

1 IN THE COMMONWEALTH COURT OF PENNSYLVANIA
 PENNSYLVANIA DEPARTMENT OF : NO. 284
 2 GENERAL SERVICES, :
 PENNSYLVANIA DEPARTMENT OF : M.D. 1990
 3 TRANSPORTATION, PENNSYLVANIA :
 PUBLIC UTILITY COMMISSION, :
 4 PENNSYLVANIA EMERGENCY :
 MANAGEMENT AGENCY, and :
 5 PENNSYLVANIA DEPARTMENT OF STATE :
 Vs. :
 6 UNITED STATES MINERAL PRODUCTS :
 COMPANY, CERTAINTIED :
 7 CORPORATION, COURTAULDS :
 AEROSPACE, INC., CHEMREX, INC. :
 8 PHILIPS ELECTRONICS NORTH :
 AMERICA CORPORATION, :
 9 ADVANCE TRANSFORMER COMPANY :
 And MONSANTO COMPANY :
 10 Defendants :
 BEFORE THE
 11 HONORABLE CHARLES P. MIRARCHI, JR.
 March 22, 2000
 12 Trial testimony in the
 13 above-captioned matter, held at the
 14 Commonwealth Court of Pennsylvania, City
 15 Hall, Courtroom 453, Philadelphia,
 16 Pennsylvania, on Wednesday,
 17 March 22, 2000, at 10:15 a.m., before
 18 John W. Begley and Teresa M. Beaver,
 19 Registered Professional Reporters -
 20 Notaries Public there being present.
 21 ESQUIRE DEPOSITION SERVICES
 22 1880 JFK BOULEVARD - 15TH FLOOR
 23 PHILADELPHIA, PENNSYLVANIA
 24 215 - 988-9191

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3 1 WHITE & WILLIAMS 2 BY: THOMAS M. GOUTMAN, ESQUIRE 3 KATHY A. O'NEILL, ESQUIRE 4 WILLIAM YOUNGBLOOD, ESQUIRE 5 One Liberty Place - 18th Floor 6 1650 Market Street 7 Philadelphia, PA 19102 8 Phone: 215 - 864-7000 9 Representing the Defendant Monsanto 10 Corporation 11 12 DANAHER, TEDFORD, LAGNESE & NEAL, PC 13 BY: KENNETH R. NEAL, ESQUIRE 14 Capitol Place 15 21 Oak Street 16 Hartford, Connecticut 06106 17 Phone: 860-247-3666 18 Representing the Defendant U.S. 19 Mineral Company 20 21 22 23 24	5 1 INDEX 2 Testimony of: John P. Woodyard PAGE 3 By Mr. Goutman 4 By Mr. McClain 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

6 1 THE COURT: Malcolm needs 2 next Thursday off, the 30th. What 3 is his last name -- 4 MS. HERSCHEL: Queen. 5 MR. EDGE: Queen. 6 THE COURT: Queen. He needs 7 the 30th off. I gather it is 8 somewhat personal and I did not 9 inquire as to the reason. And the 10 young lady that was in here -- 11 MR. EDGE: Harris, Elizabeth 12 Harris. 13 THE COURT: Harris will be 14 late tomorrow because she got a 15 new apartment and she is moving 16 into a senior citizen home at 8th 17 and Spring Garden. She's thrilled 18 with the idea, but because she's 19 moving in she can't get here 20 before 11. 21 MR. MC CLAIN: Okay. 22 THE COURT: But I wanted 23 to -- 24 MR. NEAL: There are a lot	8 1 jury in? 2 THE COURT: I'm sorry I'm 3 late. 4 MR. EDGE: In the name of 5 the Commonwealth of Pennsylvania 6 this Commonwealth Court is now 7 declared open, the Honorable 8 Charles P. Mirarchi, Jr., 9 presiding. Please be seated. 10 Good morning. 11 THE COURT: Good morning. 12 Mr. Goutman. 13 MR. GOUTMAN: Thank you, 14 Your Honor. 15 MR. EDGE: Sir, just state 16 your full name and spell your last 17 name for the record. 18 THE WITNESS: John Woodyard, 19 W O O D Y A R D. 20 - - - 21 JOHN WOODYARD, recalled. 22 - - - 23 MR. EDGE: I remind you that 24 you are still under oath.
7 1 of us, judge, by the end of this 2 case that can move into the senior 3 citizen home. 4 MR. MC CLAIN: She didn't 5 qualify before the trial started. 6 THE COURT: By the end of 7 the case we may all be living 8 there. 9 Mary tells me this is the 10 eighth day Woodyard has been here. 11 MR. MC. CLAIN: Hopefully it 12 will be the end. 13 THE COURT: But apparently 14 he has only testified four 15 previous times because we were 16 doing motions the other times. 17 MR. GOUTMAN: I will have to 18 check. 19 THE COURT: Whatever. 20 Okay. Any problems from 21 your end? 22 MR. GOUTMAN: No, Your 23 Honor. Can we just take a brief 24 comfort break before we bring the	9 1 MR. GOUTMAN: Good morning, 2 ladies and gentlemen. 3 (Jury responds good morning) 4 Good morning, Your Honor. 5 Good morning, Mr. Woodyard. 6 May I proceed, Your Honor? 7 THE COURT: You may proceed. 8 - - - 9 BY MR. GOUTMAN: 10 Q. Thank you. 11 Mr. Woodyard, where we left 12 off we were talking about these Ewing 13 experiments. Do you recall that? 14 A. Yes, sir. 15 Q. Now, have you committed to 16 memory all of Ewing's data from that 17 experiment? 18 A. No. 19 Q. Do you have a copy of 20 Ewing's report up there? 21 A. No, I don't. 22 Q. Let me hand to you actually 23 a page from my copy of his report that 24 has the date on it. Okay?

1 Now, sir, can you explain to
2 the jury what you meant when you said
3 that the results were inconsistent, and I
4 think you said defied known laws of
5 science?

6 A. Well, I think the phrase I
7 used was internally inconsistent. If you
8 raise the temperature to some level over
9 and over again with the same, basically
10 the same piece of ductboard, you would
11 expect the same thing to happened, and
12 what Mr. Ewing's results showed is that
13 the --

14 Q. What would you expect to
15 happen?

16 A. You would expect the level
17 of PCBs in the air to increase.
18 Vaporization rates increase as
19 temperature goes up.

20 Q. Is there a known
21 relationship between temperature and
22 evaporation?

23 A. Yes, for just about any
24 chemical.

1 Q. Could you draw a graph of
2 the known relationship?

3 A. In rough form, sure.

4 MR. GOUTMAN: I'm going to
5 turn over now, Your Honor, this
6 great art work that I created
7 yesterday.

8 Could the witness come down?

9 THE COURT: You may come
10 down.

11 BY MR. GOUTMAN:

12 Q. Mr. Woodyard.

13 A. This is a graph or the basis
14 of a graph. This would be, in this case,
15 PCB level -- (Indicating).

16 THE COURT: Keep your voice
17 up, please.

18 THE WITNESS: I'll tell you
19 what I will do; this is a graph
20 with the PCB level, increasing PCB
21 level going like this. Increasing
22 temperature going like this.
23 Without any real numbers on it,
24 but just in general this is what

1 the graph would look like. As I
2 said, the level of PCBs, the
3 vaporization rate of PCBs you
4 would expect to increase as the
5 temperature goes up. That's basic
6 science. That's true for any
7 chemical with any vapor pressure.
8 (Indicating)

9 BY MR. GOUTMAN:

10 Q. What was the data that was,
11 this might be somewhat complicated, but
12 maybe if you just set forth the data and
13 tell us what you mean by inconsistencies.
14 Okay? Can you do that?

15 By the way, this ductboard
16 that you tested, was it taken before or
17 after the fire?

18 A. It was collected after the
19 fire.

20 Q. And if you could, arrange it
21 by chambers. I don't know if Mr. Ewing
22 does that. I don't have a copy of his
23 report.

24 A. What I'm doing is setting up

1 a table that is kind of like Mr. Ewing's
2 table. He has got sample numbers. The
3 ones over here are from chamber two,
4 chamber three, and chamber four. That's
5 first number there and then there's test
6 numbers. He did three consecutive hours
7 in this chamber, which he raised the
8 temperature as you will see. I will
9 write down the temperature, the highest
10 temperature that he found or achieved in
11 each -- the highest temperature he
12 achieved in each of those tests, which is
13 laid out a little differently in
14 Mr. Ewing's.

15 What were the ductboard
16 concentrations?

17 Q. Here. (Indicating).

18 There's a lot of numbers.
19 Could you tell us what we are looking at,
20 please, sir?

21 A. What this represents is the
22 results of Mr. Ewing's experiments. You
23 will recall that he heated three pieces
24 of ductboard in three different chambers

1 and raised the temperature each hour to a
2 roughly different number and measured the
3 PCBs that came off in the air inside of
4 that small chamber.

5 Q. At what point is he
6 collecting air?

7 A. Throughout the course of the
8 test and running it through a collector
9 and then analyzing the collector at the
10 end of the hour, or basically --

11 THE COURT: Could you use
12 the microphone?

13 THE WITNESS: Yes, he's
14 drawing air off during the course
15 of the test at a low rate and then
16 collecting the PCBs from that air,
17 and as we discussed yesterday,
18 he's controlling the temperature
19 using the sun lamp and dialing the
20 temperature up or down as
21 appropriate.

22 BY MR. GOUTMAN:

23 Q. Now, this is chamber--

24 A. The first one is chamber

1 two, chamber three, chamber four.

2 Q. And this is after how many
3 minutes?

4 A. Well, this first test, each
5 test is an hour long.

6 Q. So this is after one hour,
7 two hour, three hours; one hour, two
8 hours, three hours; one hour, two hours
9 and three hours?

10 A. Right, and these were the
11 highest temperatures that were measured
12 in the air in each of those chambers.

13 Q. And what is the next column?

14 A. The next column shows the
15 results of testing of the air that was
16 drawn off during that hour, so in this
17 case it is 374 micrograms per cubic
18 meter. The next one is non detect. In
19 other words, there was no PCBs detected
20 in the air, and the next one was 1763
21 micrograms per cubic meter.

22 Q. Now, could you explain to
23 the jury what significant conclusions you
24 reached from this data and explain your

1 answer, please.

2 A. Well, first going back to
3 the question you asked earlier, about
4 internal inconsistencies, why this data
5 doesn't make sense, there are
6 situations -- let's take this 3-1 and 3-2
7 as examples. These are consecutive hours
8 in the same chamber. This first test
9 went up to 123 degrees. The level of
10 PCBs in the air was over 4,000 micrograms
11 per cubic meter.

12 THE COURT: Is that 4395?

13 THE WITNESS: Yes, sir. I
14 forgot the comma. It is 4,395.

15 The next hour the
16 temperature was held at a peak
17 about 121.8, which is a little
18 lower than that temperature but
19 not a lot, and the concentration
20 of PCBs is about one tenth of the
21 one preceding it, so it is almost
22 the same temperature but the
23 levels of PCBs that he was
24 measuring were dramatically

1 different, which doesn't make any
2 sense.

3 The flip side of that is
4 these two right here, 3-1 and 3-3.
5 In this case, this is the third
6 hour, this is the first hour. The
7 temperature was raised 15 degrees,
8 up to 138 degrees in the chamber.
9 The levels of PCBs are the same.
10 In other words, it doesn't follow
11 that curve I was showing you where
12 you expect --

13 BY MR. GOUTMAN:

14 Q. Are they exactly the same?

15 A. Approximately the same, but
16 for our purposes it is close enough that
17 you would expect a more significant
18 difference as a result.

19 Q. How about comparing 3-1 and
20 2-3?

21 A. 3-1 and 2-3, again, we
22 talked about 3-1. In the case of 2-3,
23 which is in the second chamber, the
24 temperature is a little bit higher, about

1 five degrees higher, but the PCBs levels
2 in the air were almost three times lower.

3 Q. Is that consistent with the
4 known laws of science?

5 A. No. Again, you would expect
6 this level to be higher than that level
7 because the temperature is higher.
8 (Indicating).

9 THE COURT: Just for the
10 sake of clarity, you have a column
11 marked temperature, T E M P.

12 THE WITNESS: Yes, sir.

13 THE COURT: You have a
14 column marked RB Air. What is RB?

15 THE WITNESS: I'm sorry,
16 this is my handwriting. This is
17 about as good as it gets. That's
18 PCBs.

19 THE COURT: That's PCBs.

20 THE WITNESS: PCBs air and
21 the column next to it is PCBs
22 duct. In each case he also had
23 analyzed a piece of the ductboard,
24 itself. In other words, sent a

1 piece of duct to the lab and had
2 them analyze it for PCBs and these
3 are the levels that he found in
4 those pieces of duct, 640 parts
5 per million on down to 180 parts
6 per million in the ductboard.

7 BY MR. GOUTMAN:

8 Q. What about 3-2 and 4-1.

9 A. 3-2 and 4-1, here we have a
10 result where the, in 4-1, the air level
11 that was drawn off of the chamber is a
12 little bit higher, maybe 14 degrees
13 higher -- excuse me. The level of PCBs
14 in the air is about 14 micrograms per
15 cubic meter higher. Roughly the same,
16 but not exactly. If you look at the
17 temperatures, however, the one with the
18 lower PCB result is almost 17 degrees, it
19 is about 17 degrees higher. In other
20 words, as I was saying before, when the
21 temperature goes up from this to this you
22 would expect this level to go up from
23 this to some much higher number, and
24 that, of course, is not what he found at

1 all, so it pretty much casts doubt on all
2 of these results because they really
3 don't make any sense from a scientific
4 point.

5 Q. With this data, if you tried
6 to plot this would you get this curve?
7 (Indicating).

8 A. Oh, no, it would be kind of
9 zig zaggy like this. Levels way above
10 and below the graph. In other words, it
11 doesn't fit this graph at all.
12 (Indicating).

13 Q. What does that tell you
14 about the validity of Mr. Ewing's test?

15 A. I wouldn't trust it. I
16 mean, I wouldn't use this result or that
17 test for anything.

18 Q. Now, going back to this,
19 what was the lowest temperature at which
20 he actually detected any PCB?

21 A. I think it was at 104.6 was
22 the lowest temperature which he actually
23 was able to measure PCB.

24 Q. Did he take measurements at

1 lower temperatures?

2 A. Yes, this one up here, 2-2,
3 and this one down here, 4-2, were both
4 around 102 or 103 degrees. Those were
5 the lowest temperatures that he tested at
6 and noted that both of those had non
7 detect results. In other words, he did
8 not find PCB in those samples at those
9 temperatures, which is at least 30
10 degrees higher than room temperature,
11 which I thought was significant.

12 Q. What does that tell you,
13 sir?

14 A. It certainly tells me that
15 you wouldn't expect to find any
16 measurable PCB in the building as a
17 result of off gassing during normal
18 operation.

19 Q. Now, this duct that he's
20 testing, it was taken when; before or
21 after the fire?

22 A. It was taken after the fire.

23 Q. And what's the significance
24 of that?

1 MR. MC. CLAIN: Your Honor,
2 this is cumulative. We have been
3 over this.

4 THE COURT: I'm sorry. I
5 didn't hear you.

6 MR. MC. CLAIN: I'm sorry,
7 Your Honor. This is cumulative.
8 This question has been asked and
9 answered at least five times.

10 MR. GOUTMAN: It has not
11 been asked or answered once in
12 terms of the significance of the
13 post fire --

14 THE COURT: Overruled.

15 THE WITNESS: The reason it
16 is significant, if you will recall
17 Mr. Ewing's objective when he did
18 this test was to try to simulate
19 what might happen to the ductboard
20 in the building. What he did was
21 test pieces of ductboard that have
22 been exposed to the smoke or fire
23 already, so he wasn't necessarily
24 even seeing any PCB coming out of

1 an adhesive in the duct. What he
2 could have easily been seeing is
3 PCB coming off the surface of the
4 fiberglass that had been deposited
5 during the fire, so it wasn't a
6 new piece of ductboard, if you
7 want to look at it that way.

8 BY MR. GOUTMAN:

9 Q. And what was he baking the
10 surface with?

11 A. With a sun lamp that we
12 talked about yesterday.

13 Q. Now, sir, bottom line as an
14 engineer and PCB specialist, what do you
15 place more weight on; this experiment
16 where three pieces of post fire duct were
17 put into three chambers and heated with
18 heat lamps for three hours or over 5,000
19 air tests taken over two-and-a-half years
20 in the actual building, itself?

21 MR. MC. CLAIN: Your Honor,
22 this is argument by counsel.

23 MR. GOUTMAN: I'm saying
24 what he would give more weight to,

1 Your Honor.

2 MR. MC. CLAIN: It is
3 argument by counsel.

4 THE COURT: Overruled.

5 BY MR. GOUTMAN:

6 Q. Let me restate the question.
7 What would you place more weight on as an
8 engineer and a PCB specialist; an
9 experiment where three post fire pieces
10 of ductboard are placed in chambers and
11 baked for three hours or over 5,000 air
12 tests taken over the course of
13 two-and-a-half years in the actual
14 building, itself?

15 A. I would definitely place
16 more weight on what we found in the
17 building, the thousands of air samples
18 that don't show any PCB off gassing from
19 the ductboard.

20 Q. Now, sir, Mr. Neal showed
21 you a couple of CertainTeed documents
22 concerning production experiments. Do
23 you recall that?

24 A. Yes, sir.

1 Q. And could you just remind us
2 what is a production experiment?

3 A. Well, the experiments that
4 he was referring to, when we were looking
5 through the CertainTeed documents, were
6 the experiments done by people in a plant
7 or in a laboratory to prove that what
8 they were doing to make duct for
9 production purposes was working and
10 working on ways to improve, improve that
11 workduct.

12 Q. And what conclusions did you
13 draw from those production documents from
14 CertainTeed regarding tests on the glue
15 used in ductboard?

16 A. Well, to me, from an
17 industrial engineering perspective, the
18 important thing is they were trying to
19 improve it and solve any problems they
20 identified. You would assume from that
21 that in a production setting that they
22 made the improvements, that they were
23 learning and improving the process as
24 they went.

1 Q. Did those documents indicate
2 anything about whether the glue in the
3 duct that was actually manufactured and
4 sold to customers had any problems?

5 A. No, they did not.

6 Q. Are you aware of any
7 evidence of glue failure in the duct in
8 the Transportation & Safety Building?

9 A. No, sir.

10 Q. What would have happened if
11 the PCB had jumped out of the glue in the
12 duct in the Transportation & Safety
13 Building as plaintiffs allege in this
14 case?

15 A. The ductboard would probably
16 have collapsed. It was part of what was
17 holding the ductboard together.

18 Q. Is there any evidence of
19 that?

20 A. No, sir.

21 Q. Did you, yourself, look at
22 pieces of ductboard?

23 A. Yes, I did, and I didn't see
24 any evidence of that.

1 Q. Sir, we showed you yesterday
2 the, I don't know if you still have it up
3 there, but let me grab it for you, the
4 1994 air sample results. Do you recall
5 that?

6 A. Yes, sir.

7 Q. And counsel had asked you
8 about the number of tests that were done
9 on the sixth floor, the fire floor. Do
10 you recall that?

11 A. Yes.

12 Q. And there were quite a few
13 tests throughout 1994 done on the sixth
14 floor, the air tests.

15 A. That's correct.

16 Q. Sir, at the time these tests
17 were being performed was the sixth floor
18 open to the public?

19 A. No, it was sealed and
20 unoccupied.

21 Q. As a PCB specialist, is
22 there any reason that you can think of to
23 pay for hundreds of air tests on a floor
24 that is not being occupied by the public?

1 A. No, in this setting they had
2 isolated the floor and they were venting
3 the air to the outside as opposed to
4 ventilating it back into other floors of
5 the building, so there was no reason to
6 take that many samples.

7 Q. Having taken those samples
8 what did they indicate?

9 A. They typically indicated
10 that the PCB air levels were safe, even
11 on the sixth floor.

12 Q. In terms of the respiratory
13 protection that was used on the sixth
14 floor, was that related, in your
15 judgment, to any PCB in the air based
16 upon these air tests?

