right.

Q. Okay.

A. Let me just add that, you know, King County like all other jurisdictions essentially -- virtually all jurisdictions in the country adopt a model code. So the underlying code is a standard code and then jurisdictions are allowed to create amendments to the code, and again, that's part of the advisory role. And so, for example, if a -- in King County, we have areas where there's, you know, ten feet of snow in the mountains and we have areas where there's never snow. And so the model code doesn't anticipate that kind of diversity in one jurisdiction, and so, you know, a task -- one of the tasks that I was involved in was writing a part of the code that dealt with that so builders would have guidance relative to the structures of roofs and that kind of thing.

Q. Okay. Prior to serving on the board then, did you have occasion to become familiar with the King County building code or the, I guess the model code from which it's based?

A. Sure. I was a builder for, oh, 25 years or

so, so I was very familiar with the code and inspection procedures, et cetera.

Q. Okay. How did you first become familiar with the code?

A. Well, you -- unfortunately, the teacher -- for a young builder, the teacher is the building inspector, so you start interacting with inspectors and learning what they want and what they don't want and then you get smart and buy a code book. You follow plans, architectural plans and so on that are designed to have you build to code. So it's a -- it's a -- you know, it's a -- learning by trial and error at the beginning and then -- and then for me I took code classes, that's how I started at Edmonds actually was taking code classes.

Q. I guess when did that trial and error experience begin for you?

A. Well, that would have been way back when -- when I started in construction industry in New York State. My dad was an architect and so I've been exposed to building codes and that -- the concept for pretty much my entire life starting at, what, 12 years old or something. In terms of learning the codes here in the Northwest which were the Uniform Building Code, they're now the International Code, but they were the

Uniform Code, and then the various amendments in, you know, Seattle, King County, Bellevue, the various jurisdictions here, so you become familiar with the model code itself and you become familiar with the unique amendments by jurisdiction.

Q. Okay. Now, I also understand that you were previously on the state board of directors for the Building Industry Association of Washington; is that correct?

A. That's correct.

Q. Okay. And when did you serve in that capacity?

A. That was -- just so you know, I have my CV in front of me so I can remember these dates.

Q. Okay.

A. So that's another document, I'm sorry I didn't mention that to begin with. Anyway, '97 to 2008, so about 11 years.

Q. Are you still involved in the building industry association?

A. I still teach classes for them. Other than that, I've gotten out of the politics basically. Just too many other things to do.

Q. And can you describe just a little bit about what the Building Industry Association does?

A. It's essentially a lobbying organization, so the National Association of Home Builders, which is the national trade association, charters state associations. And so Washington State's association is the Building Industry Association of Washington and then the state organization charters local organizations.

So I was a member of Master Builder Association of King and Snohomish County and then automatically you become a member of the Building Industry Association and the National Association of Home Builders. So I became involved through, through the Master Builder's Association.

Q. What is --

A. And they're all -- I'm sorry. They're essentially, you know, they're really essentially lobbying local governments, state government, federal government and education, outreach training, that kind of stuff.

Q. Okay. So was your involvement on the board of directors there for the Building Industry Association mainly just involvement with lobbying efforts?

A. Yeah, so we have meetings a few times a year and get together and, you know, talk about what's on the agenda, what's coming up, you know, who's running

for office, what bills are in the legislature, whether we're going to throw money at certain causes or, you know, what position we'll take on certain issues, those kinds of things.

Q. Does the Building Industry Association do anything in the way of actually setting or formulating standards or methods for the construction industry?

A. Sure. We -- we had a -- well, they have still a person whose job it is to be on top of the code issues. So that person attends all of the Washington Association of Building Officials meetings. They attend the meetings of the fire marshals, et cetera, and so on to have their, you know, ear on the ground relative to what the jurisdictions are cooking up for the builders. And, and so, yes, and then frequently that person or others will testify at, at hearings when laws that affect us are being proposed, that kind of thing.

Q. Okay. So it sounds like the state or the state agency in Washington actually formulates or adopts or amends whatever the standards are in the code, but the Building Industry Association has representatives that keep up to date and represent the association's interests before the standard, the state agency; is that a fair way to characterize it?

A. Yes, that's a good way to characterize it.

Q. Okay. And I think you already mentioned this, but you're also on the board of directors for the Master Builder's Association for King and Snohomish?

A. Yeah. I served on that board for about five years back in the early 2000s.

Q. Are you still involved in Master Builder's Association?

A. I'm not a member any longer, but I still teach classes for them and I know a lot of the people and I'm in touch with them regularly.

Q. The classes that you teach for the Building Industry Association or the Master Builder's Association, is that, is that through your work at Edmonds or is that separate and apart from your work at Edmonds?

A. No, that's separate and apart and actually predates my work at Edmonds.

Q. What kinds of classes do you teach for those two associations?

A. So for National Association of Home Builders -- well, let me explain, the National Association of Home Builders has a national curriculum and the -- a person who goes through and takes the required classes gets a certification from NAHB, it's

called certified graduate builder or certified graduate remodeler, depending on the courses they take, and so I teach a number of the required classes. I do them locally so I teach at the King County chapter, I teach at Kitsap County, sometimes I go out of state and teach in other locations. I teach in Spokane here in Washington, so -- so the same classes are taught throughout the United States, same curriculum. And I do some of them here at various associations.

I teach project management, estimating, scheduling, business finance and I -- off the top of my head I can't think of any others. Those are the ones that I typically get called for. And then there are some classes I teach that are taught just for Building Industry Association or Master Builder's and those are safety classes. So -- and I haven't been doing those lately, I've kind of stepped back from doing it. But for a number of years I taught construction safety and the OSHA ten-hour certification course for BIAW and for the MBA.

Q. Okay. Those safety classes that you've taught, did any of those cover asbestos or handling asbestos materials?

A. Yeah, there's a small component in those classes that deals with hazardous materials in general

and then as a part of that conversation there's a small part about asbestos.

Q. Is it -- that small part about asbestos, is it about how to handle asbestos materials if you encounter them or what -- what does that entail?

A. Yeah. My -- so my approach in my safety classes both for the associations and at the college is to take a -- more of a managerial approach to the issue and to talk about the requirements. And so I can kind of do it real quickly for you. Basically if you suspect that there's asbestos-containing materials in a building, you are required to have a, a consulting engineer do forensics, prepare a report that gives the location and the type of asbestos-containing material. Then you're required to have a licensed asbestos abatement contractor remove the materials, unless you're the owner. In Washington State here, if you're the owner of the building you can remove them yourself, but only the actual owner can do that.

So I'm usually teaching contractors, so I'm teaching them that they need to hire the licensed person and that's generally a condition of the demolition permit if you're tearing into those kinds of materials.

Q. Okay.

A. I also go into what the penalties are and that sort of thing which I don't know if we need go into, but we have a state agency that would enforce the, you know, those rules.

Q. And just again, I don't think I asked this question with respect to the Master Builder's Association, but do they have any involvement in any way as far as setting standards for -- or methods for the construction industry?

A. Well, it's similar to the Building Industry Association, but more local.

Q. Okay. So again, they have their -- they have representatives that represent the organization's interests before the people are making those decisions?

A. Yes.

Q. You said your dad owned a -- or your dad was an architect, I'm sorry.

A. Yes.

Q. You say you've been involved in the building industry from a young age.

Were you involved in the construction trade before you attended Syracuse?

A. Oh, yes. So I started training as a painter, actual formal training with a crew when I was 13 and worked construction, also worked in my dad's

architectural office, so I was -- I started very early.

Q. Other than painting, was there other -- any other type of construction work that you did prior to attending Syracuse?

A. Sure. So I learned the painting from the painting crew and learned carpentry and other, other trades from my dad and working around projects around home and then began to do those kind of things with the painting crew. So by the time I got to Syracuse I'd classify myself as a highly skilled painter, drywaller, carpenter. Principally those trades.

Q. Okay. And your skills that you developed over that time are -- you gained from instruction from your father and from I guess others that you worked with during those years?

A. That's correct.

Q. Okay. Were you doing any work in the construction trade while you were attending Syracuse?

A. Yes, during the summers I continued to paint and do, and do carpentry work and that sort of thing. You know, frequently painting work involves repairs and carpentry and rebuilding things and that sort of thing, so I could offer both services.

Q. Okay. What was your first job after you finished your master's degree at Syracuse?

A. Well, I had been working for a company called Ken Whiting Painting Company in the summers, and so in upstate New York, the winters are pretty severe so I got the education master's -- I started teaching school at, at a junior high school in Syracuse and so I would teach during the winter and then in the summer, during summer break I worked for Ken Whiting. And did that for a number of years.

Q. Okay. For how long after you finished up with the master's degree did you continue with Ken Whiting?

A. I don't recall how many years I worked with him. I think it was maybe four years. Maybe five years. Something like that.

Q. Four or five years beyond the time --

A. Yeah.

Q. -- you got your master's?

A. Correct.

Q. If I'm adding this up right, that puts us forward to about 1973 or '74?

A. Right in there, yes.

Q. And again, your work during that time just involved painting, carpentry, drywalling?

A. Yes. We did -- let me just say, we did some new construction and so the painting company was more than a painting company so we actually built things as

well. So relative to this case that we're talking about, I observed the sites of our work on several jobs over, you know, probably several jobs a summer kind of thing.

Q. Okay. After you left Ken Whiting Construction Company, where did you work next?

A. Well, my wife and I decided we'd had it with Syracuse, she'd grown up there and I'd been there throughout the college years and beyond and we decided that we'd travel around the country and find a new place to try out and -- excuse me, we landed in Seattle and that was I think in 1976 we ended up here. I opened up a little construction company and been here ever since.

Q. So you spent a couple of years traveling then after you left Ken Whiting?

A. It could be as much as a couple years. We came to Seattle fairly soon after leaving Whiting and I did some painting work here, I put an ad in the paper and I did some painting work, so made some more money. Again, went back on the road again and traveled around and ended up in the Boston area with my brother and worked on a couple jobs with him and then decided that Seattle was the place and we came back here.

Q. The jobs in Boston, were they along the same

lines as the work that you were doing with Ken Whiting, painting, drywalling and carpentry?

A. Yeah. I'd say so. That pretty well covers it.

Q. The business that you started in Seattle in 1976 or so, what was the name of that business?

A. Started as van der Bogert Contracting and then shortly thereafter a good friend of mine from Syracuse came out and we formed a partnership called Ideas Construction, and then at some point after that became a corporation so it was Ideas Construction, Incorporated.

Q. Who was your partner there?

A. His name is Michael Anderson.

Q. What kind of construction was Ideas Construction involved in?

A. Well, it started as that, that painting, carpentry and drywall modeled, remodeling and so on and just evolved over the years. We did -- we did some kitchens and bathrooms and so on. I guess we started just doing exterior repairs prior to a paint job, but then it evolved and we started doing additions. At some point along the way we had an opportunity to build a new home, we did that, and then it just grew from there. Towards the end of the -- of my career I was

developing land and building bigger projects. We did pretty much, pretty much everything you could imagine.