17 A. No, not at all. Not based
18 on my experience.

19 Q. What was it based on?

20 A. It was based on the original
21 concern over asbestos on the fire floors.

22 Q. Sir, with respect to the
23 sixth floor, and for that matter the
24 other fire floors: Four, five, and

1 seven, is there any reason why those
2 floors couldn't have been cleaned right
3 after the fire?

4 A. No, they could easily have
5 been cleaned.

6 Q. Is there any reason why the
7 state couldn't have cleaned the entire
8 building after the fire from a PCB
9 clean-up specialist's perspective?

10 A. No, they could have cleaned
11 it immediately.

12 Q. Is there any reason why they
13 couldn't have cleaned it to the NIOSH
14 level if they had preferred right after
15 the fire?

16 A. No, they could have done
17 that, too, if they wanted to.

18 MR. GOUTMAN: I have no
19 further questions, Your Honor.

20 MR. MC. CLAIN: Good morning,
21 Mr. Woodyard.

22 Good morning, ladies and
23 gentlemen.

24 (Jury responds good morning)

1 May I begin, Your Honor?
 2 THE COURT: You may begin.
 3 ---
 4 RE-CROSS EXAMINATION
 5 ---
 6 BY MR. MC. CLAIN:
 7 Q. Mr. Woodyard, you told Mr.
 8 Goutman you cleaned up PCBs in over 50
 9 states.
 10 MR. GOUTMAN: Objection.
 11 THE WITNESS: I don't think
 12 there are over 50 states.
 13 BY MR. MC. CLAIN:
 14 Q. In all 50 states.
 15 A. No, I don't think there was
 16 any testimony to that effect. I cleaned
 17 up PCBs in probably most of the U.S.
 18 Q. Most of the states.
 19 A. Yes.
 20 Q. And you have been paid here
 21 what; over 250,000 you told us?
 22 A. Yes, I believe that was my
 23 testimony.
 24 Q. Now you are up over 300

1 something somewhere.
 2 A. I don't know.
 3 Q. And when you go around
 4 working on these other PCB clean-ups you
 5 charge for your time as well, don't you?
 6 A. Yes, that's correct.
 7 Q. So you have been paid
 8 hundreds of thousands of dollars for
 9 doing this work all across the country;
 10 is that right?
 11 A. Yes, that's correct.
 12 Q. And what we have heard from
 13 you is that the only thing that this PCB
 14 causes is this acne condition, chloracne;
 15 is that right? Is that your testimony?
 16 A. That's my understanding of
 17 the current literature, yes.
 18 Q. Whenever someone calls you
 19 up and says, Mr. Woodyard, we want you to
 20 come to our state and clean up these PCBs
 21 have you ever said, Oh, don't even
 22 bother. It's not even a problem. Have
 23 you ever said that when they call you up?
 24 A. I certainly have never used

1 those words. There have been instances
 2 where people called me up with data they
 3 collected and asked me whether they
 4 needed to do any clean-up or not, and in
 5 some cases I told them that I didn't
 6 think so, that it was safe according to
 7 EPA.
 8 Q. But did you tell them at any
 9 of these places where the levels were
 10 under ten, Oh, don't each bother. It can
 11 only cause chloracne. Have you ever said
 12 that?
 13 MR. GOUTMAN: Objection,
 14 Your Honor. He just answered that
 15 question.
 16 THE COURT: Overruled.
 17 THE WITNESS: No, as I said
 18 I'm sure I have never used those
 19 words.
 20 BY MR. MC. CLAIN:
 21 Q. I mean, even above the EPA
 22 level, according to Dr. James, it is not
 23 a problem. Have you ever said, Don't
 24 worry about it even if it is above the

1 EPA level? Have you ever said that?
 2 A. No, not that I can recall.
 3 Q. Now, let's talk for a minute
 4 about this smoke and soot issue.
 5 As I heard you say it, not
 6 only did the smoke go up, it went down
 7 and all over independent of the HVAC
 8 system; isn't that right?
 9 A. I don't believe that was my
 10 testimony. The smoke, as you saw in the
 11 videos, did go up and down. How it went
 12 up and down is -- was due to a number of
 13 different things, including the
 14 ventilation system, but also conduits,
 15 elevator shafts. I wasn't there. I
 16 don't know exactly how it happened.
 17 Q. But we saw that it was
 18 uniform in its spread in the basement and
 19 elsewhere that was on a separate HVAC
 20 system, isn't that right, in terms of the
 21 PCB?
 22 MR. GOUTMAN: Objection.
 23 Compound.
 24 MR. MC. CLAIN: I don't want

1 to be interrupted like this
2 repeatedly, Your Honor.

3 MR. GOUTMAN: It is a
4 compound question.

5 MR. MC. CLAIN: I wasn't
6 even done with my question.

7 THE COURT: Overruled.
8 BY MR. MC. CLAIN:

9 Q. Mr. Woodyard, we saw from
10 the data, didn't we, that the PCB levels
11 when you looked at the mean were equal
12 throughout the building except on the
13 sixth floor; isn't that true?

14 A. Well, we talked about this
15 the other day. The PCB levels found on
16 surfaces and fireproofing and all
17 different media vary all over the place.
18 There were relatively consistent average
19 results found on all of the floors except
20 the fire floor.

21 Q. And you told us the way to
22 look at the data yesterday, when you
23 looked at your table five is to look at
24 the averages. Isn't that what you told

1 this jury under oath yesterday?

2 A. Yes, given that I only had
3 14 or 28 samples to work with.

4 Q. Just look at the averages is
5 what you told them. You had to do that
6 scientifically. Isn't that what you
7 said?

8 A. Yes. Given that data that
9 was about the only thing I could do
10 because there wasn't enough of it.

11 Q. And when we look at the
12 averages of the other data we find the
13 same levels throughout the building of
14 PCB; isn't that right?

15 A. About the same levels as
16 what? I'm sorry.

17 Q. The same average levels on
18 every floor except the sixth floor; isn't
19 that true?

20 A. No, I think my testimony the
21 other day, in fact, was that there was
22 significant differences in the averages,
23 for example, on hard surfaces, I pointed
24 out the 11th floor, to give you an

1 example of relatively high levels in a
2 place where only smoke would explain that
3 kind of level.

4 Q. What would explain how the
5 11th floor got more contaminated than the
6 other floors? How did that happen from
7 simply smoke?

8 A. It would clearly be because
9 of a smoke related deposit.

10 Q. Did smoke go to the 11th
11 floor better than it did the eighth floor
12 right above? The seventh?

13 A. Well, apparently it did.
14 The data is telling. It's not the smoke
15 videos which are subjective as to how
16 much is on what floor; it is the actual
17 measurements that really make the
18 difference.

19 Q. How, Mr. Woodyard? How?
20 How did it get there? It is the same
21 HVAC system. How did it get there, Mr.
22 Woodyard?

23 A. That was my point, the smoke
24 clearly to me, given that it distributes

1 itself differently throughout the
2 building, would explain that kind of
3 difference. The off gassing theory on
4 the 11th floor, which is no different
5 than any other floor, would not explain
6 why the levels would be that dramatically
7 higher.

8 Q. Except that you mentioned
9 that the 11th floor had been renovated;
10 isn't that right?

11 A. Yes, sir.

12 Q. Do you know what was
13 involved in that renovation?

14 A. From the pictures it
15 appeared to be carpeting and new walls
16 and new furniture. Basically new, fresh
17 surfaces.

18 Q. New walls? They put new
19 walls in there? Someone told you that?

20 A. No, I'm talking about
21 partitions. Basically office furniture.

22 Q. Do you know anything else
23 that uniquely happened on the 11th floor
24 that hadn't happened on any of the other

1 floors?

2 A. No, other than that fact,
3 which I thought was pretty significant.

4 Q. Do you know whether or not
5 that floor was heated during that time to
6 dry paint? Do you know anything about
7 the renovations that were done on the
8 11th floor just what; one year before the
9 measurements were taken? Do you know
10 anything about it?

11 A. No, except that new, fresh
12 surfaces were placed on the floor and the
13 levels were still higher than on other
14 floors, which could only be explained by
15 soot deposits. It couldn't be explained
16 by off gassing from the ductwork.

17 Q. Except you don't have any
18 evidence of soot deposits, do you?

19 A. Yes, I do, I have got
20 videotapes that show people rubbing desks
21 and kicking floors and showing soot
22 deposits all over the place.

23 Q. Were there any samples that
24 were taken which disclosed that it was

1 Q. You can't tell whether dust
2 is soot because it is black, can you?
3 (Indicating).

4 A. No, but in the same context
5 of that question I referred to testimony
6 by people like Mr. Cocciardi, who had
7 identified evidence of soot and smoke on
8 those floors after the fire.

9 Q. You mentioned Mr. Mancuso
10 and you said that he said that it was
11 basically all over. Isn't that what his
12 testimony was?

13 A. Yes, I think the words he
14 used was on every square inch in the
15 building.

16 Q. And as a scientist you know
17 that that term is not a precise term,
18 don't you? When you and I speak in
19 casual conversation we say, It was
20 everywhere. We don't mean it was on
21 every surface, do we? Is that the way we
22 talk casually?

23 A. No, but, again, going back
24 to my earlier answer, the whole idea of

1 soot as opposed to dust that you saw?

2 A. No, the samples that were
3 collected were typically collected after
4 the soot had been removed by the cleaning
5 service.

6 Q. And, sir, you mentioned
7 something that you could tell the soot
8 because it was black dust; isn't that
9 what you said? Black dust. In the
10 basement. You said you went in three
11 years after the fire and found soot;
12 right? That's what you said?

13 A. Yes, in the context of the
14 question it was asked how I could tell
15 that there could be any soot there, and I
16 explained that it was clear where people
17 had taken samples because of the --

18 Q. Black dust?

19 A. -- black dust or what I
20 presumed to be soot on the wall.

21 Q. Black dust. Mr. Woodyard,
22 have we had a fire in this room since
23 this trial began?

24 A. No, sir.

1 judging contamination by seeing smoke is,
2 perhaps, useful as a clue, but ultimately
3 it is the actual sampling and the
4 measuring that is important to somebody
5 like me playing PCB detective and
6 eventually doing PCB clean-ups.

7 Q. And I know that you have
8 said you don't need tests. You don't
9 need tests like Mr. Ewing conducted. You
10 don't need to do your own air tests. You
11 don't need to test soot. You can tell
12 the difference because you are a basic
13 scientist. Is that what your testimony
14 is?

15 A. I don't recall testifying to
16 anything along those lines.

17 Q. But it is true, isn't it,
18 that sometimes what we think we see tests
19 tell us whether we are right; isn't that
20 right.

21 A. Well, in this case, as I
22 said, what was important to me in
23 evaluating the release and clean-up is
24 the measurements. It is the actual

1 sample results.

2 Q. Now, let me ask you there
3 are tests that would tell us whether or
4 not there was soot here; isn't that
5 right? Tests that would detect carbon in
6 dust samples.

7 A. I imagine so. I'm not that
8 familiar with that science.

9 Q. You don't know about those
10 things.

11 A. No.

12 Q. And so when you say that you
13 think it is soot you don't know whether
14 there would be tests which would tell you
15 that it was soot or not; am I right? Is
16 that what you are telling me?

17 A. There may well be.

18 Q. Now, let's look at another
19 piece of your evidence regarding these
20 samples that were taken before the fire.
21 Where is that chart?

22 Mr. Goutman, is it still
23 here?

24 MR. GOUTMAN: Yes.

1 in the black one. I will refer to
2 the blue one.

3 BY MR. MC CLAIN:

4 Q. Look over with me at page
5 95, would you?

6 A. 95?

7 Q. Yes, 95.

8 Your Honor, I apologize. I
9 don't have a copy of this page for you.

10 THE COURT: You may proceed.

11 BY MR. MC. CLAIN:

12 Q. On the PCB inspections
13 section, data collection. Do you see
14 where I am?

15 A. Yes, sir.

16 Q. It says under the "Split
17 Sample" heading -- do you see that?

18 A. Yes, sir.

19 Q. It says, "Company
20 representatives must be familiar with
21 sample preservation methods as well as
22 chain of custody procedures."

23 Did I read that accurately?

24 A. Yes, you did.

1 BY MR. MC. CLAIN:

2 Q. Now, I think you said that
3 these samples on table five were taken by
4 a laboratory in Chicago called Severn
5 Trent Laboratory; is that right?

6 A. That's correct.

7 Q. They performed the
8 analysis --

9 A. Yes, they performed the
10 analysis.

11 Q. -- to be accurate.

12 Now, you know of, in your
13 book any way, and we will use the black
14 one. Do you have your book up there?

15 A. No, I do not.

16 MR. MC. CLAIN: Mr. Goutman,
17 do you have a copy that he could
18 refer to of his book?

19 MR. GOUTMAN: I have the one
20 that I would like to refer to
21 during his testimony.

22 MR. MC. CLAIN: I have got
23 the blue one. I will refer to the
24 blue book. It says the same thing

1 Q. Now, I want to ask you about
2 something. This Severn Trent Laboratory
3 that you utilized is a big outfit, aren't
4 they?

5 A. Yes, sir, they are.

6 Q. And they just bought a
7 company called IEA, didn't they?

8 A. I don't know.

9 Q. You are familiar with IEA,
10 aren't you?

11 A. Is that the full name of the
12 company?

13 Q. It is Industrial and
14 Environmental Analysis, Inc. IEA.

15 A. I'm not familiar with them,
16 no, sir.

17 Q. Are you familiar with their
18 book, "A Practical Guide to Environmental
19 Laboratory Services"?

20 A. No, I'm not.

21 Q. Do you know about the
22 subject of holding times?

23 A. A little bit, yes. It is a
24 common issue in doing field sampling.

1 Q. Tell the jury about that,
2 would you. Holding times. What does it
3 mean? What do holding times mean?
4 A. EPA, as part of some of
5 their standard procedures, particularly
6 for their own work, specifies how long
7 they believe the laboratory, between the
8 sampler and the laboratory, how long a
9 time should lapse between when the sample
10 is taken and when it is actually
11 analyzed or in some cases just extracted
12 by the laboratory, and those are
13 typically expressed in days or weeks or
14 months.
15 Q. Holding times. They have
16 them established for various methods of
17 analysis in regard to PCB, don't they?
18 A. Yes, they do.
19 Q. And the method that was
20 utilized to analyze these bulk samples
21 was the soil method, wasn't it?
22 A. I believe so, yes.
23 Q. You are familiar with Dr.
24 Erickson's book that we have heard about?

1 A. Yes.
2 Q. And do you know Dr.
3 Erickson?
4 A. Yes, I do.
5 Q. Is he coming to testify, do
6 you know?
7 A. I don't know.
8 Q. Now, in Dr. Erickson's book
9 it says that the holding time, this is at
10 page 136, counsel, for soil and
11 sediment --
12 MR. GOUTMAN: Excuse me. I
13 don't have anything on page 136.
14 MR. MC. CLAIN: 136 there's
15 a chart --
16 MR. GOUTMAN: Okay.
17 MR. MC. CLAIN: Do you see
18 it --
19 MR. GOUTMAN: Yes.
20 MR. MC. CLAIN: And it has
21 holding times listed for samples
22 from soil. Are you with me?
23 MR. GOUTMAN: Yes.
24 BY MR. MC. CLAIN:

1 Q. Are you with me,
2 Mr. Woodyard?
3 A. Yes, I am.
4 Q. Your Honor, again, I
5 apologize. I should have made a copy of
6 this page, too.
7 THE COURT: We will follow.
8 BY MR. MC. CLAIN:
9 Q. Now, Mr. Woodyard, the time
10 listed for the holding of these samples
11 before analysis, in terms of what the EPA
12 considers valid, is how long?
13 A. It is 14 days until the
14 extraction is done.
15 Q. 14 days. 14 days. How long
16 were these samples held before they were
17 analyzed?
18 A. They were held for
19 approximately seven years.
20 Q. Seven years.
21 A. Yes, sir.
22 Q. The EPA says hold them no
23 longer than 14 days and you have done an
24 analysis from samples that were held for

1 seven years; right?
2 A. Yes, but perhaps you are not
3 understanding the whole concept of
4 holding time. It is designed at least in
5 theory, to keep the sample from
6 deteriorating in some way or the
7 concentration to change, like if you have
8 a really volatile material like alcohol
9 or something like that, you would expect
10 that if you held it long enough that the
11 alcohol would go away. There is no
12 science behind what EPA has set up as a
13 holding time for PCB because there's no
14 evidence, even in their own studies, that
15 there is a loss of PCB or a change in
16 concentration, for the same reasons we
17 have been talking about here. It is
18 stable, has extremely low vapor pressure,
19 it doesn't deteriorate on its own
20 biologically or otherwise.
21 Q. Mr. Woodyard, are you
22 smarter than the EPA? They have
23 established a holding time for PCB,
24 haven't they?

1 A. Well, I don't suggest that
 2 I'm smarter than EPA, but I do suggest
 3 that the basis for having a holding time
 4 isn't necessarily scientific.
 5 Q. So once again the EPA is
 6 wrong when they have a holding time of 14
 7 days; is that right?
 8 A. I'm just saying that there's
 9 no scientific basis for them to say that.
 10 Q. Why do they do it? Why?
 11 Why is it that the EPA again has a rule
 12 which doesn't comply with the scientific
 13 knowledge that you say everyone knows?
 14 A. The EPA development of
 15 holding times originally was for samples
 16 taken and analyzed on their own projects.
 17 It has been argued that the reason for
 18 setting up a holding time, particularly
 19 on materials like PCB, where there's no
 20 scientific basis for doing it, is just
 21 simply to get the samples run more
 22 quickly. I believe that's even cited in
 23 Mr. Erickson's book elsewhere.
 24 Q. It is true, isn't it, that

1 for samples to be valid under the EPA's
 2 method they have to be analyzed under 14
 3 days or EPA won't accept the results; am
 4 I right?
 5 A. That's not true. A lot of
 6 samples that I have seen analyzed have
 7 been held for months or years, and I'm
 8 talking about PCB samples in this case,
 9 and EPA has been perfectly happy with the
 10 result because they don't hold people to
 11 this holding time issue except in
 12 litigation type situations.
 13 Q. Like we are here about.
 14 A. Which is not the norm.
 15 Q. We are in litigation, aren't
 16 we?
 17 A. But we are not -- what I'm
 18 talking about in EPA litigation is
 19 enforcement where they are actually
 20 accusing somebody of violating the law
 21 and trying to use samples as proof. It
 22 is a very, very different setting than
 23 what we are dealing with here.
 24 Q. To be valid in an EPA

1 litigation setting you have to analyze
 2 them within 14 days, don't you?
 3 A. Yes, if you are comparing
 4 your results with EPA's --
 5 Q. And it is true, isn't it,
 6 that you have never seen the EPA accept
 7 samples seven years old in litigation,
 8 have you?
 9 A. I have never been involved
 10 with EPA in litigation, so I don't know
 11 what --
 12 Q. Of course, you had other
 13 results to look at, results from the
 14 Gannett Fleming laboratory, and you
 15 refused to look at them, didn't you, to
 16 see whether your results were different
 17 from theirs?
 18 A. Oh, yes, I think we
 19 discussed that before. It was simply a
 20 series of sheets with results with no
 21 back-up.
 22 Q. And you refused to look at
 23 them.
 24 A. Just as EPA would refuse,

1 under your scenario, to look at them,
 2 too, because of the lack of back-up, the
 3 lack of quality control, the lack of
 4 possible experience of the lab doing PCB
 5 testing.
 6 Q. But as we demonstrated,
 7 utilizing EPA's standard your samples
 8 were deficient but you were willing to
 9 look at those and you weren't willing to
 10 look at the Gannett Fleming samples;
 11 isn't that right?
 12 A. No, that's not correct. As
 13 I said, there is no scientific reason to
 14 claim that my samples are not valid,
 15 regardless of this holding time issue
 16 that you raised. It's not a scientific
 17 thing; it is an administrative thing.
 18 Q. It is an administrative
 19 thing now.
 20 A. Yes, as I pointed out,
 21 there's no science, and even the
 22 literature backs this up, to justify a 14
 23 day holding time for PCB, so people
 24 typically, and I have seen this happen on

1 many projects, typically exceed that
 2 holding time because they aren't
 3 concerned about it.
 4 Q. Then why does EPA publish
 5 the number? Why does EPA say it is a
 6 standard? Why does Dr. Erickson publish
 7 it in his book, saying that those are the
 8 holding times that are established for
 9 these various extractions --
 10 MR. GOUTMAN: Objection.
 11 Compound questions, Your Honor.
 12 THE COURT: Sustained.
 13 BY MR. MC CLAIN:
 14 Q. Take them one at a time.
 15 A. As I mentioned, elsewhere in
 16 Mr. Erickson's book he talks about
 17 exactly the same thing I'm talking about,
 18 that being that EPA's original motivation
 19 for developing holding times for
 20 chemicals like PCBs was simply to make
 21 sure that the analysis was done quickly
 22 by the contract laboratories.
 23 Q. And they also have some
 24 specifications in this book about the

1 temperatures that you are supposed to
 2 hold them at; isn't that right? Four
 3 degrees Centigrade. Isn't that what this
 4 book says that's the temperature?
 5 Do you want to look?
 6 A. No, that's all right.
 7 Q. You believe me?
 8 A. I do. Low temperatures are
 9 typical for short term storage of
 10 samples.
 11 Q. They say that are stored in
 12 glass and not plastic; right --
 13 A. That may be true for soil.
 14 I don't know if there's a standard for
 15 asbestos --
 16 Q. And the reason --
 17 THE COURT: Mr. McClain,
 18 excuse me, but Mr. Woodyard was
 19 not finished with his sentence
 20 when you proceeded with another
 21 question.
 22 BY MR. MC. CLAIN:
 23 Q. I apologize, Your Honor
 24 Go ahead. Were you done?