Q. And how long did you continue with Ideas Construction?

A. I did -- I took a temporary full-time job with the college I believe in '98, maybe it was '97. I kept Ideas Construction for a couple of years and then it just got to be too crazy trying to do both and I dissolved the corporation in '99 I believe.

Q. Okay. So Ideas Construction isn't around anymore?

A. No.

Q. Okay. Did Michael Anderson continue in the business through the whole time that you were involved in Ideas Construction?

A. No. He retired and moved and I continued.

Q. Okay. When did he retire from the business?

A. Oh, boy. I don't know. I don't remember. It would have been in the -- it would have been in the late '80s, I believe.

Q. All right.

A. All I can tell you is when he retired my income doubled. And he's a wonderful man, he's a very, very good friend, and still is, but don't tell him I said that.

Q. All right. It sounds like when you started -- when you started van der Bogert Construction and then later it was Ideas Construction, it sounds like when you started out you were involved in some of the actual contracting work that the -- that the business did. Do I have that correct?

A. That's right. That was -- I worked with the tools, but I also coordinated everything.

Q. Okay. Was there a -- a point at which you were no longer involved in the hands-on work, doing the carpentry or painting or what have you?

A. Yeah, it would be in phases during the year depending on how much work we had going. My preference was to do hands-on work as much as possible, just because I love doing it and the exercise and so on. But there were times when we would get just too busy and I wouldn't be able to do it. But I'd say throughout my career I worked hands on at least a couple days a week.

Q. Okay. Was your hands-on work, again, in the area of doing painting, the carpentry or the drywalling?

A. Well, I got out of doing the painting and the drywalling. We began subcontracting that stuff out. I would do odds and ends of pickup carpentry, do cleanup

and that put me at job sites when other work was happening. So with respect to what we're talking about today, if I had a job where we're going to connect to a sewer main on a given day, I would want to be there for that day and so I would schedule myself to be there doing other things, to be productive. I didn't need to watch everything but I'd want to be there in case there was a problem.

So depending on, you know, foundations, the significant big ticket items, I liked to be on the site and rather than just sitting there, I'd schedule something for me to do.

Q. Okay. But as far as the work you did yourself for Ideas, it was -- it sounds like it was more or less restricted in terms of the hands-on work, the painting, the carpentry, drywalling, things of that nature. Were you ever hands-on working with sewer pipe?

A. Yeah, I've had occasion to do the side sewer work. Again, around here, I don't know about other jurisdictions, but it's very common that only registered or licensed side sewer contractors are allowed to do the side sewer work. So depending on the jurisdiction, normally an owner can do the work themselves, or if you're not the owner, you have to have a side sewer contractor do it.

So -- and I owned many of the projects we did, so I'm -- I've done a, you know, several side sewer jobs with my crew.

Q. Okay. In terms of "several," could you give me an estimate on just during your involvement with Ideas, total number of side sewer projects or work that you've been involved in, number of occasions?

A. Well, so specifically -- so if we -- if we talk pipe work which side sewer work is and pipe work that's regulated by building code, there's a lot more pipe work on jobs than just side sewer. So on most jobs my crews did all of the pipe work except where we had some regulation that wouldn't allow us to do something. That normally would be the side sewer connections. But the, the rain, what we call rain drains, you know, from your gutters and so on, the storm sewer and the connection to the storm sewer, my crews did. And it's the same technology. It's water flows downhill and the pipes are the same and so on, so. I've done a lot of this kind of work.

Q. Okay. But as far as the side sewer lines, it'd be I guess, work -- let me strike that and let me backtrack.

You have read Mr. Noll's deposition testimony, right?

A. Yes.

Q. Okay. So you're familiar with his testimony about the sewer pipe that he installed, or that --

A. Yes.

Q. -- he was around for the installation of?

A. I'm familiar with what he said about it, yes.

Q. Okay. How many -- on how many occasions have you been personally involved in a project like that, installing a sewer line of the nature that Mr. Noll described?

A. Well, again, if it's -- if it's a new job or if it's -- if it's a remodel that involves upgrading the sewer service, every job. So if we do, you know, ten or 12 of those jobs a year, it's ten or 12 a year times 20 years, it's a lot of jobs.

Q. So are you saying that you've done those on ten or 12 a year?

A. Well, I'm not saying I've done, but I've either -- I've either done them or hired a subcontractor to do them, and as I said before, almost always our crews did all of the storm water work. And the footing drains and all of that pipe work, I had my own labor crew do and I've worked with them frequently. Something about labor crews, sometimes they get the pipe flowing the wrong direction, that kind of thing so

you've got to be on top of it and shooting grade and making sure that everything's going in correctly or you end up with a lot of water in your basement.

So, yeah, I've done a lot, a lot of pipe work.

Q. How many projects have you been involved with that involved the installation of an asbestos cement sewer pipe?

A. I don't -- I don't recall that our crew ever worked with cement asbestos pipe or concrete asbestos pipe. My involvement or my interaction with the pipe is in terms of tearing out and replacing with PVC.

Q. Okay.

A. So I'm familiar with the pipe, I'm familiar with seeing it in the ground and how it's installed and, but our involvement with that would be, would be typically taking it out or abandoning the line or repairing the line.

Q. How are you familiar with the installation of asbestos cement pipe? I understand you said you and your crews never did it yourselves. So I guess my question is: How are you familiar with the installation methods?

A. Well, I've seen it done, and I've also worked with concrete pipe, not the AC pipe, which is -- which is similar, not, not exactly the same, but suffice to

say that I've seen the work done and I'm very familiar with how it's done. The pipe is laid essentially the same way that other belled pipes are laid. PVC, sewer and water pipe, same kind of cuts and fittings and that sort of thing.

Q. Okay. You say you've seen the work done. Did you see asbestos cement pipe being installed on projects that you were involved with -- involved with as part of your work for Ideas Construction?

A. I don't recall specific projects in terms of the AC pipe, but I can tell you that I have seen it installed. That's the best I can do for you. I've done so many of these that I just don't remember. The AC pipe is a very small portion of what I've observed and what I've participated in.

Q. I'm just trying to figure this out, Mr. van der Bogert. You're telling me you've seen it installed but you can't remember where you've seen it installed. Are you unable to remember if it occurred while you were doing projects for van der Bogert or was it sometime before then or --

A. Probably before then. Unlikely during van der Bogert and then during Ideas, yes. van der Bogert was mostly painting. I don't remember any side sewer work at that time. I could be wrong, but I don't remember

that.

Q. I just want to clarify, did Ideas Construction ever do jobs where part of the project involved installing asbestos cement pipe?

A. My recollection is yes. Again, I can't give you specific job sites. They're just too many. And my observations are more than just from when I was -- with Ideas Construction, so I can't kind of sort them the way you want me to.

Q. Sure. I mean, how about a total number of times that Ideas Construction was involved on a project where an asbestos cement pipe was being installed, can you give an estimate so --

A. I could -- probably not. I don't want to guess. And I'd just say that where asbestos concrete pipe or concrete pipe was involved in the project in some way, and it may -- largely our involvement with AC pipe or concrete pipe would be repairing it, you know, so we have a job we're doing and the -- we're either upgrading in some way or repairing an existing line. So as far as new installations, few new installations. In terms of repairs and, you know, digging up and looking at lines and repairing them, a lot more of that kind of interaction.

Q. I may have asked this before, but just to be

sure: Have you ever taken any kind of courses on proper methods for installing sewer pipe?

A. Oh, boy. I wouldn't say -- no, I wouldn't say any courses that were devoted to just that, no.

Q. Okay. It sounds like you qualified the answer.

You've taken courses that part of the course covered that type of material?

A. It may have. Again, it probably more related to the code issues associated with it, types of fittings, lengths of runs, slopes, that kind of thing, you know, as a part of another course. I'll just give an example, a sewer pipe has to slope a quarter inch per foot is the requirement.

Q. Switching topics again, can you tell me about your transition from working as a teacher and getting into the field of being an expert consultant, I guess what spurred that?

A. Well, I was serving on a committee called the Washington State Construction Safety Task Force and -- as a builder representative from the Master Builder Association and I met a fellow named Bob Manlowe who works at Williams Kastner and we became I'd say sort of associates of, at this point I'd call Bob a friend as well as a business associate. At some point Bob

also -- you know, I retained Williams Kastner as an attorney to represent my construction company, and Bob and I had some interactions there. But at some point Bob asked if I could create a -- an exhibit for use in court so the juries could get a feel for and understand better how drywall work is done. And we worked together on that for about a year and the intent was that attorneys would use that in court. It became clear that someone was needed other than the attorney to use the exhibit and so I got my arm twisted and I agreed to do it and that was the beginning of it. And things have just proceeded from there.

Q. About, about when did that first involvement in the case, when did that occur?

A. I'd say about eight years ago.

Q. So about in 2005 or so?

A. Something like that, yeah.

Q. Okay. Was that a construction defect case or what kind of case was that?

A. You know, at this point I don't remember, but I'm sure it was something involving joint compound. I'm pretty sure. Drywall work and joint compound.

Q. Was it possibly an asbestos case?

A. Oh, yeah.

Q. Okay. Have you done a report for this case?

A. No.

Q. Other than this case, and I suppose other than the first case in 2005 or so, have you done work as, as a retained expert in asbestos litigation?

A. I'm sorry, you lost me there with that one.

Q. Okay. We've talked about, you know, obviously this case is an asbestos-related case and it sounds like the first case that you got involved in with Williams Kastner in around 2005 with the drywall exhibit, you believe may have been an asbestos case.

Other than those two cases, have you been retained as an expert in asbestos litigation?

A. Yes, many times.

Q. Okay. About how many times, if you can recall?

A. I really don't have -- I'd be guessing, but it's -- it's well over 100. It could easily be 200.

Q. Okay. Over the last five years or so, what percentage of your work as an expert consultant has been spent in working on asbestos litigation cases?

A. In excess of 90 percent.

Q. Okay. And what percentage of that work, the asbestos litigation work, has been done for defendants as opposed to plaintiffs?

A. I haven't had an opportunity to work for a

plaintiff. So it's all defendants at this point.

Q. And I think you covered this at the beginning. You've been deposed about 50 or 60 times. How many times have you been deposed as an expert in asbestos cases?

A. That would be most of them. By the way, the 50, 60 number was really a shot from the hip so I don't want to be held to that number. It may well be more than that.

Q. Okay. Do you keep transcripts of any of those depositions?

A. I may have. I don't generally review and sign the depos, so I rarely see the transcripts of my own depositions. As you may remember, when you started out in the law that reading your own depositions is a very painful experience, so I try to avoid it.

Q. I still have that pain.

Of the depositions that you've given, how many of them have involved cases that pertain to asbestos cement pipe?