1 A. I said for soil I believe
 2 that's true. I said for asbestos samples
 3 I haven't seen a standard for that.
 4 Q. There's not a separate
 5 method for asbestos containing PCB
 6 samples, are there?
 7 A. No, I believe the lab would
 8 adopt the PCB sampling method.
 9 Q. For the soil.
 10 A. That's correct.
 11 Q. That's the one that was used
 12 utilized to analyze your samples; isn't
 13 that true?
 14 A. That's correct.
 15 Q. They say stored in glass
 16 containers; right?
 17 A. That's what EPA specifies
 18 for soil, that's correct.
 19 Q. Because it is known that
 20 plastic can off gas; isn't that right?
 21 A. I don't think that's really
 22 the issue. If it is, let's assume you
 23 are correct, we aren't concerned about
 24 plastic off gassing into our asbestos

1 samples on this project.
 2 Q. Well, do you know whether or
 3 not plastic off gassing can affect and
 4 interfere with the peaks and
 5 quantification of PCB in samples,
 6 Mr. Woodyard?
 7 A. No, it shouldn't.
 8 Q. Now, it is true, isn't it,
 9 that these samples were analyzed after
 10 the holding time date; yes?
 11 A. Yes, many years later.
 12 Q. And you don't know whether
 13 they were stored at the proper
 14 temperature, do you?
 15 A. No, I do not.
 16 Q. And they clearly were not
 17 stored in glass vials, were they?
 18 A. No, they were stored in
 19 plastic bags.
 20 MR. MC CLAIN: Now, Your
 21 Honor, we have been going for a
 22 time. I'm at a breaking point.
 23 Would this be an appropriate time
 24 for a comfort break for the jury,

1 if you want to break before lunch.
2 THE COURT: Fine. We will
3 take a brief recess.

4 MR. EDGE: Jurors, we will
5 take a short recess.

6 (Court recessed).

7 MR. EDGE: You may be
8 seated. This Court is in session.

9 THE COURT: Mr. Woodyard.
10 You may proceed.

11 MR. MC. CLAIN: Thank you,
12 Your Honor.

13 BY MR. MC. CLAIN:

14 Q. Mr. Woodyard, you talked
15 about these PCBs being in a solid, I
16 think is the way that you described them
17 to Mr. Goutman. They were in the
18 adhesive, weren't they?

19 A. Yes, that's correct.

20 Q. And that adhesive was
21 flexible, wasn't it? It was designed to
22 be.

23 A. Yes.

24 Q. It went on as a semi solid

1 adhesive of that ductwork?

2 A. I don't know. I haven't
3 done the calculation.

4 Q. It is a lot. A lot of PCB
5 went into the adhesive that went in 16
6 miles of ductwork; isn't that right?

7 A. Yes, that's correct.

8 Q. And let's talk about costs
9 for a moment. You talked about costs.
10 First we talked about that \$100,000
11 number you gave, and then it came back as
12 868. Is that the number that you are now
13 using, 868 --

14 MR. GOUTMAN: Objection,
15 Your Honor. That
16 misscharacterizes the testimony.

17 THE COURT: Sustained.

18 MR. MC CLAIN: 868,000, is
19 that the number you are now using?

20 MR. GOUTMAN: Objection.

21 Now. He testified earlier as to
22 both numbers and what the numbers
23 meant.

24 MR. MC. CLAIN: Your Honor,

1 as most glues are; am I right?

2 A. Right, you apply it as a
3 semi solid and then it hardens.

4 Q. And the role of the PCB, the
5 PCB in this material was to act as a
6 plasticizer, isn't that right, to keep it
7 flexible?

8 A. Yes, that's correct.

9 Q. And so when you talk about
10 it, did you ever sit down and try to
11 calculate just how much PCBs were in the
12 adhesive in that building?

13 A. No, I never did.

14 Q. You gave us some numbers.
15 You said that there were eight grams of
16 adhesive per square foot and the PCBs
17 were 20 percent by weight. Do you
18 remember that?

19 A. Yes.

20 Q. So you could do the
21 calculation, couldn't you?

22 A. Yes, I could.

23 Q. Do you disagree with me that
24 there's about a half ton of PCB in the

1 now he's testifying.

2 BY MR. MC. CLAIN:

3 Q. You said originally, didn't
4 you, that it cost \$100,000 more to abate
5 the PCB from the building when the
6 fireproofing was being abated. That was
7 your testimony, wasn't it?

8 A. Yes, I believe so, and that
9 was to, for that first month or so of
10 extra personnel protection which wasn't
11 necessary.

12 Q. And then the \$868,000 number
13 was a number that Mr. Goutman asked you
14 about on Re-Direct. Do you remember
15 that?

16 A. Yes, that's the number taken
17 from the invoices from the contract for
18 the PCB part of the clean-up.

19 Q. That's what I'm curious
20 about. Here, I want to show you Exhibit
21 228 in evidence.

22 MR. GOUTMAN: Can I see it,
23 please?

24 THE COURT: Is that

1 Commonwealth --
 2 MR. MC. CLAIN: Commonwealth
 3 Exhibit 228.
 4 THE COURT: For more
 5 specificity, it is 2228.
 6 MR. MC. CLAIN: I'm sorry,
 7 Your Honor.
 8 BY MR. MC CLAIN:
 9 Q. Has Mr. Goutman gone over
 10 with you the actual payments to PDG, the
 11 abatement contractor?
 12 A. I have, if what you are
 13 referring to is the application for
 14 payment, like you have shown me here, I
 15 have seen those. I have reviewed those.
 16 Q. You have reviewed them, and
 17 the sheets on the back you have reviewed
 18 as well; is that right?
 19 A. Yes, that's correct.
 20 Q. And there's a key in the
 21 back of this that -- we probably ought to
 22 show this.
 23 Now, if you will turn to the
 24 last page --

1 MS. HERSCHEL: Mr. McClain,
 2 when you get a chance, we have no
 3 record of the document being in
 4 the record. I don't have any
 5 objection, but are you offering
 6 it?
 7 MR. MC. CLAIN: We thought
 8 it was in, but if it hadn't been,
 9 the witness says he reviewed it,
 10 we offer 2228. We offer it into
 11 evidence.
 12 MS. HERSCHEL: No objection.
 13 MS. MEYERS: No objection.
 14 THE COURT: Admitted.
 15 BY MR. MC. CLAIN:
 16 Q. There's a key here,
 17 Mr. Woodyard, isn't there, on this
 18 document?
 19 A. Yes, there is. They used a
 20 code to describe different types of work
 21 activities.
 22 Q. And one of those codes is
 23 PCB decontamination; right?
 24 A. That's correct.

1 Q. And this is how the
 2 contractor, when they abated the building
 3 before it was being destroyed, before it
 4 was demolished, used to get paid for that
 5 work; isn't that right?
 6 A. Yes, that's correct, floor
 7 by floor, area by area.
 8 Q. And you claimed that the
 9 number that we paid was \$868,000. Is
 10 that the number that you gave us?
 11 A. Yes, that was -- if I can
 12 explain my calculation, the total of all
 13 of the PCB decontamination elements in
 14 their payment schedule.
 15 Q. If you go through here page
 16 by page don't you get 1,427,650?
 17 MR. GOUTMAN: Objection to
 18 counsel testifying.
 19 THE COURT: Sustained.
 20 MR. MC. CLAIN: I'm asking
 21 him. We can go through line by
 22 line.
 23 THE COURT: I don't know
 24 where you got that figure.

1 THE COURT: From adding
 2 these numbers up, Your Honor.
 3 (Indicating).
 4 MR. GOUTMAN: Objection to
 5 counsel's testifying.
 6 THE COURT: There's a number
 7 of series of numbers. Many
 8 columns here.
 9 MR. MC. CLAIN: If you will
 10 look, Mr. Woodyard, page by page
 11 --
 12 THE COURT: Which column are
 13 we referring to?
 14 MR. MC. CLAIN: We are
 15 looking at the first page, Your
 16 Honor. Penthouse phase one.
 17 Penthouse West, PCB D \$5,600. The
 18 next one, Penthouse East, PCB D
 19 \$5,600; the next page, Penthouse
 20 West, PCB D 5,600; Penthouse East,
 21 5,600; Penthouse machine, PCB D,
 22 7800, and it goes on every page,
 23 Your Honor. In that category of
 24 PCB D that we saw from the key

1 there's different numbers given
2 throughout and I'm asking him what
3 the total of all of those numbers
4 are. 9,000 here, 53 --

5 THE COURT: I think I'm not
6 following along. That's why I'm
7 having difficulty.

8 MR. MC. CLAIN: I'm sorry,
9 Your Honor. Let me show the Court
10 what we have. On every page
11 there's a PCB D, which is the key
12 for PCB decontamination. There's
13 an entry on every page for that
14 amount. If you go through I'm
15 asking him what those total on
16 every page. It is wherever you
17 see that code, PCB D, and I didn't
18 want to highlight the copies that
19 went into evidence. Maybe I
20 should have. That would have been
21 easier for everybody.

22 BY MR. MC CLAIN:

23 Q. But those entries are on
24 every page, Mr. Woodyard?

1 all the same.

2 MR. MC CLAIN: Well, I don't
3 know any good way to do this,
4 frankly, Your Honor, in terms of
5 doing this kind of a calculation.

6 BY MR. MC CLAIN:

7 Q. Would you be comfortable,
8 Mr. Woodyard, going through this document
9 and calculating this number for us so we
10 know whether or not we are working with
11 the same numbers or not? Would that be
12 something that you could do if we took a
13 break to do it?

14 A. Yes, certainly I could do
15 it.

16 MR. MC. CLAIN: Your Honor,
17 that might be an appropriate thing
18 to do with this document, to be
19 sure that we are all on the same
20 page with the numbers that he is
21 using.

22 THE COURT: Okay. How many
23 pages are involved?

24 MR. MC. CLAIN: I have got

1 A. I assume so. It is a common
2 entry.

3 Q. It is a common entry.

4 A. Yes.

5 Q. And have you gone through to
6 total those?

7 A. I'm sorry. Have I what --

8 Q. Have you totalled those?

9 A. Yes, the total from my
10 calculation was 868.

11 Q. Well, we are using the same
12 numbers; is that right?

13 A. I believe so, yes.

14 Q. And whatever the numbers
15 total they total; am I right?

16 A. Yes, the total of the PCB D
17 line items is whatever the contractor
18 claimed as PCB clean-up related expenses.

19 Q. And so if we got out a
20 calculator and calculated them we should
21 be able to get to this \$868,000 number
22 from this document; is that right?

23 A. I believe so. I don't know
24 if I used this one, but I think they are

1 it highlighted. I can go through
2 and highlight it if it will help.

3 THE COURT: We could take
4 our luncheon break and have it
5 done during the luncheon break.

6 MR. MC. CLAIN: Okay.

7 THE COURT: So we will take
8 a lunch break until 1:30.

9 MR. EDGE: This Court will
10 take a lunch recess until 1:30
11 p.m.

12 THE COURT: For accuracy, in
13 determining this number, since it
14 is to be pulled off of each
15 individual page, maybe we should
16 have a column of the numbers and
17 then a total so that they could be
18 corresponding to the pages in the
19 exhibit.

20 MR. MC. CLAIN: Yes, that
21 would be fine. I would be happy
22 to do that.

23 THE COURT: We will take our
24 luncheon recess at this time.

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1 THE COURT CRIER: This court
 2 is reconvened. Please be seated.
 3 Good afternoon, Your Honor.
 4 THE COURT: Good afternoon.
 5 MR. McCLAIN: Good
 6 afternoon, Your Honor.
 7 THE COURT: Good afternoon.
 8 MR. McCLAIN: Ladies and
 9 gentlemen. May I begin?
 10 THE COURT: You may begin.
 11 BY MR. McCLAIN:
 12 Q. When we broke, Mr. Woodyard,
 13 The Court asked us to prepare an exhibit
 14 and I did that over lunch regarding the
 15 totals for these for the document that I
 16 gave you.
 17 Mr. Woodyard, I did as The
 18 Court asked me to do. Do you see that we
 19 have the page number where the item is
 20 and then each item number listed and the
 21 amount?
 22 A. Yes, I see that.
 23 Q. From the document.
 24 A. Yes.

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1 Q. And this was for the
 2 category PCB decontamination; am I right?
 3 A. Yes, that's correct.
 4 Q. From the actual payment
 5 records?
 6 A. Correct.
 7 Q. And that number totaled
 8 1,459,050; doesn't it?
 9 A. Yes, it does.
 10 Q. Okay.
 11 A. I'm assuming this addition
 12 is correct.
 13 Q. It was done on a computer
 14 and we did it twice, so I think it is but
 15 if you want to do it manually, I welcome
 16 you to it.
 17 A. Okay. No. I did it
 18 manually with my little solar calculator
 19 and came out with 1.4 million. It was
 20 close to what you have here.
 21 MR. McCLAIN: Your Honor, I
 22 offer that exhibit into evidence;
 23 that's PEN 2228A.
 24 THE COURT: Admitted.

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1 MR. GOUTMAN: No objection.
 2 THE COURT: Admitted.
 3 MR. McCLAIN: The number
 4 you've been using, this 868,000,
 5 the number from the payment
 6 records for PCB decontamination is
 7 1,459,050; right? That's correct.
 8 THE WITNESS: Yes, it is.
 9 BY MR. McCLAIN:
 10 Q. And this number, you're
 11 aware, was the number that Mr. Hurst
 12 based his opinion on?
 13 A. Mr. Who? I'm sorry.
 14 Q. The appraiser that
 15 Mr. Goutman hired; he based his opinion
 16 based on this \$868,000 number that you
 17 had given him previously?
 18 MR. GOUTMAN: Objection Your
 19 Honor; no foundation as to whether
 20 he would know what Mr. Hurst said.
 21 MR. McCLAIN: I'm asking
 22 him.
 23 MR. GOUTMAN: There's no
 24 foundation, Your Honor.

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1 MR. McCLAIN: Do you know
 2 that?
 3 THE WITNESS: No, I don't.
 4 BY MR. McCLAIN:
 5 Q. Do you know whether
 6 Mr. Hurst was ever given this 1 million 4
 7 number that we took from the actual
 8 payment records?
 9 A. No, I don't know.
 10 Q. But you did have this
 11 document before today; didn't you?
 12 A. Yes, yes, I have seen them.
 13 Q. And there are some other
 14 items that are shown on this document;
 15 are there not?
 16 THE COURT: You used the
 17 word "this" document. Are you
 18 back looking at Exhibit 2228
 19 Commonwealth?
 20 MR. McCLAIN: Yes, I am,
 21 Your Honor. The big document.
 22 THE WITNESS: Oh, the
 23 application --
 24 MR. McCLAIN: Yes. The

1 application and the payment
2 records.
3 THE WITNESS: Very good.
4 BY MR. McCLAIN:
5 Q. In this document, also,
6 there are mobilization and
7 decontamination numbers as well; are
8 there general conditions and mobilization
9 numbers that the contractor charged for
10 doing the work? Do you recall that?
11 A. Yes, I believe so.
12 Q. And it's true, isn't it, the
13 way you do these kind of calculations,
14 typically in your business, is you
15 allocate certain parts of the general
16 conditions and the other items to the
17 various items that you're trying to
18 determine what it costs to abate; am I
19 right?
20 A. It's certainly one way to do
21 it, to take costs and apply it to the
22 whole job and somehow spread them over
23 the individual activities.
24 Q. And for mobilization --

1 check these numbers out; would you? From
2 the big document.
3 A. Was there a question there?
4 I'm sorry.
5 Q. The mobilization number is
6 \$470,000; isn't it?
7 A. Yes, including bonding,
8 insurance, mobilization.
9 Q. And the general conditions
10 number within the payment is how much?
11 A. 284,000.
12 Q. And the demobilization?
13 A. It's hard to read my copy;
14 it's about 76,000, perhaps.
15 Q. 75,000 is what I have.
16 A. True, but these costs are
17 all costs that would have been incurred
18 if they were just doing an asbestos
19 abatement.
20 Q. That's what you say.
21 MR. GOUTMAN: Objection,
22 Your Honor. Move to strike
23 counsel's comment.
24 THE COURT: Sustained.

1 BY MR. McCLAIN:
2 Q. Mr. Woodyard, have you
3 allocated and we have put up what the
4 amount is that even under this scenario,
5 where they are tearing the building down,
6 they spent on PCB decontamination; am I
7 right?
8 A. The 1.4 million that you
9 have up there represents what the state
10 paid as a line item into the contractor's
11 bill. It doesn't necessarily reflect at
12 all what they needed to do.
13 Q. Well, I understand that.
14 But that's not what this \$868,000 number
15 is either; is it?
16 A. No. The 868 came from a PDG
17 document; the contractor's document that
18 I understood was their budget for the
19 project. And I stand by my addition but
20 I was perhaps looking at a different
21 document.
22 Q. It was wrong, wasn't it?
23 The actual number is one million four,
24 isn't it?

1 A. Based on the payment
2 schedule you showed, that's correct.
3 Q. So, before we looked at the
4 report and we saw that you relied on
5 Mr. Goutman and put down in your report
6 that Mr. Ewing had taken the samples;
7 that was wrong; right?
8 A. Yes. It was not represented
9 accurately to me. I thought he worked
10 for another engineering firm when I put
11 the report together.
12 Q. Then you told me that that
13 black hook didn't have the word abrupt
14 like the blue one did and that was wrong,
15 too, wasn't it?
16 A. Yes.
17 Q. That was wrong, too?
18 A. I'm sorry. This.
19 Q. The 868 that we have been
20 talking about is not the accurate number
21 for what in fact the Commonwealth paid
22 PDG for decontamination of PCBs; is it?
23 A. It's what PDG represented to
24 the Commonwealth it cost. They paid the

1 same amount of money for this project no
2 matter how you allocate the numbers.

3 Q. It's true, isn't it, the
4 payment record show 1 million 4?

5 A. Yes, the total of the
6 payment items that PGD put together is 1
7 million.

8 Q. So, a percentage of the
9 total abatement, asbestos and PCBs needs
10 to be allocated in regard to
11 mobilization, general conditions and
12 demobilization, generally; isn't that
13 true?

14 A. No, that's not correct. As
15 I was just saying, these costs would have
16 been the same from my experience if they
17 were just doing an asbestos abatement
18 job. The incremental costs of adding
19 PCBs into the mix was insignificant, as
20 I've testified before.

21 Q. Well, it's true, isn't it,
22 that the asbestos was contaminated with
23 PCBs; isn't that right?

24 A. Yes, but PCBs did not drive

1 A. No, not necessarily.

2 Q. Mr. Kominsky is not an
3 expert in this area; is that your
4 testimony?

5 A. Mr. Kominsky's expertise is
6 not related to cost and executing PCB
7 cleanups in my experience. I have not
8 seen evidence to the contrary.