A. There have been three or four.

Q. Do you remember when the last one was?

A. I can't give you an exact date, but a recent one was earlier this year. I think it was late last year through earlier this year I had a case involving

allegations of work with AC pipe.

Q. Of these three to four cases, do you know, were these depositions where you were retained as an expert through Williams Kastner?

A. I don't recall if Williams Kastner was involved in that recent case, for example. That one I was retained by JM Pipe and CertainTeed Corporation, I think it was Union Carbide. I'm trying to think that through. I don't remember. Union Carbide might have been a co-retention on that. I think actually -- just coming back to me here. I think Williams Kastner may have represented JM in that case.

Q. In your self-employment as an expert consultant, do you have anybody who works for you to assist you in that business?

A. No.

Q. And what's the, what's the usual rate that you bill for your expert services?

A. Two hundred thirty-five.

Q. Two hundred thirty-five?

A. Yes, an hour.

Q. Okay. Is that the same rate whether you're doing review work or giving testimony, like in a deposition or at trial?

A. Yes, same rate.

Q. Is that the rate that you're charging for this case?

A. Yes.

Q. All right. When were you first retained for this case?

A. Late August -- or late -- yeah, late August. I don't remember the exact date, but later in the month.

Q. Okay. Who first contacted you regarding this case?

A. My recollection is Amanda Spencer from Williams Kastner contacted me, though it may have been a paralegal.

Q. Okay. And what is your understanding of what you've been asked to do in this case?

A. I was asked to read the depositions and form an opinion about Mr. Noll's work with -- or alleged work with the -- JM Pipe.

Q. Okay. And have you formed any opinion about Mr. Noll's work with JM Pipe?

A. Yes.

Q. Okay. And what is that opinion?

A. Well, Mr. Noll described himself as a construction worker. My take on it, he's a carpenter kind of Jack-of-all-trades guy, kind of similar to

myself, and the -- the implication in the testimony is that he regularly did side sewer work; however, when I read his descriptions of the work, I don't find it indicative of a person who did, did the work, certainly, certainly not regularly. And I could go into specifics if you'd like.

Q. Okay. What -- what -- what specifically do you -- about Mr. Noll's testimony do you find inconsistent with your, I guess with your experience?

A. Well, there's three or four things that jumped out. One is he describes when working for the contractor -- gosh, the name is escaping me right now, but he did eight jobs with the JM Pipe for the one contractor in Bremerton and Port Orchard, so I'm specifically talking about those jobs. He, he recalls that the runs from the structure to the street were 50 to 60 feet and he recalls that the crew would do between 50 and 100 cuts on the pipe in 50- -- in a 50-foot to 60-foot run. Actually, that -- that run can be accomplished with a minimum of four cuts and a maximum of about eight cuts. So 50 to 100 is, is way out of the ballpark.

He describes the pipe as having -- having couplings, so it's -- he describes it as a pipe end and a pipe end and then a coupling that couples the two

together and that it was all pipe ends and coupling. And these couplings are, depending on the manufacturer, between, you know, six inches and 12 inches long, so obviously if you have 60 feet, you can't have 50 couplings. Anywhere where you cut it, you'd have to have a coupling, right?

So if you do the math, you can't have 50 cuts because there's not enough room to put the couplings in. So it's clearly -- clearly misremembering there.

The other thing, when he talks about couplings, he doesn't talk about Ys or Ts or Ls which are all required fittings when you're doing this kind of work. He just doesn't ever offer that. And I think that's unusual. I think that somebody who's done the work regularly would offer that information.

He says that the pipes came in 13-foot lengths; that he doesn't remember them having a bell on one end. I believe that this particular manufacturer actually had a coupling at one end of the pipe already installed. So that -- that may be something that he's misremembering as well.

He says, so in relation to his side sewer work, just in his career, he says that the pipe in those days was like all pipe, and even today, that it's all couplings, and actually pipe for many, many years

has been, essentially all of it has been manufactured -- this type of pipe I should say has been manufactured with one end that's prebeveled and the other end has a bell on it so you can just slide the sections together without any cutting. So that's -- that's just an incorrect observation on his part.

He recalls that in doing this one six-plex for this contractor, that they started with a four-inch pipe and then increased it to six, increased it to eight and then reduced it back down at the main. Which again, is just not how that work would be done. The plumbing code determines the size of the pipe coming out of the structure and with just one connection to the main there's no reason to increase the size of the pipe. The pipe has already been sized based on the fixture count in the building so you don't typically increase the size on a single run like that and you certainly wouldn't increase the size and then reduce at the main. It just doesn't make any sense.

So again, just I think a mistake in observation there on his part.

He talks about the inspection process as the inspector stopping by occasionally or a couple of times or -- I think he said once in a while, this inspector would stop by. And with side sewer work -- this is a

life safety and sanitation issue and so when a side sewer is installed, the inspector comes by when the work is ready to be inspected. It's a critical element on the job site because there's a big trench that's open, there's access issues associated with the trench being open. On my experiences, on my job sites is when, when that work is being done, everybody is keyed on the inspector and the inspection and hoping that it passes -- hoping the inspector shows up, Number 1, and then secondly, that the inspection passes so we can backfill it and get on with our job.

For somebody that's doing, you know, regular side sewer work, to describe the inspection process as stopping by once in a while is just not -- again, it's just totally inaccurate.

And then finally, I'd say in my opinion, in 1979, it's just highly unlikely that the work that they were doing would be with AC pipe. I just -- I just -- it's hard for me to believe that it's AC pipe. PVC pipe had been available since the early '60s. It was a standard for the kind of construction he's describing, these side sewers from single structures. It's cheaper, it's lighter, it's easier to use. You know, I -- and I think he may simply be mistaken in terms of what pipe he was watching other people put in these

trenches.

So that's the sum. There's the four areas that -- there's the 50 to 100 cuts, there's the four- to six- to eight-inch and then reducing at the main, there's the inspection issues and then there's the, you know, does it make sense that PVC was being used in 1979?

Q. Okay. In your review of Mr. Noll's testimony, did you ever -- did you consult any of the code sections that would have been applicable that existed in the period 1979 to '86?

A. I didn't. What I did do, though, because I wanted to be sure that I was right about the availability of PVC, was I went to a site that -- it's called Milestones in PVC Water Pipe History, and I went there on the Internet and discovered that I was -- that my recollection was correct and that the original publication of the, of the standard for PVC pipe was published in 1960. And when that standard was published, then the building departments and the building code writers have something to rely on to, to introduce that material into the, into the mix.

Q. Sorry, that was an Internet site?

A. Yeah. So if you were to Google Milestones in PVC Water Pipe History, you'd find it. And I think I

just did "PVC Water pipe history," I think. This one was one of the sites. And it just was it just lists all of the, all of the milestones.

1960 was the time when the ASTM standard was written, American Society for Testing of Materials is ASTM. At that point when they -- this pipe has been used prior to that for nearly a decade, but once ASTM produces a standard like that, then you see the code writers having an easy time of incorporating that material into their accepted lists.

Q. Other than the Internet site, the Milestones in PVC Water Pipe History, did you consult any, any sections of construction code or plumbing code in your review of Mr. Noll's testimony?

A. No. The codes relative to this kind of work are -- I'm very familiar with, so I didn't.

Q. Okay. Can -- can you point to any specific sections of a construction code today that you believe would be -- strike that.

Can you point to any sections of a construction code or plumbing code that you believe Mr. Noll's description of his work is inconsistent with?

A. Well, yeah. So the work that he's describing would be typically not in the plumbing code. It'd be

in a public works code of the jurisdiction. And so public works codes are -- it's a family of codes that are -- that are -- unlike the national model that I described to you before where a model code is adopted, the public works codes tend to be, well, somewhat unique to jurisdictions. But there are standards that they all essentially adhere to.

I'd say the only thing -- well, two things. One is the four- to six- to eight- and then reduce at the main, I think would be something that an inspector would not approve. I can't imagine an inspector approving a line with 50- -- 60-foot line with 50 cuts in it. And just also the inspection process which is typically articulated in the code, that there's a -- that the test of those, of those pipes is done with water in them. And the inspector has to see that the pipes are holding water.

Q. Okay. But as far as being able to point, point out for me a specific section of a applicable public works code, are you able to do that for me today?

A. No. Just the things that I mentioned, you know, the inspection, the -- and, and what I -- what I would consider to be installation methods that an inspector would frown upon at least and probably not

approve.

Q. Did anybody assist you in your work to formulate your opinion for this case?

A. No.

Q. Okay. Other than Mr. Noll's testimony and the Milestones in PVC Water Pipe History website, did you review any other materials in formulating your opinion for this case?

A. No.

Q. Are there additional materials that you would have liked to have reviewed for this case?

A. Sure. I would have liked to have had some addresses, but as you know Mr. Noll wasn't able to remember them. It's understandable, it's a long time ago. But I would have liked to have some addresses so I could go to the jurisdiction and look at the -- look at the sewer guards, and so I could see the layout, the actual layout and verify the actual lengths and how many cuts were involved.

Q. Right. And it is understandable that he's not able to recall those addresses at this point -- for instance, you're not able to recall addresses of projects where you were observing this type of work being done, correct?

A. That's right.

Q. Okay. Did you speak to anybody about this case in the course of formulating your opinions, aside from the attorneys at Williams Kastner?

A. No.

Q. And you didn't speak to any of the witnesses in this case?

A. No.

Q. You didn't speak to any of Mr. Noll's former employers?

A. No.

Q. And as far as you know, you've never been involved in any jobs in which any of Mr. Noll's employers were present on site?

A. That's right.

Q. And you weren't present when Mr. Noll was doing the work that he described in his deposition, correct?

A. That's correct.

Q. Okay. So you can't say whether or not Mr. Noll did the work that he says he did in his deposition, correct?

A. That's correct.

Q. Okay. So your only testimony is that in your opinion based on your work experiences, Mr. Noll's work as he described it is not consistent with what the

standards were or -- well, strike that.

Your testimony is only that in your opinion based on your experience, Mr. Noll's work was, as he described it, was not consistent with your recollection of how that work was done based on your experiences through your work?

A. That's correct.

Q. And your experiences include the work at Ken Whiting in New York and then your work I guess at Ideas Construction?

A. Yes.

Q. Okay. So you're not aware of how other work crews outside of what you personally experienced at those two employments would have done these types of jobs?

A. Yes. I just want to say that I've observed a lot of crews doing this work and I've hired them and I've seen crews working who other people have hired so I've seen a lot of crews doing it and I've had my own crews do it. I wanted to add, it just occurs to me that when I was working with my dad that I was on job sites and undoubtedly saw this kind of work being done on those job sites as well so that would have been back in the '60s.

Q. Okay. So again, your expertise in the area of

the methods and practices for installing sewer pipe and asbestos cement sewer pipe are based on your observations of other work crews, correct?