9 Q. That he is experienced in
10 cleaning up PCBs from buildings? You
11 don't know about that expertise?

12 A. No. My experience with
13 Mr. Kominsky, and what I've seen thus
14 far, related primarily to how to sample
15 and how to understand what the sample
16 results meant relative to the
17 distribution of PCBs. And that was most
18 of his testimony.

19 Q. And so if in fact the
20 driving force of removing the asbestos
21 from the building was to remove the PCBs,
22 you disagree with that?

23 MR. GOUTMAN: Objection,
24 Your Honor.

1 or should not have driven the State to
2 remove anything.

3 Q. Had you read Mr. Kominsky's
4 testimony to this jury about whether it
5 should have or not?

6 A. I believe so.

7 Q. And you believe that he
8 has --

9 MR. GOUTMAN: Objection,
10 Your Honor. He can't
11 cross-examine this witness with
12 the testimony of another expert;
13 if it's an authoritative treatise
14 or what not but not the testimony
15 of an opposing expert.

16 THE COURT: Sustained.

17 BY MR. McCLAIN:

18 Q. You believe that
19 Mr. Kominsky is an expert in this field;
20 don't you?

21 A. Which field are you
22 referring to?

23 Q. PCB decontamination, and
24 abatement?

1 MS. MEYERS: Objection.

2 MR. GOUTMAN: Asks him to
3 assume a conclusion that he
4 doesn't agree with.

5 MR. McCLAIN: The testimony
6 of Commonwealth has been --

7 MR. GOUTMAN: Objection.
8 He's testifying now.

9 THE COURT: Direct your
10 question to the witness.

11 MR. McCLAIN: I will, Your
12 Honor.

13 BY MR. McCLAIN:

14 Q. Mr. Woodyard, do you know
15 whether or not the Commonwealth was
16 trying to remove PCBs by removing the
17 asbestos-containing materials, sir?

18 A. No. It was my understanding
19 that the Commonwealth was planning to
20 abate the asbestos with or without PCBs
21 before they even found out there were
22 PCBs there.

23 Q. And so you have no
24 understanding or do you have any

1 understanding, of the thought process
2 that was gone through by the Commonwealth
3 when the decision was made to evacuate
4 this building and abate it?

5 MR. GOUTMAN: Objection,
6 Your Honor.

7 THE COURT: Sustained.

8 BY MR. McCLAIN:

9 Q. Are you aware of NIOSH's
10 opinion that the -- that the
11 asbestos-containing fireproofing could be
12 maintained in place in this building?

13 A. I believe that was their
14 opinion, but as I said, the state had
15 already announced that they were planning
16 to abate the asbestos, anyway.

17 Q. Sir, my question was: Are
18 you aware that NIOSH, in August --

19 MR. GOUTMAN: Objection. He
20 said yes, Your Honor. We don't
21 need the question again. I object
22 to it. He said yes and then he
23 gave an explanation.

24 MR. McCLAIN: Your Honor,

1 I'm being interrupted.

2 MR. GOUTMAN: That's right.
3 It's my obligation to my client to
4 object and I think it's an
5 inappropriate question.

6 THE COURT: Let's take a
7 moment. First of all, we have
8 some competition back here. As
9 you noticed, the pipes are
10 clanging and banging and for
11 whatever reason, which we have no
12 knowledge. It's making it
13 difficult to hear.

14 So, let's start the question
15 again and we'll see if it passes
16 muster.

17 MR. McCLAIN: Thank you.

18 BY MR. McCLAIN:

19 Q. You're familiar with
20 exhibit, PEN Exhibit 996 -- I can't
21 remember what exhibit Mr. Goutman called
22 this but it was the ACT letter, Your
23 Honor, that we looked at yesterday.

24 THE WITNESS: Yes, I've seen

1 this.

2 BY MR. McCLAIN:

3 Q. And if you turn over to the
4 page regarding recommendations and
5 conclusions, which is at Page 8, it says
6 "Airborne asbestos does not appear to be
7 a problem in the building and is probably
8 best managed in place with the added
9 precaution of informing maintenance
10 workers and others who may be exposed to
11 the asbestos-containing fireproofing that
12 material also contains PCBs and taking
13 steps to protect these workers from
14 exposure to PCBs."

15 Did you read that,
16 Mr. Woodyard?

17 A. Yes, sir.

18 Q. And so do you know what
19 affect NIOSH's recommendation on the
20 Commonwealth in regards to asbestos had
21 in making their plans to abate the
22 building?

23 A. No. As I said, they had
24 already announced their plans to abate

1 the building right after the fire; which
2 they ultimately proceeded to do two and a
3 half years later.

4 Q. Mr. Woodyard, generally, do
5 most building owners in America today
6 maintain asbestos --

7 MR. GOUTMAN: Objection as
8 to what most building owners would
9 do.

10 THE COURT: Sustained.

11 BY MR. McCLAIN:

12 Q. Do you have experience in
13 managing asbestos, Mr. Woodyard?

14 A. Very little.

15 Q. That's not your area?

16 A. No. To some extent,
17 estimating costs associated with it to
18 some extent.

19 Q. Let's look at another item
20 from this payment record, which is 228,
21 Exhibit 228.

22 There also was an item given
23 for the removal of caulk; wasn't there?

24 A. Yes, I believe that was one

86 1 of the items. I'm looking for it. I'm 2 sorry. 3 Q. And that number was 1 4 million 6? 5 MS. MEYERS: Objection, Your 6 Honor. May I see you at side bar? 7 THE COURT: If you're 8 talking about Exhibit 228 -- 9 MS. MEYERS: Objection, Your 10 Honor. 11 THE COURT: I'm looking at 12 the key and you mentioned caulk, I 13 don't see the subdivision. 14 MR. McCLAIN: There's a sub 15 total on that, Judge. I'll refer 16 you to the page in just a second. 17 It's on Page 26, Your Honor. 18 THE COURT: It's not in the 19 key then. 20 MR. McCLAIN: No, it's just 21 on the page and it's a sub total; 22 for removal of the caulk. 23 MS. MEYERS: Your Honor, may 24 we see you at side bar, please?	88 1 includes all the -- the number 2 that Mr. McClain wants to put in 3 front of the jury is a lump sum 4 for many of the different items 5 that have nothing to do with the 6 caulk at issue in this case, 7 including the removal of all of 8 the windows in the building; the 9 caulk on the floor plaza and all 10 of the interior caulk in the 11 building, which is not at issue 12 here. 13 And the total that he just 14 announced to the jury, \$1.7 15 million, includes all of these 16 payment items and you can see, I 17 have gone through and highlighted 18 those pages. Only the highlighted 19 items refer to the exterior caulk 20 and are listed floor by floor. 21 And there's a separate line item 22 for the scaffold for exterior 23 caulk and even if you add in a 24 portion of the caulking and
87 1 THE COURT: Yes. 2 - - - 3 (Whereupon, the following 4 was held at side bar conference.) 5 - - - 6 THE COURT: First of all, I 7 don't see it. 8 MS. MEYERS: It's on Page 27 9 and 28. 10 THE COURT: I had 26. 11 MR. McCLAIN: No. The 12 subtotal for caulk is 26 and then 13 the -- 14 MS. MEYERS: Your Honor, my 15 objection is that that subtotal 16 applies to a number of different 17 items unrelated to the caulk at 18 issue in this case. 19 If you look at it and break 20 it down, and I have my own copy, 21 it included the plaza caulk, which 22 is the caulk on the plaza floor, 23 which is a different product; it 24 includes window removal. It	89 1 sealant supervision, it's still, 2 my total is 914,850. 3 So, the number that he wants 4 to put in front of the jury is 5 about twice the actual cost. And 6 I object to it. It's misleading. 7 MR. McCLAIN: The question 8 that Mr. Goutman asked was what 9 did it cause to abate all of the 10 PCBs in the building. And this is 11 PCB abatement. 12 THE COURT: That may have 13 been his question, but this now -- 14 MR. McCLAIN: It's Ms. 15 Meyers' right to come back on 16 redirect. 17 THE COURT: She has a right 18 not to have -- 19 MR. McCLAIN: No. I have 20 an absolute right, Judge, at this 21 point since Mr. Goutman has told 22 the jury that it cost \$868,000 to 23 abate all of the PCBs from the 24 building --

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1 THE COURT: You've already
2 established a figure well beyond
3 that.
4 MR. McCLAIN: Yes, sir, but
5 I want to establish the true
6 figures of what it really costs to
7 abate PCBs; just to tear the
8 building down and I've got a right
9 to do that. I'm not trying to
10 ascribe to Ms. Meyers --
11 MS. MEYERS: The jury can
12 hear this, Your Honor. I suggest
13 we go into chambers.
14 THE COURT: We'll go into
15 chambers.
16 - - -
17 (Whereupon, the following
18 was held in chambers.)
19 - - -
20 MS. MEYERS: Your Honor, the
21 problem here is that this 1.7
22 million number, there's no
23 foundation for arguing that it's
24 all attributable to PCB abatement.

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1 You will see that on every
2 single floor, they have a line
3 item for removing all of the
4 interior caulk, for example.
5 There's no evidence that the
6 interior caulk contained PCBs. It
7 was never tested. That was
8 Michael Bonn's testimony. And the
9 contract specifications are
10 different for interior caulk. We
11 don't know who manufactured it.
12 We don't know what is in it. We
13 do know they never tested it.
14 There's no foundation for any
15 assumption that that was part of
16 PCB abatement. I don't know what
17 it was part of. I don't know what
18 motivated it. As far as I can
19 tell, it's more wasted money.
20 The window removal, there's
21 no foundation for that, either,
22 and the caulk on the plaza floor,
23 I don't know that there's any
24 foundation for that but it's not

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1 attributable to any party in this
2 case.
3 So, the total number for the
4 abatement of the caulk in this
5 case is exactly consistent with
6 what Mr. Woodyard said, which was
7 it was almost \$1 million.
8 THE COURT: Mr. McClain
9 points out that the contract was
10 for asbestos, PCBs and hazardous
11 materials abatement and disposal.
12 MR. McCLAIN: That's all
13 this contract was for and so I'm
14 not suggesting --
15 THE COURT: I have a problem
16 with that. The problem I have
17 with that is that it says asbestos
18 and PCBs and if it ended there, I
19 wouldn't have a problem. But it
20 goes on to say and hazardous
21 materials. Now, as I understand
22 it, if there were other hazardous
23 materials, of which this case is
24 not involving, then the testimony

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1 has to be limited to the asbestos
2 and PCBs. And not by inference
3 but by specificity.
4 MR. McCLAIN: I'll ask the
5 witness if he knows.
6 MR. GOUTMAN: Your Honor,
7 there's a further problem, which
8 is have they laid a foundation as
9 to whether the products at issue
10 are manufactured by any defendants
11 in this case; and this court has
12 already heard argument on that
13 subject back in plaintiff's case
14 and in fact excluded testimony
15 from Mr. Hollowell concerning the
16 very sealant around the windows
17 and I believe mastic on the floors
18 because there was no testimony as
19 to the manufacturer of that.
20 In fact, the only caulk that
21 they know the manufacturer of, at
22 this point, who was then joined as
23 a defendant, is the exterior
24 caulk; Ms. Meyers company's caulk

1 and there's no objection to their
2 getting into that, but as to the
3 others, there's not an appropriate
4 foundation for this trial.

5 MS. MEYERS: I have no
6 objection to Mr. McClain preparing
7 an exhibit like the one he just
8 used for the PCB decontamination
9 listing or I'll prepare it,
10 listing the items for the exterior
11 wall caulk and itemizing that and
12 the total, which by my arithmetic
13 is \$914,850. I have no objection
14 to that.

15 But I do have an objection
16 to saying to the jury the total
17 for caulk and sealant is \$1.7
18 million, when that includes a lot
19 of unrelated items that -- and
20 since the jury only knows about
21 one caulk, they are likely to be
22 misled by that.

23 MR. McCLAIN: The Court
24 never limited any of our damages.

1 The Court has not done that.

2 What you're suggesting, if
3 you want to limit the damages to
4 what you claim is yours, you have
5 a right to do it.

6 THE COURT: I'm sorry. I
7 thought I heard you say that The
8 Court didn't limit it.

9 MR. McCLAIN: It didn't.

10 THE COURT: I thought we had
11 limited the action to the products
12 manufactured by Chemrex,
13 CertainTeed and Monsanto.

14 MR. McCLAIN: You allowed
15 all our damage evidence in; and
16 you denied the motion for nonsuit
17 on those specific grounds.

18 So, my understanding is it's
19 all in. The evidence has been
20 that if it wasn't manufactured by
21 these three, Monsanto manufactured
22 all the PCBs that we know about.

23 MR. GOUTMAN: What evidence?
24 What evidence is there of record?

1 MR. McCLAIN: The evidence
2 of record was the testimony --

3 MR. GOUTMAN: Yes.

4 MR. McCLAIN: I don't want
5 to go through it. You lost it.
6 You lost it the first time
7 through. You had three other
8 witnesses in your case that have
9 said Monsanto was the manufacturer
10 of PCBs in this country; the only
11 one. And we can go back through
12 it but I don't want to get into
13 this argument at this point.

14 All I'm saying, judge, is
15 this: I will ask the witness the
16 question. Because the question
17 was not phrased -- the question
18 wasn't phrased by Mr. Goutman,
19 what did it cost to abate PCBs as
20 manufactured by these defendants.
21 He didn't ask that. He asked the
22 question what did it cost to abate
23 all of the PCBs from this building
24 and this witness said \$868,000.

1 Having done that, regardless
2 of these other arguments, I have a
3 right to ask him was the caulk
4 abated because of PCBs. Is that
5 your understanding? And if so,
6 then I've got the right to ask him
7 about that number.

8 MS. MEYERS: Your Honor,
9 Mr. Woodyard did not say all the
10 PCB abatement totaled \$868,000.
11 He said that was the cost of PCB
12 abatement aside from the caulk and
13 the removal of the caulk cost
14 almost \$1 million.

15 He said both of those
16 things.

17 So, to suggest that his
18 testimony was misleading because
19 he didn't include the caulk, he
20 said both of those things as two
21 separate items; the caulk, he said
22 was almost \$1 million and the
23 remaining additional cost
24 attributable to PCB abatement was

1 \$868,000, based on the document,
2 the budget that he reviewed and he
3 just agreed that this later
4 document increased that number to
5 \$1.4 million.

6 That was his testimony. But
7 there's no foundation for
8 including these other items.
9 First of all, because the
10 manufacturers haven't been
11 identified and secondly, some of
12 these products have not been
13 identified as containing PCBs and
14 indeed all of the interior caulk
15 in the building was never tested.

16 MR. McCLAIN: If in fact
17 you're being accurate, then all
18 the more -- I don't think you are
19 but I will look at it -- but if he
20 said that, then he's wrong. It
21 cost 1 million 6 to remove the
22 caulk.

23 If he wants to clarify his
24 answer, or make it clearer what

1 he's talking about, then he can do
2 it or you can do it. But if he
3 said it cost \$1 million to remove
4 the caulk, he's wrong.

5 MR. GOUTMAN: We know what
6 he said.

7 THE COURT: If the caulk did
8 not contain PCBs --

9 MR. McCLAIN: Then it
10 wouldn't have been removed under
11 this contract.

12 MS. MEYERS: That's not
13 correct.

14 THE COURT: I don't know
15 that.

16 MR. McCLAIN: I will ask
17 him.

18 THE COURT: No, because it
19 says and other hazardous materials
20 so I don't know whether there were
21 any other hazardous materials in
22 the caulk.

23 MR. McCLAIN: I'll ask him.

24 THE COURT: I have no way of

1 knowing that.

2 MR. McCLAIN: We can ask the
3 witness.

4 THE COURT: If it's relating
5 to PCBs, then there was generic
6 questions that would encompass all
7 the PCBs. There was no objection
8 to Mr. Goutman's question, when
9 speaking of PCBs generically and
10 consequently, we cannot limit the
11 Commonwealth.

12 The only thing I'm concerned
13 about is this business of and
14 other hazardous materials.

15 MR. McCLAIN: I'll ask him.

16 THE COURT: Which is an item
17 separate and distinct from PCBs
18 and asbestos.

19 MR. McCLAIN: You're right.
20 I'll ask him.

21 MS. MEYERS: The other issue
22 is all of the interior caulk was
23 never even tested. There's no
24 evidence -- and I'm sure the

1 Commonwealth can't produce any
2 because the testimony was they
3 never tested one piece of interior
4 caulk.

5 THE COURT: The question I
6 limit it to was PCBs.

7 Now, if caulk did not
8 contain PCBs and contained other
9 hazardous materials, that cannot
10 be included.

11 MR. McCLAIN: Right.

12 MR. GOUTMAN: Just so the
13 record is correct and we have the
14 transcript and it's not as
15 Mr. McClain has suggested. I
16 asked him how about the caulk,
17 what did PDG do with the caulk
18 pursuant to the State
19 specifications.

20 "Answer: They chiseled it
21 out of the outside of the building
22 and disposed of it."

23 That's all he talked about,
24 disposal of the outside caulk.

1 "And was that necessary?
2 No. How much did it end up
3 costing the state? Almost \$1
4 million."

5 He never talked about the
6 interior caulk; never.

7 MR. McCLAIN: I'll ask him.

8 MR. GOUTMAN: Counsel has
9 represented that he was questioned
10 on that and in fact he restricted
11 his testimony to the exterior
12 caulk.

13 MR. McCLAIN: No. Miss
14 Meyers talked about that and I
15 said that if he so testified, I
16 have a right to ask him --

17 THE COURT: Wait a minute.
18 This may be the testimony of
19 Mr. Woodyard.

20 MR. GOUTMAN: Right. All he
21 testified about was the cost to
22 remove the exterior caulk.

23 THE COURT: By the way, we
24 had limited talk to outside caulk

1 in the beginning.

2 MS. MEYERS: Yes.

3 MR. GOUTMAN: Yes. Your
4 Honor ruled that Hollowell could
5 not even show photographs of the
6 removal of interior caulk, caulk
7 around the windows; the very
8 things that plaintiffs now want to
9 get into with this witness.

10 THE COURT: We did not
11 permit all caulk to come in.

12 The caulk testimony in this
13 case was caulk, outside caulk
14 which contained PCBs?

15 MR. GOUTMAN: Correct.

16 MS. MEYERS: And was
17 manufactured by Courtaulds. That
18 was the limitation.

19 MR. GOUTMAN: And I think
20 permitting counsel now to get into
21 interior caulk and so forth and so
22 on, would be respectfully
23 inconsistent with those rulings;
24 and therefore I believe would be

1 inappropriate, in addition to the
2 reasons I've already stated
3 concerning product identification.

4 MR. McCLAIN: The general
5 question that The Court asked me
6 to ask, I will ask and if there's
7 a foundation, I'll follow up. If
8 there's no foundation, I won't.

9 MS. MEYERS: I'm sorry, but
10 I think the general question was
11 posed before we clarified what
12 Mr. Woodyard's exact testimony was
13 and now that we've looked at it
14 and it's clear, that his testimony
15 was limited to the cost of the
16 removal of the exterior wall caulk
17 and he didn't testify about
18 anything else, and there's no
19 foundation for evidence about any
20 of these other caulking and
21 sealant items, then there's no
22 basis for asking Mr. Woodyard on
23 cross-examination any of those
24 questions because his direct

1 testimony and his redirect
2 testimony didn't address them.

3 MR. McCLAIN: Except the
4 general question still was what
5 did it cost to decontaminate the
6 building for PCBs.

7 And if the interior caulk
8 had PCBs, the number that he was
9 giving is not accurate for that
10 reason as well.

11 MS. MEYERS: Your Honor --

12 MR. McCLAIN: Oh, I'm going
13 to ask him the question, if
14 allowed, did that include -- was
15 the -- do you know the caulk was
16 removed. Yes, no.

17 If he says yes, it was
18 removed for PCB-related issues,
19 and I'm going to ask him about the
20 number.

21 Then I'm going to ask him
22 about the outside caulk, that he
23 mentioned. Just so that the
24 record is clear and that should

1 take care of it.
 2 MR. GOUTMAN: Your Honor,
 3 that doesn't solve the problem,
 4 Your Honor, of where this interior
 5 caulk came from, who manufactured
 6 it, what country it was
 7 manufactured. There is still no
 8 nexus between any defendant in
 9 this case and that interior caulk;
 10 even if it had PCBs in it. And
 11 The Court has received briefs on
 12 this.