A. Yes. And the repairs and that sort of thing that I described earlier.

Q. You've not been asked to give any opinion in this case as to whether or not Mr. Noll would have been exposed to asbestos through his work with asbestos cement pipe, have you?

A. I'm sorry, could you rephrase?

Q. You haven't been asked in this case to give an opinion as to whether Mr. Noll's work with asbestos cement pipe exposed him to asbestos, have you?

A. No.

Q. And you're not an industrial hygienist, correct?

A. Correct.

Q. And you're not being asked in this case to give any opinion as to what the cause of Mr. Noll's mesothelioma was, correct?

A. That's correct.

Q. Do you intend to do any additional work on this case at this time?

A. I don't.

Q. Are there any other opinions with regard to

the case that you intend to offer at trial that we haven't discussed today?

A. No, I think we've hit on the high points.

Q. Okay.

A. So any opinions I have would fall in those categories that I've covered.

Q. Okay.

MR. KIWALA: I don't have any further questions right now, but I'd like to make the request on the record, a copy of the CV and -- I'm sorry, I actually do have one more question for you, Mr. van der Bogert.

Q. (BY MR. KIWALA) Do you have on your -- on the transcripts, have you printed out any copies of those transcripts?

A. No, they're just on the screen.

Q. Okay. Have you made any notes about, about your review of those transcripts?

A. No, as I said, I wasn't asked to do a report or anything, so I read it and formed an opinion and then any notes are relative to how much time I spent talking with people and all that sort of thing.

Q. Okay.

MR. KIWALA: Then I'd just like to request that any responsive materials -- or any

materials responsive to the rider to the deposition notice be produced and plaintiffs reserve the right to continue the deposition once those materials have been produced.

THE WITNESS: And can I ask if you wanted the CV as an exhibit?

MR. KIWALA: If you have the CV there in front of you, yes.

THE WITNESS: Sure.

MR. KIWALA: I'm not sure how we're going to mark it today with it being a situation where you're, you know, remote from where the court reporter is.

MS. GOMEZ: I'll be happy to get the CV to the court reporter. Then she can mark it as an exhibit and attach it to the deposition transcript.

MR. KIWALA: Okay. I have no further questions. Ms. Becker, do you have questions?

MS. GOMEZ: No, no questions.

MR. KIWALA: I guess we're done.

THE WITNESS: So can I get your e-mail, Ryan?

(Deposition concluded at 11:36 a.m.)

(Signature was waived.)

REPORTER'S CERTIFICATE

I, CARLA R. WALLAT, the undersigned Certified Court Reporter pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify that the sworn testimony and/or proceedings, a transcript of which is attached, was given before me at the time and place stated therein; that any and/or all witness(es) were duly sworn to testify to the truth; that the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability; that the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript; that a review of which was waived; that I am in no way related to any party to the matter, nor to any counsel, nor do I have any financial interest in the event of the cause.

WITNESS MY HAND AND DIGITAL SIGNATURE this 16th day of September, 2013.

_____

CARLA R. WALLAT
Washington State Certified Court Reporter, #2578

A

abandoning 36:16
abatement 25:16
ability 58:12
able 32:17 51:18,20 52:13,21,22
ac 36:24 37:11,14 38:17 43:1 48:18,19
academic 12:24
accepted 50:10
access 48:5
accident 11:12
accomplished 45:20
accurate 58:13
activities 12:3
actual 12:24 25:19 26:24 32:4 52:18 52:18
ad 29:19
add 18:6 54:20
adding 28:18
additional 52:10 55:22
additions 30:22
address 4:15 4:18
addresses 52:13,15,21 52:22
adhere 51:7
administer 58:4
administra... 11:13
adopt 18:8
adopted 51:4
adopts 22:21
adult 7:24
advise 17:19
advisory 16:9 17:5,19 18:11
affect 22:17
affirmations 58:5
age 26:20
agency 22:20 22:25 26:3
agenda 21:25
aggrieved 17:8
ago 8:23,24 10:11 16:14 16:21 40:15 52:15
agreed 40:11
al 1:6
allegations 43:1
alleged 44:17
allow 34:13
allowed 18:10 33:22
alton 3:8 4:25
amanda 44:11
amendments 18:10 20:1 20:5
amends 22:21
american 1:6 50:5
anderson 30:14 31:13
angelides 3:5
answer 5:23 39:6
anticipate 18:15
anybody 5:3 43:14 52:2 53:1
anymore 31:11
anyway 20:17
apart 23:15 23:17
appeal 17:16 17:17,18
appeals 16:10 16:17 17:5 17:7
applicable 49:10 51:19
application 17:21
appointee 16:25
approach 25:6 25:8
appropriate 15:8
approve 51:11 52:1
approving 51:12
architect 17:14 19:20 26:17
architectural 19:10 27:1
area 29:22 32:21 54:25
areas 9:14,21 9:21 18:12 18:14 49:2
arm 40:10
articulated 51:14
asbestos 15:16,22 16:6 24:22 24:23 25:2 25:3,4,15 36:6,9,9,19 37:7 38:4 38:12,15 40:23 41:4 41:10,12,20 41:23 42:4 42:19 55:2 55:8,8,12 55:13
asbestosco... 7:19 25:11 25:14
asbestosre... 41:7
aside 5:2 6:21 9:21 15:20 16:3 53:2
asked 5:19,22 10:9 26:5 38:25 40:4 44:15,16 55:6,11,18 56:19
assist 43:15 52:2
associate 39:25
associated 39:10 48:5
associates 12:21 13:8 14:15 15:3 15:14 39:24
association 17:1 20:8 20:20,25 21:2,3,4,5 21:9,11,11 21:13,21 22:5,11,22 23:4,8,13 23:14,21,23 24:15 26:7 26:11 39:22
associations 21:4 22:24 23:20 24:9 25:7
astm 50:4,6,7
ata 14:22
attach 57:16
attached 58:7
attend 22:12
attended 26:22
attending 27:4,18
attends 22:10
attorney 40:2 40:9
attorneys 40:8 53:3
august 44:6,6
authorized 58:4
automatically 21:10
availability 49:14
available 6:22 48:20
avoid 42:16
aware 54:12

B

bachelors 12:19 13:3 13:7
back 9:3 10:2 19:18 23:6 24:17 29:21 29:24 43:11 47:10 54:23
backfill 48:11
backtrack 34:23
bad 5:19
ballpark 5:7 5:10 45:22
barnerd 3:6
based 18:24 47:15 53:24 54:3,5 55:2
basement 36:3
basic 11:8,9 11:14
basically 20:22 25:10
bathrooms 30:20
becker 3:13 57:18
began 27:8 32:24
beginning 19:12 40:11 42:2
begins 11:24
believe 10:7 14:8 31:6,9 31:20 41:10 46:18 48:19 50:18,21
bell 46:17 47:4

belled 37:3
bellevue 20:2
best 5:19 37:12 58:11
bet 6:3
better 40:6
beyond 28:14 29:9
biaw 24:19
big 33:10 48:4
bigger 31:1
bill 43:18
bills 22:1
biltrite 1:6
bit 20:24
board 16:10 16:22,24 17:5,12,13 17:15 18:21 20:7 21:20 23:3,5
bob 39:22,24 39:25 40:2 40:4
body 17:3
bogert 1:9 4:5,13,14 7:2 30:7 32:2 37:17 37:20,23,23 56:12
book 19:9
boston 29:22 29:25
boy 5:10 31:18 39:3
break 6:1 28:7
bremerton 45:14
briefly 12:14 12:16
brother 29:22
browder 3:5
build 19:11 30:23
builder 8:7,7 8:11 15:10 17:1,2 18:25 19:6 21:8 24:1 39:21,21
builders 18:19 21:2 21:12,13 22:15 23:4 23:7,13,22 23:23 24:15 26:6
building 9:18 12:11,23 14:8,17,20 14:24,25 15:4 16:9 16:18 17:5 17:9,11,14 17:20 18:2 18:23 19:6 19:21,24 20:8,19,25 21:5,10,21 22:5,11,22 23:12 24:14 25:12,18 26:10,19 31:1 34:10 47:16 49:20 49:21
built 12:11 28:25
business 13:13 24:11 30:5,6 31:14,17 32:5 39:25 43:15
busy 32:16
buy 19:9

C

c 3:1
call 34:15 39:24
called 7:25 11:18 24:1 24:13 28:1 30:9 39:19 49:15
candace 1:2
cant 24:12 37:18 38:5 38:8 42:23 46:4,7 51:11 53:19
capacity 20:12
carbide 43:8 43:9
career 30:25 32:18 46:23
carla 1:24 58:3,24
carpenter 27:11 44:24
carpentry 27:6,20,22 28:22 30:2 30:18 32:11 32:21,25 33:16
case 5:19 6:10,15,17 6:19 9:17 9:22 29:1 33:7 40:14 40:18,19,23 40:25 41:2 41:3,7,7,8 41:10 42:25 43:6,12 44:2,5,10 44:15 52:3 52:8,11 53:2,6 55:7 55:11,18,23 56:1
cases 41:11 41:20 42:5 42:19 43:2
categories 56:6
category 14:16 15:19 15:21
cause 55:19 58:18
causes 22:2
ccr 1:24
cement 15:16 15:22 16:6 36:6,9,19 37:7 38:4 38:12 42:20 55:2,9,13
center 11:11
cert 14:24
certain 22:2 22:3
certainly 45:5,5 47:18
certainteed 43:7
certificate 12:23,24,25 14:8,18,20 15:4,15 58:1
certification 14:13 23:25 24:19
certified 4:6 24:1,1 58:3 58:24
certify 58:6
cetera 14:23 19:2 22:12
chapter 24:4
characterize 22:25 23:1
charging 44:1
charters 21:3 21:6
cheaper 48:23
clarify 38:2
class 11:17 11:17,19,25 12:5 14:12
classes 11:2 11:20 13:11 13:22,25 15:2,13,23 16:4 19:13 19:15 20:21 23:10,12,19 23:25 24:3 24:7,14,16 24:21,25 25:7
classify 27:10
cleanup 32:25
clear 40:9
clearly 46:9 46:9
close 9:20
closure 9:17
code 17:11,21 17:23 18:8 18:9,9,11 18:15,18,23 18:23 19:1 19:4,9,11 19:13,14,24 19:25 20:1 20:4 22:9 22:22 34:10 39:10 47:12 49:9,21 50:8,13,13 50:18,21,21 50:25 51:1 51:4,14,20
codes 9:18 14:25 16:9 17:5 18:2 19:21,23 50:15 51:2 51:2,5
college 7:7 8:2,17,21 10:3,3 12:1 12:22 25:7 29:9 31:6
com 3:10,18
come 17:12
comes 48:2
coming 21:25 43:11 47:12
commercial 12:11
committee 16:16 39:19
common 33:20
communication 12:4
community 7:7 10:3 12:22
company 3:12 8:8,11 28:1 28:2,24,25 29:6,13 40:2
completed