13 This is not a market share
 14 liability state, Your Honor, and
 15 therefore that could not support
 16 an evidentiary foundation without
 17 specific product identification.
 18 In Pennsylvania, we require
 19 specific product identification;
 20 tracing a product to a
 21 manufacturer and it hasn't been
 22 done here. There's been no
 23 foundation as to the interior
 24 caulk, where it came from, and who

1 manufactured it.
 2 MS. MEYERS: Further, Your
 3 Honor, it was a different contract
 4 specification and it was never
 5 tested. There's not one shred of
 6 evidence in the record or anywhere
 7 else that that material contained
 8 PCBs. Chances are it didn't.

9 And as I recall, and I'm not
 10 certain of this, but my
 11 recollection of the testimony of
 12 the Gannett Fleming people was
 13 that they just, or the Pinoni
 14 people, I'm not sure who said it,
 15 but my recollection is that they
 16 just decided to take it out, as a
 17 precaution without testing it.

18 But nobody knows what was in
 19 that interior caulk. They just
 20 arbitrarily decided to put it in
 21 their abatement plan. That was
 22 one of their many mistakes.

23 THE COURT: We have caulk,
 24 exterior caulk containing PCBs,

1 which is the product that brings
 2 Miss Meyers' client into the
 3 picture.

4 And we have other PCBs
 5 relating to Courtauld and
 6 Monsanto.

7 MS. MEYERS: CertainTeed.

8 THE COURT: CertainTeed.
 9 CertainTeed and Monsanto and
 10 consequently, the questions can be
 11 directed on those scores. I don't
 12 have a problem with that.

13 But the problem is, I don't
 14 know if there were PCBs in any
 15 other caulk. We don't have
 16 evidence that there's PCBs in any
 17 other caulk.

18 MR. McCLAIN: Judge, I was
 19 silent because I don't want to
 20 argue about it. I don't believe
 21 that Miss Meyers is being
 22 accurate. But I don't want to
 23 belabor this over such a small
 24 point. I don't think she's

1 accurate about that.

2 I will ask the witness
 3 whether he knows whether or not
 4 the interior caulk contained PCBs.
 5 If he knows and he says yes, then
 6 we can proceed. If he says no,
 7 then we won't.

8 MR. GOUTMAN: He still isn't
 9 going to know who manufactured the
 10 caulk.

11 MR. McCLAIN: That wasn't
 12 the question you asked. I'm
 13 sorry. You didn't ask him about
 14 whether he knew about --

15 MR. GOUTMAN: Then it's
 16 irrelevant, Your Honor, because it
 17 doesn't relate to a product
 18 manufactured by a defendant in
 19 this litigation.

20 MR. McCLAIN: Then that's
 21 the question you should have
 22 asked.

23 MR. GOUTMAN: Your Honor --
 24 THE COURT: I understand all

1 the exterior caulk was Miss
2 Meyers.

3 MS. MEYERS: No, that's not
4 correct. The only evidence in the
5 record and the only evidence of
6 which I'm aware is that the caulk
7 in the joints between the exterior
8 wall panels --

9 THE COURT: I'm not talking
10 about the plaza.

11 MS. MEYERS: And we're also
12 not talking about window sealants.
13 It's a different product.

14 Mr. McClain argued strenuously
15 that the window caulk was supplied
16 by Pecora, which was not sued.

17 MR. McCLAIN: I ended up
18 being right.

19 MS. MEYERS: And apparently
20 he was -- well, that's not in the
21 record. That was his argument.
22 It's not in the record.

23 MR. McCLAIN: I was right.

24 THE COURT: That it was by

1 Pecora?

2 MR. McCLAIN: Yes.

3 MS. MEYERS: But they are
4 not in the case.

5 THE COURT: Were they a
6 former entity of yours?

7 MS. MEYERS: No. A
8 competitor.

9 MR. GOUTMAN: No relation.

10 MR. McCLAIN: I'm just
11 digging here, Your Honor, because
12 I was -- the windows; not the
13 exterior.

14 THE COURT: If you were
15 right, then it would not be
16 admissible.

17 MS. MEYERS: I want to
18 correct the record that Courtauld
19 did not supply all the caulk in
20 the exteriors in the building.
21 There was a different product in
22 the windows and plaza floor. I'm
23 only talking about the wall
24 panels.

1 MR. GOUTMAN: If you look at
2 this, it includes window caulk.

3 MS. MEYERS: And window
4 removal.

5 MR. McCLAIN: It's PCBs,
6 Mr. Goutman, and you said what did
7 it cost to abate the building of
8 PCBs and then you asked as a
9 separate item about wall caulk but
10 his testimony right now is what it
11 costs to abate all the PCBs from
12 the buildings 868,000 and then as
13 a separate item the wall caulk;
14 that was nearly 1 million. I want
15 to show what the real numbers
16 were.

17 MR. GOUTMAN: As Mr. McClain
18 has pointed out, if I can regain
19 my train of thought, the -- there
20 is a separate category for PCB
21 decontamination and a separate
22 category for caulk and sealants
23 and what Mr. Woodyard was talking
24 about was PCB decontamination, a

1 separate category in the PDG
2 building documents.

3 Now he's getting into a new
4 category, caulk.

5 And Mr. Woodyard
6 specifically addressed himself
7 solely to the exterior caulk.
8 That's all he testified about.

9 THE COURT: This issue goes
10 to damages. And the fact is
11 damages can only be as against the
12 products of those persons who are
13 defendants. And consequently,
14 whether McClain's -- whether
15 Goutman's question was overly
16 broad doesn't enlarge the scope of
17 the plaintiff's right to recovery
18 for items that were not
19 manufactured by these defendants.

20 So, therefore, in the
21 opinion of this court, it has to
22 be tailored to involve those
23 products which the defendants in
24 this case may be responsible for.

1 MR. McCLAIN: Judge, I
2 understand what you're saying, but
3 that's not why I'm offering it.
4 I'm not asking for \$3 million in
5 this case. This is not an item of
6 damages as far as I'm concerned.
7 It's a matter of credibility of
8 this witness who stood up here and
9 told this jury under oath that it
10 was \$868,000 to abate this
11 building. I've already
12 demonstrated that he's wrong.
13 He's not only wrong on 1.4 million
14 but he's wrong on more than that.

15 THE COURT: You've
16 demonstrated several areas where
17 there were some inaccuracies.

18 MR. GOUTMAN: Wait for
19 redirect. I'm not done either,
20 Your Honor.

21 THE COURT: I understand
22 that. That's not for me to
23 determine. You're certainly
24 making a strong effort to

1 accomplish what you set out to do.
2 I recognize that.

3 Now, but I think we still
4 have to limit it to the products
5 that are involved in this case;
6 otherwise, there will be an area
7 of confusion with respect to
8 damages that the jury may not be
9 able to divorce itself.

10 MR. McCLAIN: All right. I
11 understand your ruling and I'll do
12 that.

13 MS. MEYERS: For the record,
14 Your Honor, the objection was
15 sustained I take it.

16 THE COURT: Yes. The
17 objection was sustained and we'll
18 go on now.

19 BY MR. McCLAIN:

20 Q. Let's limit our -- limiting
21 our discussion to exterior wall caulk,
22 they spent almost \$1 million on exterior
23 wall caulk removal; is that right?

24 A. Yes, that was my testimony.

1 Q. And that's not including any
2 general conditions, mobilization, et
3 cetera; right? None of those allocated
4 costs in that million dollar number?

5 A. Assuming you allocate them,
6 yes.

7 Q. And just so that the jury is
8 clear, to do that mobilization, general
9 conditions and demobilization, that's
10 almost -- it's \$829,000, isn't it, in the
11 contract?

12 A. I'm sorry? What did you
13 include in that?

14 Q. Mobilization, 470, general
15 conditions, 284 and demobilization
16 75,000, totals \$289,000; doesn't it?

17 A. Right; money I said would
18 have been spent whether there was PCBs
19 there or not.

20 Q. But not the wall caulk;
21 right? The removal of the wall caulk --

22 A. Removal of the wall caulk as
23 I've testified before was unnecessary;
24 but they spent almost \$1 million doing

1 it.

2 Q. You think the whole thing
3 was unnecessary; don't you? I'm not
4 debating that to you.

5 MR. GOUTMAN: Objection to
6 what the whole thing means.

7 MR. McCLAIN: The PCB
8 decontam --

9 THE COURT: Sustained.

10 BY MR. McCLAIN:

11 Q. The PCB decontamination you
12 didn't think was necessary?

13 A. Yes, the building was almost
14 cleaned, anyway.

15 Q. I understand that's your
16 opinion. I don't want to debate that.

17 MR. GOUTMAN: Objection.
18 Move to strike counsel's
19 statement.

20 THE COURT: Sustained.

21 BY MR. McCLAIN:

22 Q. The reality is they spent \$1
23 million and under this contract,
24 mobilization, general conditions and

1 demobilization were part of it; weren't
 2 they?
 3 A. No. As I said, there is
 4 nothing in there about how mobilization
 5 and demobilization is spread or not
 6 spread among different activities.
 7 Q. Right. And then we have --
 8 there was some transportation and
 9 disposal; right? Of items?
 10 A. Yes, that's correct.
 11 Q. And you didn't include those
 12 in your number either; did you?
 13 A. No, because my earlier
 14 testimony was that most of that could be
 15 disposed of as nonPCB waste and I did not
 16 try to estimate how much that would
 17 actually be.
 18 Q. But they did dispose of it
 19 as PCB waste; didn't they?
 20 A. Yes. Wasted money as I
 21 said.
 22 Q. But that total, when you
 23 totaled those numbers to \$213,000;
 24 doesn't it, in light of what the

1 Commonwealth spent?
 2 A. I'm sorry. Where is that
 3 number?
 4 Q. It's transportation and
 5 disposal in the contract.
 6 MR. GOUTMAN: Objection,
 7 Your Honor. That includes some of
 8 the items to which the objection
 9 has already been sustained.
 10 MR. McCLAIN: What?
 11 MR. GOUTMAN: We could
 12 discuss it at side bar, if you
 13 like.
 14 MR. McCLAIN: Just include
 15 the amount for exterior wall
 16 caulk.
 17 MS. MEYERS: Objection, Your
 18 Honor. That item isn't broken
 19 down.
 20 THE COURT: May I have the
 21 question, please.
 22 - - -
 23 (Whereupon, the pertinent
 24 portion of the record was read.)

1 - - -
 2 THE COURT: I don't know
 3 whether it includes it or not.
 4 Sustained. If you can clarify it.
 5 BY MR. McCLAIN:
 6 Q. Mr. Woodyard, you don't know
 7 whether the interior caulk had PCBs in it
 8 or not; did you?
 9 MR. GOUTMAN: Objection,
 10 Your Honor. This court sustained
 11 an objection to that area of
 12 inquiry. I don't know where that
 13 question is coming from now, quite
 14 frankly.
 15 BY MR. McCLAIN:
 16 Q. Mr. Woodyard, the
 17 exterior --
 18 MR. GOUTMAN: There's an
 19 objection.
 20 THE COURT: Mr. McClain has
 21 a right to ask a leading question.
 22 BY MR. McCLAIN:
 23 Q. You don't know whether the
 24 interior caulk had PCBs or not; do you?

1 MR. GOUTMAN: Objection,
 2 Your Honor. It deals with
 3 interior caulk and the court
 4 sustained an objection to that
 5 area.
 6 THE COURT: Are we talking
 7 about exterior or interior?
 8 MR. GOUTMAN: Interior
 9 caulk, Your Honor.
 10 BY MR. McCLAIN:
 11 Q. Mr. Woodyard, all of these
 12 items were for TOSKA PCB waste; were they
 13 not?
 14 A. Not all of them but most of
 15 them were TOSKA-related disposal, yes.
 16 Q. And for TOSKA related
 17 disposal charges, how much were they?
 18 MR. GOUTMAN: Objection,
 19 Your Honor. They are related to
 20 matters that the court sustained
 21 an objection to.
 22 MR. McCLAIN: How do they
 23 know that?
 24 MS. MEYERS: By looking at a

1 document.

2 MR. McCLAIN: The witness
3 has not professed that that's the
4 case, nor have I asked a single
5 question about it.

6 THE COURT: Sustained. I'll
7 be glad to go back in side bar and
8 explain it.

9 BY MR. McCLAIN:

10 Q. Mr. Woodyard, let me ask you
11 this; with the items that were disposed
12 in TOSKA, PCB containing?

13 MR. GOUTMAN: Objection,
14 Your Honor. It's the same
15 question reworded. I object to
16 it. There's no foundation as to
17 specifically what items he's
18 talking about.

19 MR. McCLAIN: Mr. Woodyard,
20 can you answer my question?

21 THE COURT: May I see
22 counsel a moment, please.

23 - - -

24 (Whereupon, the following

1 was held at side bar conference.)

2 - - -

3 THE COURT: I believe the
4 question is broad enough to
5 include items that would not
6 otherwise be admissible. That's
7 why I sustained the objection; not
8 that you don't have a right to
9 delve into the area, but not as to
10 the area which are not involving
11 these defendants.

12 MR. McCLAIN: But if the
13 injury can't be separable, unlike
14 the removal of specific areas of
15 caulk, that is the disposal of all
16 of the PCB-containing materials
17 and they are tort feasons in that
18 regard, there's joint liability in
19 this state and so they are
20 responsible, if at all, for all of
21 it or some of it, whichever the
22 jury determines.

23 So -- I'm not done.

24 MS. MEYERS: Excuse me.

1 MR. McCLAIN: And so, I have
2 a right establishing that the
3 TOSKA is for PCB disposal to ask
4 him the question, because they are
5 responsible, if or any part of it,
6 for all of it.

7 MR. GOUTMAN: Your Honor,
8 they do in fact break it down.
9 They say the duct board. That was
10 manufactured by defendant in this
11 case. I don't know where he's
12 getting the jointly several here;
13 they break it down. He's asking
14 for a total number, which includes
15 PCBs and other products whose
16 manufacturers have not been
17 identified or joined in this
18 litigation.

19 MR. McCLAIN: Show me an
20 item that you can break out from
21 those items.

22 MS. MEYERS: Your Honor, the
23 number that the jury just heard,
24 which I move to strike is a total

1 for all of this disposal,
2 including --

3 THE COURT: I thought these
4 separate items of caulk were all
5 such that were broken down and as
6 a result they can be separated.

7 MR. McCLAIN: Okay. We'll
8 do it that way.

9 MS. MEYERS: Your Honor, he
10 just announced a number to the
11 jury that includes all of this.
12 And I move to strike that number
13 because it includes light fixtures
14 and ballasts; even this is not
15 broken down here for precast
16 caulk. It includes --

17 THE COURT: Wait a minute;
18 light fixtures and ballast did
19 have PCBs in it.

20 MS. MEYERS: But they are
21 not in the case.

22 MR. GOUTMAN: By a
23 manufacturer that's been
24 dismissed.

1 MR. McCLAIN: Mr. Goutman
2 talked about it extensively on the
3 record.

4 MR. GOUTMAN: But it can't
5 be an element of damages in the
6 case. The case against the
7 manufacturer of the light ballast
8 is over. This court granted
9 summary judgment.

10 THE COURT: Wasn't there
11 some light ballasts that
12 CertainTeed had?

13 MR. GOUTMAN: No.

14 MS. HERSCHEL: No, sir.

15 MR. GOUTMAN: Phillips.

16 MS. MEYERS: They are
17 dismissed. The court found that
18 that was not a defective product.

19 Your honor, also, there is a
20 charge for freon.

21 MR. McCLAIN: That's not
22 included in the number that I gave
23 him.

24 MS. MEYERS: There's a

1 charge for ACM waste, which is
2 asbestos containing and that is
3 the -- one of the larger numbers.

4 MR. McCLAIN: That's not in
5 the number that I gave him.

6 MS. MEYERS: That's all
7 added up.

8 MR. GOUTMAN: Excavated
9 soil.

10 MS. MEYERS: Yeah, excavated
11 soil.

12 MR. GOUTMAN: PCB liquids,
13 what are they? Who manufactured
14 those?

15 MS. MEYERS: Just to give
16 the court a picture of how
17 misleading it is, if you look at
18 the total amount for the disposal
19 of the duct board and the exterior
20 caulk and precast, as well as
21 gasket material, which is not at
22 issue in this case, the total is
23 \$10,000 and the number that he
24 gave, the number was in excess of

1 \$200,000; and that's the reason
2 that I move that it be stricken.

3 THE COURT: Where do PCB
4 liquids come in?

5 MR. GOUTMAN: There's been
6 no testimony.

7 MS. MEYERS: We don't know.

8 THE COURT: I don't remember
9 any testimony on that.

10 MS. MEYERS: That was a
11 totally misleading number. And
12 maybe --

13 MR. McCLAIN: They were
14 restoring the light ballast,
15 removing light ballast in the
16 basement.

17 THE COURT: We had testimony
18 on that?

19 MR. McCLAIN: No.

20 MR. GOUTMAN: There wasn't
21 151,000 gallons of liquid from
22 light ballasts.

23 MR. McCLAIN: How do you
24 know? From the previous removal

1 projects.

2 THE COURT: The objection is
3 sustained. You may break it down
4 but the objection is sustained.

5 MS. MEYERS: Thank you, Your
6 Honor.

7 - - -

8 (Whereupon, the side bar
9 conference ended.)

10 - - -

11 BY MR. McCLAIN:

12 Q. Mr. Woodyard, let me ask
13 you: Each of the items we have up here,
14 the exterior caulk, the interior
15 decontamination, was disposed up in a
16 TOSKA landfill; am I right?

17 A. I don't know how they
18 managed each of the individual waste
19 groups.

20 Q. Some of it was disposed of
21 in TOSKA; wasn't it?

22 A. I imagine some of it was,
23 yes.

24 Q. Do you know what number that

1 is, how much it cost?
 2 MR. GOUTMAN: Your Honor,
 3 it's the same question that the
 4 court just sustained an objection
 5 to.

6 MR. McCLAIN: No. I asked
 7 for these two numbers that we've
 8 just put up, the PCB
 9 decontamination and the exterior
 10 wall caulk, how much did that cost
 11 to dispose of.

12 MR. GOUTMAN: I didn't
 13 interpret the question that way.

14 THE COURT: Overruled.
 15 BY MR. McCLAIN:

16 Q. Do you know how much it was?

17 A. To dispose of the waste from
 18 those activities?

19 Q. Yes.

20 A. No, I don't.

21 Q. You didn't include that in
 22 your \$868,000 number either; did you?

23 A. No, I did not.

24 Q. So, it's some number greater

1 than two million four; am I right?

2 MR. GOUTMAN: I object.
 3 Objection, Your Honor. There's no
 4 foundation as to what 2.4 million
 5 is or that this witness has agreed
 6 to that.

7 THE COURT: Sustained.

8 BY MR. McCLAIN:

9 Q. Was there a number
 10 associated with disposal?

11 A. I'm sorry? A number?

12 Q. The TOSKA disposal,
 13 Mr. Woodyard?

14 A. Was there a cost associated
 15 with it?

16 Q. Yes, sir.

17 A. I assume so. I don't know
 18 what that number is.

19 Q. All right. Now, let's look
 20 at that ACT letter, if we can.

21 You talked about reference
 22 to --

23 THE COURT: What page?

24 MR. McCLAIN: I'm talking

1 about the document generally right
 2 now, Your Honor.

3 There's a couple of things
 4 from the ACT letter that I want to
 5 talk about. First of all, you
 6 said that the letter referred the
 7 Commonwealth to the EPA; do you
 8 remember that testimony yesterday?

9 THE WITNESS: Yes, I do.

10 BY MR. McCLAIN:

11 Q. It's true, isn't it, that in
 12 each instance that they discussed it, the
 13 recommendation was the NIOSH
 14 recommendation?

15 A. I wouldn't say that at all.

16 Q. Do you see -- look over with
 17 me, if you will. This is Page 3. Do you
 18 see where it says "NIOSH recommends that
 19 occupational exposure to carcinogens be
 20 reduced to the lowest feasible level."

21 Do you see that?

22 A. Yes, I do.

23 Q. And do you see where it says
 24 results of several investigations of PCB

1 surface contamination in office buildings
 2 indicate that a background level of
 3 service contamination in the range of 50
 4 to 100 micrograms per square meter,
 5 therefore, for surfaces in the
 6 occupational environment that may be
 7 routinely contacted by unprotected skin,
 8 NIOSH investigators have recommended that
 9 PCB contamination not exceed 100
 10 micrograms; the lowest feasible level
 11 considering background contamination."

12 Read for me, if you will,
 13 anyplace else that they say NIOSH
 14 recommends anything else in this
 15 document?

16 A. On Page 8, for example,
 17 NIOSH states "These results should also
 18 be compared with EPA cleanup criteria or
 19 what we've called the safe level of ten
 20 micrograms per 100 square centimeters for
 21 high contact services and 100 micrograms
 22 per 100 square centimeters for indoor low
 23 contact surfaces."

24 Q. Where does it recommend that

1 level? They recommend exposures be kept
2 to the lowest feasible level; don't they?
3 Isn't that what the document says?

4 A. Of course, but that's what
5 NIOSH has always recommended up until
6 about a month after this letter came out
7 when they changed their policy.

8 Q. Sir, I'm talking about this
9 letter. Let's stay on this letter and
10 then we'll talk about whatever else you
11 want to talk about.

12 In this letter, they
13 recommend their level; don't they?

14 A. The language that you cited
15 states that they recommend occupational
16 exposure be reduced to the lowest
17 feasible level.

18 Their policy is unstated, as
19 we cited earlier; if you looked at the
20 table in the back of the document, it
21 states "it must be emphasized that the
22 recommendation does not represent NIOSH
23 policy. It is merely a guideline used by
24 NIOSH investigators in the conduct of

1 health hazard evaluations."

2 I've worked on 100 cleanups
3 or more. I have seen a number of NIOSH
4 documents in my experience related to
5 transformer fires, as I testified before.
6 I have never in those documents seen them
7 refer any of my clients or the people who
8 were owners to the EPA cleanup status.
9 This is the first time I've ever seen it.

10 It's obvious to me, the way
11 this is written, that they knew this
12 wasn't a transformer fire in the
13 traditional sense and that it was a PCB
14 cleanup for which they typically don't
15 take the lead.

16 Q. Where does it say that
17 anywhere in the document? It doesn't say
18 that anywhere; does it?

19 A. Excuse me. I'm up here
20 because I have years of experience doing
21 this. I'm interpreting what this letter
22 says to me because I have seen a lot of
23 letters like this in the past. And this
24 one is very different. It's very unusual

1 because it direct them to consider the
2 EPA standards, which is for NIOSH almost
3 unheard of.

4 Q. Just like you interpreted
5 that Mr. Ewing had taken the samples;
6 right? That was your interpretation,
7 too, wasn't it?

8 A. No; that was information
9 that was provided to me in error,
10 presuming that he worked for a company
11 that he didn't work for at the time.

12 Q. You added a whole lot of
13 facts that no one gave you about how he
14 collected debris, right from your
15 expertise?

16 A. No. The information that I
17 provided about Mr. Ewing was accurate.
18 It's just that I associated him with the
19 wrong samples. There was no problem
20 there.

21 Q. Part of your expertise;
22 right?

23 A. Excuse me?

24 Q. It was part of your

1 expertise?

2 A. What was part of my
3 expertise? I'm sorry.

4 Q. Your discussion with Ewing,
5 was part of your expert report; wasn't
6 it?

7 A. Yes, it was. And I
8 mentioned before that it was in error. I
9 just connected the wrong person to the
10 samples. It doesn't have any affect on
11 the result.

12 Q. It says nowhere in this
13 letter, does it, that our recommendation
14 only applies to transformer fires; does
15 it? It doesn't say that anywhere in the
16 letter?

17 A. No. This is not a
18 transformer fire that we're talking about
19 at the T and S Building.

20 Q. Right. It's not?

21 A. Right. That's why they
22 cited them to the EPA standard, which
23 they never do.

24 Q. In fact they said the health

1 department needs to decide what standards
2 to apply here; isn't that right?

3 A. That's correct.

4 Q. And the year before the
5 health department had already chosen the
6 NIOSH standard; isn't that true?

7 A. In principal, they had, but
8 as I testified before, they never
9 actually applied it. They continued to
10 use the EPA safe standard as the
11 guideline and announce to the employees
12 that the building was safe.

13 Q. You've come back to that
14 again. Nowhere in the spill policy does
15 it say EPA safe standard; does it? Those
16 words are not used; are they?

17 A. No. They use a number of
18 different terms, but as a practitioner in
19 the business, I use a lot of different
20 terms, including that one, to describe
21 the EPA cleanup standards.

22 Q. Now, if we look at the data,
23 you were talking about the mean
24 information regarding the PCB levels

1 that I'm clear on this, those averages
2 are pretty close in your business; am I
3 right?

4 A. Pretty close to what?

5 Q. To each other.

6 A. Yes, they are all similar;
7 but as I pointed out the other day in
8 testimony, they list the maximum for
9 those same floors, the median and the
10 spread is pretty dramatic, compared to
11 the mean.

12 Q. We're going to come back to
13 that. You talked to us about averages
14 yesterday; didn't you?

15 A. I don't recall.

16 Q. On your own chart you didn't
17 talk about averages?

18 A. Oh, yeah, I talked about
19 computing averages with my 28 samples,
20 yes.

21 Q. And then 14,000 on the
22 fourth floor, fifth floor, 18,000, right?

23 A. Yes, sir.

24 Q. And then on the 6th floor we

1 found throughout the building; table six,
2 for Mr. Ect's letter.

3 A. Yes, sir.

4 Q. In looking at the averages,
5 which you talked about yesterday, the
6 averages from your own chart --

7 A. Yes. Yes.

8 Q. The levels, the mean, that
9 was the average; right? Isn't that what
10 you told us that's what mean means?

11 A. Yes, that's correct.

12 Q. The average floor to floor
13 for bulk sampling of PCBs 1260s, that's
14 from the fireproofing; right?

15 A. Yes, sir.

16 Q. It's 20, 20, 20, 14, 18 --

17 MR. GOUTMAN: Objection,
18 Your Honor. It's 20, 24, 26.
19 It's not 20, 20, 20.

20 BY MR. McCLAIN:

21 Q. 20,556, Mr. Woodyard, is the
22 first one, the second is 24,870; right?

23 A. Yes. That's correct.

24 Q. 26,720; right? And just so

1 have a much higher level, 69,000; right?

2 A. Yes.

3 Q. And as Mr. Neal pointed out,
4 the highest level, the maximum level of
5 three million perhaps takes that number a
6 little bit higher than it should be;
7 isn't that true?

8 A. I'm sorry. Takes it higher
9 than it should be? It is what it is.
10 It's contamination on the 6th floor.

11 Q. That one mill -- that one,
12 three million number, that one largest
13 number that existed on the 6th floor
14 creates a higher average than if you
15 didn't include that number, am I right?

16 A. Yes, but it's still a real
17 data point so it should be included.

18 Q. And then the 7th floor,
19 28,000; 28th floor, 28,000; the 9th
20 floor, 27,000; the 10th floor, 22,000;
21 the 11th floor, 26,000; the 12th floor,
22 24,000; the 13th floor, 16,000; the 14th
23 floor, 23,000; right?

24 A. Yes, sir.

1 Q. And then in -- do you know
2 where the PH was?
3 A. Penthouse.
4 Q. Penthouse, 20,000; PA?
5 A. I don't recall what PA stood
6 for. I'm sorry.
7 Q. It's down here on the
8 bottom, PA means penthouse A.
9 A. Oh, thank you.
10 Q. All right. PH means
11 penthouse. Do you see that?
12 A. Yes, I do. Thank you.
13 Q. And all the way down here,
14 it's 28,000, there are 16,000, 14,000 in
15 each of those; right?
16 A. Yes, that's correct.
17 Q. And then if you look over at
18 table seven, which is the results of bulk
19 sampling for total PCBs, you look down
20 the list and you have 22,000, 28,000,
21 29,000, 17,000, 23,000, 86,000 on the 6th
22 floor; right? Again, 6th floor is nearly
23 four times the amount found on any floor
24 up to that point; right?

1 A. Yes.
2 Q. And then on the 7th floor,
3 36,000; 8th floor, 32,000; 9th floor,
4 31,000; 10th floor, 26,000; 11th floor,
5 29; 12th is 28; the 13th is 18; 14 is 23
6 and et cetera; right?
7 A. Yes, sir.
8 Q. All right. Now, I wanted to
9 look over at table nine for a moment;
10 which is the wipe sample numbers.
11 And if you look at the mean,
12 it's true, isn't it, that on every floor
13 you're above the NIOSH level; the mean
14 average of the wipe samples for PCB 1260;
15 right?
16 A. Yes, at its face.
17 Understand, too, these data
18 represent all the wipe samples that were
19 collected, which includes areas that have
20 been cleaned in high contact areas as
21 well as some of the areas that were low
22 contact, troughs and things like that.
23 They, in providing this data to NIOSH,
24 kind of mixed up the numbers.

1 Q. NIOSH got it wrong, too,
2 huh? Is that right?
3 A. No. NIOSH was provided with
4 a blend of all the data without really
5 sorting it into these high and low
6 contact areas, which is an important
7 consideration, when you are setting
8 standards.
9 Q. So they were wrong? Isn't
10 that what you are saying? NIOSH was
11 wrong?
12 A. Wrong about what? I'm
13 sorry?
14 Q. About their analysis here?
15 A. Oh, no. They just had
16 incomplete -- they had a data set here
17 that was not sorted and they in fact
18 cited that in the letter, that if you
19 were to sort this or if you were to look
20 at the data, you need to look at high
21 versus low contact; as well as looking at
22 the case standards.
23 Q. It's true, isn't it, on
24 every floor there were wipe samples that

1 were above the NIOSH level?
2 A. Yes, I believe so.
3 Q. Now, you mentioned the EPA
4 spill policy standard. You have talked
5 about NIOSH and then Mr. Goutman
6 mentioned to you Dr. James' risk
7 assessment standard; am I right?
8 A. Yes.
9 Q. That he came up with?
10 A. Yes.
11 Q. As far as you know, did
12 Dr. James ever submit that to the EPA and
13 say that's the standard I would like to
14 use in this building?
15 A. No, of course not. He had
16 developed the risk assessment after the
17 building's determination was pretty much
18 set.
19 Q. No one at EPA ever said
20 that's a level that we would allow you to
21 clean to; did they?
22 A. No, but Dr. James used the
23 same procedure that EPA would use to do a
24 risk assessment. I'm sure they would

1 have considered that if it were given to
2 them in a timely fashion.

3 Q. There's no evidence that
4 NIOSH ever would have approved that
5 number either; is there?

6 A. Well --

7 MR. GOUTMAN: Objection. It
8 assumes that NIOSH has that
9 authority.

10 THE COURT: Sustained.

11 BY MR. McCLAIN:

12 Q. Do you know whether it was
13 ever submitted to NIOSH?

14 A. No. The risk assessment
15 would not have been submitted to NIOSH
16 because up to the point at 1995 they
17 didn't consider risk assessment as an
18 option.

19 Q. You've said that they now
20 consider risk assessment; didn't you?

21 A. Yes, I do.

22 Q. Was it said to them after
23 they began considering risk assessment,
24 do you know?

1 A. No, not to my knowledge.

2 Q. Now, in regard to all of
3 these numbers that we have shown, this
4 was after the determination was made to
5 tear the building down; am I right?

6 A. Yes, that's correct.

7 Q. All right. And these are
8 not numbers to renovate and reoccupy the
9 building; are they?

10 A. No. Well, these were
11 predemolition numbers for caulk and PCB
12 decon.

13 Q. But it was to tear the
14 building down, not to reoccupy; right?

15 A. No. If they were going to
16 reoccupy it, the numbers would have been
17 a lot lower.

18 Q. They are not the right
19 numbers; are they?

20 A. No, definitely not.

21 Definitely not.

22 Q. And it's true, isn't it,
23 that in regard to this NIOSH level, the
24 new Keystone building will be below the

1 NIOSH level; won't it?

2 MR. GOUTMAN: Objection.

3 Calls for speculation. The
4 building isn't even built yet.

5 MR. McCLAIN: Let me ask you
6 this question.

7 BY MR. McCLAIN:

8 Q. Mr. Woodyard, you can't buy
9 PCB containing building products today;
10 can you?

11 MR. GOUTMAN: Objection.

12 Beyond the scope of redirect.

13 THE COURT: Sustained.

14 BY MR. McCLAIN:

15 Q. Mr. Woodyard, can you tell
16 me, if you know, whether when the new
17 Keystone building is built, whether it
18 will have PCB contamination below the
19 NIOSH level or not?

20 MR. GOUTMAN: Objection.

21 Calls for speculation. The
22 building isn't built yet.

23 MR. McCLAIN: He's an
24 expert. If he doesn't know, he

1 can say that.

2 MR. GOUTMAN: How can he
3 testify to the levels of --

4 THE COURT: Sustained.

5 BY MR. McCLAIN:

6 Q. Mr. Woodyard, let me ask you
7 this question: It's true, is it not,
8 that when the building was demolished and
9 the site was cleaned, it was below the
10 NIOSH level, the T and S building site?

11 MR. GOUTMAN: Objection. No
12 foundation. I've heard nothing
13 about tests of the site.

14 THE COURT: Sustained.

15 BY MR. McCLAIN:

16 Q. Do you know once the
17 material was hauled away and put in a
18 TOSKA landfill what the level was at that
19 site, Mr. Woodyard?

20 A. No, I don't.

21 MR. McCLAIN: Thank you. No
22 further questions.

23 MR. NEAL: Good afternoon,
24 ladies and gentlemen. Good

1 afternoon, Your Honor,
2 Mr. Woodyard.
3 THE WITNESS: Good
4 afternoon.

5 - - -
6 EXAMINATION
7 - - -

8 BY MR. NEAL:

9 Q. Mr. Woodyard, you were asked
10 a question by Mr. McClain about
11 Mr. Kominsky and I think your testimony
12 was that as far as you were concerned,
13 Mr. Kominsky's expertise was in the area
14 of just sampling and interpretation of
15 sampling data?

16 A. I think my answer was that
17 my experience with Mr. Kominsky, and I
18 have worked with him in the past, was
19 that that was primarily where he had
20 worked on projects I was involved in.

21 Q. How many projects did you
22 work on with him?

23 A. Maybe one or two, where we
24 encountered each other and they were

1 transformer fires.

2 Q. And you heard Mr. Kominsky's
3 testimony because you were present during
4 the time he was on the stand, and the
5 first time when he was being qualified;
6 is that correct?

7 A. I was here for at least a
8 day. I don't recall which day it was.

9 Q. And of course you've read
10 his testimony; correct?

11 A. Yes, sir.

12 Q. And you were there when
13 Mr. Kominsky was qualified by this court,
14 Judge Mirarchi, as an expert in the area
15 of PCBs --

16 MS. HERSCHEL: Objection,
17 Your Honor. Objection. I
18 don't -- counsel is simply
19 rehearsing testimony that went
20 forward when Mr. Kominsky was
21 here. He's requalifying his
22 witness through this witness.

23 MR. NEAL: Your Honor,
24 Mr. Woodyard made a comment about

1 what he considered Mr. Kominsky's
2 expertise to be. And I have a
3 right to explore that.

4 THE COURT: Overruled.

5 BY MR. NEAL:

6 Q. You were here when His
7 Honor, Judge Mirarchi, qualified
8 Mr. Kominsky as an expert in the area of
9 PCBs, PCB-related issues, investigation
10 evaluation of PCB contamination in
11 buildings, their sources and their modes
12 of transport; isn't that correct?

13 A. Yes, sir.

14 Q. And that just doesn't
15 involve sampling; does it not? It
16 involves something more than just
17 sampling?

18 A. True. It would involve
19 physical chemical properties, things like
20 that.

21 Q. And you were here when
22 Mr. Kominsky talked about the number of
23 articles that he published; is that
24 correct?

1 A. Yes.

2 Q. And he published some 40
3 articles that were in peer review
4 journals; is that correct?

5 A. I don't recall.

6 Q. Well, you wouldn't disagree
7 with me; would you?

8 A. No.

9 Q. And he published articles,
10 ten of which were on PCBs in peer review
11 journals; is that correct?

12 A. I don't recall the exact
13 number. I know he has published in peer
14 review journals, yes, on PCBs.

15 Q. Have you published in peer
16 review journals on PCBs?

17 A. Perhaps once.

18 Q. Once. Of all the articles
19 that you have, that you've listed, how
20 many were peer review?

21 A. Again, maybe one or two.

22 Q. Now, you were also here when
23 Mr. Kominsky indicated that he had -- he
24 was a master certified hazardous

1 materials manager under the Institute of
2 Hazardous Materials Management under the
3 Academy of Hazardous Material Managers.

4 Are you a certified
5 industrial hazardous manager?

6 A. No, I'm not.

7 Q. And certified industrial
8 hazardous manager deals in the area of
9 the management and control of hazardous
10 wastes; is that not correct?

11 A. Actually, I don't know what
12 that is.

13 Q. But you're not that?

14 A. But I am not one, no.

15 Q. And Mr. Kominsky is a
16 certified industrial hygienist; you're
17 not a certified industrial hygienist; is
18 that correct?

19 A. No, I'm not.

20 Q. And Mr. Kominsky testified
21 that he worked for NIOSH for some 14
22 years. You didn't work for NIOSH; did
23 you?

24 A. No, I did not.

1 Q. And you heard that
2 Mr. Kominsky was the chief PCB
3 investigator for NIOSH during the period
4 of time from 1979 to 1988; did you not?

5 A. Yes, I did.

6 Q. And Mr. Kominsky has also
7 done research for the Environmental
8 Protection Agency; have you done that?

9 A. Yes, I have.

10 Q. Have you published?

11 A. One time or another, yes.

12 Q. In peer review journals?

13 A. Not that I can recall, no,
14 just EPA reports and documents for the
15 government.

16 Q. Okay. Now, you indicated on
17 several occasions that it's just good
18 basic science; is that correct? When you
19 were talking about various matters on
20 cross-examination or direct examination;
21 correct? You talked about just basic
22 science, good, basic science?

23 A. Yes, in several instances I
24 was trying to point out when data or

1 results might not make sense, compared to
2 good science.

3 Q. And as part of being good,
4 basic science, would you agree that it
5 would involve keeping up on the
6 literature and reference books that come
7 out; is that correct?

8 A. In some cases that may be
9 true, yes.

10 Q. In this instance, when you
11 wrote your report, you testified that you
12 didn't refer to any reference books of
13 any kind; is that correct?

14 A. I don't think that was my
15 testimony, but I think you or someone
16 asked me about whether I had picked up my
17 high school chemistry books or something
18 along those lines and I admitted I had
19 not done that; but I did site, if I may
20 finish --

21 Q. Go ahead.

22 A. I did indicate that I had
23 looked at some other books. I think I
24 might have even mentioned Mr. Erickson's

1 PCB book as a source of data.

2 Q. Well, you indicated, did you
3 not in your testimony, the only purpose
4 you used Mr. Erickson's book was to get
5 evaporation and vapor pressure rates;
6 isn't that correct?

7 A. I don't think I limited it
8 quite that much but I typically would use
9 his book as a starting point for just
10 data. There's a lot of data tables and
11 good references and citations to other
12 works.

13 Q. And you didn't research the
14 literature, did you not, when you sat
15 down and wrote your report?

16 A. In relation to?

17 Q. In relation to PCBs as they
18 are involved in solids or in matrix of
19 glue?

20 A. No, I did not.

21 Q. You didn't do any original
22 sampling of your own; did you?

23 A. No, I did not.

24 Q. You didn't do any testing on

1 your own; isn't that correct?

2 A. Just laboratory analysis;
3 not chamber testing or anything like
4 that.

5 Q. Basically what you did is
6 you took other people's data and you
7 critiqued it; is that correct?

8 A. I took other people's data
9 and tried to understand it. We're
10 talking about everybody's data, including
11 Mr. Ewing's, Mr. Kominsky's and of course
12 all of the State, thousands of samples
13 the State collected.