12:18
component 24:24
compound 40:21,22
computer 6:8 6:22
computerbased 11:10
concept 19:21
concepts 12:12
concluded 2:14 57:23
concrete 12:5 36:9,24 38:15,16,18
condition 25:22
connect 33:3
connected 12:7
connection 34:17 47:13
connections 34:15
consider 51:24
consistent 53:25 54:4
consists 17:13
construction 7:4,6,19 8:8,11,14 9:17,25 10:16 11:2 11:24 12:3 12:21 19:19 22:7 24:18 26:9,21,25 27:3,18 28:24 29:5 29:13 30:10 30:11,15,16 31:4,7,10 31:15 32:2 32:3 37:9 38:2,8,11 39:20 40:2 40:18 44:24 48:21 50:13 50:18,21 54:10
consult 49:9 50:12
consultant 7:5 8:18 9:10 39:17 41:19 43:14
consulting 7:8 8:25 10:1 25:12
contact 6:13
contacted 44:9,12
contains 58:12
content 13:12
context 7:12 7:18 10:22
continue 10:15 28:10 31:3,13 57:3
continued 27:19 31:16
continuously 8:5
contract 9:24 11:19
contracting 30:7 32:5
contractor 25:16 33:25 45:12,14 47:8
contractors 25:20 33:21
contractre... 8:14
control 11:16
conversation 17:24 25:1
conversations 17:16
cooking 22:14
coordinated 32:8
copies 56:14
copy 56:10
coretention 43:10
corporation 30:11 31:9 43:7
correct 10:5 10:14 14:10 14:14 20:9 20:10 27:16 28:17 32:6 49:17 52:24 53:17,18,21 53:22 54:7 55:3,16,17 55:20,21
correctly 36:2
counsel 58:17
count 47:16
country 18:8 29:10
county 1:1 16:9 17:1,2 18:2,6,12 18:23 20:2 21:9 24:4,5
couple 10:9 12:2 29:15 29:17,23 31:7 32:19 47:23
couples 45:25
coupling 45:25 46:1 46:6,19
couplings 45:24 46:2 46:5,8,11 46:25
course 11:21 11:24 12:18 14:5 15:3 24:19 39:7 39:12 53:2
courses 11:5 14:17,19,21 14:23 24:2 39:1,4,7
coursework 13:17 14:3 15:5,12,15
court 1:1 3:7 4:6 40:5,8 57:12,15 58:3,24
cover 24:22
covered 39:8 42:2 56:6
covers 11:22 30:3
crazy 31:8
create 18:10 40:4
crew 26:24 27:6,9 34:3 35:23 36:8 45:17
crews 34:12 34:18 35:21 35:24 36:20 54:13,17,18 54:19,20 55:3
critical 48:3
current 7:2
currently 7:14 11:5 16:9
curriculum 2:11 23:23 24:8
cut 46:5
cuts 37:4 45:18,20,21 46:7 49:3 51:12 52:19
cutting 47:5
cv 20:13 56:10 57:6 57:7,14

D

d 2:1
dad 19:20 26:16,16 27:7 54:21
dads 26:25
date 22:23 42:23 44:7
dates 20:14
day 33:4,5 58:19
days 32:19 46:24
deal 13:16
deals 24:25
dealt 16:5 18:18
decade 50:7
december 10:22
decide 17:16
decided 10:10 29:7,9,23
decision 17:9
decisions 26:14
defect 8:14 40:18
defendant 3:12
defendants 1:7 41:23 42:1
degree 12:9 12:19,20,21 13:3,8,9,10 13:16,18,19 13:23 14:1 14:16 15:3 15:14 27:25 28:10
demolition 25:23
department 7:5,6 9:2,5 10:10,13,17 11:2,3
departments 49:20
depending 24:2 32:13 33:9,22 46:2
depo 6:7
depos 42:13
deposed 42:3 42:4
deposition 1:8 2:14 5:5,9 6:21 34:24 43:24 53:16,21 57:1,3,16

depositions 6:8 42:11 42:14,15,18 43:3 44:16
der 1:9 4:5 4:13,14 7:2 30:7 32:2 37:17,20,22 37:23 56:11
describe 12:16 17:4 20:24 48:13
described 14:4 35:10 44:23 51:4 53:16,25 54:4 55:5
describes 45:11,23,24
describing 48:21 50:24
description 50:22
descriptions 45:3
design 15:1
designed 19:10
determines 47:12
developed 27:12
developer 15:10
developing 31:1
devoted 39:4
didnt 8:3 16:15 20:16 33:6 49:12 50:16 53:5 53:8
digging 38:22
digital 58:19
direction 35:25
directors 20:7 21:21 23:3
disclosure 16:8,11
discovered 49:16
discussed 15:20,22 16:3 56:2
discussion 15:25
dissolved 31:9
diverse 17:15
diversity 18:16
document 20:16
documented 12:4
documents 6:4 6:23 11:24 12:1,2,2
doesnt 18:15 46:11,13,17 47:19
doing 7:23 8:4,22,25 24:16,17 27:17 30:1 30:21,22 32:10,15,21 32:23 33:6 37:20 38:19 43:23 46:12 47:7 48:12 48:18 53:16 54:17,19
donald 1:2
dont 5:17 15:18,19,24 16:23 19:8 26:2,5 28:11 31:18 31:18,24 33:19 36:8 36:8 37:10 37:13,24,25 38:14 40:20 41:16 42:7 42:12 43:5 43:9 44:7 45:3 47:16 55:24 56:8
doubled 31:23
downhill 34:19
drains 34:16 35:22
drywall 30:18 40:6,22 41:9
drywaller 27:10
drywalling 28:22 30:2 32:22,24 33:16
duly 58:9

E

e 2:1 3:1,1
ear 22:13
earlier 14:4 42:24,25 55:5
early 13:23 16:23,24 23:6 27:1 48:20
easier 48:23
easily 41:17
easy 17:8 50:9
ed 1:9 4:5,13
edmonds 7:7 10:3,6,16 12:22,23 13:9 15:13 19:14 23:15 23:16,18
education 12:17,21 13:15 21:18 28:4
efforts 21:22
eight 40:15 45:13,21 47:10 51:9
eightinch 49:4
either 15:14 17:10 35:19 35:19 38:19
elective 14:16
element 48:3
email 57:21
employer 7:3
employers 53:9,13
employments 54:14
encounter 25:4
ended 29:12 29:22
ends 32:25 46:1
enforce 26:3
engineer 25:13
entail 25:5
entire 19:22
erosion 11:16
error 19:12 19:16
es 58:8
escaping 45:12
essentially 11:19 18:7 21:1,16,16 37:2 47:1 51:7
estimate 5:8 34:5 38:13
estimating 9:19 11:8,9 11:14 14:22 24:10
et 1:6 14:22 19:2 22:12
event 58:17
everybody 48:7
everythings 36:2
evolution 9:1
evolved 30:19 30:22
exact 42:23 44:7
exactly 36:25
examination 1:8 2:3 4:9
example 18:12 39:13 43:6
excavating 12:6
exception 17:10
excess 41:21
excuse 29:11
exercise 32:15
exhaustive 9:19
exhibit 2:11 2:14 40:4 40:10 41:10 57:6,16
exhibits 2:10
existed 18:2 49:10
existing 38:20
expand 11:21
experience 19:17 42:16 45:9 54:3
experienced 54:13
experiences 48:6 53:24 54:5,8
expert 7:5,8 7:10,11,17 7:23 8:1,4 8:18 9:10 9:15,23 39:17 41:4 41:12,19 42:4 43:4 43:13,18
expertise 54:25
explain 23:22
exposed 19:21 55:8,13
extent 12:16
exterior 12:8 30:21

F

faculty 10:8 11:1
fair 5:24,25

9:9 22:25
fairly 29:18
fall 11:7 56:5
familiar 18:22 19:1 19:3 20:3,4 35:2,6 36:13,13,18 36:21 37:1 50:16
familiarity 18:1
family 51:2
far 6:19 7:8 9:11 16:4 26:8 33:13 34:21 38:21 51:18 53:11
father 27:14
federal 21:17
feel 17:9 40:5
feet 18:13 45:17 46:4
fellow 39:22
field 39:17
figure 37:16
filled 14:16
finally 48:16
finance 24:11
financial 58:17
find 29:10 45:3,8 49:25
finished 27:25 28:9
finishes 12:9 12:9
fire 17:14 22:12
first 16:21 19:3 27:24 40:13 41:3 41:8 44:4,9
fittings 37:4 39:11 46:12
five 13:11,17 23:5 28:12 28:14 41:18
fixture 47:16
flowing 35:25
flows 34:19
follow 19:9
follows 4:7
foot 39:14
footing 35:22
force 39:20
foregoing 58:12
forensics 25:13
form 44:16
formal 12:3 12:17 14:12 26:24
formed 30:9 44:19 56:20
former 53:8
formulate 52:3
formulates 22:20
formulating 22:6 52:7 53:2
forward 28:19
foundations 12:5 33:9
four 28:12,14 42:21 43:2 45:10,20 49:2,3 51:9
fourinch 47:8
free 9:5
frequently 17:21 22:15 27:21 35:23
friend 30:8 31:24 39:24
front 20:14 57:8
frown 51:25
full 4:11 8:24 58:12
fulltime 31:5
further 56:8 57:17

G

gained 18:1
27:13
general 13:15 24:25
generally 25:22 42:12
getting 14:13 15:3 39:16
gianaris 3:5
give 5:7 34:4 38:5,13 39:12 42:23 55:6,11,19
given 5:5,8 33:4 42:18 58:7,14
gives 9:5 25:13
giving 43:23
go 6:11 9:3 12:8 24:5 26:1,2 45:5 52:16
goes 12:5 23:24
going 5:23 6:12 10:18 11:6,7 16:18 17:25 22:2 32:13 33:3 36:2 57:11
gomez 3:13 57:14,19
good 23:1 30:8 31:24
google 49:24
gosh 8:1 45:12
gotten 20:22
government 21:17,18
governments 21:17
grade 36:1
graduate 24:1 24:1
graduated 13:6
grant 17:17
granted 17:10
grew 30:24
ground 22:13 36:14
grown 29:8
guards 52:17
guess 7:5 9:3 14:11 18:23 19:16 27:14 30:20 34:22 36:20 38:15 39:17 45:9 54:9 57:20
guessing 41:16
guidance 18:19
gutters 34:16
guy 44:25

H

hand 58:19
handle 25:4
handling 24:22
hands 32:18
handson 32:10 32:14,20 33:15,17
happening 33:2
happy 57:14
hard 48:19
havent 24:16 41:25 55:11 56:2
hazardous 24:25
head 7:6 9:2 9:5 10:13 24:12
hear 17:15
hearing 5:15
hearings 22:16
held 42:8
hes 31:23,23 44:24 46:20 48:21 50:24 52:20
high 12:18 28:5 56:3
highly 27:10
48:17
hip 42:7
hire 25:21
hired 35:19 54:17,18
history 49:15 49:25 50:1 50:12 52:6
hit 16:15 56:3
hold 9:14,23
holding 51:17
home 4:23 5:2 21:2,12 23:21,23 27:8 30:24
hoping 48:8,9
hour 43:21
hours 6:20
hundred 43:19 43:20
husband 1:3
hygienist 55:15

I

id 8:19 10:10 27:9 29:8 30:3 32:17 33:7,11 38:15 39:23 39:24 40:15 41:16 48:16 51:8 56:9 56:24
ideas 30:9,11 30:15 31:3 31:7,10,15 32:3 33:14 34:6 37:9 37:23 38:2 38:8,11 54:9
identifica... 2:10
il 3:8
ill 4:18 5:16 5:19 10:22 39:12 57:14
illinois 5:1
im 4:16 5:22

5:23 6:12 6:25 7:4,5 9:7 10:18 11:6 15:24 17:25 20:16 21:15 23:9 23:10 25:20 25:20 26:17 28:18 34:2 35:6,18 36:13,13 37:1,16 40:21,22 41:5 43:8 45:14 50:16 55:10 56:10 57:10
imagine 11:1 17:25 31:2 51:11
implication 45:1
inaccurate 48:15
inch 39:13
inches 46:3,3
include 11:25 54:8
included 9:17 15:11,25
includes 7:9 12:1
income 31:23
inconsistent 45:9 50:22
incorporated 30:12
incorporating 50:9
incorrect 47:6
increase 47:14,17,18
increased 9:10 47:9,9
indicative 45:4
industrial 55:15
industry 19:19 20:8 20:20,25 21:5,11,21 22:5,7,22 23:13 24:15 26:9,10,20
information 6:13 46:15
inspected 48:3
inspection 12:23 14:8 14:18,20,24 15:4 19:1 47:22 48:8 48:10,13 49:5 51:13 51:23
inspector 19:6 47:23 47:24 48:2 48:8,9 51:10,11,16 51:25
inspectors 19:7
installation 15:21 35:5 36:6,18,22 51:24
installations 38:21,21
installed 35:3 36:14 37:7,12,17 37:18 38:12 46:20 48:2
installing 15:5,16 35:9 38:4 39:2 55:1
instance 52:22
instruction 27:13
integrated 15:7
intend 55:22 56:1
intended 8:2
intent 17:20 40:7
interacting 19:7
interaction 36:10 38:24
interactions 40:3
interest 58:17
interested 13:13
interests 22:24 26:14
interior 12:9
international 19:25
internet 49:16,23 50:11
interpreta... 17:22
introduce 49:22
invoice 4:19
involve 15:15
involved 7:19 10:16 14:1 14:13,19 15:4 18:17 20:19 21:12 23:7 26:19 26:21 28:22 30:16 31:14 32:4,10 34:7 35:8 36:5,6 37:8 37:8 38:3 38:11,16 41:8 42:19 43:6 52:19 53:12
involvement 21:20,22 26:7 34:5 36:10,15 38:17 40:13
involves 27:21 35:12
involving 40:21 42:25
isnt 31:10
issue 17:23 25:8 48:1
issues 8:14 9:24 22:3 22:10 39:10 48:5 49:5
itd 34:22 50:25
items 33:10
ive 5:13,18 6:10 7:24 7:25 9:4,25 10:7 11:12 11:15 16:12 19:20 20:22 24:17 33:18 34:2,20 35:18,18,19 35:23 36:4 36:23,23 37:1,12,14 37:15 54:16 54:17,18,19 54:19 56:6

J

jackofallt... 44:25
jm 3:12 43:7 43:12 44:18 44:20 45:13
job 8:2,2 17:19,23 22:9 27:24 30:21 31:5 33:1,3 35:11,13 38:6,19 48:4,6,11 54:21,23
jobs 29:2,3 29:23,25 34:3,11,12 35:14,15 38:3 45:13 45:15 53:12 54:15
joint 40:21 40:22
jumped 45:10
junior 28:5
juries 40:5
jurisdiction 18:16 20:5 33:23 51:1 52:16
jurisdictions 18:7,8,10 20:3 22:14 33:20 51:6

K

kastner 3:14 39:23 40:1 41:9 43:4,5 43:11 44:12 53:3
keep 22:23 42:10
ken 28:2,7,10 29:5,16 30:1 54:8
kept 31:6
keyed 48:7
kind 8:23 9:1 9:6 12:3 13:1 14:3 16:1,7,15 17:8 18:15 18:20 21:18 22:17 24:17 25:9 27:8 29:3 30:15 34:20 35:25 37:4 38:8 38:24 39:1 39:11 40:19 44:25,25 46:12 48:21 50:15 54:22
kinds 8:25 14:19 15:25 22:4 23:19 25:23
king 1:1 16:9 17:1 18:2,6 18:12,22 20:2 21:9 23:4 24:4
kitchens 30:20
kitsap 24:5
kiwala 2:4

3:4 4:10 56:8,13,24 57:7,10,17 57:20
know 4:18 5:15,17 6:2 8:8,12 12:25 13:16 14:4 15:9 17:10,24 18:6,13,16 19:11 20:2 20:13 21:16 21:24,25 22:3,13 23:10 26:2 26:4 27:21 29:3 31:18 33:9,19 34:2,16 35:13 38:18 38:22 39:12 40:1,20 41:6 43:2 46:3 48:12 48:23 49:6 51:23 52:13 53:11 57:12

L

l 3:13
labor 35:23 35:24
laid 37:2,3
land 31:1
landed 29:11
language 17:22,23
largely 7:16 8:13,13 38:17
late 31:20 42:24 44:6 44:6,6
lately 24:17
law 42:15
laws 22:17
lawsuits 7:10
layout 52:17 52:18
learned 27:5 27:6
learning 19:7 19:12,23
leaving 29:18
left 29:5,16
legislature 22:1
lengths 39:11 46:17 52:18
licensed 25:15,21 33:21
life 7:24 19:22 48:1
lighter 48:23
liked 33:10 52:11,12,15
line 16:14 35:9 36:16 36:17 38:20 51:12,12
lines 15:6 30:1 34:21 38:23
list 9:19
lists 50:2,10
literal 17:22
litigation 7:12,14,16 7:18 41:4 41:12,20,23
little 6:11 20:24 29:13
llc 3:6
load 10:18 11:7
lobbying 21:1 21:17,22
local 21:6,17 26:11
locally 24:4
location 25:14
locations 24:6
long 7:22 10:6 28:9 31:3 46:3 52:14
longer 16:11 23:9 32:10
look 52:16,16
looking 6:18 38:23
lost 41:5
lot 5:13 9:25 15:9 16:16 16:17 23:10 34:10,20 35:15 36:3 36:4,4 38:23 54:17 54:19
love 32:15
ls 46:11
lynnwood 7:7

M

m 1:12 4:2 57:23
main 33:4 47:10,14,19 49:4 51:10
making 26:14 36:2
man 31:23
management 7:6 10:17 11:2,15 12:22 24:10
managerial 25:8
manlowe 39:22
manufactured 47:2,3
manufacturer 46:2,18
manufacturing 3:12
mark 57:11,15
marked 2:14
marshal 17:14
marshals 22:12
master 17:1 21:8,13 23:4,7,13 24:15 26:6 39:21
masters 12:20 13:7 27:25 28:4,10,16
material 25:14 39:8 49:22 50:10
materials 7:20 9:18 11:8,14,20 11:25 14:1 14:22 24:23 24:25 25:4 25:11,16,24 50:5 52:7 52:10 56:25 57:1,3
math 46:7
matter 58:16
maximum 45:21
mba 24:20
mean 11:6 15:24 38:10
means 9:18
mechanical 17:13
meetings 21:23 22:11 22:12
member 16:22 21:8,10 23:9
mention 20:17
mentioned 14:7 23:2 51:22
mesothelioma 55:20
met 39:22
methods 9:18 11:8,14,21 11:25 14:1 14:22 15:5 15:16 16:5 22:7 26:8 36:22 39:2 51:24 55:1
michael 30:14 31:13
milestones 49:15,24 50:3,11 52:6
mine 30:8
minimum 45:20
misremembe... 46:9,21
mistake 47:20
mistaken 48:24
mix 49:22
model 18:8,15 18:23 20:4 51:3,4
modeled 30:18
money 22:2 29:20
month 10:12 44:8
mountains 18:14
moved 31:16

N

n 2:1 3:1
nahb 23:25
name 4:11 6:12 30:6 30:14 45:12
named 39:22
national 21:2 21:3,11 23:21,22,23 51:3
nature 33:16 35:9
nearly 50:7
necessarily 9:22
need 6:1 25:21 26:2 33:6
needed 40:9
never 18:14 36:20 53:11
new 19:19 28:3,24 29:10 30:24 35:11 38:21 38:21 54:9
noll 1:2,2 35:9 44:23 52:13 53:15 53:20 55:7
nolls 6:8 34:24 44:17

44:20 45:8 49:8 50:14 50:22 52:5 53:8,12,24 54:3 55:12 55:19
normally 33:23 34:14
northwest 19:24
notebook 6:12 6:14,23
notes 6:14,18 56:17,21
notice 6:6,6 6:21 57:2
number 4:19 16:25 24:3 24:18 28:8 34:6,7 38:10 42:7 42:8 48:9

O

oaths 58:5
observation 47:6,21
observations 38:7 55:3
observed 29:2 37:14 54:16
observing 52:23
obviously 4:24 41:6 46:4
occasion 18:22 33:18
occasionally 47:23
occasions 34:7 35:7
occur 40:14
occurred 37:19
occurring 58:14
occurs 54:20
odds 32:25
offer 8:12 27:23 46:13 46:15 56:1
office 4:21 4:23,25 5:2 6:5 22:1 27:1
official 17:9 17:14,20
officially 9:7
officials 22:11
oh 5:10 8:1 18:25 26:23 31:18 39:3 40:24
okay 4:14,17 4:24 5:5,7 5:12,21 6:1 6:2,4,9,14 6:18,21 7:2 7:8,22 8:9 8:15,20 9:9 9:14 10:2,6 10:15,20 11:5,20 12:14 13:2 13:8,19,25 14:3,7,11 14:19 15:2 15:13,20 16:13,20 17:25 18:5 18:21 19:3 20:6,11,15 21:20 22:19 23:2 24:21 25:25 26:12 27:12,17,24 28:9 29:5 31:10,13,17 32:9,20 33:13 34:4 34:21 35:2 35:7 36:12 37:6 39:5 40:18,25 41:6,14,18 41:22 42:10 43:22 44:9 44:14,19,22 45:7 49:8 50:17 51:18 52:5 53:1 53:19,23 54:12,25 56:4,7,17 56:23 57:17
old 5:12 19:23
older 16:11
once 6:13 47:24 48:14 50:7 57:3
ones 24:12
online 11:11
ooo 4:3
open 48:5,6
opened 29:13
opinion 8:12 44:17,19,22 48:16 52:3 52:7 53:24 54:2 55:6 55:12,19 56:20
opinions 53:2 55:25 56:5
opportunity 30:23 41:25
opposed 12:25 41:24
oral 1:8
orchard 45:14
order 12:10
organization 21:1,6
organizations 21:7 26:13
original 49:17
osha 24:19
outreach 21:18
outside 7:11 7:18 54:13
owned 26:16 34:1
owner 8:8,11 13:13 25:17 25:18,19 33:23,24