14 Q. And when it came to
15 analyzing that, you accepted some and you
16 rejected others; is that correct?

17 A. By and large, the only ones
18 that I rejected, if I recall, were the
19 results somehow tied to Mr. Ewing's
20 experiment. In general, I accepted the
21 State's data and the Kominsky data as
22 well.

23 Q. And you indicated, during
24 the course of your examination, that you

1 results.

2 Q. Well, you talked about that
3 you sampled all of the -- excuse me --
4 reviewed all of the air tests. Where
5 were the other 1300 air tests?

6 A. Again, it's been a while
7 since I counted up samples, but these
8 3800 samples are, if I recall, from 1994.

9 Q. But you --

10 A. And then there were samples
11 collected in 1995 and '96.

12 Q. But you didn't refer to that
13 in your report; did you?

14 A. I don't know. Perhaps not.

15 Q. The only thing you referred
16 to is 3,787 air samples; correct?

17 A. Well, the purpose of that
18 particular citation in the report was to
19 show that there were almost 4,000 air
20 tests taken and only a handful of them
21 actually had any detectable PCBs above
22 this point five microgram level.

23 Q. And that was --

24 A. That was the purpose of

1 relied heavily on 5,000 air tests; is
2 that correct?

3 A. Yes, sir.

4 Q. Where did you get the number
5 5,000?

6 A. I don't recall. It's been a
7 long time since I even looked at the
8 actual data.

9 Q. Do you have your report in
10 front of you?

11 A. Yes, I do.

12 Q. Could you look at Page 16?

13 A. I'm there.

14 Q. You have it under the middle
15 paragraph, 3.2?

16 A. Yes, sir.

17 Q. You talked about analyzing
18 air sampling; correct?

19 A. Yes, I did.

20 Q. And you talked about 3,787
21 air samples; is that correct?

22 A. Yes. That refers
23 specifically to table three, which is, I
24 believe a summary of the 1994 air test

1 making that illustration. Of course the
2 data in '95 and '96 was even better in
3 the sense that it had no detectable 1262
4 above point five.

5 Q. If the data was better, why
6 wasn't it in your report? Wouldn't you
7 want to use the best data?

8 A. I don't know. There are
9 probably a lot of things I could have
10 included in my report that I didn't for
11 one reason or another.

12 Q. Except you said the data was
13 even better for '96 and '97, yet you
14 didn't refer to it at all in your report;
15 did you?

16 A. No, I don't think I did.

17 Q. Now, you also talked about,
18 remember the documents that you received
19 to review I think it was from
20 CertainTeed, as far as to get you up to
21 speed as far as the ductwork and how it
22 was fabricated and things of that sort;
23 is that correct?

24 A. Yes, we talked about that

1 last time.

2 Q. And we talked about the
3 tests and you and I went over the tests,
4 where we were indicating and I was
5 pointing out to you, it says it fails
6 here and it fails there; do you remember
7 that?

8 A. Right, the different
9 performance tests for the duct work.

10 Q. Then when Mr. Goutman asked
11 you, you said well, I just assumed, I
12 just assumed that that wouldn't carry
13 forward during the year that it was used
14 to build the Transportation and Safety
15 Building; is that right? You said I just
16 assumed that they had finally gotten a
17 proper product and it worked? Do you
18 remember that?

19 A. I don't remember my exact
20 language.

21 Q. Do you remember saying I
22 assumed that they corrected the problems?

23 A. What I remember in our
24 discussion was that we were explaining

1 how industrial experiments work and how
2 it's designed to really improve the
3 quality of the product and move forward
4 and that the result of those kinds of
5 tests are essentially built into the
6 product; they are reflected in changes in
7 the way things are made.

8 Q. And then this morning or
9 this afternoon you testified the reason
10 that, for these tests, and you said,
11 while I assumed that we were talking
12 about a period of time prior to the
13 Transportation and Safety Building, I
14 assumed that that product, the problems
15 they had was worked out. Do you remember
16 that?

17 A. I don't remember my exact
18 language but that was the purpose of
19 really having those experimental results
20 in there was to show that there was
21 experimental work done to improve
22 quality.

23 Q. Did you ask at all whether
24 in fact the problems were worked out or

1 if they had any problems with the
2 adhesive that was used in the
3 Transportation and Safety Building?

4 A. No, I did not. I had seen
5 those documents and others, talking about
6 different experiments they had done to
7 improve mixes and change the adhesive.
8 That's the way that sort of business is
9 done in the industry.

10 Q. You had -- what's the latest
11 date you had in there, 1964?

12 A. '64 or '65 was the last one
13 in my expert report, yes.

14 Q. But did you ask CertainTeed,
15 hey, do you have any further test
16 results, beginning in '66, '67, '68 or
17 any time thereafter, where the adhesives
18 had a problem where they dried up?

19 A. No, I didn't.

20 Q. Now, we talked about the
21 prefire samples. We probably talked
22 about it ad nauseam.

23 But the prefire samples that
24 you had were 28 individual samples;

1 correct?

2 A. Yes, that's correct.

3 Q. And 14 of them you really
4 couldn't utilize in the sense of you
5 didn't know when they were taken, you
6 didn't know how they were stored, you
7 didn't know any information at all about
8 the samples that you received; correct?

9 A. That's correct. I just knew
10 that they were from the building, before
11 the fire.

12 Q. And then you then went on
13 the bottom half, maybe we have it here.

14 On the bottom half, and you
15 used the 14 samples right here and you
16 compared them to Mr. Kominsky's outer
17 samples; correct?

18 A. Yeah, that's -- well, that's
19 the way I constructed the table. I
20 didn't do much with it but that was
21 originally what I was hoping to do.

22 Q. And for instance, on the
23 11th floor, you have a prefire sample.
24 You don't know where that sample was

1 taken in relationship to where
2 Mr. Kominsky's sample was taken; is that
3 correct?

4 A. No, I didn't make any
5 attempt to compare them.

6 Q. And we're talking about
7 floors, I think you testified before,
8 55,000 square feet, 60,000 square feet?

9 A. That's my understanding;
10 typically.

11 Q. And you don't know whether
12 this was taken on the west side or the
13 east side or north corner on or the south
14 corner; do you?

15 A. I'm not sure. I don't
16 recall what the labels had on them.
17 Let's assume you're correct. I don't
18 know exactly where it was taken.

19 Q. And would it have been nice
20 for your purposes to be able to maybe get
21 it to see if it was in the same area
22 where Mr. Kominsky took his samples?

23 A. Well, I don't know what you
24 mean by nice. I mean it's --

1 Q. To see if it's
2 representative.

3 A. Well, statistically, the
4 term representative doesn't mean
5 anything. That introduces your own
6 judgment.

7 What we're talking about
8 here is a sample taken somewhere compared
9 to a couple other samples taken somewhere
10 else and as you can see from that table,
11 on every floor except five and six, the
12 results are significantly lower before
13 the fire than after the fire, which I
14 think is important.

15 Q. When you and I talked
16 yesterday, I think it was yesterday, we
17 talked about one of the purposes and the
18 thing you want to have is a
19 representative sample; is that correct?

20 A. Well, again, that was your
21 term.

22 Q. Well, we also looked at
23 Mr. Erickson's book where it talked about
24 getting a representative sample and you

1 agreed, did you not, that that probably
2 is what you want, so that it represents
3 the whole, so that what you take on a
4 floor would be representative of that
5 floor; correct?

6 A. I think in the context of --
7 no, not necessarily. In the context we
8 were talking about, with Mr. Kominsky's
9 data, it had to do with dividing the
10 floor into quadrants and taking samples
11 from different quadrants and so forth
12 which I think is a good idea; call it
13 representative, call it grid sampling,
14 whatever.

15 Q. Do you think it would be
16 fair and representative, if this were the
17 floor, right here, of the Transportation
18 and Safety Building and we took a small
19 little sample from the very, very corner,
20 took one sample and then on the basis of
21 that sample made a determination as to
22 what it represented for the entire floor.
23 Do you think that would be fair?

24 A. No. No, of course not. In

1 fact, I testified before Mr. Kominsky's
2 one sample over 50 resulted in him saying
3 that all the fireproofing in the whole
4 building had to go to a TOSKA landfill.
5 That's exactly what you're talking about
6 and I think that's not the appropriate
7 conclusion.

8 Q. Let's be fair about that.
9 Mr. Kominsky's testimony, was it not, is
10 that based on the State's data, that --
11 all of that material had to be taken to a
12 TOSKA landfill; not based on his data but
13 on the State's data?

14 A. I don't recall his
15 testimony. I was thinking back to his
16 report, which I thought was very
17 specific, as to the results.

18 Q. In a moment after I finish,
19 Your Honor, may I ask for one moment so
20 that I could obtain that.

21 THE COURT: You may.

22 BY MR. NEAL:

23 Q. In any event, do you have
24 one sample that was taken, you don't know

1 how it was taken, you don't know where it
2 was kept you don't know how and on the
3 basis of that, you added it up and then
4 compared averages to averages; is that
5 correct?

6 A. Yes, that's correct.
7 Although I don't have quite the problem
8 you do with whether the samples are
9 collected off in the corner or are
10 represented --

11 Q. No, you don't. And when is
12 the last time you did sampling?

13 A. A long time ago.

14 Q. A long time ago. And so you
15 don't see any problem in taking one
16 little tiny sample off in a corner and
17 then saying that will represent, when I
18 get those results, that will represent
19 everything on this floor?

20 A. No. The reason I created a
21 table like that and computed the averages
22 was to show averages, which is what we do
23 to compare different levels. And that's
24 what we've done.

1 Q. Isn't it your testimony the
2 reason you compared averages to averages
3 because you didn't have enough samples to
4 compare to Mr. Kominsky's? That you had
5 to use average?

6 A. No. My testimony was that
7 averages were a good way to compare it.
8 You're acting as though by not having
9 enough data, I can't do anything with the
10 data and that's incorrect.

11 Q. Now, prefire samples, all
12 determined to be Aroclor 1262; correct?

13 A. Yes, that's correct.

14 Q. And I think as you testified
15 before, the only known source, and you
16 testified again today, as the only known
17 source of Aroclor 1262 in the
18 Transportation and Safety Building was
19 the adhesive in the duct work; is that
20 correct?

21 A. In the duct board and, of
22 course, in the duct wrap on the metal
23 duct.

24 Q. Whatever way you want to

1 call it, it was in the adhesive; is that
2 correct?

3 MS. HERSCHEL: Objection,
4 Your Honor. It's misleading.
5 There were two separate adhesives.

6 MR. NEAL: He's explained
7 that, I thought, Your Honor.

8 THE WITNESS: I've answered
9 the question.

10 BY MR. NEAL:

11 Q. The only known source was
12 the adhesive in the ductwork, whether it
13 be round or rectangular; correct?

14 A. Yes, albeit different
15 adhesives.

16 Q. Still Aroclor 1262?

17 A. Yes.

18 Q. And then you stated that
19 there was some background in the prefire,
20 or what you determined to be the prefire
21 results were background levels; correct?

22 A. Yes, that's correct.

23 Q. Levels that we see every day
24 in various areas that could be existing

1 every day in various areas; is that
2 correct?

3 A. Yes, as supported in
4 Harrisburg by the data collected in
5 Harrisburg.

6 Q. And the only Aroclor you
7 found was 1262; no other Aroclor;
8 correct?

9 A. In the Transportation and
10 Safety Building, prefire samples, that's
11 correct.

12 Q. That was background level in
13 the Harrisburg area?

14 A. Yes; total PCB, that's
15 correct.

16 Q. And the Aroclor that you
17 found in the South Office Building and
18 the Milton Hershey School was not Aroclor
19 1260; was it?

20 A. I don't recall which Aroclor
21 it was.

22 Q. You testified, did you not,
23 that it as Aroclor 1260?

24 A. I don't recall that

1 testimony.

2 Q. Well, let's assume that I'm
3 correct and I can show you the testimony.
4 It was Aroclor 1260. It was a different
5 Aroclor than 1260?

6 A. Not necessarily. It was
7 analyzed at a time period when
8 Mr. Cocciardi was finding everything was
9 1260 and later representing or at least
10 other people represented those analyses
11 should have been 1262.

12 Q. But you don't know that, do
13 you, because you don't know the
14 circumstances under which that sampling
15 was done; do you?

16 A. No, but they were analyzed
17 by the same laboratory. It's quite
18 reasonable to assume that they are 1262
19 because they were having the same problem
20 that I am.

21 Q. Mr. Woodyard, I don't want
22 to know what you can assume. I want to
23 know if you know for an actual fact
24 whether it was Aroclor 1260 or not in the

1 Milton Hershey School and the South
2 Office Building?

3 A. No, I don't, nor do I know
4 at the time that it was actually 1262 in
5 the T and S Building.

6 Q. But you have to assume, do
7 you not, that the Aroclor that they
8 found, because you have no other
9 information, was Aroclor 1260; that's
10 what they found?

11 A. Well, at the time they found
12 it in the T and S Building as well.

13 Q. They found -- you found
14 1262; did you not?

15 A. Four years later, true.

16 Q. Did you ever do a background
17 study of Harrisburg, as far as levels of
18 PCB and kinds of PCB in the Harrisburg
19 area?

20 A. No, I did not. I was
21 satisfied with the results from the
22 State's own background study.

23 Q. Is it your testimony that
24 the Aroclor 1262 was just hovering around

1 the Transportation and Safety Building
2 but it wasn't hovering around the Milton
3 Hershey School or the South Office
4 Building, that a different Aroclor was
5 hovering around there?

6 A. You're using the term
7 hovering as that's what background is all
8 about. I don't know how the PCBs got
9 into the fireproofing before the fire.
10 That's why we're calling it background.
11 It could have easily been the same PCB in
12 all three buildings.

13 MR. NEAL: Your Honor, may I
14 have a moment?

15 THE COURT: Yes.

16 MR. NEAL: If I could have
17 about one minute?

18 THE COURT: How many minutes
19 do you need?

20 MR. NEAL: I need two
21 minutes.

22 THE COURT: Let's take a
23 brief recess.
24 - - -

1 (Whereupon, there was a
2 brief recess.)
3 - - -

4 THE COURT: Mr. Neal?

5 MR. NEAL: No further
6 questions, Your Honor.

7 MR. GOUTMAN: May I proceed,
8 Your Honor?

9 THE COURT: You may proceed.

10 MR. GOUTMAN: Good
11 afternoon.
12 - - -

13 EXAMINATION
14 - - -

15 BY MR. GOUTMAN:

16 Q. You testified, and I believe
17 it's in your report about this \$868,000
18 number; is that correct?

19 A. Yes, sir.

20 Q. Where did that \$868,000
21 number come from?

22 A. It was the sum of the PCB
23 decontamination billing items from a PDG
24 document.

1 Q. A different document than
2 what you were shown today?

3 A. I believe so.

4 Q. Sir, whether it's 868,000 or
5 1,459,000, you indicated on
6 cross-examination that if they were to do
7 the cleanup for reoccupancy, as opposed
8 to blowing the building up, it would have
9 cost less; did you not?

10 A. Yes.

11 Q. Can you explain to the jury
12 why?

13 A. Well, as I testified before,
14 removing the caulk would have been
15 unnecessary, in my view, under any
16 circumstances, out of the 1.4 million for
17 cleanup, a lot of that money went into
18 cleaning floor troughs and grinding up
19 floor tile mastic and things that would
20 not have been required if the building
21 was occupied and not required for
22 demolition.

23 Q. Could you estimate how much
24 less expensive it would have been just to

1 clean up the building, whether it's 1.4
2 million or 868,000, for reoccupancy?

3 A. I think in my report I
4 estimated that about five percent of the
5 building actually needed to be recleaned
6 to meet the EPA safe standard, which is
7 what they cleaned up for predemolition,
8 and using that and applying that against
9 some of the numbers that were in my
10 report for total cleanup, it would have
11 been I think about four or 500,000,
12 total.

13 Q. You were questioned about
14 smoke and soot. Do you remember that?
15 And Mr. McClain cleaned the TV screen.
16 Do you recall that?

17 A. Yes, I do.

18 Q. And you mentioned, I
19 believe, during your testimony, the
20 testimony of division chief engineering
21 design DGS Joseph Mancuso. Do you recall
22 that?

23 A. Yes, sir.

24 Q. And Mr. Mancuso testified

1 that he walked through the building and
2 every square inch was covered with soot
3 throughout the building absolutely. Do
4 you recall that testimony?

5 A. Yes, I do.

6 MR. McCLAIN: I object to
7 that. I'd like you to read the
8 last question and answer exactly
9 the way it was asked.

10 BY MR. GOUTMAN:

11 Q. "What did you see with
12 respect to damage on the building on that
13 tour?"

14 "Answer: Just a lot of
15 smoke and soot. Every square inch that
16 you could see or touch was covered with
17 soot and of course the odor was terrible.

18 "Question: Was that pretty
19 much throughout the building?"

20 "Answer: Absolutely."

21 Now, sir, in relying upon
22 Mr. Mancuso's testimony, did you have any
23 reason to believe that a division chief
24 for DGS would mistake soot for dust?

1 A. No, I do not.

2 Q. Sir, do you know how much
3 DGS spent to clean up smoke and soot
4 after the fire?

5 A. Yes. They spent about \$1.2
6 million on fire cleanup contractors.

7 Q. Sir, did DGS spend \$1.2
8 million for some light dusting?

9 MR. McCLAIN: Objection, Your
10 Honor, unless he knows what was
11 entailed.

12 BY MR. GOUTMAN:

13 Q. Do you know what it entails?

14 A. Yes, I do. It involved a
15 variety of different cleaning techniques
16 that are specific.

17 Q. Did they spend \$1.2 million
18 for some light dusting?

19 A. No. They were going after
20 soot.

21 Q. You were questioned, sir,
22 about these prefire asbestos samples; do
23 you recall that?

24 A. Yes, sir.

1 Q. And, sir, these were
2 provided by Mr. McClain's office to me
3 and then sent to your laboratory when?

4 A. I believe it was in January
5 of '99. Is that right?

6 Q. And before January of 1999,
7 between 1992 and 1999, whose
8 responsibility would it have been to
9 maintain and properly store those
10 samples?

11 MR. McCLAIN: Objection,
12 Your Honor. Calls for
13 speculation. Calls for a legal
14 conclusion. How would he know?

15 MR. GOUTMAN: They were
16 asked questions concerning storing
17 of samples and I want to know
18 whose responsibility that would
19 have been.

20 THE COURT: If he knows.

21 BY MR. GOUTMAN:

22 Q. If you know, sir.

23 A. Whoever was holding the
24 samples at the time.

1 MR. McCLAIN: I ask that
2 that answer be stricken. He
3 doesn't even know who was holding
4 the samples at the time.

5 MR. GOUTMAN: The answer is
6 substantive. Whoever was holding
7 the samples, Your Honor.

8 MR. McCLAIN: Who was? I
9 don't have any idea as I sit here.

10 THE COURT: We've had enough
11 testimony from counsel. We'll go
12 back to the witness.

13 MR. GOUTMAN: I think
14 counsel does know.

15 MR. McCLAIN: I will
16 withdraw it. We'll just move on.

17 BY MR. GOUTMAN:

18 Q. You were asked about being
19 called upon to give advice about PCBs and
20 what do you tell them; do you recall
21 that?

22 A. Yes, I do.

23 Q. And are you called upon to
24 give advice on PCBs?

1 A. All the time.

2 Q. And what do you tell people?

3 A. When it comes to -- well,
4 really in any situation, when they talk
5 about spill cleanup or standards, you
6 know, the answer is obey the law. If you
7 need help understanding the law, I can
8 help you with that.

9 Q. Do you ever give them advice
10 about cleanup?

11 A. Oh, absolutely. Absolutely.
12 Compliance issues for people who are
13 still using PCBs, as well as cleanup for
14 those who want to do a cleanup.

15 Q. How many years have you been
16 overseeing and directing PCB cleanups?

17 A. About 20 years.

18 Q. And how many states?

19 A. Most of them.

20 Q. How many foreign countries?

21 A. Three or four.

22 Q. Sir, when you -- when people
23 ask you what should I clean the PCBs up
24 to, what do you tell them? When they ask

1 you what the cleanup level should be,
2 what do you tell them?