P

p 3:1,1
page 2:3,10
pain 42:17
painful 42:16
paint 27:19 30:21
painter 26:23 27:10
painting 27:2 27:5,6,9,21 28:2,22,24 28:25 29:19 29:20 30:2 30:17 32:11 32:21,23 33:15 37:24
paper 13:1 29:19
paralegal 44:13
part 7:9 8:23 10:8,9 11:1 14:15,21,23 17:8,19 18:11,18 25:1,2,3 37:9 38:3 39:7,12 47:6,21
participated 37:15
particular 46:18
partner 30:13
partnership 30:9
party 58:16
passes 48:9 48:10
penalties 26:1
people 8:12 17:8,13 23:10 26:14 48:25 54:18 56:22
percent 41:21
percentage 41:19,22
period 49:11
permit 25:23
person 22:9 22:10,16 23:24 25:22 45:4
personally 35:8 54:13
pertain 42:19
pertained 14:4
pertaining 15:5,16
pertinent 9:22
phases 32:12
phone 4:18,24 4:25 5:14
pickup 32:25
piece 12:25
pipe 15:17,22 16:1,6,7 33:17 34:9 34:9,11,12 35:3,22,25 36:4,7,9,10 36:10,13,19 36:24,24 37:2,4,7,11 37:14 38:4 38:12,16,16 38:18,18 39:2,13 42:20 43:1 43:7 44:18 44:20 45:13 45:18,23,24 45:25 46:1 46:19,23,24 46:25 47:2 47:9,12,15 47:15 48:18 48:19,20,25 49:15,18,25 50:1,6,12 52:6 55:1,2 55:9,13
pipes 34:19 37:3 46:16 51:15,17
place 12:4

29:11,24 58:8,14
plaintiff 3:3 42:1
plaintiffs 1:4 41:24 57:2
plan 10:12,15 11:11
plans 19:9,10
please 4:11 5:15,17
plumbing 17:13 47:12 50:13,21,25
point 6:2,20 8:19 15:8 30:10,23 32:9 39:24 39:25 40:3 40:20 42:1 50:6,17,20 51:18,19 52:21
points 56:3
politics 20:22
port 45:14
portion 37:14
position 9:5 10:13 16:12 22:3
possible 32:14
possibly 40:23
practices 55:1
prebeveled 47:3
predates 23:18
preference 32:13
prepare 25:13
present 3:20 53:13,15
presentation 17:12
presume 5:23
pretty 12:12
19:22 28:3 30:3 31:2,2 40:22
prevention 11:13
previously 11:12 20:7
principally 27:11
printed 56:14
prior 18:21 27:3 30:21 50:7
pro 5:12
probably 5:10 9:16 13:11 29:3 37:22 38:14 39:9 51:25
problem 33:8
procedures 19:2
proceeded 40:12
proceeding 4:20
proceedings 58:6,10,14
process 47:22 48:13 51:13
produced 57:2 57:4
produces 50:8
productive 33:6
program 11:13
project 11:15 24:10 35:8 38:3,11,16
projects 27:7 31:1 34:1,6 36:5 37:8 37:10,20 52:23
proper 39:2
properties 16:2
proposed 22:17
provide 7:12
psychology 12:20 13:3
public 51:1,2 51:5,20
publication 49:18
published 49:19,20
pursuant 58:4
put 10:21 29:19 33:1 46:8 48:25
puts 28:18
pvc 36:11 37:3 48:19 49:6,14,15 49:18,25 50:1,12 52:6

Q

qualified 39:5
quality 11:18
quarter 39:13
question 5:16 5:16,19,22 5:24 8:15 26:6 36:21 56:11
questions 56:9 57:18 57:18,19
quickly 25:10

R

r 1:24 3:1 58:3,24
rain 34:15,15
rarely 42:13
rate 43:17,22 43:25 44:1
rcw 58:4
read 34:24 44:16 45:3 56:20
reading 42:15
ready 6:10 48:3
real 25:10
really 21:16 41:16 42:7
reason 47:14
rebuilding 27:22
recall 15:18 15:24 16:23 28:11 36:8 37:10 41:15 43:5 52:21 52:22
recalls 45:15 45:17 47:7
recession 16:15
recollection 13:24 38:5 44:11 49:17 54:4
record 4:12 6:16 56:10 58:13
recorded 58:11
reduce 47:18 51:9
reduced 10:18 11:7 47:10
reducing 49:4
regard 55:25
regarding 6:15 44:9
registered 33:21
regular 48:12
regularly 23:11 45:2 45:5 46:15
regulated 34:10
regulation 34:13
related 39:9 58:16
relation 46:22
relative 8:13 9:24 17:7 17:11,20 18:19 22:14 29:1 50:15 56:21
rely 49:21
relying 6:25
remember 15:19 20:14 31:18 37:13 37:18,19,24 37:25 40:20 42:14,22 43:9 44:7 46:17 52:14
remodel 35:12
remodeler 24:2
remodeling 30:18
remote 57:12
remove 25:16 25:18
repairing 36:17 38:18 38:20,23
repairs 27:21 30:21 38:22 55:4
repeat 5:16
rephrase 5:20 55:10
replacing 36:11
report 25:13 40:25 56:19
reported 1:24
reporter 4:6 57:12,15 58:4,24
reporters 58:1
represent 22:23 26:13 40:2
representa... 17:2 39:21
representa... 22:23 26:13
represented 43:12
request 56:9 56:25
required 14:17 23:25 24:3 25:12 25:15 46:12

requirement 39:14
requirements 25:9
reserve 57:2
residential 12:12
respect 26:6 33:2
responsive 56:25 57:1
restricted 33:15
retained 40:1 41:4,12 43:3,7 44:4
retire 31:17
retired 31:16 31:22
retirement 8:3
review 42:12 43:23 49:8 50:14 52:7 56:18 58:15
reviewed 52:11
revised 17:17
rider 57:1
right 5:14 6:5 10:4,25 14:15 16:10 18:3,4 28:18,20 31:21 32:1 32:7 34:25 44:4 45:12 46:6 49:13 52:20,25 53:14 56:9 57:2
rigorous 12:24
rkiwala 3:10
road 29:21
role 18:11
roofs 18:20
room 5:3 46:8
rules 26:4
run 45:19,19 47:17
running 21:25
runs 39:11 45:16
ryan 3:4 57:22

S

s 2:3 3:1
safety 9:25 10:1 11:12 11:13 24:16 24:18,21 25:6 39:20 48:1
sanitation 48:1
saw 54:22
saying 35:16 35:18
says 46:16,22 46:23 53:20
schedule 33:5 33:11
scheduling 24:11
school 12:18 28:4,5
scope 11:18 11:19
screen 56:16
sea 1:4
seattle 1:15 3:16 4:1 20:2 29:11 29:18,24 30:5
secondly 48:10
section 51:19
sections 47:5 49:10 50:13 50:18,20
see 10:21,23 11:6 13:2 37:7 42:13 50:8 51:16 52:17
seeing 36:14
seen 36:23 37:1,6,11 37:17,18 54:18,19
selfemployed 7:4,23,25
selfemploy... 7:13,18,21 8:18 43:13
seminar 11:9 11:9,17
sense 47:19 49:6
separate 15:18,21 23:15,17
september 1:13 4:1 9:8 58:20
sequencing 9:18
sequentially 12:10
serve 20:11
served 23:5
service 35:13
services 7:11 7:11,17 27:23 43:18
serving 7:10 18:21 39:19
setting 22:6 26:8
seven 6:20
severe 28:3
sewer 15:5,9 16:1 33:4 33:17,18,21 33:22,25 34:2,6,9,11 34:14,17,17 34:21 35:3 35:9,13 36:7 37:3 37:24 39:2 39:13 45:2 46:22 47:25 48:2,13 52:17 55:1 55:2
sewers 48:22
share 9:11
shed 29:8
shell 12:8
shooting 36:1
shoreline 4:16,22 5:2
shortly 30:8
shot 42:7
shows 48:9
side 15:9 33:18,21,22 33:25 34:2 34:6,9,11 34:14,21 37:24 45:2 46:22 47:25 48:1,13,22
sign 42:12
signature 57:24 58:19
significant 33:10
similar 14:6 26:10 36:25 44:25
simmons 3:5
simmonsfirm 3:10
simply 48:24
single 47:17 48:22
sir 4:11
site 33:10 48:4 49:14 49:23 50:11 53:13
sites 29:2 33:1 38:6 48:6 50:2 54:22,23
sitting 33:11
situation 5:18 57:11
six 13:11 46:3 47:9 49:4 51:9
sixplex 47:7
size 47:12,14 47:17,18
sized 47:15
skilled 27:10
skills 27:12
skipping 12:15
slide 47:4
slope 39:13
slopes 39:11
small 24:24 25:1,3 37:14
smart 19:9
snohomish 17:1 21:9 23:4
snow 18:13,14
society 50:5
soils 12:5,6
somebody 46:14 48:12
somewhat 12:7 51:5
soon 29:18
sorry 5:22 20:16 21:15 26:17 41:5 49:23 55:10 56:10
sort 12:14 13:12 15:7 17:11 26:2 27:20,22 37:5 38:8 39:23 55:4 56:22
sounded 13:20
sounds 22:19 32:1,3 33:14 39:5 41:7
speak 53:1,5 53:8
specific 14:23 16:7 37:10 38:6 50:17 51:19
specifically 16:5 34:8 45:7,15
specifics 45:6
spencer 44:11
spend 6:16 12:2
spent 6:19 13:11 29:15

41:20 56:21
split 8:16,20
spokane 24:6
spring 11:15
spurred 39:18
standard 14:21 18:9 22:24 48:21 49:18,19 50:4,8
standards 11:18 22:7 22:21 26:8 51:6 54:1
start 13:2,4 19:7
started 8:21 8:22,23 10:8 13:6 19:14,19 26:23 27:1 28:4 30:5,7 30:17,20,22 32:1,2,4 42:14 47:8
starting 19:22
state 4:11 19:20 20:7 21:3,6,17 22:19,20,24 24:5 25:17 26:3 39:20 58:5,24
stated 17:11 58:8,14
states 21:4 24:8
stenograph... 58:10
step 10:12 16:13,19
stepped 9:4,7 16:12,20 24:17
stepping 9:7
stop 47:25
stopping 47:23 48:14
storm 34:17 34:17 35:21
street 1:14 3:7,15 45:16
strike 34:22 50:19 54:1
structural 15:1
structure 45:16 47:13
structured 11:23
structures 18:19 48:22
students 11:11
stuff 4:19 6:13 7:15 12:7 13:15 21:19 32:24
subcontrac... 32:24
subcontractor 35:20
suffice 36:25
suite 1:14 3:15
sum 49:2
summary 12:13
summer 11:17 11:17 28:6 28:7 29:3
summers 27:19 28:2
superior 1:1
supervision 58:11
suppose 41:2
sure 4:13 9:24 11:23 15:24 17:7 18:25 22:8 27:5 36:2 38:10 39:1 40:21,22 49:13 52:12 57:9,10
suspect 25:11
switching 39:15
sworn 4:6 58:6,9,9,13
syracuse 12:19 13:5 13:15 26:22 27:4,9,18 27:25 28:5 29:8 30:8

T

take 6:1 7:9 10:9 12:4 13:25 22:3 24:2 25:8 44:24
taken 16:4 39:1,7
takes 9:12 23:24
talk 12:7 21:24 25:9 34:9 46:11
talked 15:8 41:6
talking 29:1 33:2 45:15 56:22
talks 46:10 47:22
tami 3:13
task 18:17 39:20
tasks 18:17
taught 11:12 11:15,20 12:10,10 24:7,14,18 24:22
tbeckergomez 3:18
teach 11:2,5 11:10 14:5 20:21 23:9 23:12,19 24:3,4,4,5 24:6,10,14 28:6
teacher 19:5 19:6 39:16
teaching 10:15,18 11:15 25:20 25:21 28:4
tearing 25:23 36:11
technology 34:18
telephonic 1:8
telephonic... 3:2,11
tell 31:22,24 37:11 39:15
telling 37:17
temporary 31:5
ten 18:13 35:14,14,17
tend 51:5
tenhour 24:19
tenure 9:2
terms 19:23 33:15 34:4 36:11 37:10 38:22 48:24
test 51:15
testified 4:7
testify 22:16 58:9
testimony 34:24 35:2 43:23 45:1 45:8 49:8 50:14 52:5 53:23 54:2 58:6,10,13
testing 50:5
textbook 15:25
thats 5:25 9:20 10:5 10:14 11:7 11:9 12:7 12:12,12 13:24 14:15 18:4,11 19:13 20:10 20:16 23:1 23:17 25:22 27:16 32:7 34:10 37:12 46:14 47:3 47:5,6 48:4 48:12 49:2 52:25 53:14 53:18,22 54:7 55:21
theres 6:25 10:24 18:13 18:14 24:24 25:1,11 34:10 45:10 46:8 47:14 48:4,5 49:2 49:3,3,5,5 51:14
theyre 19:25 21:15,15,16 38:6 56:16
thing 11:10 13:1 15:7 16:1 18:20 22:18 26:2 27:20,22 29:4 35:25 37:5 39:11 46:10 51:8 55:4 56:22
things 7:15 15:9 20:23 22:4 27:8 27:22 28:25 33:6,16 40:12 45:10 51:8,22
think 9:16 10:10 13:17 13:19,24 23:2 24:12 26:5 28:12 29:12 42:2 42:24 43:8 43:8,10,11 46:13,14 47:20,24 48:24 49:25 50:1 51:10 56:3
thirtyfive 43:19,20
thought 13:14
three 42:21 43:2 45:10
threequarters 14:25,25

throw 22:2
ticket 33:10
time 6:16,19 8:16,23,24 8:25 9:5,11 10:8,9,24 16:18 18:3 27:9,13 28:14,21 31:14 37:25 50:4,9 52:14 55:23 56:21 58:8 58:14
times 5:6,8 5:11 21:23 32:16 35:15 38:11 41:13 41:14 42:3 42:4 47:23
today 4:16,25 5:14 7:1 12:8 33:3 46:24 50:18 51:21 56:2 57:11
tools 32:8
top 22:9 24:11 36:1
topical 13:12
topics 12:15 39:15
total 8:16 34:6 38:10
totally 48:15
touch 23:11
trade 21:3 26:21 27:18
trades 27:7 27:11
training 14:12 15:2 15:15 16:4 21:18 26:23 26:24
transcribed 58:11
transcript 57:16 58:7 58:12,15
transcripts 6:7,8,22 42:10,13 56:14,15,18
transfer 13:14
transition 39:16
travel 29:10
traveled 29:21
traveling 29:15
trench 48:4,5
trenches 49:1
trenching 12:6
trial 19:12 19:16 43:24 56:1
trouble 5:15
true 58:13
truth 58:9
try 29:11 42:16
trying 31:8 37:16 43:8
ts 46:11
turn 8:3
twisted 40:10
two 16:14,20 23:20 41:11 43:19,20 45:25 51:8 54:14
type 15:17 25:14 27:3 39:8 47:2 52:23
types 39:10 54:14
typically 9:16 24:13 36:16 47:16 50:25 51:14

U

unable 37:19
underlying 18:9
undersigned 58:3
understand 5:17 16:8 20:6 36:19 40:5
understand... 52:14,20
understanding 44:14
understood 5:24
undoubtedly 54:22
unfortunately 19:5
uniform 19:24 20:1
union 1:14 3:15 43:8,9
unique 20:5 51:6
united 24:8
university 12:20
unusual 46:14
upgrading 35:12 38:20
upstate 28:3
use 40:4,8,10 48:23
usual 43:17
usually 25:20

V

van 1:9 4:5 4:13,14 7:2 30:7 32:2 37:16,20,22 37:23 56:11
various 15:25 20:1,2 24:9
verify 52:18
version 17:18
virtually 18:7
vitae 2:11
vs 1:5

W

wa 3:16
waived 57:24 58:15
waiver 17:11
wallat 1:24 58:3,24
want 10:2 19:8,8 33:4 33:7 38:2,9 38:14 42:8 54:16
wanted 49:13 54:20 57:6
washington 1:1,15 4:1 4:16 7:7 20:8 21:4,5 22:10,20 24:7 25:17 39:20 58:5 58:24
wasnt 8:22 16:17,17 52:13 56:19
watch 33:7
watching 48:25
water 34:18 35:21 36:3 37:4 49:15 49:25 50:1 50:12 51:16 51:17 52:6
way 8:3 11:23 12:3 14:13 19:18 22:6 22:25 23:1 26:8 30:23 37:3 38:9 38:17,20 42:6 45:21 58:16
website 52:6
wed 29:7,10
week 32:19
weeks 12:2
went 13:22 29:21 49:14 49:15
weve 16:3 41:6 56:3
whats 21:24 21:25 43:17 43:17
whiting 28:2 28:7,10 29:5,16,18 30:1 54:9
whos 21:25 46:14
wife 1:3 29:7
williams 3:14 39:23 40:1 41:9 43:4,5 43:11 44:12 53:3
williamska... 3:18
winter 28:6
winters 28:3
witness 4:6 7:10 57:5,9 57:21 58:8 58:19
witnesses 53:5
wonderful 31:23
wood 12:5
work 7:8,9,23 8:1,4,17,17 8:23 9:1,6 9:9 10:1,3 11:11,19 14:12 15:10 15:11 16:16 18:1 23:14 23:15,18 27:3,17,20 27:21 28:21 29:2,6,19 29:20 30:1 32:5,10,13 32:14,20 33:1,13,15 33:19,22,23 34:6,9,9,9 34:11,12,20 34:22 35:21 35:22 36:4 37:1,6,9,24 40:6,22 41:3,19,22 41:23,25 43:1,23

44:17,18,20
45:2,3,4
46:13,15,23
47:11,25
48:3,7,13
48:17 50:15
50:22,24
52:2,23
53:16,20,24
53:24 54:3
54:5,6,8,9
54:12,17,22
55:3,8,12
55:22
worked 10:6
26:25,25
27:14 28:7
28:11 29:23
32:7,18
35:23 36:9
36:23 40:6
worker 44:24
working 10:7
16:5 27:7
28:1 33:17
39:16 41:20
45:11 54:18
54:21
works 39:23
43:14 51:1
51:2,5,20
wouldnt 32:17
34:13 39:3
39:3 47:18
write 6:12
writers 49:21
50:9
writing 11:19
18:18
written 50:5
wrong 35:25
37:25

X

x 2:1

Y

yeah 5:6
10:18 21:23
23:5 24:24
25:6 28:15
30:3 32:12
33:18 36:4
40:17,24
44:6 49:24
50:24
year 9:3,3
10:19 21:23
32:12 35:14
35:14,17
40:7 42:24
42:25,25
years 8:1,5
8:23,24
9:11 10:8,9
10:11 11:16
13:11,17
16:14,20,25
18:25 19:22
20:18 23:6
24:18 27:15
28:8,11,12
28:13,14
29:9,15,17
30:19 31:7
35:15 40:15
41:18 46:25
york 19:19
28:3 54:9
youd 45:6
46:5 49:25
young 19:6
26:20
youre 5:12
16:8 23:3
25:15,17,17
25:23 33:24
35:2 37:17
43:22 44:1
46:12 52:22
54:12 55:15
55:18 57:12
youve 5:8
24:21 26:19
34:7 35:16
36:1 37:6
37:17,18
39:7 42:3
42:18 44:15
53:11 55:6
ys 46:11

Z

0

010 58:4
05 1:12 4:2

1

1 2:11 48:9
10 1:12 4:2
100 41:17
45:18,21
49:3
11 20:18
57:23
12 19:22
35:14,14,17
46:3
13 26:24
132067811 1:4
13foot 46:16
16 8:24 10:11
11:16
16th 58:19
17 10:11
18 8:23 10:8
1960 49:19
50:4
1973 28:19
1976 29:12
30:6
1979 48:17
49:7,11
1989 13:23
1994 13:20
14:9

2

20 8:1,5
35:15
200 41:17
2000s 16:24
23:6
2005 40:16
41:3,9
2008 20:17
2013 1:13 4:1
58:20
206 3:17
23rd 9:8
25 18:25
2578 1:24
58:24
28 58:4

3

30 9:3
36 57:23

4

4 2:4
4100 1:14
3:15

5

5 58:4
50 5:10 8:19
8:19,20,20
42:3,7
45:16,18,18
45:21 46:4
46:7 49:3
51:12,12
50foot 45:19

6

6 1:13 4:1
60 5:10 42:3
42:7 45:17
46:4
601 1:14 3:15
60foot 45:19
51:12
60s 48:20
54:24
62002 3:8
628 3:17
64 13:6
6600 3:17
67 10:22
68 13:7
69 13:7

7

70 9:3
74 28:19

8

8004799533
3:9
80s 31:20
86 49:11

9

90 41:21
94 13:10,13
13:21
97 20:17 31:6
98 31:6
98101 3:16
99 31:9