3 A. I refer them to either the
4 EPA cleanup standards or to risk
5 assessments; if there is something about
6 their situation that deserves that kind
7 of attention.

8 Q. Now, sir, what if the risk
9 assessment gives you a number that is
10 higher than the EPA level? Well, the EPA
11 level is ten micrograms for high contact
12 surface? Is that correct?

13 A. Yes. That's correct.

14 Q. What if the risk assessment
15 gives you a number that's higher, such as
16 in this case, 19.8? What advice do you
17 give?

18 A. I leave that up to the
19 clients to decide which one to use.
20 They are both safe because they are both
21 based on risk.

22 Q. You were asked about whether
23 Dr. James' risk assessment was ever
24 supplied to the EPA.

1 Before -- after the fire but
2 before they sent the people back in the
3 building, did the State do a risk
4 assessment?

5 A. No, they did not.

6 Q. For two and a half years
7 when people were in that building, did
8 the state do a risk assessment?

9 A. No, never.

10 Q. Before they decided to put
11 TNT in this building and blow it up, did
12 the State do a risk assessment?

13 A. No, they did not.

14 Q. You were asked questions
15 about whether there were levels of PCBs
16 higher than the NIOSH level on the floors
17 of the building; do you recall that?

18 A. Yes, I do.

19 Q. What, if anything, did the
20 state say about levels of PCBs in that
21 building that were higher than NIOSH but
22 below the EPA safe standard?

23 A. They told the employees in
24 the building that the building was safe

1 tell people to compare their levels with
2 the EPA standard?

3 A. No. I had never seen that
4 before this particular case.

5 Q. And what significance do you
6 attach to the fact that the NIOSH was
7 telling the State to compare their levels
8 with the EPA safe standard?

9 A. It's significant because
10 they are acknowledging the relevance or
11 how these standards might apply to this
12 building, based on their review of the
13 data.

14 Q. Now, you were asked
15 questions concerning the mix of data that
16 NIOSH had in its table; some was high
17 contact and some was low contact.

18 Did NIOSH specifically
19 comment on the mix of data that was
20 supplied to them by DGS?

21 A. Yes, they did. They pointed
22 out that it was both high and low contact
23 data mixed and that it should be looked
24 at separately.

1 to occupy.

2 Q. Do you agree with the state?
3 Was it safe to occupy?

4 A. Yes, absolutely.

5 Q. You were asked some
6 questions about the NIOSH letter; and
7 whether NIOSH -- are we looking at the
8 NIOSH letter to DGS of August 20, 1995?

9 A. Yes, sir.

10 Q. And could you read the last
11 sentence of that paragraph for us?

12 A. "These results should also
13 be compared with EPA cleanup criteria of
14 1,000 micrograms per square meter for
15 outdoor contact surfaces and 10,000
16 microgram per square meter for indoor low
17 contact surfaces."

18 Q. Have you dealt with NIOSH
19 over the years?

20 A. Yes, I have.

21 Q. Many times?

22 A. A number of times; all on
23 PCB transformer fires.

24 Q. Have you ever known NIOSH to

1 Q. And could you read the
2 highlighted sentence preceding the one
3 that I asked you to read?

4 A. "The results for furniture
5 and office items should be separated" --

6 Q. Start with next one,
7 "however."

8 A. "However the SLPCBW data set
9 includes surfaces such as floors,
10 ceilings, air filters, floor troughs and
11 computer sub floors. The results for
12 furniture and office items should be
13 separated from these others for a more
14 detailed analysis."

15 Q. NIOSH is recommending that
16 they separate them out?

17 A. Yes, which would only make
18 sense if you were going to have two
19 separate cleanup standards, which is what
20 the EPA safe standards are all about.

21 Q. Now, sir, you were also
22 asked, if you turn to table six, this
23 morning, you were asked wasn't it true
24 that the averages for PCBs in the

1 asbestos on the various floors were the
 2 same.
 3 Sir, the averages on table
 4 six, which is for Aroclor 1260 range from
 5 six parts per million to 36 parts per
 6 million; do they not or excuse me, six
 7 parts per million to 28 parts per
 8 million, do they not?
 9 A. Which table?
 10 Q. Table six, excuse me, on
 11 nonfire floors.
 12 MR. McCLAIN: What's the
 13 question now?
 14 BY MR. GOUTMAN:
 15 Q. The range of averages on
 16 table six are from six parts per million
 17 to 28 parts per million on the nonfire
 18 floor?
 19 A. Well, to be fair, the
 20 results, the averages are about 14 to
 21 about 28 level, if I read it correctly,
 22 is from data from another location.
 23 Q. Okay.
 24 A. But it's a pretty good

1 spread.
 2 Q. Is 14 the same as 28?
 3 A. No, it's not. Of course
 4 not.
 5 Q. Is this consistent or
 6 inconsistent with a chaotic spread of
 7 smoke and soot as a result of a fire?
 8 A. Certainly and it's
 9 inconsistent with a nice, even
 10 distribution of off-gassed PCB, which is
 11 the State's theory, that it doesn't make
 12 sense based on this data.
 13 Q. How about the ranges, where
 14 it says maximum? Is there a broad range
 15 of maximums?
 16 A. Oh, absolutely and I talked
 17 about that the other day. Some of these
 18 maximums are extremely high. The median
 19 is the middle data point, so that means
 20 that half the data is below that level.
 21 So, you could do the math yourself. The
 22 numbers are -- can be extremely low in
 23 some of these ranges and extremely high.
 24 So, that's the kind of

1 result you would expect from smoke.
 2 Q. Why don't we turn to table
 3 seven.
 4 Again, the average ranges
 5 for the nonfire floors are from what? 14
 6 to -- 15 to 36 parts per million?
 7 A. It depends on your
 8 definition of fire floors.
 9 Q. I meant other than the sixth
 10 floor?
 11 A. Right. 36 to as low as 15.
 12 Q. 15 to 36, is that the same
 13 number?
 14 A. No, it's not.
 15 Q. This is, by the way, for
 16 total PCBs; right?
 17 A. Yes, that's correct.
 18 Q. And the ranges, are they the
 19 same number? An even distribution?
 20 A. No, certainly not based on
 21 the maximums that we see here.
 22 Q. Is this data consistent or
 23 inconsistent with the fire spreading PCBs
 24 in that building?

1 A. It's consistent.
 2 Q. The prefire asbestos, did it
 3 have more or less PCBs than the asbestos
 4 sampled after the fire?
 5 A. The prefire asbestos was
 6 about five times lower in PCB than the
 7 asbestos sampled afterwards.
 8 Q. What does that tell you?
 9 A. That most of the PCBs were
 10 deposited by the fire.
 11 Q. You were asked some
 12 questions about the duct board in the
 13 Transportation and Safety Building; and
 14 its condition.
 15 Are you aware of any
 16 evidence in this case presented by anyone
 17 that CertainTeed ever had a problem with
 18 the glue in their duct board drying up
 19 and the duct board deteriorating?
 20 A. No. There is no evidence.
 21 Q. Is there any evidence that
 22 you're aware of, sir, that the duct board
 23 in this building, excuse me, that the
 24 glue in the duct board in this building,

1 dried up because PCBs were jumping out of
2 them and that the duct board collapsed?

3 A. No, there's no such
4 evidence.

5 Q. What conclusions did you
6 reach, sir, based upon your analysis of
7 thousands and thousands of tests, as well
8 as your own inspection of the building,
9 of the source of PCBs found in the
10 surfaces and in the air of the
11 Transportation and Safety Building?

12 A. My simple conclusion was
13 that most of the PCBs found in that
14 building on surfaces and everywhere, were
15 the result of the fire; the burning of
16 duct board and light fixtures.

17 Q. And what is your conclusion,
18 sir, as to whether that fire-related
19 contamination could have been cleaned up?

20 A. It absolutely could have
21 been cleaned up. I've worked on much,
22 much worse projects where the cleanup
23 went quickly and the work was done and
24 the building reoccupied.

1 the ventilation system were on, PCBs were
2 flying out of the ductwork, you'd be
3 seeing PCBs accumulating in the building.
4 And it just wasn't happening, based on
5 all the data that was being collected.

6 Q. Sir, you were asked
7 questions about and gave responses
8 concerning the State's plans to remove
9 the asbestos even before they found PCBs?

10 A. Yes, sir.

11 Q. And are you aware of their
12 plans to put in sprinklers in the
13 building?

14 A. That was my understanding,
15 yes.

16 Q. Sir, are you aware, sir, of
17 the State's position taken, even before
18 the fire, that to put in sprinklers, they
19 had to take out the asbestos?

20 A. Yes, I'm aware of that.

21 MR. GOUTMAN: Thank you. No
22 further questions.

23 MS. MEYERS: Your Honor, I
24 have a few brief questions.

1 Q. Lastly, you were asked
2 questions -- do you have a copy of your
3 report?

4 A. Yes, I do.

5 Q. You were asked questions by
6 Mr. Neal about whether you referred to
7 data after 1994. I want to direct your
8 attention to Page 16.

9 The sentence before 3.2.
10 Do you see that?

11 A. Yes, I do.

12 Q. Do you refer to data that
13 post dates 1994 in that?

14 A. Yes, I do.

15 Q. And what point are you
16 making there? Do you see the sentence?

17 A. Yes, I do. And I just have
18 to read it to answer your question.

19 Q. I know you've been on the
20 witness stand a while.

21 A. The point here is that PCB
22 levels in the building were not
23 increasing. We've talked about that
24 before. If the building were reoccupied,

1 THE COURT: Ms. Meyers?

2 MR. McCLAIN: How does she
3 have a right to follow up now? I
4 don't think she --

5 THE COURT: The court
6 believes she has a right to follow
7 up.

8 MR. McCLAIN: Okay.

9 MS. MEYERS: Thank you, Your
10 Honor.

11 - - -

12 EXAMINATION

13 - - -

14 BY MS. MEYERS:

15 Q. Good afternoon,
16 Mr. Woodyard.

17 A. Good afternoon.

18 Q. I just wanted to clarify one
19 brief point. Mr. McClain asked you about
20 your earlier testimony that the state
21 wasted almost \$1 million by removing the
22 exterior wall caulk.

23 And he asked you if you
24 included in your estimate the cost of

1 transportation and disposal of that
 2 material and you said you had not.
 3 I'd like you to look at Page
 4 32 of the Plaintiff's Exhibit 2228,
 5 please. That is the contractor's request
 6 for payment.
 7 A. Which page number? I'm
 8 sorry.
 9 Q. Page 32.
 10 A. Okay.
 11 Q. And that's a listing of
 12 transportation and disposal costs for
 13 various materials; correct?
 14 A. Yes, it is.
 15 Q. Would you look at just about
 16 at the middle of the page, item TD 0008?
 17 A. Yes.
 18 Q. And that shows the cost of
 19 transportation and disposal for caulk and
 20 some other items lumped together;
 21 correct?
 22 A. Yes, that's correct.
 23 Q. And would you tell the jury
 24 how much that total cost is for the

1 transportation and TOSKA disposal of
 2 caulk and those other items together?
 3 MR. McCLAIN: Your Honor,
 4 wasn't this the item that I was
 5 precluded from going into?
 6 Because it involved other items?
 7 I was precluded from going into
 8 it.
 9 THE COURT: Overruled.
 10 MR. McCLAIN: Okay.
 11 THE WITNESS: The total cost
 12 of transportation and disposal for
 13 that group of waste was \$3,706.
 14 BY MS. MEYERS:
 15 Q. If you add that \$3,706 to
 16 your previous estimate for the cost that
 17 the state incurred in removing the caulk
 18 from the exterior building, and assume
 19 that that entire \$3,706 was attributable
 20 to the caulk, does that change your
 21 testimony that the state wasted almost \$1
 22 million in caulk removal?
 23 A. No. It's still true.
 24 MS. MEYERS: Thank you. No

1 further questions, Your Honor.
 2 THE COURT: Mr. McClain?
 3 MR. McCLAIN: Thank you,
 4 Your Honor.
 5 - - -
 6 EXAMINATION
 7 - - -
 8 BY MR. McCLAIN:
 9 Q. Now that we're into other
 10 items, how much does it cost to dispose
 11 of all the other items then?
 12 MR. GOUTMAN: Objection,
 13 Your Honor.
 14 MR. McCLAIN: She opened it
 15 up.
 16 THE COURT: Overruled.
 17 MS. MEYERS: Your Honor --
 18 THE COURT: Overruled.
 19 BY MR. McCLAIN:
 20 Q. The total to dispose of all
 21 the other items was \$214,000; wasn't it
 22 the number we were using?
 23 A. Is that a question?
 24 Q. Yes.

1 A. I don't know. I don't know
 2 where the \$214,000 comes from.
 3 Q. Just give me a ballpark
 4 number from adding those up. I want to
 5 let you go home tonight.
 6 A. Thank you. You're talking
 7 about what was the total cost of TOSKA
 8 waste disposal, PCB-type waste disposal?
 9 Q. Yes.
 10 A. It would appear to be around
 11 \$200,000.
 12 Q. All right. We'll leave it
 13 at round numbers, \$200,000.
 14 Okay. Now, real quick,
 15 because I do want to let you go tonight
 16 and you've been here an awful long time.
 17 First of all, on this
 18 \$868,000 number --
 19 A. Yes, sir.
 20 Q. Mr. Goutman gave that you
 21 document; didn't he? That's where you
 22 got that number, the \$868,000 number?
 23 A. I don't remember who gave me
 24 the document. It was one of the early

1 documents I reviewed from the PDG bidding
2 process.

3 Q. From the lawyers; right?

4 A. Yes. They copied it for me
5 and gave it to me.

6 Q. Yes. And this document,
7 regarding the other totals that we came
8 to today, was available; was it not?

9 A. Yes, it was.

10 Q. All right. And in regard to
11 whether you are right about your theory
12 of fire spread or we're right about
13 Mr. Ewing's theories or Mr. Kominsky's
14 theory about how the PCBs were spread,
15 were there any directions or warnings on
16 these ducts that said if you heat them,
17 whether it's in a fire or during the
18 regular heating season, any type
19 instruction at all that said these will
20 release PCBs?

21 MS. HERSCHEL: Objection,
22 Your Honor.

23 MR. McCLAIN: I'll rephrase
24 it.

1 BY MR. McCLAIN:

2 Q. Was there any warning that
3 said if these ducts are in a fire they
4 contain PCBs and they will contaminate
5 this building? Any warning like that on
6 these ducts?

7 MR. GOUTMAN: Objection,
8 Your Honor. There's no obligation
9 under Pennsylvania law to warn
10 against a burning up of items.

11 MR. McCLAIN: Your Honor, I
12 don't believe that's an
13 appropriate objection.

14 MR. GOUTMAN: Can we see the
15 court at side bar?

16 THE COURT: Yes.

17 - - -

18 (Whereupon, the following
19 was held at side bar conference.)

20 - - -

21 MR. GOUTMAN: There is no
22 obligation under Pennsylvania law
23 to label everything in a building,
24 which has burned, give off a

1 toxin. This witness has already
2 testified that everything in an
3 office building if it burns will
4 give off a toxin. No court has
5 ever, in Pennsylvania, ever
6 recognized an obligation for a
7 manufacturer to warn against what
8 might happen if your product is
9 caught in a catastrophic building
10 fire.

11 MR. McCLAIN: We've briefed
12 this extensively and your motion
13 was overruled on that subject and
14 your motion on compulsory nonsuit
15 was overruled on that subject.

16 MR. GOUTMAN: You said
17 earlier, when Mr. Cocciardi was
18 testifying, that you were
19 withdrawing any claim for
20 fire-related damages. Now you're
21 saying well, there's a duty to
22 warn against fire-related damages
23 that you're not even claiming in
24 this case.

1 MR. McCLAIN: I'm sorry,
2 Mr. Goutman. I don't want to
3 argue with you. It seems
4 disingenuous to me. You've now
5 put this witness up to say the way
6 PCBs were spread in this building
7 was through the fire. My
8 withdrawal of the fire claim was
9 those direct fire-related damages
10 on floors six and five and four
11 and you know that.

12 MR. GOUTMAN: No, that's not
13 true. Ken, you withdrew any claim
14 for environmental costs related to
15 the fire.

16 MR. McCLAIN: You're going
17 to keep him here overnight. I
18 have a question that relates to
19 did he see anything that would
20 instruct the user, whether the
21 heat source was the heat from the
22 duct, whether it was from the tape
23 or from the fire, that this
24 product can contaminate your

1 building. Was there any
2 instruction such as that on these
3 ducts and that's the only question
4 I want to ask and I'm done.
5 MR. GOUTMAN: He's said he's
6 seen no warnings on this. All
7 that counsel is trying to do is
8 make a point that CertainTeed
9 should have put a warning about
10 what happens if your product gets
11 caught in a catastrophic fire; an
12 element of damages which counsel
13 frankly has withdrawn and frankly
14 which is not even recognized under
15 Pennsylvania law.
16 MR. McCLAIN: I'll rephrase
17 the question so it cannot be
18 objectionable.
19 MS. HERSCHEL: Can we know
20 what that is?
21 THE COURT: Let me hear the
22 question as you rephrase it.
23 MR. McCLAIN: Was there any
24 warning or instruction that the

1 PCBs in this ductwork could get
2 out under any circumstance,
3 period.
4 MR. GOUTMAN: That's the
5 same problem, Your Honor. We're
6 talking about a product, be it
7 carpet, be it that chair that
8 you're sitting in, that will
9 release toxins if burnt in a fire.
10 There's no court in Pennsylvania
11 that's ever said, well, you're
12 liable, if you don't put a label
13 that says don't, you know, don't
14 let this get caught in a building
15 fire and if it does, you're
16 liable.
17 There's no court that's ever
18 said there's an obligation to warn
19 about what might happen if a
20 chair, ductwork or anything else
21 like that is caught in a
22 catastrophic fire. That's the
23 problem.
24 So, the question presumes a

1 cause of action that doesn't exist
2 on a claim that was withdrawn six
3 months ago.
4 THE COURT: Sustained.
5 BY MR. McCLAIN:
6 Q. Mr. Woodyard, in those
7 instruction books that you've shown us,
8 that you reviewed --
9 A. Yes, sir.
10 Q. -- was there any type of
11 warning on those at all about the PCB
12 content of the ductwork?
13 A. No, there was not.
14 MR. McCLAIN: Thank you. No
15 further questions.
16 MR. GOUTMAN: No questions,
17 Your Honor.
18 MR. NEAL: No questions,
19 Your Honor.
20 MS. HERSCHEL: No questions,
21 Your Honor.
22 MS. MEYERS: No questions,
23 Your Honor.
24 THE COURT: Mr. Woodyard,

1 you may step down.
2 THE WITNESS: Those are the
3 six words that are going to set me
4 free. Thank you, Your Honor.
5 THE COURT: We're going to
6 adjourn now until 11:00 tomorrow
7 morning.
8 MR. McCLAIN: I'd like to
9 mark this exhibit that I made as
10 2228F.
11 MS. MEYERS: Your Honor, I
12 have an objection to this exhibit.
13 MR. McCLAIN: The one that
14 we made, Mr. Woodyard and I, move
15 it into evidence at this time.
16 MR. GOUTMAN: I object, Your
17 Honor. This, unlike the other
18 times when a witness agrees with
19 certain numbers, this witness did
20 not agree with these numbers. He
21 agreed that this number appeared
22 in that document, but he did not
23 agree with this number and he
24 didn't agree with that number.

1 In other instances, where
 2 we've allowed --
 3 THE COURT: There's two
 4 issues, if I may.
 5 MR. GOUTMAN: Okay. You're
 6 the judge.
 7 THE COURT: One, that it may
 8 be marked and it may be marked.
 9 Two, that it be admitted; no, it
 10 may not be admitted. It is
 11 marked. What was the marking
 12 number?
 13 MR. McCLAIN: 2228F.
 14 THE COURT: 2228F.
 15 - - -
 16 (Whereupon, the proceedings
 17 concluded at 4:10 p.m.)
 18 - - -
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LAWYER'S NOTES

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CERTIFICATE

1 I hereby certify that the
 2 proceedings and evidence noted are
 3 contained fully and accurately in the
 4 notes taken by me on the deposition of
 5 the above matter, and that this is a
 6 correct transcript of the same.
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 John Begley, RPR

Teresa M. Beaver, RPR

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